



May 12, 2022

VIA ELECTRONIC MAIL

Deputy District Attorney Nicole Roth, Esq.
San Diego District Attorney's Office
330 West Broadway
San Diego, California 92101
Via email at: Nicole.Roth@sdcca.org

Re: Public Records Request #21-133

Dear Ms. Roth,

I write on behalf of Tasha Williamson, who submitted the above-referenced public records act request to the San Diego District Attorney's Office for records related to officers who were charged with crimes from January 1, 2014 through September 30, 2021.

This letter addresses the District Attorney's response to Ms. Williamson's request for:

1. Names of Officers who have been charged with any crimes
2. The crimes they were or are charged with
3. Dates of arrest
4. Name of Law Enforcement Agency that arrested them
5. Name of Law Enforcement Agency that referred the case to the District Attorney's Office if no arrest
6. Name of Law Enforcement Agency they work or worked for
7. Court Case number

The California Public Records Act (CPRA) requires disclosure of public records on request unless they fall within narrowly defined exceptions. Cal. Const. Art. I, § 3(b); Govt. Code § 6253. If a record contains both disclosable and exempt information, the CPRA requires disclosure of "[a]ny reasonably segregable portion [of public records]. . . after deletion of the portions that are exempted by law." Govt. Code § 6253(a).

By your letter of November 19, 2021, the District Attorney's office initially responded to Ms. Williamson's request. Other than "publicly filed criminal complaints" in cases "specifically related to the defendant's status as a peace officer," which would provide "the defendant's name, court case number, and crimes with which the defendant is charged (as requested in items 1, 2, and 7)," and "publicly filed criminal complaints involving charges related to a peace officer discharging a firearm at a person and use of force resulting in death or great bodily injury," your letter refused to disclose any requested records, claiming that such records are "part of our investigatory files" and therefore "exempt from CPRA disclosure" under Government Code section 6254(f).

By letter of December 17, 2021, you further responded to Ms. Williamson's request and disclosed criminal complaints filed against:

- Matthew Dages for filing a false report;
- Richard Fischer for assault and battery by officer and false imprisonment;
- Christopher Hays for false imprisonment, sexual battery, and assault and battery by officer;
- Jeffrey Jackson for assault and battery by officer;
- Nicholas Morgan and Joshua Nahan for assault and battery by officer; and
- Aaron Russell for murder.

Although disclosure of the complaints is appropriate, it falls short of the District Attorney's CPRA obligations in responding to Ms. Williamson's request. Under current law, the District Attorney may not invoke the investigatory files exemption for records relating to the charges against the officers listed above.

In Senate Bill 1421 and Senate Bill 16, the Legislature prohibited state and local agencies from asserting the investigatory files exemption of section 6254(f) to withhold records relating to charges such as those against the officers listed above.

As the relevant statute provides;

Notwithstanding ... subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by a state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act ...

(A) A record relating to the report, investigation, or findings of any of the following:

(i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.

(ii) An incident involving the use of force against a person by a peace officer or custodial officer that resulted in death or in great bodily injury.

(iii) A sustained finding involving a complaint that alleges unreasonable or excessive force.

(iv) A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.

(B)

(i) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public.

(C) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency involving dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, false statements, filing false reports, destruction, falsifying, or concealing of evidence, or perjury.

(D) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct ... involving prejudice or discrimination ...

(E) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that the peace officer made an unlawful arrest or conducted an unlawful search.

Penal Code § 832.7(b)(1). The charges against the officers listed above apparently fall into one or more of the categories specified in section 832.7(b)(1), such as discharge of firearm at a person, force resulting in death or great bodily injury, unreasonable or excessive force, sexual assault against a member of the public, dishonesty, or unlawful arrest.

Accordingly, section 832.7(b) requires release of more than the criminal complaints relating to those charges. The Legislature mandated:

Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action. Records that shall be released pursuant to this subdivision also include records relating to an incident specified in paragraph (1) in which the peace officer or custodial officer resigned before the law

enforcement agency or oversight agency concluded its investigation into the alleged incident.

Pen. Code § 832.7(b)(3). The District Attorney must disclose such records regardless of whether it created them in the first instance. *Becerra v. Superior Court*, 44 Cal. App. 5th 897, 918-23 (2020).

Accordingly, the District Attorney's office is unlawfully invoking the investigatory files exemption, potentially exposing the office to litigation that could result in an order compelling disclosure under the CPRA and awarding substantial fees and expenses. Govt. Code §§ 6258, 6259.

I hope to resolve this matter without litigation if possible. Please let me know if the District Attorney's office will promptly release all requested records and make it unnecessary to pursue legal action to vindicate the public's right to disclosure.

Very truly yours,

FIRST AMENDMENT COALITION



Monica N. Price
Legal Fellow