



April 9, 2018

Senator Nancy Skinner
State Capitol, Room 2059
Sacramento, CA 95814

RE: SB 1421 (SUPPORT)

Dear Senator Skinner:

I write on behalf of the First Amendment Coalition (FAC) to express this organization's strong support of your Senate Bill 1421, which would provide badly needed transparency to the critical issue of police misconduct, which at present remains shrouded in secrecy in California.

FAC is a nonprofit and nonpartisan public interest organization dedicated to advancing free speech, more open and accountable government, and public participation in civic affairs. Our members are journalists, academics, activists and others who share a passion for open government as a means to ensuring the proper functioning of our democracy. For 30 years, FAC has helped journalists and ordinary citizens to gain access to their government; our group was instrumental in the drafting and passage of Proposition 59 in 2004, which amended the California Constitution to include a right of access to government records and meetings.

Public access to records of police misconduct will serve not only the public, who will be able to assess whether police departments are exercising their extraordinary authority in a manner consistent with the individual rights guaranteed to all citizens under United States and California Constitutions. It will also enhance public confidence in policing by lifting the veil of secrecy that allows resentment, ill-will and conspiracy theories to thrive.

FAC is a strong proponent of the principle that transparency benefits not just the public, but the agencies that serve the public. Transparency as to serious police misconduct is no exception--it would allow police departments to more effectively address misconduct by allowing for public debate and discussion about standards, training and discipline to be based on facts rather than speculation. Fact-based scrutiny and debate will lead to better community engagement, more effective policing, and safer streets.

Importantly, SB 1421 contains important carve-outs from its transparency requirements to protect the identities of witnesses, family members of peace officers, and others. And its disclosure requirements are limited -- the legislation would require disclosure of information only where a law enforcement agency has sustained findings of the most serious forms of police misconduct, such as sexual assault and perjury, as well as instances where police officers used deadly force or discharged firearms at a person.

Among public employees generally subject to the California Public Records Act (CPRA), peace officers stand alone in their ability to avoid public scrutiny when they have been found to have committed the most serious forms misconduct. Under current law, records relating to

accusations of misconduct against peace officers, no matter how serious, remain confidential. (See Penal Code section 832.7.)

This stands in stark contrast to all other public employees subject to the CPRA. As them, the right of access to public records requires disclosure of all “well-founded” complaints, the information upon which they are based, and any discipline imposed. (*American Federation of State, County and Municipal Employees, et al. v. Regents of University of California* (1978) 80 Cal.App.3d 913, 917; *Bakersfield City School District v. Superior Court* (2004) 118 Cal.App.4th 1041, 1046.) Moreover, in the case of higher-ranking public employees, disclosure of an investigation into misconduct is required even if the charges are found not to be reliable and the official is exonerated. (*BRV, Inc. v. Superior Court* (2006) 143 Cal. App. 4th 742, 759.)

There is no principled reason for the distinction under California law between absolute bar on public disclosure of police misconduct records, and the relatively broad disclosure requirements for all other employees. The *Bakersfield*, *BRV* and *AFSCME* cases cited above reason that the reasonable expectation of privacy that may attend public-employee personnel files gives way to the intense public interest in holding public employees accountable when they have been accused of misconduct and, even more so, when those accusations are proven to be well-founded. (See, e.g., *AFSCME*, 80 Cal.App.3d at 918 [regarding disclosure of public employee disciplinary records, “where the charges are found true, or discipline is imposed, the strong public policy against disclosure vanishes,” and “this is true even where the sanction is a private reproof”].)

SB 1421’s disclosure requirements are much more modest than the disclosure standard established by *AFSCME* and related authorities. While those authorities require disclosure of records relating to any form of misconduct, SB 1421 is limited to specific categories of misconduct, namely the most serious forms -- which, given the immense discretion and power peace officers wield, can have serious and even life-ending consequences for the public.

California has long been an outlier among states in permitting records of police misconduct to remain concealed from public view.¹ This legislatively enforced secrecy has no principled basis in law or policy. SB 1421 would bring much-needed transparency to an area where the public interest scarcely could be higher.

Sincerely,



David Snyder
Executive Director

¹ Twenty-seven states require the release of such records. (See WNYC, “Is Police Misconduct a Secret in Your State?,” available at <https://project.wnyc.org/disciplinary-records/>.) Among the 10 largest states, California is one of only four that requires confidentiality of such records. (*Id.*)

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