



**THE RIGHT TO KNOW ACT:
LOS ANGELES COUNTY SHERIFF'S
DEPARTMENT RESPONSE TO POLICE
TRANSPARENCY REFORM**

November 2020

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Introduction

Transparency in urban policing is essential to ensuring that police enforce laws in a manner acceptable to the public. Secrecy in policing leads to unlawful practices and the belief, too often shared by police and communities, that the interests of the public and the police are not the same. In recent years, California has made substantial efforts to reform laws which previously allowed police secrecy. However, passing laws is not enough for reform. For a police agency to claim to be “transparent and accountable” it must enforce the laws that govern its own conduct. Unfortunately, law enforcement has not rapidly embraced these new laws in all cases.

California enacted Senate Bill 1421, the Right to Know Act, which amended California Penal Code sections 832.7 and 832.8 and became effective January 1, 2019, to provide that certain records previously made confidential by law, including the investigations of police shootings, shall not be confidential. Law enforcement may temporarily withhold such records to protect an investigation but must provide written factual justifications for the withholding. Although the Los Angeles County Sheriff’s Department purports to maintain a website of such data, the website has a scarcity of the required information.¹

Pursuant to Penal Code section 832.7, four general types of previously confidential police records are no longer confidential: (1) incidents involving the discharge of a firearm at a person by a peace officer or custodial officer, whether a sustained finding was made or not; (2) incidents in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury, whether a sustained finding was made or not; (3) records relating to an incident in which a sustained² finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public; and (4) records relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including,

¹ Until June of this year, the Sheriff’s Department had not posted any Penal Code section 832.7 data on its website. On June 30, 2020, the Sheriff’s Department began posting information..

² As defined in Penal Code section 832.8 as the terms relate to Penal Code section 832.7, the word “sustained” 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 pursuant to Sections 3304 and 3304.5 of the Government Code, that the actions of the peace officer or custodial officer were found to violate law or department policy, whereas “unfounded” means that an investigation clearly establishes that the allegation is not true.

but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.³

As amended, Penal Code section 832.7 represents a substantial and important step towards greater transparency and accountability in cases involving police uses of force, sexual assault, and dishonesty. These issues are at the heart of many of the recent cases that have drawn public attention and increased tensions between the Los Angeles County Sheriff's Department (Sheriff's Department) and the communities it serves. Accordingly, the Office of Inspector General conducted a review of the Sheriff's Department's response to community requests for Penal Code section 832.7 information in the calendar year 2019. It should be noted that from January 1, 2019, to roughly November of 2019, the Sheriff's Department's Discovery Unit handled all Public Records Act requests, including Penal Code section 832.7 requests. In November 2019, two weeks after the Office of Inspector General met with representatives of the Discovery Unit to discuss perceived problems, the Sheriff's Department transferred the responsibility of responding to Penal Code section 832.7 requests to the Audits and Accountability Bureau (AAB). While this report focuses on the Discovery Unit responses, attention is also paid to AAB's inclusion.

In October 2019, the Office of Inspector General met with Sheriff's Department Discovery Unit staff and analyzed documentation and spreadsheets memorializing the Sheriff's Department's response to the Penal Code section 832.7 requests received in 2019. The Office of Inspector General also met with Los Angeles Police Department (LAPD) staff and reviewed the LAPD's process for responding to CPRA/Penal Code section 832.7 requests as a benchmark against which to measure the Sheriff's Department's process. As discussed in detail below, the Office of Inspector General found deficiencies in the staffing and infrastructure the Sheriff's Department established to respond to the CPRA/Penal Code section 832.7 requests received in 2019, resulting in substantial delays in Penal Code section 832.7 compliance.

In 2019, the Sheriff's Department received 2,909 Penal Code section 832.7 records requests. The requesters were a mix of news agencies, private citizens, and a significant number of criminal defense attorneys. As of January 23, 2020, over seventy percent (2,058) of the Penal Code section 832.7 requests remained outstanding.⁴ Moreover, 1,942 of the outstanding Penal Code section 832.7

³ Penal Code section 832.7(b).

⁴ In mid-November, 2019, the LASD Audits and Accountability Bureau took over the Penal Code section 832.7 PRA requests. Analysis of the Penal Code section 832.7 data provided in spreadsheet form by LASD's Discovery unit showed that AAB completed an additional nine individual Penal Code section 832.7 CPRA requests.

requests were pending for over 180 days without a response, well outside of the time limits mandated by the California Public Records Act.

Perhaps most importantly, based on the information provided to the Office of Inspector General, as of July 6, 2020, records were produced in only four requests for deputy involved shooting related incidents. This must be balanced against the 196 deputy involved shootings in the last nine years. Failure to release this information on shootings and other serious uses of force is contrary to the statutory requirements of Penal Code section 832.7.

The Sheriff's Department did institute a number of changes in November 2019 to its Penal Code section 832.7 response process: The Sheriff's Department shifted the responsibility for responding to Penal Code section 832.7 requests from the Discovery Unit to the Audit and Accountability Bureau (AAB). AAB then assigned additional staff to respond to Penal Code section 832.7 requests, created new response procedures, and implemented a computer-based tracking and correspondence system to manage Penal Code section 832.7 requests.

On September 17, 2020, the Sheriff's Department informed the Office of Inspector General that it had drafted new policies relating to the processing of Penal Code section 832.7 CPRA requests. According to the Sheriff's Department, the new policies also address the process of ruling on exemptions to CPRA requests based upon the assertion of safety concerns by individual deputies. The Office of Inspector will reserve comment on these policies until after the policies are finalized and implemented and we have been provided the opportunity to review them.

Despite the changes already implemented, the Office of Inspector General has concerns about the actual transparency afforded by AAB's response procedures.

In analyzing the responses of the Sheriff's Department, we have found that there is a tremendous amount of internal confusion about the respective duties of AAB and the Discovery Unit. Each is utilizing a different and incompatible information system resulting in data that cannot be reconciled thus producing inaccurate statistics. These inaccuracies are yet another barrier to complete and transparent access to Penal Code section 832.7 information.

Lastly, the Office of Inspector General found that at certain key points in the Sheriff's Department's force review process no detailed memoranda are created to preserve the Department's analysis and actions. Given that 832.7(b)(2) requires the release of "documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident," preserving the Department's analysis and actions is crucial for transparency. While it is possible that a court

could impose limitations on the types of documentation to be released, the Sheriff's stated commitment to transparency, as noted by the current Sheriff on his [Transparency Promise page of the lasd.org website](#) and in a recent statement regarding Penal Code section 832.7,⁵ dictates that best practices should include the preservation of Sheriff's Department disciplinary analyses in the event there is a judicial decision requiring disclosure.

Background

On September 30, 2018, Senate Bill 1421, the Right to Know Act, was enacted into law and codified as California Penal Code section 832.7. As discussed above, Senate Bill 1421 (SB-1421) allows access to four general types of previously confidential police records: police shootings, uses of force resulting in death or great bodily injury, sexual assault involving a member of the public, and dishonesty. Penal Code section 832.7 went into effect on January 1, 2019 and authorizes access to these records by means of a California Public Records Act request. We will first discuss the general rules governing CPRA requests, then we will set forth the rules particular to Penal Code section 832.7.

California Public Records Act

The California Public Records Act⁶ was enacted to provide public access to information regarding the workings of government while respecting the privacy rights of individuals. Under the CPRA, a public agency must respond to a public records act request within ten calendar days. A fourteen-day extension (beyond the ten days) is permissible if "unusual circumstances"⁷ exist, after which the public agency must advise the requesting party when the information will be made available. A CPRA request must reasonably describe an identifiable record, but the public agency is also required to assist a member of the public to "make a focused and effective request that reasonably describes an identifiable record."⁸ A public agency must also make a reasonable effort to elicit additional information from a requester in order to clarify the request and help the public agency identify records

⁵ On June 16, 2020, the Sheriff posted a [statement](#) on the LASD website regarding Penal Code section 832.7, touting his commitment to transparency. Additionally, the LASD website has a [Transparency Promise page](#), in which Sheriff Villanueva states that he, "consider[s] transparency to be of critical importance to effective policing in the 21st century."

⁶ The California Public Records Act is codified in Government Code sections 6252- 6253. A "public record" is broadly defined in Govt. Code section 6252(e), and includes not only writings, but any "form of communication or representation," which includes voicemails, videos, computer records.

⁷ "Unusual circumstances" may include the need to search for and collect the requested records from other locations, to consult others and to locate and review many records.

⁸ Govt. Code section 6253.1.

responsive to the request.⁹ In sum, the Sheriff's Department must generally respond to CPRA requests that seek Penal Code section 832.7 information within a maximum of twenty-four calendar days (ten days plus the fourteen-day extension) from date of receipt.

CPRA does not require the requested records be provided in the applicable ten or twenty-four-day periods. A public agency must only respond to a requester within the twenty-four-day period. In that response, the agency must provide a reasonable estimate of when the records will be made available. A public agency shall not delay or obstruct the inspection or copying of public records.¹⁰ If a public agency denies a CPRA request, the denial must be in writing.¹¹ If a public agency withholds a record based on a statutory exemption, such as the so-called "catch-all exemption," which allows for non-disclosure of documents or records if the public interest in non-disclosure outweighs the public interest in disclosure,¹² the agency must notify the requester of the reasons for withholding the record.¹³ As a result, any denial of a Penal Code section 832.7 request must be in writing and state the reason(s) and any applicable exemption(s) upon which the denial is based.

Non-compliance with the CPRA can result in legal liability. For 2019, the Sheriff's Department responded to eleven lawsuits related to CPRA compliance issues, so far incurring approximately \$129,263 in legal indemnities for fees, and costs. Two of these eleven lawsuits were still pending at the time of our review and their legal fees/costs are not included in this total. The total amount of legal expenses will necessarily increase when these cases are resolved.¹⁴ In comparison, the Los Angeles Police Department reported only one active CPRA civil case for 2019.

Senate Bill 1421: The Right to Know Act

Senate Bill 1421, enacted on September 30, 2018, made significant changes to Penal Code section 832.7, which governs exceptions to the confidentiality of peace and custodial officer (police) records. Penal Code section 832.7 allows for the release of several types of police records that were previously confidential and

⁹ Ibid.

¹⁰ Govt. Code section 6253(d).

¹¹ Govt. Code section 6255(b).

¹² Govt. Code section 6255(a).

¹³ Govt. Code section 6255(a), see also *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1074-1075.

¹⁴ On June 30, 2020, The Los Angeles Times reported they have filed a lawsuit against the Sheriff's Department for noncompliance CPRA/Penal Code section 832.7 requests. See <https://www.latimes.com/california/story/2020-06-30/la-times-lawsuit-deputy-misconduct-records>.

unavailable. Penal Code section 832.7 went into effect on January 1, 2019 but applies retroactively to police records created prior to its effective date.¹⁵

The person or agency seeking information pursuant to Penal Code section 832.7, must request the information by means of a CPRA request. Responsive materials to a Penal Code section 832.7 request include not only writings, but a wide range of information in various forms:

Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.¹⁶

Although Penal Code section 832.7 authorizes the release of many materials, it also limits the information that may be produced. Responsive records may be redacted or exempted from disclosure for reasons of privacy, officer safety, a pending administrative or criminal investigation, and/or public policy. Personal data, such as addresses and phone numbers, must be redacted. Documents and records should also be redacted to preserve the anonymity of complainants or witnesses. Confidential medical or financial information must be redacted as well. And records may be redacted where there is specific, articulable, and particularized reason to believe the disclosure of that record would pose a specific danger to the physical safety of the peace officer, custodial officer, or another person.¹⁷

Pitchess and Brady

Prior to SB-1421, California's law on the disclosure of confidential law enforcement records was largely controlled by two cases: the United States Supreme Court case of *Brady v. Maryland* (1963) 373 U.S. 83 (hereinafter *Brady*), and the California

¹⁵ See, *Walnut Creek Police Officer's Association v. City of Walnut Creek*, 33 Cal.App. 5th 940 (2019). The Sheriff's Department has a policy of retaining documents related to internal affairs investigation indefinitely, thus a wide time range of records can be requested.

¹⁶ Penal Code section 832.7(b)(2).

¹⁷ See generally, Govt. Code sections 6254-6255 and Penal Code section 832.7.

Supreme Court case of *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (hereinafter *Pitchess*). Penal Code section 832.7 does not replace the disclosure requirements under *Brady* and *Pitchess* but adds a third method by which certain police records may be obtained.

Under *Brady*, the United States Supreme Court held that the prosecution in a criminal case has a constitutional duty to disclose to the defense all material exculpatory evidence. However, in California, a party in a criminal case who seeks the disclosure of police personnel files which potentially contain exculpatory information is required to follow a two-step “*Pitchess* Motion” procedure. In the first step, the requester must petition the court, showing good cause for release of the records or information sought and materiality to the subject matter of the pending litigation. The second step commences if a judge believes the threshold issues of good cause and materiality are met. If so, a judge will hold an *in-camera* hearing to review the pertinent documents and determine what information, if any, will be disclosed. Further, the court often issues a protective order mandating the moving party not disclose the information to any other party, including the opposing party in a criminal case.

It is important to note that requests coming from criminal defense attorneys are necessary in order to provide information for the defense of their clients and requests from the prosecution aid the prosecutor in analyzing the case to determine if there are questions about a deputy’s credibility.

Under these decisions the legal discretion to release confidential police records does not lie exclusively with the law enforcement agency in possession of the records. Under *Brady* the “prosecution team,” which includes the prosecutor and the police agency, has a legal duty to disclose exculpatory police records, while under *Pitchess*, the discretion lies with the court. However, with respect to CPRA requests, the law enforcement agency is initially responsible for determining whether or not to release information.

The Sheriff’s Department’s Handling of Public Records Act Requests

Prior to the January 1, 2019 effective date of the amendment to Penal Code section 832.7 made by SB-1421, the Sheriff’s Department’s Discovery Unit handled all requests made pursuant to the California Public Records Act. After January 1, 2019, the Discovery Unit continued to handle all CPRAs, including those made for information pursuant to the amended Penal Code section 832.7.¹⁸

¹⁸ As will be discussed below the Audits and Accountability Bureau took SB-1421 responsibility in November of 2019 and establish different protocol.

On January 1, 2019, CPRA requests for Penal Code section 832.7 records began pouring into the Sheriff's Department. The influx of Penal Code section 832.7 requests strained the already understaffed and under-equipped Discovery Unit. The Office of Inspector General's review revealed that the Discovery Unit was not prepared and lacked the staff and the infrastructure to comply with the time limits imposed by the CPRA.¹⁹ The Office of Inspector General requested all documentation memorializing the Sheriff's Department's preparations to address the predictable onslaught of CPRA requests brought on by the amendment of Penal Code section 832.7. To date, no documentation on the Sheriff's Department's pre-planning for SB-1421 has been provided nor has the Office of Inspector General been advised as to whether any advance preparations were made or documented. In a letter to the Los Angeles County Board of Supervisors dated August 13, 2020 signed by Undersheriff Tim Murakami, the Sheriff's Department reported back on its plan to comply with Penal Code section 837.2 – a year and a half *after* the effective date of the amendment to the law made by SB-1421.

CPRA/Penal Code section 832.7 Discovery Unit Response Process

When the Sheriff's Department Discovery Unit receives a CPRA request, the request is entered into the CPRA Log. Due to staffing issues, there is about a one-week lag between the date of receipt of a CPRA request and entry of the request into the CPRA Log. Because the Sheriff's Department is already so backlogged with outstanding requests, upon receipt of a new CPRA request a fourteen-day extension letter is automatically sent to the requester. After the extension letter is sent, it is determined whether there are responsive records, whether any exemptions to disclosure apply, and the location of the responsive records. Priority is given to requests related to pending civil or criminal litigation and the more complex requests are handled by an attorney from County Counsel.

There are several exemptions to the CPRA upon which the Sheriff's Department can base a denial of a request or redact responsive records made available to a requester.²⁰ For example, a CPRA request for records related to on-going investigations or security procedures may be denied. A CPRA request that is overly broad and/or burdensome may sometimes be denied. The Discovery Unit generally

¹⁹ As discussed above, the Sheriff's Department was required to respond in writing to these CPRA requests within a maximum of twenty-four calendar days (ten days plus fourteen-day extension) from date of receipt. The Office of Inspector General utilized this twenty-four day timeline as a general metric to evaluate the Sheriff's Department's responsiveness to the Penal Code section 832.7 requests received in 2019.

²⁰ The types of materials exempted from production pursuant to the CPRA are listed generally at Govt. Code sections 6254 and 6255.

does not produce records in response to requests asking for “any and all” information on an employee/issue as they consider this an overly broad request. This practice differs from the Los Angeles Police Department (LAPD) which reported it does not deny requests that ask for “any and all” documents related to a particular subject/incident as “overly broad and burdensome.” The Office of the Inspector General learned in its interview with LAPD’s Legal Affairs Division that the LAPD works with requesters, as mandated by the CPRA, to refine the request into a form to which the LAPD can satisfactorily respond.²¹

In addition to CPRA exemptions, there are specific exemptions listed in Penal Code section 832.7. With respect to Penal Code section 832.7 materials, an agency shall redact the following from disclosed records:

(A) Personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace and custodial officers.

(B) Information necessary to preserve the anonymity of complainants and witnesses.

(C) Information necessary to protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct and serious use of force by peace officers and custodial officers.

(D) Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person.²²

The Sheriff’s Department reviews Penal Code section 832.7 requests to determine whether responsive records exist. If responsive records exist, the Sheriff’s Department must then determine whether any CPRA/Penal Code section 832.7 exemptions apply. If so, a determination is made whether to redact or withhold the record. Once it has been determined that responsive non-exempt records exist, a response letter is sent to the requester. The response letter notifies the requester

²¹ As explained above, a public agency must make a reasonable effort at eliciting additional information from a requester in order to clarify the request and help the public agency identify records responsive to the request. See, Govt. Code section 6253.1.

²² Penal Code section 832.7 is codified at Penal Code section 832.7. See exemptions listed at Penal Code section 832.7(b)(5).

whether responsive records exist and whether those records will be provided. Again, an agency must notify the requester of the reasons for withholding the record if it withholds a record based on a statutory exemption.²³

Lastly, non-exempt responsive records must be identified and retrieved for production from the fifteen divisions and approximately eighty-two sub-units of the Sheriff's Department. Department personnel responsible for responding to CPRA requests must contact the relevant unit and request the responsive records from that unit. Department members from the Discovery Unit reported that they sometimes encounter internal resistance to their intra-departmental requests for information from other units because those units must take time from their regular duties to locate and produce records to the CPRA team. This issue could likely be eliminated by tasking employees in units subject to frequent CPRA/Penal Code section 832.7 requests as designated points of contact for retrieving responsive records.

Discovery Unit Staffing

On October 29, 2019, Office of Inspector General staff met with the Sheriff's Department staff from the Discovery Unit assigned to respond to CPRA requests (CPRA team). At the time of this meeting, there were only seven Discovery Unit staff members tasked with responding to all CPRA requests received by the Sheriff's Department, including those made pursuant to Penal Code section 832.7. Six of these seven employees were on temporary loan to the CPRA team, having been borrowed from other units within the Sheriff's Department. Moreover, the CPRA team was budgeted for only two permanent analyst positions to respond to CPRA/Penal Code section 832.7 requests and only one of those budgeted positions was filled. This level of staffing is not significantly different from the level of staffing observed by the Office of Inspector General in 2017, before the effective date of SB-1421.²⁴

Discovery Unit personnel repeatedly stated that more staffing was required to effectively process CPRA requests. Team members reported that the Los Angeles Police Department's CPRA unit had significantly more staffing to process a similar number of CPRA requests. Team members also reported a need for an audio file specialist position. Copying and redacting audio files is an extremely time-consuming task. A specialist in downloading and redacting audio files would allow the other analysts to focus on responding to the backlog of CPRA requests. Lastly,

²³ Govt. Code section 6255(a), see also *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1074-1075.

²⁴ In July 2017, the Office of Inspector General met with Discovery Unit employees to review the Sheriff's Department's CPRA response process. At that time, there was only full-time analyst assisted by part-time staff.

team members recommended more staffing from County Counsel. At the time of our meeting, only one Deputy County Counsel was assigned to help with the more complex CPRA requests. Discovery Unit personnel recommended the addition of another Deputy County Counsel to deal with the increased workload and to eliminate gaps in legal support due to staff absences.

Discovery Unit Infrastructure

To track CPRA requests and responses the CPRA team uses a spreadsheet that is ill-suited to the task. The spreadsheet consists of numerous categories of datapoints. Office of Inspector General staff reviewed the tracking spreadsheet and found multiple incomplete entries. In many cases, it appeared that sections of the spreadsheet were inconsistently updated. Often there were no entries regarding which other Sheriff's Department units participated in the response to a request.²⁵ There were no entries in a spreadsheet section titled "Hours to Complete." There were incomplete entries in the section specifying the staff member assigned to respond to CPRA requests. The CPRA team noted that the implementation of a software package called "Government Q&A," which is specifically geared to records management tasks, would greatly improve their ability to process CPRA requests. Sheriff's Department personnel at the Discovery Unit reported that the yearly software license for Government Q&A is approximately \$150,000.

The Discovery Unit personnel stated they use Adobe Acrobat software for document processing and redaction. The Discovery Unit had only one licensed copy of Acrobat software. The unit reported they also used publicly available PDF software packages, but this created translation errors between files processed by different software packages. The Discovery Unit stated that as an alternative to the Government Q&A software additional licenses for Adobe Acrobat would make the entire unit more efficient in responding to all CPRA requests.

As to training, the Discovery Unit provided a two-day training based on an eight-page memorandum entitled "California Public Records Act ("CPRA") In a Nutshell," prepared by County Counsel in 2015, well before the enactment of SB-1421. Seven-and-one-half pages of this eight-page memorandum are dedicated to exemptions and other reasons for denying a CPRA request. At the time of our meeting, the Discovery Unit reported that there were no specific Sheriff Department policies for handling Penal Code section 832.7 CPRA records requests. Additionally, the Sheriff's Department did not provide policy documents of any type to the Office of Inspector General despite a written request.

²⁵ Frequently the CPRA team must contact other units in the Sheriff's Department' to research CPRA/Penal Code section 832.7 requests and obtain responsive documents and records.

The Discovery Unit was significantly disadvantaged by the lack of appropriate tracking software, an insufficient number of software licenses, and a lack of departmental training/policies on Penal Code section 832.7.

The Sheriff's Department is not Releasing Reports of Shootings and Uses of Force

By enacting SB-1421 the legislature made clear that the public has a right to know about shootings and serious uses of force by law enforcement officers, as well as other serious police misconduct. In the cases of police shootings and serious uses of force, the legislature mandated that any record "relating to the report, investigation, or findings" of an "incident involving the discharge of a firearm at a person by a peace officer or custodial officer" and incidents "in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury" within the sooner of 60 days from the force or the prosecutor deciding whether to file criminal charges.²⁶

There is only a basis for refusing to release these records is if the release would be "reasonably expected" to interfere with a criminal enforcement proceeding against the officers for their use the force. If the agency asserts that release would interfere with the criminal enforcement proceeding, the agency must provide within 180 days of the incident or the prosecutor's decision, in writing, "the specific basis for the agency's determination."²⁷

Since 2011, there have been 196 deputy involved shootings by Sheriff's Department deputies. The Office of Inspector General has determined that in eighty-four of those shootings there is no legally permissible reason under Penal Code section 832.7 to delay disclosure. There are eighty-nine other shootings for

²⁶ California Penal Code sections 832.7(b)(2) states: "Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action."

²⁷ Penal Code section 832.7(b)(7)(A).

which permissible delay under PC 832.7 has expired but it is unknown whether the Sheriff's Department can articulate "clear and convincing evidence" that "extraordinary circumstances warrant continued delay due to an ongoing criminal investigation or proceeding" and that "prejudice to the active and ongoing criminal investigation or proceeding outweighs the public interest in prompt disclosure".²⁸ Yet as of January 2020, 13 months after the first CPRA pursuant to Penal Code 832.7, the Sheriff's Department Discovery Unit had released records on only four shootings.²⁹

Further, the Sheriff's Department, unlike LAPD, until recently had not uploaded any of this type of information onto its public website. On June 30, 2020, the Sheriff's Department began posting information disclosable under Penal Code 832.7 on its website under a "transparency" portal. The portal is divided into the three categories of information that Penal Code section 832.7 addresses: [*Deputy Involved Shooting, Use of Force Resulting in Great Bodily Injury, and Sustained Findings of Sexual Assault and/or Dishonesty*](#). As of August 17, 2020, the following information was available on the portal:

- [*Deputy Involved Shooting \(DIS\)*](#): three shootings were posted on June 30, 2020, ten were added on July 31, 2020, and eight were added on August 13, 2020;
- [*Use of Force Resulting in Great Bodily Injury*](#): four uses of force resulting in great bodily injury were posted on July 31, 2020 and six more were added on August 13, 2020;
- [*Sustained Findings of Sexual Assault and/or Dishonesty*](#): three incidents of dishonesty were posted on July 31, 2020 and one incident was added on August 13, 2020.

According to the Sheriff's website, the webpage on which this data is posted contains documents that the Sheriff's Department "has previously released through [sic] to individuals or organizations who have requested them from the Los Angeles County Sheriff's Department," suggesting that out of all of the CPRA requests received pursuant to Penal Code section 832.7 records have been released for only twenty incidents.

²⁸ Penal Code section 832.7(b)(7)(A)(iii).

²⁹ As explained later in this report, the Office of Inspector General requested updated data from AAB and the Discovery Unit. While the data from the two units could not be reconciled, it appears that AAB has produced records in response to a CPRA in three additional cases. [*Information on the Sheriff's Department public website*](#) suggests that additional records have been released in response to CPRA requests.

Year 2019 CPRA/Penal Code section 832.7 Compliance Statistics

A review of the CPRA team's tracking spreadsheet clearly shows the ineffectiveness in 2019 of the Sheriff's Department's response to CPRA requests for Penal Code section 832.7 records. The Office of Inspector General analyzed data from the CPRA Log provided by the Sheriff's Department. In 2019, the Sheriff's Department received approximately **4,513 CPRA requests. Over sixty four percent of that total were Penal Code section 832.7 requests (2,909 requests). As of January 23, 2020, over seventy percent (2,058) of the Penal Code section 832.7 requests received in 2019 remained outstanding. Moreover, 1,942 of the outstanding Penal Code section 832.7 requests were pending for over 180 days without a response in violation of time limits imposed by the CPRA.**

Per Discovery Unit personnel, information was produced to requesters in only **five out of the 851** reportedly completed Penal Code section 832.7 requests received in 2019. Four of these completed requests were for information on deputy shootings.³⁰ Of those four, three sets of records were released. The fourth was produced but not released due to non-payment of fees by the requester. The fifth request for which documents were produced was for letters of discipline for current and sworn personnel. The Sheriff's Department reported that they produced discipline letters for "the top 11 executives" and "letters for deputies through the letter A." It is unknown what actual documents were produced as that information was not provided to the Office of Inspector General.

The charts which follow illustrate the inefficiency of the Sheriff's Department's 2019 Penal Code section 832.7 process.

³⁰ AAB reports that as of July 10, 2020 two additional shooting cases and one force case were provided to requesters. The names of the involved deputies were released.

CPRA Requests by Type

The following charts breaks out the 2019 CPRA requests by type:

By Type

Type	# of Requests	% of Total
Penal Code section 832.7	2,909	64.5%
Misc	404	9.0%
Reports	331	7.3%
Non-PRA	239	5.3%
Audio 911	192	4.3%
CFS	138	3.1%
Booking Info	137	3.0%
Personnel	63	1.4%
Contracts	36	0.8%
E-Mails	18	0.4%
Stats	17	0.4%
Clery Act	13	0.3%
Incarceration	8	0.2%
CCW	7	0.2%
Deputy	1	>0.1%
Grand Total	4513	100.0%

Completed CPRA Requests

Of the 4,513 total CPRA requests received in 2019, approximately 1,993 requests (44.1%) were completed while 2,519 requests (55.9%) remained pending as of December 31, 2019. For the purposes of this review, the term “completed” means that a response letter was sent to the requester.

By Status

Type	# of Request	% of Total
Completed	1993	44.1%
Pending	2519	55.9%
Re-Open	1	>0.1%
Grand Total	4513	100.0%

Penal Code section 832.7 Requests

Of the 2,909 Penal Code section 832.7 requests received in 2019, a total of 851 requests (29.3%) were completed while 2,058 requests (70.8%) remained pending as of December 31, 2019.³¹

³¹ As previously noted, in mid-November 2019, LASD Audits and Accountability Bureau (AAB) took over responsibility for responding to Penal Code section 832.7 CPRA requests. Analysis of the Discovery Unit spreadsheet showed that AAB completed written responses for an additional nine individual Penal Code section 832.7 CPRA requests. The Office of the Inspector General requested confirmation of this number from AAB and as of the date of this report has received none.

By Status

Type	# of Request	% of Total
Completed	851	29.2%
Pending	2,058	70.8%
Grand Total	2,909	100.0%

On average, in 2019, it took approximately 151 days to complete the 851 Penal Code section 832.7 requests with the longest being 349 days and the shortest being one day.

Pending Penal Code section 832.7 Requests

Of the 2,058 requests still pending, the vast majority of these requests (1,942 or 70.8%) had been pending for over 180 days, well outside of the time limits imposed by the CPRA. The following table displays the 2,058 pending 2019 requests by the number of days elapsed from the date the request was received to until January 23, 2020, our analysis cutoff point:

Days Request Outstanding						
	1 to 30	31 to 60	61 to 90	91 to 180	Over 180	Total
Pending Requests	1	13	16	86	1942	2058

The Office of Inspector General did not conduct a qualitative analysis of whether the response letters complied with the requirements of the CPRA because a short time after our meeting with the Discovery Unit on October 29, 2019, the Sheriff’s Department transferred the duties of responding to Penal Code section 832.7 requests to the Audits and Accountability Bureau (AAB), a unit that reports directly to the Undersheriff.

Audits and Accountability Bureau Assumes Penal Code section 832.7 Duties

After the Office of Inspector General began this review and had already met with the Sheriff’s Department Discovery Unit and LAPD Legal Affairs Division, we were informed that the responsibility for processing Penal Code section 832.7 requests had been reassigned to the Audits and Accountability Bureau (AAB). This reportedly occurred sometime in mid-November. We were informed the Discovery Unit still responds to all non-Penal Code section 832.7 CPRA requests. On February 20, 2020, the Office of Inspector General met with AAB and Discovery Unit representatives. AAB outlined a number of changes that it had implemented in a relatively short amount of time.

AAB assigned additional staff to respond to Penal Code section 832.7 requests. AAB reported that it had tasked one detective, six sergeants, and six professional staff with responding to Penal Code section 832.7 requests. The Discovery Unit staffing remained unchanged. AAB reported that it implemented new request tracking system software and revised its response letter, which was vetted by County Counsel. As many of AAB's Penal Code section 832.7 processes and procedures were still being implemented, it is unknown whether these processes and procedures will improve compliance with Penal Code section 832.7 and the CPRA.

AAB reported that it sent emails to all the pending Penal Code section 832.7 requesters, explaining the reasons for the delay in the Sheriff's Department response and informing the requesters that their requests were being processed (see Exhibit 1). AAB further reported that it sends updates to the pending requesters every 30 days, advising them of the status of their requests. AAB created new response procedures which streamlined the review process. AAB stated that this streamlining has allowed them to process a number of "requested items" since assuming responsibility over Penal Code section 832.7 requests. It is difficult to quantify this number in that a single Penal Code section 832.7 request can contain many sub-items. The Office of Inspector General has requested a complete accounting of the actual number of individual CPRA requests documented on the Discovery Unit spreadsheet that AAB has processed. AAB stated that they no longer use the Discovery Unit spreadsheet. It is unclear how the remaining 2019 requests are being accounted for if the Discovery Unit spreadsheet is no longer being used. AAB did not respond to our request for documentation of completion of responses sent in 2019. AAB also reported that training was being provided to staff on the new processes and procedures. AAB developed trainings for case managers as well as a training for an Information Resources and Technology Team. A quiz on the training was also prepared by AAB for the Discovery Unit and AAB unit employees tasked with responding to CPRA requests. Further, the CPRA overview prepared by County Counsel was updated as of February 18, 2020.

Although AAB's changes seem to have improved Penal Code section 832.7 request tracking and correspondence with requesters, the Office of Inspector General still has concerns about actual transparency of AAB's response procedures. Most of these concerns center on how AAB interprets and applies the CPRA and Penal Code section 832.7 exemptions to disclosure.

For example, the Sheriff's Department's procedure on the safety exemption is of particular concern. Pursuant to Penal Code section 832.7, a deputy's records shall be **redacted** "where there is a specific, articulable, and particularized reason to

believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person.”³²

When a deputy’s records are responsive to a Penal Code section 832.7 request, an email is sent to that deputy to inform them that a request was made. That email contains a form the deputy may complete if the deputy feels his/her safety would be in jeopardy if records were released. That form is evaluated by the Chief of the Professional Standards Division and a decision is made as to whether the disclosure of the records would pose a significant danger to the physical safety of the deputy. If the Chief determines that the deputy’s claim that releasing the records pose a significant danger to the physical safety of the deputy, according to AAB personnel a response letter is then sent to the requester stating:

“...[W]e have determined that the records you requested are exempt from disclosure under Government Code section 6255(a). Section 6255(a) allows an agency to withhold a record when the public interest served by withholding the record clearly outweighs the public interest in disclosure. Law enforcement employees’ names may be withheld from disclosure in accordance with Government Code section 6255(a) when it is determined that release of their names would reveal their identity and endanger their safety.” (See Exhibit 2).

In order to streamline the process by which a deputy can invoke the safety exemption to a Penal Code section 832.7 request, AAB is in the process of creating a “master list” of deputies for whom AAB will automatically invoke the safety exemption and withhold records. The process and criteria used by AAB to determine which deputies qualify for the master list is of great interest to the Office of Inspector General. In order to analyze the process and criteria used in deciding to invoke the officer safety exemption, the Office of Inspector General requested all materials related to the implementation of the master safety list process. To date, we have received no responsive information.

A similar concern exists regarding the Sheriff’s Department’s procedure for handling records of discipline for dishonesty or sexual assault allegations that are sustained by the Sheriff’s Department but which have been appealed to the Civil Service Commission and in which the Civil Service Commission has not yet ruled on the appeal.³³ If a Penal Code section 832.7 request is made while the appeal to the Civil Service Commission is still pending, AAB is of the opinion that the findings have not been “sustained” and will not produce records. In this circumstance, the Sheriff’s Department sends a response letter stating there are no responsive documents “at

³² Penal Code section 832.7(b)(5)(d).

³³ Los Angeles County Code of Ordinances, Title 5, Appendix I.

this time.” (See Exhibit 3). The requester is not informed that a Civil Service Commission appeal is pending or of the Sheriff’s Department’s position in such cases. The requester is not informed that if the Sheriff’s Department’s discipline is upheld by the Civil Service Commission the requester will have to again request those records in order to obtain them. Compare the language in this letter (see Exhibit 3) to the language in a typical no-responsive-documents letter (see Exhibit 4). The only difference is the “at this time” phrase.

Lastly, requests that are not sufficiently focused, and/or requests where the public interest in not disclosing the record outweighs the public interest served by disclosing it, may be denied. For example, where there are voluminous records that would require manual redaction of private and exempt records, the records will not be provided by the Sheriff’s Department because it asserts that the request is unreasonably overbroad and burdensome. Some CPRA requests are rejected because they are vague i.e., do not provide adequate description of the records sought. For example, the requester only provides the first name of the deputy for whom records are sought. Other than sending a form letter, there is no indication that AAB meaningfully confers with requesters to refine requests so the requests can be fulfilled. (See Exhibit 5). The CPRA requires that an agency “make a reasonable effort at eliciting additional information for a requester in order to clarify the request and help the public agency identify records responsive to the request.” (Govt. Code section 6253.1.) The Office of Inspector General is concerned with whether the Sheriff’s Department’s form letter, although inviting input from the requester, is the Sheriff’s Department’s best effort at true transparency – especially when dealing with unsophisticated requesters.

On July 6, 2020, the Office of Inspector General submitted questions for AAB and the Discovery Unit as to AAB’s transition to handling the SB-1421 Public Records Act requests. The answers to those questions illustrate the disconnect between AAB and the Discovery Unit efforts to comply with Penal Code section 832.7. The Discovery Unit reports that as of July 10, 2020, there 2,796 pending SB-1421 requests and 2,767 overdue requests. In reporting these numbers, the Discovery Unit admits that “[p]ending/Overdue SB1421 stats may not be accurate until Discovery Unit receives updated stats from AAB.” AAB reports that as of July 10, 2020, there are 472 pending requests with 470 overdue. Further, AAB reports that they sent 2,204 response letters out with 2,142 indicating “no responsive documents.” Of those sixty-eight that did not get a “no responsive documents” letter, three actually received documents. Sixty-five were requests for law enforcement officers in other agencies. This disconnect stems from the different and incompatible information systems each unit uses to keep track of the responses to CPRA requests. Transparency as to the SB-1421 response process cannot happen without consistent and accurate statistics.

The Los Angeles Police Department

On December 3, 2019, Office of Inspector General staff met with representatives from the Los Angeles Police Department's Legal Affairs Division (LAPD Legal Affairs) to review the LAPD's system of responding to Penal Code section 832.7 requests and benchmark the LAPD process against the Sheriff's Department's Discovery Unit process. LAPD Legal Affairs generally responds to all CPRA requests submitted to the LAPD, including Penal Code section 832.7 requests. LAPD Legal Affairs reported that it receives approximately 4,000 CPRA requests per year, of which about 400 (10 percent) are Penal Code section 832.7 requests. While the LAPD processes a similar number of total CPRA requests as the Sheriff's Department (LAPD: approx. 4,000; LASD: approx. 4,500), the Sheriff's Department receives substantially more Penal Code section 832.7 requests per year (approx. 2,909) than LAPD (approx. 400). Despite receiving a similar number of total CPRA requests per year, the Los Angeles Police Department's LAPD's staffing commitment to CPRA requests is much larger than the Sheriff's Department's Discovery Unit in 2019.³⁴

LAPD Legal Affairs is staffed with one detective, one senior management analyst, eight management analysts, and two clerks. In response to Penal Code section 832.7, LAPD Legal Affairs created a separate unit to respond to Penal Code section 832.7 requests. The LAPD's Penal Code section 832.7 unit is staffed by one Detective III, one senior management analyst, four management analysts and two clerks. In addition, LAPD Legal Affairs utilizes an additional sixteen employees imbedded in various units whose job it is to gather CPRA information from their respective units. The Sheriff's Department does not have dedicated unit level contacts. This type of contact is important in alleviating any resistance at the unit level that there may be in providing the requested document.

³⁴ It should be noted that when AAB took over the Penal Code section 832.7 unit it was staffed with 13 Sheriff's Department personnel. Therefore, in 2020, the entire CPRA unit, encompassing both the Discovery Unit and AAB, totals 20. While this is commensurate with the centralized CPRA staffing for LAPD, the absence of Sheriff's Department personnel assigned to the units responsible for gathering the records impacts the Sheriff Department's ability to promptly respond to CPRA requests.

	Detective III	Sr. Man. Analyst	Man. Analyst	Clerk	Other
CPRA Unit	1	1	8	2	
1421	1	1	4	2	
Unit Level Contacts					16

In addition to differences in staffing resources allocated to CPRA requests, there are also significant differences in the process used by the LAPD to respond to these requests. One significant difference in the process is the LAPD’s use of NextRequest, a public records request software package which allows the LAPD to efficiently track CPRAs throughout the request process from receipt to disclosure. The LAPD representatives stated that the use of records request software was essential to the effective management of the large number of CPRA requests received by their department.

The LAPD also utilizes its website to guide potential CPRA requesters through the process of submitting a PRA request. The LAPD website directs users to materials already made public – such as incident videos – thus reducing the number of potentially unnecessary CPRA requests. In an effort to speed up response times, the LAPD quickly sends out incident summaries as well as a list of related records to a requester rather than spending the time copying and redacting every available record related to an incident. The requester can then submit a subsequent request for the more specific record. This process reduces the time LAPD spends on producing records that are not what the requester seeks.

It is also important to note that the LAPD **does not** deny requests that ask for “any and all” documents or records related to a particular subject/incident as “overly burdensome.” The LAPD works with the requester to refine an “any and all” to a more particularized form to which the LAPD is able to respond. As the LAPD does not deny “any and all” requests, it must process through a large number of requests of varying degrees of complexity, from simple matters to the production of voluminous documents and/or videos. To do this, the LAPD triages CPRA requests into four general categories: (1) very simple matters – e.g. denials of requests; (2) matters that can be completed in a short amount of time; (3) matters that can be completed within 60 days; and (4) complex matters that will take longer than 60 days to complete. Then based on the complexity of the request, the LAPD assigns appropriate level of staffing. LAPD representatives estimated that each category of request represented about twenty-five percent of the total requests received.

The LAPD representatives stressed that the successful implementation of their CPRA process was the direct result of the strong commitment to transparency by Chief of Police Michel Moore who issued an administrative order mandating compliance with the CPRA which reads in pertinent part as follows:

406.30 CALIFORNIA PUBLIC RECORDS ACT. The Department is committed to upholding the right of the public to access records and information concerning the conduct of the people's business consistent with the Constitution of the State of California and the California Public Records Act (CPRA). The Department recognizes its obligation to comply with the CPRA, to facilitate public records access, and to promote a culture of transparency and accountability. Pursuant to the CPRA, Government Code Sections 6250—6257, all Department records are public records and shall be disclosed to the public, upon request, unless there is a specific legal basis not to do so.

In sum, the LAPD provides a blueprint for the efficient response to CPRA requests. The effectiveness of their system is corroborated by the fact that there currently is **only one** active lawsuit filed against the LAPD in the Superior Court alleging non-compliance with the California Public Records Act.

In comparison to the Sheriff's Department Discovery Unit, the LAPD Legal Affairs Division benefits from having dedicated unit level contacts, a request management software package that has been specifically tailored to CPRA responses, an integrated website, all supported by a written policy from the Chief of Police emphasizing the importance of transparency by and through compliance with the CPRA.

Structural Barriers to True Penal Code section 832.7 Transparency

Lastly, the Office of Inspector General is concerned that certain structural elements of the Sheriff's Department's force-review process may negatively impact Penal Code section 832.7 transparency. The Office of Inspector General found that at certain key points in the Sheriff's Department's force review process no substantive memoranda were created to preserve the Sheriff's Department's analysis and actions.

Force/Shooting Response Team Reviews

After a deputy involved shooting or a use of force involving a serious injury occurs, various units from the Sheriff's Department may respond to the scene. Responding units may include the Homicide Bureau (Homicide), Internal Affairs Bureau (IAB), and Training and Risk Management bureaus. Collectively, these departmental units evaluate the incident to address whether criminal violations have occurred and whether proper tactics and policies were followed. Each of these units create reports which may now be discoverable by means of Penal Code section 832.7. While these reports detail the investigation and may result in a criminal prosecution or discipline, in instances where there is no criminal prosecution or discipline these documents do not analyze whether the deputies adhered to the tactics taught by the Sheriff's Department.

As noted above, Penal Code section 832.7 specifically authorizes the release of records relating to a police discharge of a firearm at a person and records relating to an incident which resulted in death or great bodily injury.³⁵ The Sheriff's Department generally categorizes these types of incidents as "Category 3" force.³⁶ However, there are certain injuries, such as the breakage of small bones in the fingers, which the Sheriff's Department will not categorize as a Category 3 injury but which would be considered great bodily injury by California caselaw. Because information related to the review of force involving the discharge of a firearm or the infliction of death or great bodily injury may now be accessed by the public, the Office of Inspector General is concerned that the absence of documentation from the force review process will result in a lack of transparency.

Executive Force Review Committee

Another potential structural barrier to true Penal Code section 832.7 transparency is the lack of substantive documentation of the Executive Force Review Committee (EFRC) findings and conclusions. After the investigations into a shooting or a significant use of force have been completed, these incidents are reviewed by the

³⁵ See California Penal Code sections 832.7(a)-(b), enacted by Senate Bill 1421.

³⁶ The Sheriff's Department defines "Category 3 Force" as: all shootings in which a shot was intentionally fired at a person by a department member; any type of shooting by a department member which results in a person being hit; force resulting in admittance to a hospital; any death following a use of force by any department member; all head strikes with impact weapons; kick(s) delivered from a standing position, to an individual's head with a shod foot while the individual is lying on the ground/floor; knee strike(s) to an individual's head deliberately or recklessly causing their head to strike the ground, floor or other hard, fixed object; deliberately or recklessly striking an individual's head against a hard, fixed object; skeletal fractures, with the exception of minor fractures of the nose, fingers or toes, caused by any department member; all canine bites; or any force which results in a response from the Internal Affairs Bureau (IAB) Force/Shooting Response team. MPP 3-10/100.00, Use of Force Reporting Procedures.

EFRC.³⁷ The EFRC is comprised of three commanders who convene a hearing with the employee's unit commander, the IAB investigator, personnel from the Training Bureau, the Homicide Bureau, the Advocacy Unit, and the Risk Management Bureau.³⁸

In the case of a deputy involved shooting or Category 3 use of force, the EFRC panel reviews the investigation report, the IAB administrative investigation report, and any prior information presented to the Sheriff's Department or subsequently discovered information related to the incident. At the EFRC meeting, the panel evaluates the incident and determines whether the use of force and tactics by each involved employee were within the Sheriff's Department's policies and procedures. If the EFRC determines a policy violation occurred, the panel makes a disciplinary recommendation to the concerned unit commander and division chief. The EFRC may also recommend other corrective action, training, debriefings, or commendations. While the EFRC panel's findings and conclusions are documented in an extremely brief memorandum, this memorandum does not contain a substantive record of the panel's factual review, policy and tactics analysis, and the basis for its conclusions.

In the interest of true transparency, the Office of Inspector General recommends that the basis of the EFRC panel's findings, analysis, and conclusions be substantively documented in writing. Again, the public cannot review what does not exist. For the community to gain a complete understanding of the deputy involved shootings and significant uses-of-force pursuant to the increased access provided by Penal Code section 832.7, the Sheriff's Department must produce detailed and substantive memoranda of its entire force review process.

Conclusion

Senate Bill 1421 was enacted September 30, 2018. The bill had an effective date of January 1, 2019. In the months before the bill went into effect, it is clear that the Sheriff's Department took no action to support its already fragile Discovery Unit CPRA team. The Sheriff's Department provided no additional staffing or infrastructure to respond to the new CPRA requests that would foreseeably follow the passage of this new law.

Sheriff's Department staff repeatedly stressed the need for additional staffing. Despite receiving far fewer Penal Code section 832.7 requests (LAPD: 400 versus LASD: 2909) the LAPD has a much larger number of staff dedicated to responding to CPRA requests. The LAPD also has software, training, and infrastructure designed

³⁷ MPP 3-10/140.00 - Executive Force Review Committee

³⁸ Ibid.

specifically to process CPRA requests. Whether the shortage of staff/training/infrastructure was a function of a lack of planning, budget issues, or inefficient utilization of employees by the Sheriff's Department is of no matter. It is clear that the CPRA unit must have additional resources.

As a result of the Sheriff's Department inadequately staffing and equipping the Discovery Unit, thousands of SB-1421 California Public Records Act requests have stalled in "pending" status. The requests that were completed took an average of 151 days. The consequences of non-compliance are significant. The Sheriff's Department faced 11 lawsuits for lack of compliance with the CPRA in 2019. By comparison LAPD had one active lawsuit. The indemnities, attorney's fees, and legal costs resulting from these lawsuits might be better spent on increased infrastructure and training.

While AAB's implementation of increased staffing, tracking software, and a streamlined response process is laudable, the Office of Inspector General cannot opine on the actual effectiveness and transparency of AAB's changes until these processes and procedures have been implemented and there is an indication that the backlog of requests has lessened.

The Office of Inspector General has reviewed the [Sheriff's Department statement entitled "SB 1421 Compliance," dated June 16, 2020](#), posted on the LASD website and referenced by the Sheriff in a tweet days after a Los Angeles Times article was published which was critical of his SB-1421 response.³⁹ The Office of Inspector General is concerned about statements by the Sheriff regarding the efforts made by the Sheriff's Department to prepare for the inevitable onslaught of CPRA requests prior to the effective date of SB-1421. We requested all documents relevant to the efforts made by the department pre-SB-1421 and received no responsive documents. We are also concerned about the delay in implementing changes to the ineffective CPRA response system from January 1, 2019 to November 2019. The delay in implementation of an effective response team for eleven months resulted in a failure to comply with CPRA timelines, leading to multiple lawsuits against the county. Further, during these eleven months criminal defendants were denied access to legally discoverable records necessary for the defense of their criminal cases. Sheriff Villanueva's assertion that 75% of the requests have been responded to apparently means only that some written response was sent to the requester and not that records were provided.

³⁹ <https://www.latimes.com/california/story/2020-06-15/sheriff-villanueva-force-policies-transparency>

True transparency requires full disclosure to the requester as to why the records were not produced. Without this information, a requester will be misled into thinking that no records exist. Perhaps of greater consequence is the possibility of unsound convictions and sentences, including imprisonment, for defendants who, due to Sheriff's Department ineffectiveness and questionable exemption procedures, did not receive records in a timely manner before trial. Regardless of the reason, the delay in records production will be viewed as a lack of transparency resulting in a loss of public trust.

Penal Code section 832.7's effectiveness relies primarily on the integrity of the law enforcement agencies. Unlike *Brady* and *Pitchess* processes where the prosecution or courts review the requests, the discretion of releasing Penal Code section 832.7 records lie entirely with law enforcement absent expensive and time-consuming lawsuits. The Sheriff's Department can ensure transparency only with complete and detailed explanations as to why a record was not produced in cases where exemptions apply.

On January 29, 2020, Sheriff Alex Villanueva tweeted:

"As @LASDHQ's Sheriff, I consider transparency to be of critical importance. The community trusts us. With trust comes a duty to be accountable. That's why I informed @LACountyBOS we are taking on a massive effort to load all legally allowable info online."

Clearly, making **all** non-exempt Penal Code section 832.7 records available online would be a significant step for the Sheriff's Department towards total transparency. The Sheriff's Department is not publishing all deputy involved shooting records online. The Sheriff's Department is not complying with statutorily required timelines for making public the names of deputies and the records pertaining to deputy involved shootings. Creating a culture of transparency comes from the top. LAPD's stronger commitment to transparency has made the LAPD Legal Affairs Division efficient, avoided litigation costs associated with untimely responses, and provided the public information with information it is entitled to. This commitment can be seen in LAPD Directive 4 (see Exhibit 6), stating a specific policy recognizing LAPD's obligation to comply with the CPRA, to facilitate public records access, and to promote a culture of transparency and accountability.

It remains to be seen if the Sheriff's Department has improved the effectiveness and transparency of its Penal Code section 832.7 and CPRA response process by transferring the handling of these requests to AAB. Regardless of whether additional resources are devoted to these requests, a clear framework of CPRA training and response policies is necessary to convey to the public that the Sheriff's

Department is complying with Penal Code section 832.7 in a fair and transparent way. Only then will the public be able to benefit from the release of documents mandated by Penal Code section 832.7.



OFFICE OF THE SHERIFF

COUNTY OF LOS ANGELES

HALL OF JUSTICE

ALEX VILLANUEVA, SHERIFF



September 11, 2020

Mr. Daniel W. Baker
Chief Deputy, Inspector General
Los Angeles County Office of Inspector General
312 South Hill Street, 3rd Floor
Los Angeles, California 90012

Dear Mr. Baker:

**RESPONSE TO THE LOS ANGELES COUNTY OFFICE OF INSPECTOR
GENERAL'S SEPTEMBER 2020 REPORT, "THE RIGHT TO KNOW ACT: LOS
ANGELES COUNTY SHERIFF'S DEPARTMENT RESPONSE TO POLICE
TRANSPARENCY REFORM"**

Attached is the Los Angeles County Sheriff's Department's (Department) response to the Los Angeles County Office of Inspector General's (OIG) validation draft on "THE RIGHT TO KNOW ACT: LOS ANGELES COUNTY SHERIFF'S DEPARTMENT RESPONSE TO POLICE TRANSPARENCY REFORM" report.

We thank you and your staff for your efforts in reviewing the various functions and responsibilities within the Department's purview. We have reviewed the report and appreciate your input.

We have attached a document containing responses to the report.

The dedication made by members of the OIG to execute this report is greatly appreciated by the Department. We are committed to balancing community safety with public trust and appreciate the recommendations you make to assist us in this endeavor.

211 WEST TEMPLE STREET, LOS ANGELES, CALIFORNIA 90012

A Tradition of Service
— Since 1850 —

Mr. Baker

-2-

September 11, 2020

The Audit and Accountability Bureau (AAB) has the responsibility to monitor and document the Department's response related to this review. Should you have any questions regarding the Department's response, please contact Captain Rodney K. Moore at (323) 307-8302.

Sincerely,

ALEX VILLANUEVA, SHERIFF



TIMOTHY K. MURAKAMI
UNDERSHERIFF

VALIDATION – LOS ANGELES COUNTY OFFICE OF
INSPECTOR GENERAL REPORT

SUBJECT: The Right to Know Act: Los Angeles County Sheriff's Department
Response to Police Transparency Reform

Introduction

1. *In 2019, the Sheriff's Department received 2,909 Penal Code section 832.7 records requests. The requesters were a mix of news agencies, private citizens, and a significant number of criminal defense attorneys. As of January 23, 2020, **over seventy percent (2,058)** of the Penal Code section 832.7 requests remained outstanding. Moreover, 1,942 of the outstanding Penal Code section 832.7 requests were pending for **over 180 days without a response**, well outside of the time limits mandated by the California Public Records Act. (Page 2, Paragraph 4)*

Response: This statement does not take into account data from AAB. In December 2019, AAB completed 634 requests. Upon receipt of a Public Records Act request, AAB sends the requester a letter responding to the request by the statutory deadline. If necessary, the requester also receives a letter advising them of a need for an extension. Every 30 days, all requesters for Penal Code 832.7 records information receive updates advising them on the status of their request.

2. *In analyzing the responses of the Sheriff's Department, we have found that there is a tremendous amount of internal confusion about the respective duties of AAB and the Discovery Unit. Each is utilizing a different and incompatible information system resulting in data that cannot be reconciled thus producing inaccurate statistics. These inaccuracies are yet another barrier to complete and transparent access to Penal Code section 832.7 information. (Page 3, Paragraph 4)*

Response: AAB is assisting the Discovery Unit in handling Penal Code section 832.7 requests. The Discovery Unit is responsible for all other California Public Records Act requests. AAB created and developed a system for processing Penal Code section 832.7 requests. The Discovery Unit has been trained in the use of the new system and is currently converting to the same processing system as AAB.

The Sheriff's Department's Handling of Public Records Act Requests

3. *The Discovery Unit generally does not produce records in response to requests asking for 'any and all' information on an employee/issue as they consider this an overly broad request. (Page 8, Paragraph 3)*

Response: The Sheriff's Department does not deny requests for "any and all" Penal Code 832.7 incidents related to a specific employee or incident. The Sheriff's Department corresponds with requesters and asks them to refine their request if it is determined to be an overly broad request.

The Sheriff's Department is not Releasing Reports of Shootings and Uses of Force

4. *According to the Sheriff's website, the webpage on which this data is posted contains documents that the Sheriff's Department "has previously released through [sic] to individuals or organizations who have requested them from the Los Angeles County Sheriff's Department," suggesting that out of all of the CPRA requests received pursuant to Penal Code section 832.7 records have been released for only twenty incidents. (Page 13, Paragraph 3)*

Response: As of the date used in this report (August 17, 2020), records relating to twenty-one shooting incidents, ten use of force incidents resulting in great bodily injury, and five sustained findings of sexual assault and/or dishonesty were posted on the Sheriff's Department website. The Sheriff's Department is continuously publishing responses to Penal Code section 832.7 requests on the Sheriff's Department website, as they are produced to the requester. As of September 9, 2020, a total of sixty-three records responsive to Penal Code section 832.7 requests have been published on the Department website.

Completed CPRA Requests

5. *Of the 4,513 total CPRA requests received in 2019, approximately 1,993 requests (44.1%) were completed while 2,519 requests (55.9%) remained pending as of December 31, 2019. For the purposes of this review, the term "completed" means that a response letter was sent to the requester. (Page 15, Paragraph 2)*

Response: This statement does not take into account data from AAB. In December 2019, AAB completed 634 requests.

Audits and Accountability Bureau Assumes Penal Code section 832.7 Duties

6. *In order to streamline the process by which a deputy can invoke the safety exemption to a Penal Code section 832.7 request, AAB is in the process of*

creating a "master list" of deputies for whom AAB will automatically invoke the safety exemption and withhold records. (Page 18, Paragraph 4)

Response: AAB has created a list of personnel that are exempt based upon specific, articulable, and particularized reasons, per Penal Code section 832.7(b)(5)(D). Safety exemptions are not automatic, and are evaluated and approved by the Professional Standards Division, which consults with County Counsel when needed.

- 7. Some CPRA requests are rejected because they are vague i.e., do not provide adequate description of the records sought. For example, the requester only provides the first name of the deputy for whom records are sought. Other than sending a form letter, there is no indication that AAB meaningfully confers with requesters so the requests can be fulfilled. (Page 19, Paragraph 2)*

Response: For requests in which AAB is unable to identify the requested personnel, they send the requester a letter requesting more detailed information. AAB asks the requester for any further information they may be able to provide, such as first name, last name, employee number, and unit of assignment. The requester is also provided with an email address, telephone number and a person to contact for assistance with their request.

- 8. AAB reports that as of July 10, 2020, there are 472 pending requests with 470 overdue. Further, AAB reports that they sent 2,204 response letters out with 2,142 indicating "no responsive documents." Of those sixty-eight that did not get a "no responsive documents" letter, three actually received documents. Sixty-five were requests for law enforcement officers in other agencies. (Page 19, Paragraph 3)*

Response: Upon receipt of a Public Records Act request, AAB sends the requester a letter acknowledging the request by the statutory deadline. If necessary, the requester also receives a letter advising them of a need for an extension. Every 30 days, all requesters for Penal Code section 832.7 records information receive updates advising them on the status of their request. AAB did not receive, nor account for, sixty-five requests for law enforcement officers in other agencies.

Force/Shooting Response Team Reviews

- 9. As noted above, Penal Code section 832.7 specifically authorizes the release of records relating to a police discharge of a firearm at a person and records relating to an incident which resulted in death or great bodily injury. The Sheriff's Department generally categorizes these types of incidents as "Category 3" force. However, there are certain injuries, such as the breakage of small bones in fingers, which the Sheriff's Department will not categorize as a Category 3 injury*

but which would be considered great bodily injury by California caselaw. (Page 23, Paragraph 2)

Response: In responding to Penal Code section 832.7 requests, the Sheriff's Department uses Category 3 force as one screening factor related to use of force resulting in death or great bodily injury. All potential cases are reviewed and analyzed for responsiveness on a case-by-case basis, including the force used, the specific injuries, and other potential release factors. County Counsel is consulted when needed.