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The People's Business

California Public Records Act Update

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Agenda

1. AB 473
2. Overview of the Guide
3. Legal Update
 - A. Recent Cases
 - B. Law Enforcement Records

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AB 473

- Effective January 1, 2023, the CPRA will be relocated to a new Division (614) of the Government Code found in §§7920.000-7930.215
- Nothing in AB 473 was “intended to substantially change the law relating to inspection of public records.” The changes were intended to be “entirely nonsubstantive in effect. Every provision of this division and every other provision of [AB 473], shall be interpreted consistent with the nonsubstantive intent of the act.” (Govt. Code § 7920.110)

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The People's Business 2022 Update

- Updated and revised to reflect AB 473 and changes to the law
- Organized the same as the 2008 and 2017 editions
 - Major updates to sections regarding law enforcement records
 - Citations include cross-references to current code sections
- In addition to the “Frequently Requested” chart, we have included disposition and derivation charts

Recent Cases Included in Guide

- *Community Action Agency of Butte County v. Superior Court (Bussey)*, (2022) 79 Cal.App.5th 221
 - Four-factor test to determine whether a nonprofit entity is “another local public agency” under the PRA; the factors are:
 1. Whether the entity performs a government function;
 2. The extent to which the government funds the entity's activities;
 3. The extent of government involvement in the entity's activities; and
 4. Whether the entity was created by the government).

Recent Cases Included in Guide (Cont.)

- *Kinney v. Superior Court (Kern County)*, (2022) 77 Cal.App.5th 168
 - Local agencies are only required to disclose arrestee information pertaining to “contemporaneous” police activity. The legislature has not defined the term “contemporaneous” in the context of arrest logs, but the purpose of the disclosure requirement is “only to prevent secret arrests and provide basic law enforcement information to the press.” For example, a request for 11 or 12 month old arrest information would not serve the purpose of preventing clandestine police activity, therefore those records are exempt from disclosure.

Recent Cases Included in Guide (Cont.)

- *Riskin v. Downtown LA Property Owners Association*, (2022) 76 Cal.App.5th 438.
 - Trial courts have discretion to deny attorneys' fees award when a plaintiff obtains a result so minimal or insignificant as to justify a finding that the plaintiff did not prevail, which may occur when the requester obtains only partial relief.

Law Enforcement Records

- Since last update, significant changes in the law in this area:
 - AB 748 (effective 2019) – audio/video related to critical incidents now publicly available within specified timeframes.
 - SB 1421 (effective 2019) – notwithstanding law enforcement records exception in the CPRA, four categories of incidents/misconduct made publicly available.
 - SB16 (effective 2022) – expanded list of categories and documents publicly available, disclosure deadline, new retention requirements, impacts to AC privilege.

Law Enforcement Records (AB748)

- AV related to critical incident released within 45 days, or demonstrate why disclosure would interfere with an active criminal or admin investigation, and then can withhold for up to 1 year.
- “Relates to a critical incident” if it depicts any of the following incidents:
 - An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
 - An incident in which the use of force by a peace officer or custodial officer against a person resulted in death or in great bodily injury.

Peace Officer Personnel Records (PC 832.7)

- a. Peace Officer Personnel Records are generally confidential
- b. Exceptions to that general rule and notwithstanding the law enforcement records exception in the PRA, these categories are publicly available:

Discharge of a firearm at a person by police	Sustained finding of sexual assault involving a member of the public
UOF against a person by police that resulted in death or GBI	Sustained finding involving dishonesty in certain instances
Sustained finding unreasonable or excessive force	Sustained finding engaged in conduct involving discrimination
Sustained finding for failing to intervene on excessive force	Sustained finding unlawful arrest or conducted an unlawful search

Peace Officer Personnel Records (PC 832.7)

What types of documents are available for those incidents/misconduct?

- All Investigative records/materials and all disciplinary records.
- Records that shall be released pursuant to this subdivision also include records relating to an incident specified in paragraph (1) **in which the peace officer or custodial officer resigned before the law enforcement agency or oversight agency concluded its investigation into the alleged incident.**

Peace Officer Personnel Records (PC 832.7)

- Timing of Release: 45 days from request, unless you can establish temporary withholding as a result of criminal or admin investigation/proceedings.
- Attorney-client privilege: Factual information provided to attorney or info discovered by attorney-led investigation not protected by A/C privilege.
 - Billing records also not protected, so long as the records do not relate to active or ongoing litigation and do not disclose purpose of consultation.

Cases interpreting the new laws

- Do these laws apply retroactively to incidents that occurred prior to SB1421?

Yes. *Ventura County Deputy Sheriffs' Assn. v. County of Ventura* (2021) 61 Cal.App.5th 585.

- What is a "final determination" for purposes of interpreting "sustained finding"?

Opportunity for appeal not necessarily a completed appeal. *Collondrez v. City of Rio Vista* (2021) 61 Cal.App.5th 1039.

QUESTIONS?



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