



Police Department

Scott Whitney, Chief of Police

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To: Alex Nguyen, City Manager
Scott Whitney, Chief of Police

From: Jason Benites, Assistant Chief

Subject: SB 1421 Briefing Memo

Senate Bill 1421 (SB 1421) went into effect on January 1, 2019. It amended Penal Code section 832.7, and gave the public access to police personnel records related to reports, investigations, and findings via the Public Records Act (PRA) in three (3) categories:

- Job-related dishonesty.
- Sexual assault against a member of the public, or a sexual act while on duty.
- Specified use of force incidents involving the discharge of a firearm at a person by an officer, or a use of force by an officer against a person resulting in death or great bodily harm. Following discussion between law enforcement agencies and attorneys across the state, the Oxnard Police Department defines “great bodily harm” for SB 1421 purposes as “*force that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.*”

The statute provides an exhaustive list of the types of applicable records, including, but not limited to: all investigative reports, photos, audio and video recordings, transcripts, documents presented to the district attorney for review, internal investigation reports, and disciplinary records. Requested records that are applicable to SB 1421’s provisions are referred to as “responsive.”

Initial Litigation

Litigation related to SB1421 first centered on whether or not the new law applied to cases moving forward from January 1, 2019, or included records from prior to that. When the law took effect, several police associations and deputy sheriff’s associations throughout California filed for injunctive relief in their respective jurisdictions. On January 11, 2019, the Ventura County Sheriff’s Deputies Association sued Ventura County to block the release of records of “1421 responsive” cases that preceded Jan. 1, 2019. Superior Court

Judge Henry Walsh issued a temporary restraining order on Jan. 23, 2019 to block the disclosure of such records.

In line with Judge Walsh's order, the City of Oxnard took the position that it would not release any records pursuant to a PRA request, because the law did not state that records created prior to January 1, 2019 were responsive, and several courts throughout California granted requests to bar the release of such documents. Of note, the City of Oxnard recognized that the California Attorney General also took issue with SB 1421's applicability to records preceding January 1, 2019.¹

On March 29, 2019, the California First District Court of Appeal ruled on the matter, and stated that records created prior to January 1, 2019 were responsive. The City of Oxnard immediately took the position that it would release responsive records pursuant to PRA requests.

Litigation in California then turned toward costs related to redacting SB 1421 responsive records. Prior to disclosing records pursuant to SB 1421, agencies must redact certain categories of information to protect the privacy interest of certain individuals, such as witnesses, complaining parties, victim information, personal information of officers (other than the officers' names), and confidential financial and/or medical information. In general, redaction is time and labor intensive, especially the effort to redact body worn camera video, or in cases with thousands of pages of documents. In May 2019, the First District Court of Appeal ruled that agencies could recover costs from requestors for redacting exempt material from otherwise responsive electronic records, such as police officer body camera footage.² As a result, some requesting parties withdrew their PRA requests, or suspended their request pending the outcome of continued litigation on this topic. The California Supreme Court overturned this on May 28, 2020. As such, agencies now may not recover costs from requestors to perform record redaction.

Process

Consistent with California law, the Police Department purges administrative/internal affairs investigations after five (5) years.³ The Police Department maintains criminal investigation files (such as officer- involved shootings) indefinitely.

¹ Initially, the California Attorney General ("AG") decided to refrain from releasing personnel records of peace officers that "pre-dated" SB 1421's operative date – January 1, 2019 – "until the legal question of retroactive application of the statute is resolved by the courts," because "the public interest in accessing these records is clearly outweighed by the public's interest in protecting [the] privacy rights" of peace officers. On May 17, 2019, the AG reversed course, and opined that SB 1421 applies to records before January 1, 2019.

² *National Lawyers Guild v. City of Hayward*

³ California Penal Code section 823.5(b).

When an agency receives public records requests, staff must assess and determine if they are responsive. If the records are responsive, the redaction process begins. As mentioned above, redaction is a time consuming process. Upon completion of the redaction phase, the Police Department then sends the records to the City Attorney's Office for review, which in turn sends them to the City Clerk for their release to the requestor. This process can require up to several months for cases with voluminous amounts of records. PRA requests for previously processed/released records are met faster.

Officers who have been involved in incidents that qualify under SB 1421 and an administrative report exists are notified of the specific incident and to the possibility of the release of records. The Police Department advised all officers that any future qualifying incident could be subject to a PRA request.

Oxnard's SB 1421 Requests and Compliance

Oxnard Police Department staff set to work on redacting responsive materials throughout 2019. Redaction involved the review of several thousand pages of material, and (expectedly) required months to complete. The City first disclosed SB 1421 responsive records pursuant to a PRA request on November 13, 2019. The City subsequently produced additional responsive records after completion of redaction and review for each individual case. Because of this, requestors received responsive records on a rolling basis (as each case became ready), versus receiving their entire requests at once (after every responsive case in their request was ready). By the end of May 2020, the Police Department had already disclosed all but one of its SB 1421 responsive cases. The City produced this last responsive item on July 6, 2020.

At the time of this writing, the Police Department has received seventeen (17) requests for SB 1421 related materials since the statute went into effect. Of these, five (5) requests had responsive documents. The Police Department has met all responsive requests, and the City of Oxnard has been fully compliant.