



POLICE TRANSPARENCY HANDBOOK

FAC
FIRST AMENDMENT COALITION

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Police Transparency Handbook

A guide on accessing police misconduct and
use-of-force records in California

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It is not intended to constitute legal advice and does not form an attorney-client relationship.*

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Introduction to the Police Transparency Handbook

For decades, California was one of the most secretive states when it came to internal law enforcement records, with officers having more privacy protections than other government employees.

This veil of secrecy began to lift starting in 2019, after California passed landmark legislation that made certain use-of-force and officer misconduct records accessible under the California Public Records Act.

Senate Bill 1421, The Right to Know Act of 2018, opened up public access to records about police shootings and other uses of force, as well as internal records about several types of officer misconduct. A companion bill, Assembly Bill 748, opened up access to audio and video recordings, such as body camera footage and 911 calls, from police shootings and instances when officer force caused significant injuries. The public's demand for more police transparency spurred lawmakers to further increase access in 2021, when they passed Senate Bill 16, which expands the categories of officer misconduct that agencies must disclose. Together, these laws significantly expand public access to previously secret internal affairs reports, audio and video recordings, witness statements and much more related to misconduct and officers' violent interactions with the public.

While this series of legislation created a sea change in California, and allowed the press and public to better perform their oversight role, meaningful and timely access is often thwarted by agency practice and legal threats.

When the laws were enacted, law enforcement labor unions rushed to the courts to try to limit the scope of the new laws and keep information under wraps. News organizations and transparency advocates, including the First Amendment Coalition, formed the resistance and obtained important court decisions protecting the public's access. Today, many aspects of these laws remain the subject of vigorous debate, varying law enforcement agency interpretation and ongoing legal challenges.

This resource is designed to help you navigate these laws and exercise your right to know. The Police Transparency Handbook's anchoring document, an in-depth Legal Guide, provides a detailed overview of the key statutes and relevant court cases. The handbook also contains Frequently Asked Questions and sample Public Records Act request letters you can use to generate your own requests.

You can also use FAC's free [Legal Hotline](#) for help navigating these laws. Journalists on deadline and those seeking custom training sessions can contact the FAC team directly at legal@firstamendment.org or (415) 460-5060.

Legal Guide

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Introduction

California lawmakers passed three bills starting in 2018 that significantly broadened the public's right to access information about law enforcement officer disciplinary records and significant uses of force against members of the public.

Senate Bill 1421, "The Right to Know Act," significantly broadened the public's ability to obtain records about police shootings, other significant uses of force and certain disciplinary records. An important companion bill, AB 748, further increased transparency by requiring that agencies disclose recordings of "critical incidents," which includes body camera video of police shootings, among other important recordings essential to public understanding of law enforcement activity in our communities. In 2021, lawmakers built on this increased access with Senate Bill 16, which expanded the categories of misconduct subject to disclosure and made a number of procedural changes, including new deadlines for disclosure and limiting certain reasons for withholding records.

These police transparency laws cover police officers, sheriff's deputies, highway patrol officers, local jailers and state prison guards, along with records created or maintained by other agencies, including district attorneys and oversight agencies.

The following guide explains in some detail each of these laws, along with relevant court rulings, and also explains what records the public has a right to see. **Section I** is about police misconduct and use-of-force files, and **Section II** is about video and audio recordings, such as dash cam and body cam footage.

The public can access these records under the California Public Records Act, the state's main freedom-of-information law. For the basics on how the CPRA works, refer to [FAC's primer](#). As for timing: under the CPRA, the government is generally required to respond to a request for records within 10 calendar days. The time for responding can be extended by the agency for an additional 14 days (for a total of 24 days). SB 16 has added that covered records must be produced no later than 45 days from the date of request for disclosure, unless delay is authorized by other provisions of the statute.

Notably, many types of routine police records – such as incident reports, investigative files of closed cases, jail booking photos, even arrest reports – are often not publicly available. This handbook does not cover those longstanding exemptions to the California Public Records Act, rather it focuses on the specific categories of records related to police conduct that are now subject to disclosure. To understand the foundations of the California Public Records Act, its

exemptions, and information that can be released upon agency discretion, refer to CPRA Primer.

I. Files About Police Misconduct and Other Critical Incidents

In 2018 the California Legislature enacted [SB 1421](#), which amended [Penal Code section 832.7\(b\)](#) (“Section 832.7(b)”). The Legislature enacted SB 1421 to greatly expand public access to records concerning police uses of force and serious misconduct. As the Legislature explained:

“The public has a right to know all about serious police misconduct, as well as about officer-involved shootings and other serious uses of force. Concealing crucial public safety matters such as officer violations of civilians’ rights, or inquiries into deadly use of force incidents, undercuts the public’s faith in the legitimacy of law enforcement, makes it harder for tens of thousands of hardworking peace officers to do their jobs, and endangers public safety.”

[S.B. 1421](#), section 1(b).

SB 1421 went into effect on January 1, 2019, and made records about certain types of conduct by state and local law enforcement officers (referred to in the law as “**peace officers or custodial officers**”) available under the California Public Records Act (“CPRA”).

SB 16 was adopted in 2021 and went into effect on January 1, 2022, further amending Section 832.7(b) to broaden the records subject to disclosure.

Under Section 832.7(b), the following records must be disclosed, even if they are “**personnel records**” for which disclosure was previously prohibited:

- **officer-involved shootings** (Section 832.7(b)(1)(A)(i));
- uses of force resulting in **great bodily injury** or death (Section 832.7(b)(1)(A)(ii));
- **sustained findings** that an officer committed **sexual assault** as defined in Section 832.7(b)(1)(B);
- **sustained findings** that an officer committed **dishonesty** as described in Section 832.7(b)(1)(C);
- **sustained findings** involving a complaint that alleges **unreasonable or excessive force** (Section 832.7(b)(1)(A)(iii));
- **sustained findings** that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive (Section 832.7(b)(1)(A)(iv));
- **sustained findings** that a law enforcement officer engaged in conduct involving prejudice or discrimination against a person (Section 832.7(b)(1)(D)); and
- **sustained findings** that an officer made an unlawful arrest or conducted an unlawful search (Section 832.7(b)(1)(E)).

SB 16 also amended Penal Code section 832.5 by mandating time periods for retention of records. All complaints and any reports regarding law enforcement officers and currently in the

possession of a department or agency shall be retained for a period of no less than five years where there was not a sustained finding of misconduct, and for not less than 15 years where there was a sustained finding of misconduct. Records shall not be destroyed while a request related to that record is being processed, or during any process or litigation to determine whether the record is subject to release. Section 832.5(b).

A. Definitions

Each of the boldfaced terms above has a special meaning in the law, some of which are defined in the statute. These terms are important for determining what is, and what is not, a public record subject to disclosure.

1. Peace officers and custodial officers (“officers”)

Section 832.7(b) covers records related to the above-listed categories of incidents involving “peace officers or custodial officers.” Peace officers include police officers, officers of sheriff’s departments, California Highway Patrol officers, officers of specialized policing agencies, such as those for ports, and many other types of law enforcement personnel. Penal Code sections [830 to 830.15](#) detail numerous categories of “peace officers.” Peace officers may also include some correctional officers, e.g., prison guards for state prisons, and other employees of the California Department of Corrections and Rehabilitation, such as parole and probation officers. Custodial officers are employees of city or county law enforcement agencies that maintain custody of prisoners in local detention facilities. Penal Code sections [831 and 831.5](#) explain the types of individuals who are custodial officers.

For simplicity, peace officers and custodial officers are referred to as “officers” below, except when the statute distinguishes between the two.

2. Personnel records

“Personnel records” means any file maintained under the officer’s name by the officer’s “employing agency” that contains records relating to, in relevant part, “[e]mployee advancement, appraisal, or discipline” and “[c]omplaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties.” Penal Code section 832.8(a).

Records relating to the conduct of an elected county sheriff, as opposed to deputies employed by the sheriff’s department, are not “personnel records” because the county is not deemed the sheriff’s “employing agency.” *Essick v. County of Sonoma*, 81 Cal. App. 5th 941, 951-54 (2022). Therefore, records about an investigation into an elected sheriff’s alleged harassment of a county supervisor were subject to disclosure, although they did not fall into one of the categories of misconduct described in Section 832.7(b). *Id.* at 955 (holding statutes protecting personnel records “provide no shield against embarrassment to an elected official who also happens to be a peace officer”).

3. Officer-involved shootings

An agency must disclose records relating to **any incident in which an officer discharged a firearm at a person**. Records relating to such incidents must be disclosed even if nobody was hit or injured. See Section 832.7(b)(1)(A)(i). A shooting incident does not have to be investigated by an agency for the records to be released. Similarly, the agency does not need to have made any findings that an officer violated any policy or law for records to be released.

Rather, any record relating to **the report**, or investigation, or findings concerning the incident must be released. See Section 832.7(b)(1)(A).

The term “firearm” is not defined in this statute. Elsewhere, the Legislature has defined “firearm” as “a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.” Penal Code section 16520(a). That definition likely applies here. Typically weapons such as pellet guns are not firearms if they “use the force of air pressure, gas pressure, or spring action” rather than an explosive “to expel a projectile.” *People v. Monjaras*, 164 Cal. App. 4th 1432, 1435 (2008). While sidearms, rifles, and shotguns are generally firearms, other projectile weapons may not be. For example, a bean bag launcher that uses gas or compressed air is not necessarily a “firearm.”

In terms of which agency or agencies may have records related to officer-involved shootings, note that state law typically requires the California Attorney General to investigate fatal shootings of unarmed civilians. Gov. Code section 12525.3(b)(1) (“A state prosecutor shall investigate incidents of an officer-involved shooting resulting in the death of an unarmed civilian. The Attorney General is the state prosecutor unless otherwise specified or named.”) (adopted by AB 1506). The California Attorney General, via the state Department of Justice, may also choose to investigate other shootings or incidents as well. Given this, you may wish to seek records from the state agency, as well as the local agency involved.

4. Use of force resulting in death or great bodily injury

An agency must disclose records relating to any incident in which an officer’s use of force resulted in death, or in “great bodily injury.” See Section 832.7(b)(1)(A)(ii). The term “great bodily injury” is defined in California law as “a significant or substantial physical injury.” See, e.g., Penal Code section [12022.7\(f\)](#). However, this term and its applications to individual instances of force inflicted on members of the public has been the subject of much debate. Agencies and their legal advisers have used narrow interpretations to withhold records that requesters have sought, leading to challenges in and out of court.

Importantly, the term “great bodily injury” has been interpreted broadly by the California courts. See *People v. Washington*, 210 Cal. App. 4th 1042, 1047-48 (2012) (“some physical pain or damage, such as lacerations, bruises, or abrasions” constitutes great bodily injury); *People v. Jung*, 71 Cal. App. 4th 1036, 1042 (1999) (same); *People v. Wallace*, 14 Cal. App. 4th 651, 665-66 (1993) (cuts and burns from being flex-tied, burning sensation from an insecticide-like substance were great bodily injury); *People v. Bustos*, 23 Cal. App. 4th 1747, 1755 (1994) (multiple abrasions, lacerations, and contusions were great bodily injury); *People v. Corona*, 213 Cal. App. 3d 589 (1989) (a swollen jaw, bruises to head and neck and sore ribs were “great bodily injury”); *People v. Sanchez*, 131 Cal. App. 3d 718 (1982) (multiple abrasions and lacerations to victim’s back and bruising of eye and cheek were “great bodily injury”) disapproved on other grounds in *People v. Escobar*, 3 Cal. 4th 740, 751, fn. 5 (1992); *People v. Jaramillo*, 98 Cal. App. 3d 830, 836–837 (1979) (multiple contusions, swelling and discoloration of the body, and extensive bruises were “great bodily injury”).

Some agencies and their legal counsel, however, have argued that they must only disclose a smaller universe of records, those that meet the definition of “serious bodily injury,” which can be interpreted as requiring more severe injuries than “great bodily injury.” However, in drafting SB 1421 the Legislature specifically rejected use of the term “serious bodily injury” and instead chose to use the term “great bodily injury.” See [SB 1421 Senate Floor Analysis dated August 31, 2018](#) at page 2. Furthermore, at least two trial courts have rejected agency attempts to use the more narrow definition of “serious bodily injury” when responding to requests for

records under Section 832.7(b). See *Richmond Police Officers' Association v. City of Richmond*, Case No. MSN19-0169 (Contra Costa Sup. Ct. July 31, 2020); *The Sacramento Bee, et al., v. Sacramento Co. Sheriff's Dept.*, No. 34-2019-80003062 (Sacramento Sup. Ct., Nov. 8, 2019). These courts have held that "great bodily injury" under Section 832.7(b) must be interpreted broadly and consistently with the broad interpretations under *People v. Washington*, and the cases listed above.

Therefore, in responding to requests for records under Section 832.7(b), agencies should interpret "great bodily injury" broadly, and in line with the broad scope of "great bodily injury" applied by the California courts.

As with shooting incidents, a use of force resulting in great bodily injury does *not* have to be investigated by an agency for the records to be released. Similarly, the agency does *not* need to have made any findings that an officer violated policy or any law for records to be released. Rather any record relating to *the report*, or investigation, or findings concerning the incident must be released. See Section 832.7(b)(1)(A).

5. Sustained finding

This definition is key to whether records about certain types of misconduct will be available to a requester. A "sustained" finding is a final determination by the agency, hearing officer, or other applicable investigating agency, following an investigation and opportunity for an administrative appeal, that the actions of the officer violated law or department policy. See Penal Code section [832.8\(b\)](#).

One trial court has held that once a sustained finding has been made, an agency must disclose the records *even if* the agency later decides to drop the sustained finding, or enters into a settlement agreement with the officer to drop the sustained finding. See *Richmond Police Officers' Association v. City of Richmond*, Case No. MSN19-0169 (Contra Costa Sup. Ct. July 31, 2020). In other words, an agency cannot make an agreement with an officer that would hide a sustained finding from disclosure.

As long as an officer has the opportunity to pursue an administrative appeal after a finding of misconduct, the officer cannot thwart disclosure "by declining to pursue an administrative appeal of a disciplinary finding or ... by settling or abandoning such an appeal at any point before its conclusion." *Collondrez v. City of Rio Vista*, 61 Cal. App. 5th 1039, 1053 (2021).

When a "sustained finding" is required as a condition of disclosing law enforcement agency records, the agency must make an administrative determination that an officer engaged in misconduct. For purposes of disclosing the relevant agency records, that leaves it to the agency to decide whether, for example, a given use of force was unreasonable or excessive or an arrest or search was unlawful. If a court were to make similar findings, for example in deciding a civil rights lawsuit or granting a motion to suppress in a criminal case, the relevant judicial records would generally be accessible to the public the way any court records would be available, but the agency's internal records might not be subject to disclosure unless the agency made its own "sustained finding." Therefore, if an agency disagrees with a judicial finding that an officer acted unlawfully, a court might find the agency's internal records about the incident would not be subject to disclosure.

6. Sustained findings of sexual assault

Under Section 832.7(b), an agency must release any records relating to an incident in which a “sustained finding” was made that an officer engaged in sexual assault involving a member of the public. See Section 832.7(b)(1)(B).

“Sexual assault” is broadly defined under Section 832.7(b) as including instances when a police officer propositions a member of the public or engages in a sexual act with a member of the public while on duty:

“sexual assault” means the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority. For purposes of this definition, the propositioning for or commission of any sexual act while on duty is considered a sexual assault.

Section 832.7(b)(1)(B)(ii). “Member of the public” means “any person not employed by the officer’s employing agency and includes any participant in a cadet, explorer, or other youth program affiliated with the agency.” Section 832.7(b)(1)(b)(iii).

As one trial court summarized, the statute defines sexual assault as including “[1] Nonconsensual sexual acts or propositions, whether committed on or off the job; and [2] Sexual acts or propositions committed on the job, whether or not consensual (or claimed to be consensual).” *Richmond Police Officers’ Association v. City of Richmond*, Case No. MSN19-0169 (Contra Costa Sup. Ct. July 31, 2020).

7. Sustained findings of dishonesty

Section 832.7(b)(1)(C) requires disclosure of records relating to an incident in which a sustained finding was made of dishonesty by an 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, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.

Thus, the law covers at least two types of incidents: (a) incidents in which an officer engaged in dishonesty related to reporting, investigation, or prosecution of a crime committed by anyone; and (b) incidents in which an officer engaged in dishonesty related to reporting of, or investigation of misconduct by, another officer. In order for the records to become disclosable, there must be a sustained finding that the officer committed dishonesty falling into one of these categories.

8. Sustained findings of unreasonable or excessive force

An agency must disclose records relating to any sustained finding involving a complaint that alleges unreasonable or excessive force. Section 832.7(b)(1)(a)(iii).

The statute does not define “unreasonable” or “excessive.” Elsewhere, the Legislature has stated, “Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance,” and “the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.” Penal Code section 835a(a)(3), (b).

The Legislature has also required all law enforcement agencies to “maintain a policy that provides a minimum standard on the use of force,” which shall include a “requirement that an officer may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.” Gov. Code section 7286(b)(2). The same statute defines “[e]xcessive force” as “a level of force that is found to have violated Section 835a of the Penal Code, the requirements on the use of force required by this section, or any other law or statute.” Gov. Code section 7286(a)(2). Courts have also addressed what force is “reasonable.” See, e.g., *Graham v. Connor*, 490 U.S. 386, 396 (1989).

9. Sustained findings of failure to intervene

An agency must disclose records relating to a sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive. Section 832.7(b)(1)(a)(iv).

The statute does not define “intervene” or “clearly unreasonable or excessive.” Elsewhere, the Legislature has required that use of force policies must contain a “requirement that an officer intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.” Gov. Code section 7286(b)(9).

In that statute, the term “[i]ntercede’ includes, but is not limited to, physically stopping the excessive use of force, recording the excessive force, if equipped with a body-worn camera, and documenting efforts to intervene, efforts to deescalate the offending officer’s excessive use of force, and confronting the offending officer about the excessive force during the use of force and, if the officer continues, reporting to dispatch or the watch commander on duty and stating the offending officer’s name, unit, location, time, and situation, in order to establish a duty for that officer to intervene.” Gov. Code section 7286(a)(4).

10. Sustained findings involving prejudice or discrimination

An agency must disclose any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that an officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, records, and gestures involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical and/or mental disability, medical condition, genetic information, marital status, sex, gender, gender identity or expression, age, sexual orientation, or military and veteran status. Section 832.7(b)(1)(D).

11. Sustained findings of unlawful arrest or search

An agency must disclose any record relating to an incident where a sustained finding was made that a peace officer made an unlawful arrest or conducted an unlawful search. Section 832.7(b)(1)(E). Unlike other provisions of section 832.7(b)(1), this clause refers only to a “peace officer” and thus excludes custodial officers.

B. Scope of records that must be released

The statute requires disclosure of a broad array of records: “all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to” anyone who determines whether the

officer's action was consistent with law or policy or determines whether to file charges against the officer; and records related to "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." Section 832.7(b)(3).

In addition, after SB 16, the statute now provides that otherwise disclosable records must be released regardless of whether "the peace officer or custodial officer resigned before the law enforcement agency or oversight agency concluded its investigation into the alleged incident." Section 832.7(b)(3).

SB 16 also limited an agency's ability to claim attorney-client privilege over records covered by Section 832.7(b). The attorney-client privilege does not prohibit disclosure of "[f]actual information provided by the public entity to its attorney or factual information discovered in any investigation conducted by, or on behalf of, the public entity's attorney" or "[b]illing records related to the work done by the attorney so long as the records do not relate to active and ongoing litigation and do not disclose information for the purpose of legal consultation between the public entity and its attorney." Section 832.7(b)(12).

It does not matter which agency initially created the records—if an agency has in its possession records subject to disclosure under Section 832.7, it must disclose them even if it did not initially create them and/or the records pertain to officers from a different agency. See *Becerra v. Superior Court*, 44 Cal. App. 5th 897, 920 (2020).

C. Incidents that occurred and records created before January 1, 2019

SB 1421 and SB 16 apply irrespective of when the incident occurred or the records were created. Thus, an agency must release records under Section 832.7(b) even if the records were created, or the incident occurred, prior to January 1, 2019, when the amendments to Section 832.7(b) came into effect, or January 1, 2022, when SB 16's amendments took effect, as the case may be. *Ventura County Deputy Sheriffs' Ass'n v. County of Ventura*, 61 Cal. App. 5th 585, 593-94 (2021); *Walnut Creek Police Officers' Ass'n v. City of Walnut Creek*, 33 Cal. App. 5th 940, 941 (2019).

D. Requester costs for recordings, including edited or redacted body cam or dash cam video

Just as with other categories of other records disclosable under the CPRA, the government may generally charge only for the direct costs of duplicating records or the direct costs of providing the records in electronic form, with limited exceptions that allows agencies to charge for certain programming or computing services. Gov. Code sections 7922.530(a), 7922.575.

Of particular importance, the California Supreme Court held that agencies may not charge a requester for the agency's costs of redacting electronic records such as audio and video records. *Nat'l Lawyers Guild v. City of Hayward*, 9 Cal. 5th 488, 506-507 (2020). Rather, the agency may only charge for the direct costs of duplicating records or the direct costs of providing the records in electronic form.

SB 16 confirmed that the cost of copies of records subject to disclosure pursuant to section 832.7(b) shall not include the costs of searching for, editing, or redacting the records. Section 832.7(b)(10). This means no law enforcement agency should be able to recover these

costs of staff time to fulfill their disclosure obligations for these records. This is an important consideration because some counties may assert the authority to charge greater costs under a local ordinance, purportedly adopted pursuant to Government Code section 54985. But the language in SB 16 makes clear that county agencies, namely the office of the sheriff in this context, should not do so with respect to records made disclosable under Penal Code section 832.7(b). The question whether county agencies can lawfully levy such charges for staff time spent responding to requests made under the CPRA has not yet been litigated.

E. Timing of disclosure

Generally, the CPRA does not establish a hard deadline for agencies to disclose requested records. Instead, it typically requires an agency merely to “state the estimated date and time when the records will be made available.” Gov. Code section 7922.535(a).

However, in SB 16, the Legislature mandated that records subject to disclosure under Section 832.7(b) “shall be provided at the earliest possible time and no later than 45 days from the date of a request for their disclosure,” unless “temporary withholding for a longer period is permitted.” Section 832.7(b)(11).

The statute allows temporary withholding as follows:

1. Active criminal investigation

“During an active criminal investigation, disclosure may be delayed for up to 60 days from the date the misconduct or use of force occurred or until the district attorney determines whether to file criminal charges related to the misconduct or use of force, whichever occurs sooner.” Section 832.7(b)(8)(A)(i).

2. Criminal proceeding against officer

“After 60 days from the misconduct or use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a **criminal enforcement proceeding against an officer who engaged in misconduct or used the force.**” Section 832.7(b)(8)(A)(ii) (emphasis added). The agency must provide written updates at 180-day intervals stating “the specific basis for the agency’s determination that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding. The writing shall include the estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner.” *Id.*

3. Criminal proceeding against someone other than officer

“After 60 days from the misconduct or use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a **criminal enforcement proceeding against someone other than the officer who engaged in the misconduct or used the force.**” Section 832.7(b)(8)(A)(iii) (emphasis added). As that statute says, the agency must provide written updates at 180-day intervals, stating:

the specific basis why disclosure could reasonably be expected to interfere with a criminal enforcement proceeding, and shall provide an estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the

investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner, unless extraordinary circumstances warrant continued delay due to the ongoing criminal investigation or proceeding. In that case, the agency must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding outweighs the public interest in prompt disclosure of records about misconduct or use of force by peace officers and custodial officers. The agency shall release all information subject to disclosure that does not cause substantial prejudice, including any documents that have otherwise become available.

4. Criminal charges filed related to same incident

“If criminal charges are filed related to the incident in which misconduct occurred or force was used, the agency may delay the disclosure of records or information until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea” has expired. Section 832.7(b)(8)(B).

5. Administrative investigation

“During an administrative investigation ... the agency may delay the disclosure of records or information until the investigating agency determines whether the misconduct or use of force violated a law or agency policy, but no longer than 180 days after the date of the employing agency’s discovery of the misconduct or use of force, or allegation of misconduct or use of force, by a person authorized to initiate an investigation.” Section 832.7(b)(8)(C).

II. Recordings of Police Shootings and Use-of-Force Incidents

AB 748 amended the CPRA to require the disclosure of audio and video records of “critical incidents.” The amendment, now codified at Government Code section 7923.625 (“Section 7923.625”) allows the public to access a significantly broader range of recordings than was previously available.

Although most commonly thought of as providing for the release of police “body cam” or “dash cam” videos, Section 7923.625 is not limited to such videos but instead applies to any “video or audio recording that relates to a critical incident.” Thus, records such as audio of 911 calls and bystander videos that end up in the possession of the government should be subject to Section 7923.625’s disclosure requirements.

A. Records that Can Be Obtained Under Section 7923.625

Except in the relatively narrow circumstances described below, Section 7923.625 requires agencies to disclose audio and video records of “critical incidents.” A “critical incident” is: (i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer; or (ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death or in great bodily injury.

In other words, Section 7923.625 provides for release of video and audio recordings of the same types of officer-involved shooting and use of force incidents for which records must be released under Penal Code section 832.7(b). As under Section 832.7(b), agencies should interpret the term “great bodily injury” broadly, and consistently with the broad manner in which California courts have interpreted the term.

Section 7923.625 allows an agency to withhold audio and video recordings of critical incidents in the following limited circumstances.

B. Withholding based on active investigation

An agency may withhold a recording for 45 days or longer from the date the agency “knew or reasonably should have known about the incident” *only if* releasing the recording would substantially interfere with an active criminal or administrative investigation. However, the longer the agency withholds the recording, the higher the burden on the agency to justify delaying disclosure. Thus, an agency may only withhold a recording for up to 45 days, *if*, based on the facts and circumstances depicted in the recording, disclosure would substantially interfere with an active investigation, such as by endangering the safety of a witness or a confidential source. The agency must provide a written explanation to the requester of the specific basis for the agency’s determination that disclosure would substantially interfere with the investigation and must also provide the estimated date of disclosure. To withhold a recording for longer than 45 days, the agency faces a more substantial burden, and must provide a new written notice every 30 days. See Section 7923.625(a)(1)-(2).

C. Redaction or withholding based on privacy expectation

An agency may redact or withhold a recording if the agency demonstrates, on the facts of the particular case, that the public interest in withholding the recording clearly outweighs the public interest in disclosure *because* the release of the recording would violate the reasonable expectation of privacy of someone depicted in the recording. Sections 7923.625(b). There are a number of limitations for invoking this exception.

First, the agency must provide a written explanation to the requester of the specific expectation of privacy at issue and the public interest served by withholding the recording.

Second, whenever possible, the agency is required to redact the recording “including blurring or distorting images or audio, to obscure those specific portions of the recording” to protect the privacy interest at stake. The agency may only withhold the recording entirely if the agency demonstrates that a privacy interest cannot adequately be protected through redaction. Furthermore, when redacting a recording, the agency is not permitted to interfere with the viewer’s ability to fully, completely, and accurately comprehend the events captured in the recording and cannot not otherwise edit or alter the recording.

Even when a recording is entirely withheld because of a privacy interest, the person whose privacy is being protected (or their surviving family) can still obtain a copy of the recording (except where it would substantially interfere with an active criminal or administrative investigation, in which case the provisions above concerning active investigations apply). See Section 7923.625(b)(2).

As noted above, agencies may *not* charge for redacting the records at issue. See *Nat’l Lawyers Guild v. City of Hayward*, 9 Cal. 5th 488, 506-507 (2020).

*This guide is for informational purposes only.
It is not intended to constitute legal advice and does not form an attorney client relationship.*

FAQ

Obtaining law enforcement misconduct and use-of-force records and recordings in California

What types of law enforcement personnel and investigatory records are open to the public in California?

California law requires agencies to release eight categories of records about officer conduct:

- **Officer-involved shootings:** Records related to the discharge of a firearm by an officer, regardless of whether anyone was struck or whether the shooting was considered justified under department policy or the law;
- **Any use of force** that caused great bodily injury or death, regardless of whether the force was considered justified;
- **Sexual assault:** Records related to a sustained finding of sexual assault against a member of the public. “Sexual assault” is broadly defined to include propositioning a member of the public, or the commission of a sexual act, while on duty. Records of sexual assault allegations are available only when the employing agency has “sustained” those allegations;
- **Official dishonesty:** Records relating to a sustained finding of an officer’s acts of dishonesty during the investigation, reporting, or prosecution of crime or police misconduct;
- **Unreasonable or excessive force:** Records related to a sustained finding involving a complaint that alleges unreasonable or excessive force;
- **Failure to intervene:** Records related to a sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive;
- **Prejudice or discrimination:** Records relating to a sustained finding that an officer engaged in conduct involving prejudice or discrimination; and
- **Unlawful arrest or search:** Records relating to a sustained finding that a peace officer made an unlawful arrest or conducted an unlawful search. Note that this particular provision only applies to “peace officers,” unlike other provisions that apply to both “peace” and “custodial” officers. The difference between “peace” and “custodial” officers is discussed in detail in the Legal Guide.

What is a “sustained finding”?

A “sustained” finding means a final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal, that the actions of the peace officer or custodial officer were found to violate law or department policy.

A “sustained finding” is **not** a condition of disclosing records related to **discharge of a firearm at a person** or **use of force resulting in death or great bodily injury**. Those records must be disclosed regardless of whether the shooting or force was found justified or investigated at all.

How do I request law enforcement records?

You can use our [sample letter](#) to generate a written request to submit to the police department, sheriff's office, state attorney general's office or other law enforcement agency that employs the officer in question, or any other agency you think may have related records, for example, a civilian oversight agency or board. While the law does not require a request for records to be submitted in writing, we recommend it.

Can I see a police officer's entire personnel file?

No, but you are entitled to records relating to the categories of misconduct listed above. Disciplinary records about other types of conduct and other types of investigative files remain secret.

Who has a right to see these records?

Any member of the public can request records under the California Public Records Act. You do not need to be a journalist or lawyer, or even a resident of California.

Can I make my request anonymously?

Yes, although you may want to provide an anonymous email address or phone number in case the agency needs to send copies of requested records, collect appropriate fees, advise you of the status of the request, or provide assistance regarding its scope.

How long does an agency have to respond to a records request?

An agency must respond to a request within 10 calendar days. In unusual circumstances, it can give itself an extension of 14 calendar days. The agency's response must include (a) whether it will or will not provide records and (b) if it is not going to provide records, the specific CPRA exemptions the agency believes allow it to withhold the records you seek. Records subject to disclosure under Penal Code section 832.7(b) – the police transparency provisions introduced by SB 1421 and SB 16 – must be disclosed within 45 days of the date of the request unless a delay is authorized by the statute when an investigation or criminal case is open. "Critical incident" recordings – body cam and other video and audio recordings of police shootings – subject to disclosure under Government Code section 7923.625 – are not necessarily subject to the same 45-day deadline.

Can an agency withhold the name of an officer involved in a shooting?

The name of an officer in an officer-involved shooting generally must be disclosed immediately unless there is a credible threat to officer safety. Generalized threats do not suffice. Rather, the agency must show there is "a specific, articulable, and particularized reason to believe that disclosure of the [name] would pose a significant danger to the physical safety" of a specific officer.

Can I access officer body camera videos?

Yes, a 2019 law called Assembly Bill 748 requires police agencies to release recordings of “critical incidents,” as defined in that law. For a thorough discussion of what is accessible, see Section B of our [Legal Guide](#). You can use this sample [request letter](#) to seek recordings.

What does it cost to obtain police personnel records or videos?

Under the CPRA, government agencies generally can charge a requester only for the “direct cost of duplication,” so fees should be minimal. An agency may not charge a requester for the cost of reviewing or redacting records, including body cam or dash cam videos.

How quickly can I get officer body cam or dash cam videos?

The general rule is that agencies are required to release video or audio files just as they are required to release any records under the CPRA — “promptly.” However, an agency may delay the release of video or audio files for 45 days or longer if releasing the recordings would “substantially interfere with an active criminal or administrative investigation,” such as by endangering the safety of a witness or a confidential source. If this is the case, the agency must provide a written explanation of how they believe the release would “substantially interfere with” an active investigation.

Can an agency withhold information while an internal affairs or administrative investigation is pending?

In the case of records relating to officer-involved shootings and uses of force resulting in great bodily injury, if an agency initiates an administrative investigation, an agency may delay disclosing records for 180 days or until the agency determines whether the use of force or shooting violated agency policy (whichever is shorter). In any event, the agency may be obligated to release the audio/video recordings of the incident sooner than this under Government Code Section 7923.625. (See [Section II](#) of our [Legal Guide](#).)

I want to know if a particular officer has ever been punished for excessive use of force or failing to prevent excessive force; sexual assault; prejudice or discrimination; unlawful arrest or search; or lying. How would I go about finding out?

Submit a CPRA request to the officer’s employing agency, asking for any records including his/her name that involve accusations of any such misconduct. You may also ask other agencies, such as the district attorney’s office or the California Department of Justice, for records about officials employed by other agencies.

What kind of information can agencies lawfully withhold or redact?

Agencies can lawfully redact some personal information such as home addresses, telephone numbers or the identities of family members of officers. But they must release the names and work-related information of officers. Agencies can also redact information that would reveal the identities of whistleblowers, complainants, victims, and witnesses, as well as confidential medical and financial information.

Where do I send my records request?

You make the request to the agency that employs the officer. However, an outside agency (such as the local district attorney's office) may be involved in an investigation. You are also entitled to records maintained or created by any outside agency. Agencies may have a website for submitting public records requests, often called a portal.

Do I have to know an officer's name to make a request?

No. You can ask an agency for all records about any and all of its officers' conduct that would be disclosable under the Public Records Act. However, if you are seeking information about a specific officer, it helps to have the name. It will also help speed the process of getting records if you narrow your request as much as possible. Note that the CPRA requires agencies to assist requesters in identifying the records they seek, including by explaining the agency's recordkeeping systems and ways in which a request can be modified.

What records can I access about a police chief or sheriff?

All California sheriffs and police chiefs are subject to the CPRA. Although an elected sheriff may be a "peace officer," records about the sheriff's own conduct are not protected by the strict privacy laws that apply to other officers, because the county is not deemed the sheriff's "employing agency." Records about the conduct of police chiefs, however, may not be subject to that rule, because police chief are typically appointed employees of cities, as opposed to elected county sheriffs.

Are campus police subject to California's open-records laws?

If they are employed by a government agency, yes. Private security officers may not be subject to the CPRA, depending on how and whether they are supervised by government agencies.

Are there laws other than the CPRA that might help me obtain police records?

Yes. Some California cities have local Sunshine Ordinances that create additional rights of access and enforcement mechanisms. If an officer is employed by an agency in a city with a strong Sunshine Ordinance, familiarize yourself with it. However, some police records are private by state statute and are not disclosable, regardless of a local ordinance.

What can I do if an agency denies my request?

You may want to start a dialogue, challenging the reason for the denial. For instance, you may disagree with the reasons an agency gives for withholding the records, and you may want to make arguments, such as if you know a record exists or why you think it meets the definitions about what records are disclosable. This type of negotiation, which we recommend you do or memorialize in writing, can lead agencies to change their determinations. Short of litigation, there is no formal administrative appeal process under California law, but it can be productive to explain to an agency why their response does not comply with the law and insist that they do. If you are a journalist, consider writing a story or editorial about transparency issues you encounter. Beyond such negotiations, typically the only way to enforce the CPRA is to file a lawsuit in Superior Court.

What can I do if an agency says it will take months to respond or doesn't respond at all?

There are steps you can take to advocate for yourself. Mark the agency's deadline to respond on your calendar. If the agency has not responded by that date, follow up immediately to politely demand that they do so, and keep following up until they comply. If an agency gives you an estimate that it may take an extended period of time to respond or produce records, you may point them to the language in SB 16 that says responsive covered records must be produced no later than 45 days from the date of request for disclosure, unless delay is authorized by other provisions of the statute.

Last updated January 2023

Sample Public Records Act request letter seeking information about police conduct accessible under SB 1421 and SB 16

Date

Name and title **[of the official/agency with custody of the records]**

Name of Agency

Address

Re: Public Records Act Request

Dear [name of agency head or records clerk]:

This is a request made under the California Public Records Act for records subject to disclosure under Penal Code Section 832.7, which gives the public the right to know about certain incidents of officer misconduct and uses of force.

With respect to incidents that occurred/or involve **[provide date or date range or officer name or other information about the incident you are interested in]**, this request is for any and all records related to **[any of the following categories you wish to request]:**

- Incidents involving the discharge of a firearm at a person by a peace officer or custodial officer;
- Incidents in which the use of force by a peace officer or custodial officer against a person resulted in death or great bodily injury;
- Incidents in which there was a sustained finding of dishonesty by any peace officer or custodial officer;
- Incidents in which there was a sustained finding of sexual assault by a peace officer or custodial officer involving a member of the public;
- A sustained finding involving a complaint that alleges unreasonable or excessive force;
- A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive;
- Incidents 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 including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status;
- Incidents 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.

If you contend that any portion of the records requested is exempt from disclosure by express provisions of law, Government Code section 7922.525(b) requires segregation and redaction of that material in order that the remainder of the records may be released. If you contend that any express provision of law exempts from disclosure all or a portion of the records I have requested, Government Code section 7922.535(a) requires that you notify me of the reasons for

the determination not later than 10 days from your receipt of this request. Government Code sections 7922.500 & 7922.540(a) require that any response to this request that includes a determination that the request is denied, in whole or in part, must be in writing and include the name and title of the person(s) responsible for the City's response.

Government Code section 7922.500 prohibits the use of the 10-day period, or any provisions of the CPRA or any other law, "to delay access for purposes of inspecting public records."

In responding to this request, please keep in mind that Article 1, § 3(b)(2) of the California Constitution expressly requires you to broadly construe all provisions that further the public's right of access, and to apply any limitations on access as narrowly as possible.

If I can provide any clarification that will help expedite your attention to my request, please contact me at **[provide phone or email address]**, pursuant to Government Code Section 7922.600. Because I **[explain any role in the incident at issue — e.g., if you are a relative of an individual harmed, etc. -- or if you represent a nonprofit public interest organization that intends to distribute this information]** I request that you waive any fees. *North Cty. Parents Ass'n v. Dep't of Ed.*, 23 Cal. App. 4th 144, 148 (1994); Cal. Gov. Code § 7922.505. In any event, to the extent records responsive to my request include audio or video recordings, chargeable fees for such recordings are limited to "direct costs of duplication," and cannot include time spent reviewing or redacting any recordings that are covered by my request. *Nat'l Lawyers Guild v. City of Hayward*, 9 Cal. 5th 488, 506-507 (2020). Finally, I ask that you notify me of any duplication costs exceeding \$__ before you duplicate the records so that I may decide which records I want copied.

[Optional additional language you may wish to include]

To further aid in your processing of this request, we remind you what the law says about your obligations:

- **Many kinds of records must be disclosed, including** "all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports;" in addition, any presentations, memos, or other materials compiled about a relevant incident and given to someone responsible for bringing criminal charges, or taking administrative action, or taking disciplinary action; any presentations, memos, letters, or other materials describing proposed or final findings about discipline, or modifications of discipline due to the Skelly or grievance process. Penal Code section 832.7(b)(3).
- Whether you created the records or not, and whether the records concern your officers or others, your agency must disclose **all requested records in its possession**. *Becerra v. Superior Court*, 44 Cal. App. 5th 897, 918 (2020).
- A "**sustained**" finding means "a final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal... that the actions of the peace officer or custodial officer were found to violate law or department policy." Penal Code section 832.8(b).
- Even **when the officer involved in an alleged incident has resigned** before an investigation is over, please produce all records available. Penal Code section 832.7(b)(3).

As long as there was an opportunity for an appeal, even if an appeal hearing isn't completed, an internal investigation can be final and its finding remains sustained. *Collondrez v. City of Rio Vista*, 61 Cal. App. 5th 1039, 1053 (2021).

Thank you for your timely attention to this matter.

Sincerely,
[NAME]

Sample Public Records Act request letter for audio or video recordings of Critical Incidents under AB 748

Date

Name and title **[of the official/agency with custody of the records]**

Name of Agency

Address/

Re: Public Records Act Request

Dear _____,

This is a request made under the California Public Records Act for recordings relating to “critical incidents,” as defined by Government Code Section 7923.625.

This request is for any and all audio or video recordings that depict incidents [include a date range here, if possible, to help focus the request] involving:

- **the discharge of a firearm at a person by a peace officer or custodial officer; or**
- **the use of force by a peace officer or custodial officer against a person that resulted in death or great bodily injury**

[Alternatively, if you are seeking records about one or more specific incidents, provide as many details as possible about the incident(s) in question.]

Please be advised that your agency must interpret “great bodily injury” consistently with the broad manner in which California courts have interpreted the term.

If you contend that any portion of the records requested is exempt from disclosure by express provisions of law, Government Code Section 7922.525(b) requires segregation and redaction of that material in order that the remainder of the records may be released. If you contend that any express provision of law exempts from disclosure all or a portion of the records I have requested, Government Code section 7922.535(a) requires that you notify me of the reasons for the determination not later than 10 days from your receipt of this request. Government Code sections 7922.500 & 7922.540(a) require that any response to this request that includes a determination that the request is denied, in whole or in part, must be in writing and include the name and title of the person(s) responsible for the agency’s response.

Government Code section 7922.500 prohibits the use of the 10-day period, or any provisions of the CPRA or any other law, “to delay access for purposes of inspecting public records.”

In responding to this request, please keep in mind that Article 1, § 3(b)(2) of the California Constitution expressly requires you to broadly construe all provisions that further the public’s right of access, and to apply any limitations on access as narrowly as possible.

If I can provide any clarification that will help expedite your attention to my request, please contact me at **[provide phone or email address]**, pursuant to your obligations under Government Code §7922.600 that require you to assist in making a focused and effective request. Because I **[explain any role in the incident at issue — e.g., if you are a relative of**

an individual harmed, etc. — or if you represent a nonprofit public interest organization that intends to distribute this information] I request that you waive any fees. *North Cty. Parents Ass’n v. Dep’t of Ed.*, 23 Cal. App. 4th 144, 148 (1994); Cal. Gov. Code § 7922.505. In any event, chargeable fees for recordings like those I seek are limited to “direct costs of duplication,” and cannot include time spent reviewing or redacting the recordings. *Nat’l Lawyers Guild v. City of Hayward*, 9 Cal. 5th 488, 506-507 (2020). Thank you for your timely attention to this matter.

Sincerely,

[NAME]