

CLIENT NEWS BRIEF

New Restrictions on Disclosure of Video and Audio Recordings

A new law will restrict the public disclosure of video and audio recordings created during the commission or investigation of rape, incest, sexual assault, domestic violence, or child abuse that depicts the face, intimate body part, or voice of a victim of the incident. Assembly Bill (AB) 459 goes into effect on January 1, 2018.

The California Public Records Act (CPRA) requires public agencies to respond to a records request within 10 days, and to make eligible public records promptly available to a requester who pays the costs associated with duplication. Video and audio data are generally considered public records that are subject to disclosure, unless they are exempt under the express provisions of the CPRA or the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure.

Over the past several years, peace officers' use of body-worn cameras has become a frequent topic of public debate. Advocates stress public benefits such as improved evidence documentation and greater transparency, while others express concerns regarding potential invasions of privacy and violations of trust. AB 459 addresses the possibility that such recordings, which may contain sensitive, personal, or violent imagery or audio, could be distributed to the public, and is designed to provide victims of sexual or domestic violence with greater confidence that such footage will not be released.

AB 459 adds section 6254.4.5 to the Government Code, which specifies that the CPRA "does not require disclosure of an audio or video recording that was created during the commission or investigation of the crime of rape, incest, sexual assault, domestic violence, or child abuse that depicts the face, intimate body part, or voice of a victim of the incident depicted in the recording." A public agency may withhold any such video or audio recording by showing that the public interest served by not disclosing the recording clearly outweighs the public interest served by disclosure of the recording. When balancing the public interest served by disclosure, AB 459 sets forth the two factors the public agency must consider:

- The constitutional right to privacy of the person or persons depicted in the recording; and
- Whether the potential harm to the victim caused by disclosing the recording may be mitigated by redacting the recording to obscure images showing intimate body parts and personally identifying characteristics of the victim or by distorting portions of the recording containing the victim's voice, provided that the redaction does not prevent a viewer from being able to fully and accurately perceive the events captured on the recording.

Notably, AB 459 also explicitly allows a victim of sexual assault or domestic violence, or his or her parent or guardian (if the victim is a minor), next of kin, or legally authorized designee, to obtain a copy of any such recordings. Such a

November 2017
Number 72



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November 2017
Number 72

disclosure to a victim or family member does not require that the recording be made available to the public.

Lozano Smith will provide additional details about how AB 459 is applied and interpreted as public agencies begin utilizing these new standards. For more information on AB 459, please contact the authors of this Client News Brief or an attorney in our [Charter Schools Practice Group](#) or at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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