

**MOTION BY SUPERVISORS HOLLY J. MITCHELL
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May 18, 2021

Increasing Transparency Through Access to Peace Officer Records

Community trust and respect are critical components of effective law enforcement and necessary to preserve the safety of all community members. The people of Los Angeles County (County) have vested its peace officers with extraordinary authority, including the powers to detain, search, arrest, and use deadly force. The misuse of that authority not only harms the individual target of deputy misconduct, but also the public’s trust in the legitimacy of law enforcement.

While the public has a fundamental right to know the facts surrounding officer-involved shootings or incidents of serious misconduct, for decades the legal system has worked to keep secret law enforcement departments’ investigations of their officers and deputies uses of deadly force. The public has largely been prevented from learning when officers and deputies were found by their own departments to have violated departmental policy or the law.

This changed in 2018, when the California Legislature (Legislature) enacted SB 1421 (Skinner), which amended Penal Code Section 832.7 and opened certain law enforcement records—making them accessible to the public through the California Public Records Act (PRA) (Gov. Code Sec. 6250 *et seq*). The public now has access to some of the records that are most crucial to understanding how deputies interact with the communities they police and how law enforcement agencies respond to the most serious

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MOTION BY SUPERVISORS HOLLY J. MITCHELL AND HILDA L. SOLIS

May 18, 2021

Page 2

allegations of misconduct. The Legislature may also continue to expand the categories of records available to the public, and has already introduced a bill for the current legislative session, SB 16 (Skinner 2021), to broaden access and impose financial penalties on agencies which do not timely respond to requests for records.

Since early 2019, law enforcement agencies throughout California have been disclosing these newly public records in response to individual requests. Some of these requests are duplicative in part or all, and, while fulfilling these requests in a complete and timely manner is both mandated by law and of utmost importance, they do pose significant costs to the County. Moreover, while individual requestors may work to make all or some of the requested records available to the general public, the County cannot solely rely on these ad hoc attempts to facilitate public access or satisfy its legal obligation to respond to each and every request when received.

In addition, while the mandate of the new law is clear, there have been significant issues with the Los Angeles County Sheriff's Department's (LASD) compliance. According to a [report](#) by the Office of Inspector General (OIG), as of January 2020, over 70 percent of the PRA requests under SB 1421 were still pending over 180 days after they were received. As of July 2020, the OIG reports that LASD had over 2,700 overdue requests. And while LASD has represented that it has responded to 75 percent of requests, this "response" includes any written correspondence to the requestor, including a statement that its request has been received; it does not reflect the number of requests that have been substantively fulfilled. LASD's failure to produce records in a timely manner, including completely denying requests for records clearly within the purview of SB 1421, has resulted in multiple ongoing lawsuits. This poses a significant cost being borne by the County, and, under the PRA, the County is required to pay costs and attorneys' fees incurred by the requestor if they successfully obtain records (Gov. Code Sec. 6259(d)). The current draft of SB 16 imposes a civil fine of up to \$1,000 per day if records are not timely produced.

Additionally, the disclosure of records frequently arises in criminal cases, where criminal defense attorneys regularly seek publicly available records related to misconduct or excessive force by officers involved in their client's criminal case. In such cases,

MOTION BY SUPERVISORS HOLLY J. MITCHELL AND HILDA L. SOLIS

May 18, 2021

Page 3

County employees at the Office of the Public Defender (PD), the Alternate Public Defender's Office (APD) and the Office of the District Attorney (DA) all spend County resources resolving disclosure of records that should be open to the general public.

In addition to ensuring LASD's compliance with its new obligations under SB1421, it is important to also ensure the Department's compliance with its preexisting obligation to disclose the names of deputies who have shot of members of the public. Even under the more-restrictive disclosure laws in place before the passage of SB 1421, the California Supreme Court has recognized that there is significant public interest in the disclosure of the names of peace officers who are involved in shootings, and they may not be withheld in response to a PRA request absent particularized facts showing a valid, non-speculative concern for the officer's safety. *Long Beach Police Officers Assn. v. City of Long Beach*, 59 Cal.4th 59 (2014). Other law enforcement agencies across the state—including the Los Angeles Police Department and Oakland Police Department--regularly release the names of officers involved in such uses of deadly force, many even without receipt of a PRA request from the public.

The PRA explicitly authorizes local jurisdictions to adopt policies that allow for faster or more efficient access to public records than specifically required under the PRA. It also allows an agency to comply with its requirements under the PRA by posting records on a website and directing individuals to that site.

Automatic disclosure of these now-public records is the most efficient way to satisfy the County's obligations under the PRA and maximize transparency and ensure the public's right to access to this vital information. While some law enforcement agencies have begun to publish responses to individual PRA requests as they are filled, law enforcement agencies have generally not adopted a proactive strategy of publishing new records. LASD, for instance, has posted some records on its website as it responds to requests, but the items posted include only a limited selection of those disclosable under SB 1421, and the posting does not allow for meaningful searching of records, including searches for documents associated with a particular deputy or individual.

Additionally, under the current process, in which LASD is the County entity primarily responsible for responding to PRA requests for SB 1421 material, appears

MOTION BY SUPERVISORS HOLLY J. MITCHELL AND HILDA L. SOLIS

May 18, 2021

Page 4

unworkable. Over two years after the passage of SB 1421, LASD still has not created a meaningful, streamlined, and efficient process for documenting, tracking, and responding to PRA requests. LASD currently relies on County Counsel staff to respond to the complex PRA requests it receives, and members of LASD's PRA response team have expressly requested additional staffing from County Counsel to address these requests. Given this existing reliance on County Counsel, as well as its own expertise in fulfilling employment-related PRA requests directed to other County agencies such as the Civil Service Commission, County Counsel is well-suited to satisfying LASD's obligations imposed by the PRA, SB 1421, as well as any additional legislation that might further expand the public's access to records relating to allegations of misconduct by peace officers employed by the LASD.

WE THEREFORE MOVE THAT THE BOARD OF SUPERVISORS:

- 1) Direct County Counsel, in consultation with the Inspector General (IG), to report back in 30 days, in writing, with an assessment of best practices for full compliance with the Public Records Act (PRA), including SB 1421 (Skinner), which amended Penal Code Section 832.7 and opened certain law enforcement records. Such report shall also include a draft ordinance for consideration by the Board of Supervisors which contains provisions that:
 - a. Requires County agencies employing peace officers to publish non-confidential records on a website pertaining to incidents involving peace officers and custodial officers.
 - b. Requires such agencies to publish the above-referenced records within 30 days, with consideration for the compelling public interest in making such records public in a manner that is timely and strengthens transparency and public confidence. This provision should also set out clear and specific criteria that govern the determination of when a record is created.
 - c. Requires that a public record that was created prior to the effective date of this ordinance shall be published on the appropriate website within 30

MOTION BY SUPERVISORS HOLLY J. MITCHELL AND HILDA L. SOLIS

May 18, 2021

Page 5

days after it is identified as a public record responsive to a request made under the PRA.

- d. Allows such agencies to publish public records in its possession that have not been requested pursuant to a PRA.
 - e. Requires that such public records published on the website be searchable and indexed on the respective agency or department's website to display key information about the incident, including, but not limited to, the date, name of the officer, type of force used, related violations of law or department policies, discipline imposed, grounds for withholding records when applicable, a link to audio or video records, and other information.
 - f. Requires publication of redactions required pursuant to Penal Code Section 832.7(b)(5).
 - g. Allows such agencies to redact or withhold records pursuant to relevant forms of confidentiality and other types of protected information, if applicable; and prohibiting the withholding or delaying of production of any record relating to serious uses of force or officer misconduct on the basis of any other relevant discretionary statutory grounds.
 - h. Prohibits such agencies from temporarily withholding production of records relating to a serious use of force beyond the time permitted by statute and prohibiting the withholding of records for more than eighteen months.
 - i. Provides standard language that explicitly allows all County agencies to provide greater access to such records.
 - j. Mandates publication of the names of deputies involved in officer-involved shootings within 48 hours of the incident occurring, in compliance with state law.
- 2) Direct County Counsel and CEO, in consultation with the IG, and the Sheriff, to report back, in writing within 30 days, on the feasibility of County Counsel or the IG managing the fulfillment of the PRA requests seeking records relating to

MOTION BY SUPERVISORS HOLLY J. MITCHELL AND HILDA L. SOLIS

May 18, 2021

Page 6

uses of force, allegations of misconduct, and deputy discipline, and otherwise satisfy the obligations in this proposed ordinance. This report should include potential funding sources needed for this purpose.

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