

DOWNEY POLICE DEPARTMENT

TRAINING



BULLETIN

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SB 1421 and AB748

Until the recent passing of the two Bills outlined below, California has been one of the few remaining states to vigorously protect the confidentiality of peace officer personnel files. Two new Bills, which are set to go into effect in 2019, will change some of the past practices pertaining to the release of personnel file information and Body Worn Camera/In-Car Video footage.

SB 1421 Amends Penal Code § 832.7 To Exclude Certain Files From Confidentiality as of January 1, 2019.

While most peace officer personnel files will remain exclusively subject to so-called Pitchess discovery, 832.7(b) will now deem four distinct categories as no longer confidential and therefore subject to routine discovery under the provisions of the Public Records Act (Govt. Code § 6250, et seq.)

(A)(i) – An incident involving any officer’s discharge of a firearm at a person.

(A)(ii) – A use of force incident by any officer resulting in death or great bodily injury. [Note: GBI is not defined in this section, but has otherwise been held to include “significant or substantial injury” – Penal Code § 12022.7(f) – i.e. “greater than minor or moderate harm” – CalCrim 875; Since the vagueness of GBI will undoubtedly be subject to interpretation, the department will conduct careful review of such requests to make sure they meet the requirements for release.

(B) – A sustained finding of sexual assault by any officer involving a member of the public.

(C) – A sustained finding of dishonesty by any officer, including perjury, false statements, false reports, falsifying or concealing evidence.

Since the sexual assault and dishonesty classifications will only arise after the allegation has been sustained, the ability to delay disclosure will solely apply to OIS and force cases. In those cases, the department may initially delay release for up to 60 days from the date of the incident (or if the DA files) if the requesting party is provided with a written explanation of the specific basis for delay during the pendency of an active criminal investigation. Delays beyond 60 days may be obtained if the department provides a similar written explanation of how release would interfere with an ongoing criminal proceeding against the officer or other person. If the

department's delay is based solely upon an ongoing administrative investigation, the delay is limited to up to 180 days from the date of agency discovery.

Please note that these new provisions allow for limited redaction of certain information for reasons such a privacy, medical records, and danger to any person. In any motion to compel, the agency also retains the ability to petition that the file be sealed pending judicial review and "frivolous" complaints will not be subject to release.

AB748 Amends the Public Records Act To Address the Release of Audio and Video Recordings.

As the Legislature tries to keep up with technological advances associated with Body Worn Camera's, "dash-cams" (COBAN), and other electronic recordings, Govt. Code § 6254(f)(4) will now regulate the release of such data arising out of a "critical incident" as of July 1, 2019. "Critical Incidents" are defined as those which depict only (i) an officer's discharge of a firearm at a person and (ii) an officer's use of force resulting in death or great bodily injury.

Initially, the agency may delay disclosure for up to 45 days from the date of discovery during an active criminal or administrative investigation if the agency provides the requesting party with a written explanation of the specific basis of how release would substantially interfere with the investigation. After 45 days, additional delays up to one year may be extended if the agency provides the requesting party with clear and convincing evidence in writing as to how disclosure would substantially interfere with the investigation. During such delay, the agency must reassess withholding every 30 days and notify the requester until the recording is released.

Please note that before releasing any information described above, the department will consult with the city's legal-council to make sure the authority to obtain the information is present. If there is a legal standing to not release the information, the public record's request will be denied. If the department is required to release a report, investigation, or video footage involving a current employee, that person will be notified before its release.