

UNLOCKING PUBLIC RECORDS IN CALIFORNIA



Today's goals:

- Learn about the California Public Records Act
- Hear strategies for overcoming barriers to access
- Get reporting ideas from an award-winning journalist
- Learn about free open-government resources available to you

Today's presenters:

David Loy, Legal Director, First Amendment Coalition

Omar Rashad, Government Accountability Reporter, FresnoLand

Ginny LaRoe, Advocacy Director, First Amendment Coalition

With contributions from FAC Legal Fellows Khrystan Policarpio & Annie Cappetta!

California Constitution

“The people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.”

Article 1, section 3(b)

POP QUIZ!

There are many open-records laws. Which one applies?

- California Public Records Act (CPRA)
- U.S. Freedom of Information Act (FOIA)
- Legislative Open Records Act (LORA)
- Access to courts – right of access comes from constitution, common law, rules of court, etc

Note: In Zoom, guests responded to a live a quiz; please see following slides for the quiz questions. Correct answers in bold

You are investigating the U.S. Department of Homeland Security's use of an AI tool to surveil individuals crossing the border. You want to see the DHS internal memo that analyzes the tool's level of intrusion on people's privacy. How should you request the record? Multiple choice:

- **FOIA Request to DHS**
- CPRA Request to DHS
- Search court records
- LORA Request to DHS

You'd like to access search warrant materials after learning San Francisco Police Department officers served a search warrant on Google, seeking data it maintains. What's the best way access these records?

- FOIA Request to SFPD
- CPRA Request to Google
- **Search court records**
- LORA Request to SFPD

Elevators are routinely malfunctioning at the California legislative offices in Sacramento. You want to find out what's going on and think the California Department of General Services (DGS) has records. Do you submit:

- FOIA Request to DGS
- **CPRA Request to DGS**
- Search court records
- LORA Request to DGS

To recap:

- The California Legislature – make a **LORA** request
- Federal agencies – make a **FOIA** request
- California and federal courts – typically access records online or in person

Reporting tip: Know what open-government laws apply to an agency before submitting a request or seeking access

The CPRA applies to:

State and local government agencies, including:

- City (ex. Mayor, City Council)
- County (ex. Board of Supes)
- School district (board and administration)
- Special districts
- State agencies

What qualifies as a “public record”?

- A “writing” – defined broadly to mean any means of recording information in any way
- Related to conduct of the people’s business
- Prepared, owned, used, or retained by state or local agency
- Includes records on personal devices or accounts
- But not anything that’s purely personal
- Ex: no personal address books or grocery lists

Fast facts about the CPRA

- Any person can submit a California Public Records Act request
- You don't have to give a reason! Records must be disclosed unless exempt
- Agencies can't discriminate between requesters
- Recommend submitting in writing, though not required
- Agency must make "determination" and notify you in 10 calendar days (+14 days)
- Disclosure must be "prompt"
- Insist on help – the law says there is a duty to assist requesters

Fees for records

- Costs for obtaining copies — generally only “direct costs of duplication” or “statutory fee if applicable”
- You have a right to inspect records – generally no fee for inspection
- Generally, no charge for time agency spends to review or redact information. If fees are assessed, they must point to a legal authority for doing so.
- Can charge for cost of “programming and computer services necessary to produce a copy of the record” where request requires “data compilation, extraction or programming.”

Reporting tip: Look skeptically on fee assessments.. Even if the fees are lawful, they are not mandatory. Seek waiver, negotiate.

Government accountability: Accessing misconduct records

For public employees – except law enforcement, which is subject to different disclosure requirements – these general principles apply to public access:

- Must be disclosed: If charges are found true, discipline is imposed, or there is reasonable cause to believe the complaint to be well founded
- Exempt from disclosure: If charges are trivial or groundless
 - ◆ But for high-ranking public official/employee: Record must be disclosed even if they're exonerated

What about disclosure for police misconduct & use-of-force records?

Key takeaway: The law is different.

Government accountability: Accessing law enforcement misconduct records

Even with recent reforms, many law enforcement personnel and investigative records remain secret. For example, you cannot generally access:

- Entire personnel files of law enforcement
- Complaints or findings of misconduct (except your own complaint against an officer)
- Case files even of closed criminal probes
- Incident report – details must be released but not necessarily the record

Landmark police transparency laws open access to certain disciplinary records & force records

- SB 1421 took effect January 2019: Opening up access
- AB 748 in July 2019: Critical incident recordings
- SB 16 in 2022/23: More categories of misconduct

Law enforcement misconduct records that must be released following recent reforms:

For any “peace” or “custodial” officer – ex. city police officers, sheriff’s deputies, campus police, jailers, disclosure required about **sustained finding** of:

- Sexual assault against member of public
- Official dishonesty by officer
- Excessive force
- Failure to intervene against officer using clearly excessive force
- Prejudice or discrimination
- Unlawful arrest or search

➤ *No loophole for officer’s resignation*

Disclosure of use-of-force records

- Officer firing gun at a person
- Any use of force resulting in great bodily injury or death

Key point: Doesn't depend on whether there was a sustained finding of misconduct or even a disciplinary investigation

For qualifying use-of-force records and misconduct records, agency must disclose:

“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.”

Exemptions: an overview

- Exemptions must be narrowly construed & burden on gov't to prove an exemption applies
- Withholding of records is typically discretionary, not mandatory
- Can't withhold whole record b/c some portion is exempt

Exemptions: commonly cited

- “Investigative records,” e.g. police incident reports. Applies even to long-dead investigations, but certain info must be released
- Preliminary drafts and deliberative process
- Attorney-client privileged communications – but not all legal documents
- Records prepared specifically for use in agency litigation
- Privacy – balancing public’s right to know against privacy interest
- “Catchall” exemption

Exemptions: when to pushback

- When agency lets public employee redact their own record before released
- When agency withholds disciplinary findings against public employees (not peace officers)
- Denied access to “confidential” settlement agreement between government official/agency sued

Case studies & tips

from Omar Rashad



How to have a document state of mind

- Begin with piecing together the public agencies that intersect with your beat
- Start thinking about how they communicate and their formal processes
 - Text, email
 - Internal reports, audits
 - Third-party contracts with public agencies
- Get a sense for the paper trail and file a CPRA request

THE HILL

Cal Poly spends more than \$100,000 isolating COVID-positive students

by Omar Rashad
February 15, 2022

Cal Poly spent more than \$100,000 isolating students off-campus in January after a record-high number of students tested positive for COVID-19, according to documents obtained by Mustang News through a public records request.

Cal Poly officials signed contracts with three local hotels to isolate COVID-positive students: the Lamplighter Inn, Sands Inn & Suites and Hotel Buena Vista.

In the first week of January, more than 250 on-campus students tested positive for COVID-19, which was more than four times Cal Poly's on-campus isolation capacity of 62 beds.

Cal Poly San Luis Obispo spent more than \$100,000 to isolate COVID-positive students off-campus in January 2022

Besides sending COVID-positive students to three local hotels, university officials also gave out two dozen \$400 university store gift cards to students who chose to isolate at home. In the first week of January, more than 250 on-campus students tested positive for COVID-19, more than three times Cal Poly's on-campus isolation capacity of 62 beds.

Lamplighter Inn Hotel Buena Vista Sands Inn & Suites University Store Gift Cards

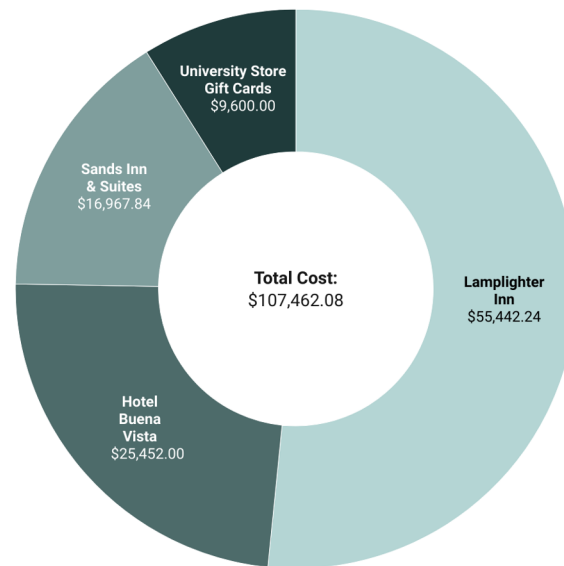
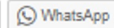


Chart: Omar Rashad | Mustang News • Source: Contracts between Cal Poly and local hotels obtained through public records requests • Created with Datawrapper

UC, Cal State police much less diverse than the students they serve



BY OMAR RASHAD AND KATHERINE SWARTZ , MARCH 10, 2021 UPDATED MARCH 12, 2021



Most universities denied my records request

- I sent a PRA to 33 California public university campuses
- Most denied my PRA on privacy grounds
- Through more reporting, I found out a state agency, POST, collects data on all CA police officers
- They denied my request too
- I got advice from the FAC on how to respond and case law to reference

University	Email	Filed PRR	ETA?	Public Records Act Officer
UC Berkeley	YYY	YNN		pra@berkeley.edu
UC Davis	YNN	YNN	small request	publicrecords@ucdavis.edu
UC Irvine	YNN	YNN	small request	pra@uci.edu
UCLA	YNN	YNN	not obtained	records@ucla.edu; rbaldridge@fin
UC Merced	YYY	YYY	small request	publicrecords@ucmerced.edu
UC Riverside	YYY	YYY	small request	publicrecords@ucr.edu
UC San Diego	YYY	YYY	small request	NA see notes
UC Santa Barbara	YNN	YNN		pra@ehs.ucsb.edu
UC Santa Cruz	YNN	YNN		pra@ucsc.edu
UC San Francisco	YYY	YNN		bgee@chanoff.ucsf.edu
CSU Bakersfield	YNN	YNN		
CSU Channel Islands	YYY	N		
CSU Chico			waiting inquired	
CSU Dominguez Hills			waiting inquired	
CSU East Bay	YNN	N		
CSU Fresno	YNN	YNN		
CSU Fullerton			YNN	
Humboldt State University	YNN	N		
CSU Long Beach	YNN	YNN		
CSU LA			waiting YNN	
California Maritime Academy			waiting inquired	
CSU Monterey Bay	YNN	YNN		
CSU Northridge			waiting N	
Cal Poly Pomona	YNN	YNN		
CSU Sacramento			waiting inquired	
CSU San Bernardino	YYY	YNN		
SDSU	YNN	N		

Pushing Back

Thanks so much for getting back to me, I appreciate you working with me on this request.

I wanted to send over a few items:

- In all rulings I've read, I have not seen sex and race labeled as personal information and are not outlined in 832.7 (a) or 832.8. They are not specifically mentioned unlike "marital status, family members, educational and employment history, home addresses."
- The state Supreme Court in its 2007 POST decision noted that "information specifically listed in section 832.8, subdivision (a), is the type of information that is not generally known to persons with whom officers interact in the course of performing their official duties."
- Sex and race, like name and badge number, are known to persons with whom the officers interact.
- In 2013, the California appeals court found that official service photographs of peace officers can be disclosable as an example of records that show "an officer's appearance" and other info "that ordinarily is known to persons that the officers comes into contact with" (217 Cal.App.4th 685 (2013) *ARMANDA IBARRA et al., Petitioners, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY*)
 - If the official file photos of peace officers do not impact a privacy interest, I don't see why sex and race can make an adverse impact on privacy interests, especially in the aggregate per agency.
 - Nevertheless, even if individual records of sex and race amount to personal information, aggregates per agency do not implicate the privacy rights of any single officer.
 - You mention that personal information from such a file could be "easily linked to individual officers." But that's really not the case. These relevant departments have 20, 30 or even more than 50 sworn officers. Disclosing aggregates for groups of that size cannot possibly implicate the privacy rights of any single individual.
 - Also, I have neither the means or intention to link aggregate sex and race information back to individual officers.

Therefore, rather than "an aggregate of sex and race for all the UC and CSU POST agencies in two datasets," I request an aggregate of sex and race for each of the agencies mentioned in my initial correspondence. Also, just to note, UC Irvine and UC Santa Cruz have police department websites that disclose this very information. Here's [UCI Police Department's website](#) and here is [UC Santa Cruz's police department website](#). Surely if this was an invasion of personal, private information, they wouldn't do such a thing.

I totally understand initial concerns about this matter but again I'm really just looking for aggregate sex and race information of peace officers per the agencies I've listed.

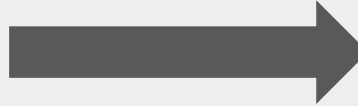
Also, I'd be totally fine with compromising: I'm OK with scrapping the first data set and only asking for the second dataset (containing race and sex of peace officers per agency) if that makes you more comfortable with moving forward with this.

Once again, thank you for your time and I appreciate your help with this public records request!

Best Regards,

Omar Rashad

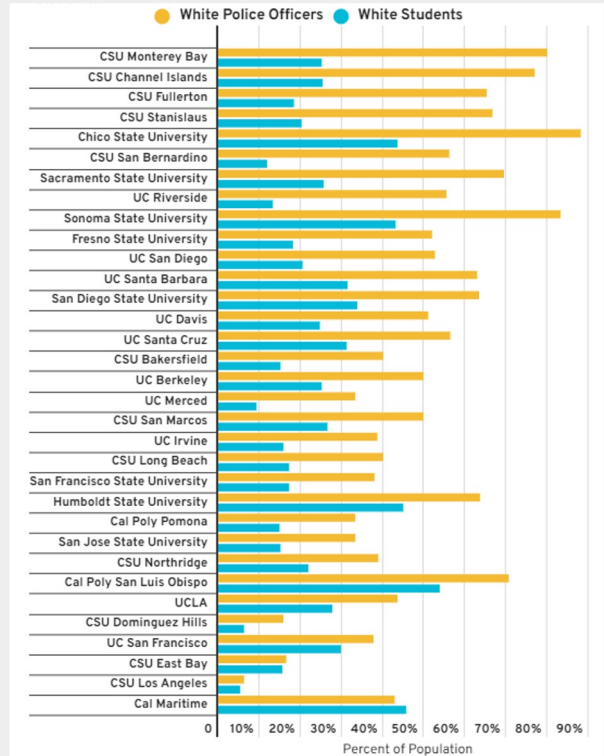
Reporting Fellow, [CalMatters](#)
[Portfolio](#) | [Twitter](#) | [LinkedIn](#)



ag_name	sex	ethnicity_desc
CPSU SAN LUIS OBISPO PD	M	White
CPSU SAN LUIS OBISPO PD	M	Hispanic or Latino
CPSU SAN LUIS OBISPO PD	M	White
CPSU SAN LUIS OBISPO PD	M	White
CPSU SAN LUIS OBISPO PD	M	American Indian or Alaska Native
CPSU SAN LUIS OBISPO PD	M	White
CPSU SAN LUIS OBISPO PD	M	White
CPSU SAN LUIS OBISPO PD	M	Hispanic or Latino
CPSU SAN LUIS OBISPO PD	F	White
CPSU SAN LUIS OBISPO PD	M	White
CPSU SAN LUIS OBISPO PD	M	White
CPSU SAN LUIS OBISPO PD	M	White
CPSU SAN LUIS OBISPO PD	M	White
CPSU SAN LUIS OBISPO PD	M	Hispanic or Latino
CPSU SAN LUIS OBISPO PD	M	White
CPSU SAN LUIS OBISPO PD	F	Asian
CPSU SAN LUIS OBISPO PD	M	White
CSU BAKERSFIELD DPS	M	White
CSU BAKERSFIELD DPS	F	Native Hawaiian or other Pacific Islander
CSU BAKERSFIELD DPS	M	White
CSU BAKERSFIELD DPS	M	Hispanic or Latino
CSU BAKERSFIELD DPS	F	Hispanic or Latino
CSU BAKERSFIELD DPS	M	White
CSU BAKERSFIELD DPS	M	White
CSU BAKERSFIELD DPS	M	White
CSU BAKERSFIELD DPS	M	Hispanic or Latino
CSU BAKERSFIELD DPS	M	White
CSU BAKERSFIELD DPS	F	Hispanic or Latino
CSU BAKERSFIELD DPS	M	Hispanic or Latino
CSU BAKERSFIELD DPS	M	Hispanic or Latino
CSU BAKERSFIELD DPS	M	Black or African American
CSU BAKERSFIELD DPS	F	Hispanic or Latino
CSU CAL MARITIME ACADEMY PD	M	Filipino
CSU CAL MARITIME ACADEMY PD	M	White
CSU CAL MARITIME ACADEMY PD	M	White
CSU CAL MARITIME ACADEMY PD	M	Hispanic or Latino
CSU CAL MARITIME ACADEMY PD	M	Black or African American

Data in hand

At 32 of 33 public university campuses, police officers are whiter than the students they serve, a CalMatters review of officer demographics shows. And in many cases, the disparities are glaring: Cal State Monterey Bay, for example, has a student population that is just over a quarter white. Yet of the university's 15 police officers, 12 of them are white – about 80%.

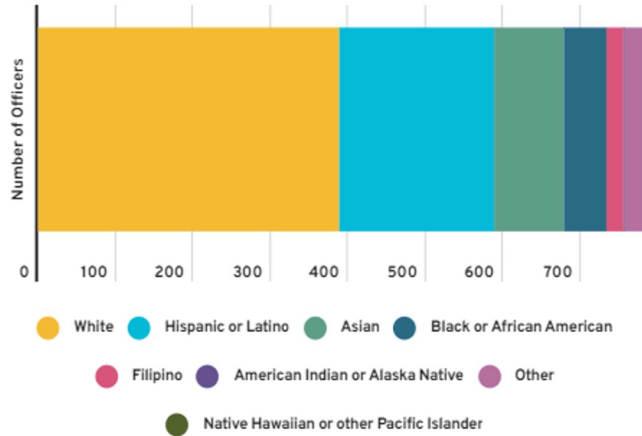


Note: For UC enrollment data, racial categories only refer to domestic students as the institution does not break down demographics for international students. **Sources:** CSU Enrollment Database (Fall 2020), UC Fall Enrollment at a Glance (2020) and California Commission on Peace Officer Standards and Training data (February 2021)

Data in hand (cont.)

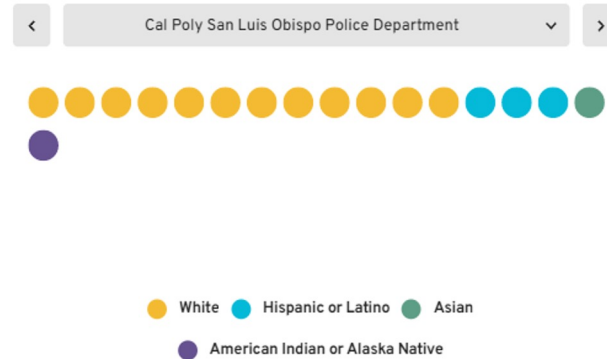
California Campus Police Officers by Race

About half of all police officers at UC and Cal State campuses are white, compared with less than a quarter of students.



Police Officer Demographics by Campus

At 19 of California's 33 public universities, white officers comprise 50 percent or more of campus police departments, though some forces are more diverse.



Follow the Money

Why did Fresno County give the Clovis Rodeo pandemic relief funds?

Federal program is meant to support equitable growth, but Fresno County hasn't developed a metric to measure equity.



by Omar Shaikh Rashad

April 26, 2023



Fresno County officials did not assess whether organizations that applied for funding actually needed federal relief dollars in order to stay afloat, county staff told FresnoLand. County officials also did not develop a metric to evaluate organizations' equity aims in order to evaluate their impact on underserved communities or to compare applicants with each other.

The unprecedented infusion of cash for local governments had great potential to bridge equity gaps, considering it didn't have the typical constraints of annual government budgets. [Last year, President Joe Biden even put out a 301-page report on how the ARPA program was his first opportunity to advance equity through major legislation.](#)

Every organization that applied for funding had to explain how it would “promote strong, equitable growth, and racial equity among impacted communities in Fresno County.” In response to that equity question, the Clovis Rodeo stated it does not discriminate against anyone, strives to be a family-friendly event and has affordable tickets between \$20 and \$35, according to its application for subrecipient funding, which Fresnoland obtained through a California Public Records Act Request.

In its application, the rodeo did not highlight a specific community or underserved group that its programming would specifically benefit, but did note how doing “outreach to underserved audiences, local schools and all interested is a part of the Association's core mission.”

Federal ARPA program: An investigation you can localize

- President Biden issued \$350 billion to local governments across the country through the federal American Rescue Plan Act program
 - ARPA program meant to be used for:
 - government worker revenue replacement
 - premium pay for essential workers
 - upgrading sewer, water or broadband infrastructure
 - equitable economic recovery from pandemic
- PRA ideas
 - Surveys produced and released by local governments to gauge resident feedback on how federal pandemic relief dollars should be spent
 - Responses to surveys
 - Actual expenditures v.s. survey responses
 - Documents that led to specific ARPA allocations

Takeaways

- It helps to have a source, someone on the inside, to tell you what documents, records exist
- Getting advice on how to push back is important – use FAC's free Legal Hotline
- Process to get records can take a while, try to plan accordingly

Get in touch if you have any questions about:

- How to narrow a PRA or request data and analyze it
- Email: omar@fresnoland.org, Twitter: @omarsrashad

More reporting tips: The FOI mindset

- Recommend: Make requests in writing & good to treat it as a serious document
- If you talk by phone, still document in writing – can help to show you are serious and create a helpful record for later enforcement
- Put it on your calendar: 10 calendar days from the date of your request. If no “determination” is provided by that date, follow up!

Reporting tips: Don't take “no” for an answer

- Denied: What law do they cite and how does that comply with the facts? What reporting do you have that may challenge a denial?
- What experts in your newsroom or in the press advocacy community can you consult to evaluate the legitimacy of any denial?
- “Unduly burdensome” or “overly broad”: Narrow, revise your request. Remember agencies are required to assist you.
- Claim request will take weeks or months to fill? You may want to request “rolling production.”
- Other gov't agencies also in possession? Make separate request to other agencies that may have the information and may respond differently.

Reporting tips: When secrecy is the story

Is the secrecy newsworthy and a reader service to disclose? Consider news coverage



LOCAL

Judge: Shasta County must turn over sheriff's office records to Record

SAN JOSE

San Jo advoc back.

SUBSCRIBER ONLY

Amid FBI investigation, Antioch police refuse to release use of force records, including a controversial neck hold that has since been widely banned

by Ramona Gi
JUNE 20, 2021

Four dog bite cases are also being withheld



Public Records
C's financial data
of almost \$2500.

The request was based on the County's claim that it would take an estimated 100 hours of staff time to find the NorCal CoC data *Shasta Scout* had requested. Charging fees for staff time to procure information does not appear to comply with California's PRA law.



What every journalist should know about PRA requests

- **Competitive concerns:** Your request itself is a public record.
- **Competitive advantage:** Use Next Request and other request portals to see what other requesters have asked for and how the agency responded – ideas for what you may want.
 - Investigative reporting tactic: “FOIA the FOIAs”
- **Gov’t can’t favor one requester over another:** Have the records you want already been released to another requester or listed as disclosed on any agency portal?

Brainstorm: What kind of records requests are useful on your beats?

- Public employee contracts & severance agreements
- Emails or texts of government employees
 - Within the same agency, between multiple agencies, or between members of the public and government officials
- Legal settlements (details that often aren't included in court records)
- Official policies and manuals

How can FAC be a resource to you?

Get your questions answered by FAC's legal staff

FAC's **free** Legal Hotline provides information on public records requests, open meetings, access to court records and First Amendment issues.



<https://firstamendmentcoalition.org/legal-hotline/>

CPRA handbook online

Frequently Asked Questions

About the California Public Records Act

Q: Do I have to submit a Public Records Act request in writing?

A: No, but we recommend it. It helps to create a record of your request.

Q: Who can make a Public Records Act request?

A: Anyone can. This includes individuals, organizations and companies. There is no residency requirement, meaning anyone regardless of where they live may request records. In fact, you can request records anonymously, meaning you have a right to request records without disclosing your identity.

Q: What government agencies are subject to the Public Records Act?

Table of Contents | CPRA Primer



I. Public Records Act Framework

- A. Basic structure
- B. "Public records" is broadly defined
- C. Numerous exemptions

II. Agencies and documents governed by the Act

- A. State
- B. Local
- C. Proposition 59

III. What are public records?

- A. Writing
- B. Containing information relating to the conduct of the public's business
- C. Prepared, owned, used or retained by state or local

Records

Records

Public Records Act FAQ

Public Records Act

Public Records Act

PRA sample request letter

Name of Agency

Address

RE: Public Records Act Request

Dear _____,

I am requesting access to records in possession or control of the **[insert government entity]** for the purposes of inspection and copying pursuant to the California Public Records Act, California Government Code § 7920.000 et seq. ("CPRA"), and Article I, § 3(b) of the California Constitution. The specific records I seek to inspect and copy are listed below. As used herein, "Record" includes "Public Records" and "Writings" as those terms are defined at Government Code § 7920.530 & 7920.545. I request access to inspect/copies of **[Describe the record as precisely as possible, including the designation of any forms or reports with titles, the date or dates if relevant, the author and addressee if the item is a letter or memo, etc. If the record is referred to in another document or published report and it will help to attach a copy of that reference, do so.]**

If you contend that any portion of the records requested is exempt from disclosure by express

Police Transparency Handbook: In Print and Online and Available for Download

The screenshot shows the website's navigation and content. At the top, a grid of images is overlaid with the word "RESOURCES" and the title "POLICE TRANSPARENCY HANDBOOK". Below this is a button labeled "Download the Police Transparency Handbook". A sidebar menu on the left lists "Police Transparency Handbook", "Legal Guide", "FAQ", "Sample Letter | Police Recordings", and "Sample Letter | Police Records". The main content area is titled "Police Transparency Handbook" and "Introduction". The introduction text reads: "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."

The cover features a dark blue header with the title "POLICE TRANSPARENCY HANDBOOK" in white. Below the title, it says "A guide to accessing public records about law enforcement in California" and "UPDATED IN 2023". The background image shows a blurred "POLICE LINE DO NOT CROSS" sign at night.

QUESTIONS

THANK YOU FOR JOINING US!



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