

California Expands Public Access to Police Records

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Written by:

Jenell Van Bindsbergen
Partner
Fresno

Jessica A. Mejorado
Associate
Fresno

Governor Newsom signed Senate Bill (SB) 16 on September 30, 2021, expanding the types of police officer records subject to disclosure pursuant to a public records request. This is an expansion of provisions enacted in SB 1421, that went into effect on January 1, 2019. (See [2018 Client News Brief Number 60](#).) SB 1421 increased public access to certain police records related to incidents of discharge of a weapon at a person, incidents involving great bodily injury or death, sustained findings of dishonesty, and sustained findings of sexual assault.

The new bill, which takes effect January 1, 2022, adds four new categories of police records that will also be disclosable as public records. They are:

- A sustained finding involving a complaint that alleges unreasonable or excessive force;
- A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive;
- A sustained finding by any law enforcement agency or oversight agency that an officer made discriminatory or racial statements, including statements made in online posts; and
- A sustained finding by any law enforcement agency or oversight agency that an officer made an unlawful arrest or conducted an unlawful search.

In addition to expanding the types of police records subject to public disclosure, SB 16 adds retention requirements for sustained findings of misconduct. Records containing sustained findings of misconduct must now be maintained for 15 years instead of five years. The new law also clarifies some of the questions that arose following the passage of SB 1421 and adopts certain rulings by California courts addressing those questions. Specifically, SB 16 includes the following provisions related to the disclosure of records:

- Public agencies cannot pass on the cost of searching for, editing, or redacting records and only can recover the direct cost of duplication;

- Records must “be provided at the earliest time” and no later than 45 days after the request, unless otherwise legally permitted (for example, where there is an active criminal investigation of the officer whose records are being sought);
- Incomplete personnel investigations relating to the disclosable categories are subject to disclosure and releasable where an officer resigns prior to the completion of the investigation;
- The Attorney-Client privilege does not extend to:
 - Billing records (except for active, ongoing litigation and for the purpose of legal consultation);
 - Factual information exchanged between the public entity and the attorney or discovered during an investigation conducted for the benefit of the agency by the attorney; and
- Hiring agencies are required to request and review any records of misconduct when hiring officers.

Finally, the new law adds a section to the Penal Code which requires every peace officer to immediately report all use of force to the officer’s department or agency.

Takeaways

SB 16 highlights the complexities surrounding the keeping and disclosure of police records in California and the growing trend toward transparency. California Public Records Act requests are time-sensitive, and the new law includes many considerations for public entities, including how to respond in a timely manner to records requests and the cost of providing the records. We recommend contacting your legal counsel to assist with new records requests which will undoubtedly be coming once SB 16 is effective. Additionally, SB 16 increases accountability to the public by requiring each officer to report all use of force to the officer’s department or agency. Because of the potential fiscal impacts of the law which cannot be passed on, agencies will need to consider how to comply with SB 16 as well as increasing calls for transparency in law enforcement. Agencies should also review their policies for retention and record keeping, hiring procedures and the ability to produce audio and video records, which can be costly, so that they are in compliance with the new law.

If you have any questions about SB 16 or disclosure of police records in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcasts](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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