

---

UNFINISHED BUSINESS

---

Bill No: SB 16  
Author: Skinner (D)  
Amended: 8/30/21  
Vote: 21

---

SENATE PUBLIC SAFETY COMMITTEE: 4-0, 3/9/21  
AYES: Bradford, Ochoa Bogh, Skinner, Wiener

SENATE JUDICIARY COMMITTEE: 8-1, 4/13/21  
AYES: Umberg, Caballero, Durazo, Gonzalez, Hertzberg, Laird, Wieckowski,  
Wiener  
NOES: Borgeas  
NO VOTE RECORDED: Jones, Stern

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/20/21  
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski  
NOES: Bates, Jones

SENATE FLOOR: 31-3, 6/2/21  
AYES: Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd,  
Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Kamlager, Laird, Leyva,  
Limón, McGuire, Min, Newman, Ochoa Bogh, Pan, Portantino, Roth, Rubio,  
Skinner, Stern, Umberg, Wieckowski, Wiener  
NOES: Borgeas, Grove, Wilk  
NO VOTE RECORDED: Bates, Dahle, Hurtado, Jones, Melendez, Nielsen

ASSEMBLY FLOOR: 57-13, 9/1/21 - See last page for vote

---

**SUBJECT:** Peace officers: release of records

**SOURCE:** Author

---

**DIGEST:** This bill expands the categories of police personnel records that are subject to disclosure under the California Public Records Act (CPRA); and modifies existing provisions regarding the release of records subject to disclosure.

*Assembly Amendments* specify that the records related to use of excessive or unreasonable force must be sustained in order to be subject to disclosure; and clarify that provisions of the attorney-client privilege better comply with standards.

**ANALYSIS:**

Existing law:

- 1) Provides pursuant to the CPRA that all records maintained by local and state governmental agencies are open to public inspection unless specifically exempt. (Gov. Code, §§ 6250 et seq.) Defines "public records" to include any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Gov. Code, § 6252, subd. (e).)
- 2) Requires an agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the CPRA or that on the facts of the particular case, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov. Code, § 6255, subd. (a).)
- 3) Authorizes any person to institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter. (Gov. Code, § 6258.) Provides that if the plaintiff prevails in an action under the CPRA, the judge must award court costs and reasonable attorneys' fees to the plaintiff. (Govt. Code, § 6259, subd. (d).)
- 4) Requires the complaints and any reports or findings relating to these complaints shall be retained for a period of at least five years. (Pen. Code, § 832.5, subd. (b).)
- 5) Provides that complaints by members of the public that are determined by the peace or custodial officer's employing agency to be frivolous, as defined, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, shall not be maintained in that officer's general personnel file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the

CPRA. (*Pen. Code, § 832.5, subd. (c).*) Defines “frivolous” as “totally and completely without merit or for the sole purpose of harassing an opposing party.” (*Civ. Code, § 128.5, subd. (b)(2).*) Defines “unfounded” as “mean[ing] that the investigation clearly established that the allegation is not true.” (*Pen. Code, § 832.5, subd. (d)(2).*)

- 6) States that except as specified, peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to citizens' complaints against personnel are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery. This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or any agency or department that employ these officers, conducted by a grand jury, a district attorney's office, or the Attorney General's Office. (*Pen. Code, § 832.7, subd. (a).*)
- 7) Provides that the following peace officer or custodial records maintained by their agencies shall not be confidential and shall be made available for public inspection pursuant to the CPRA:
  - a) A record relating to the report, investigation, or findings of any of the following:
    - i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer; or
    - ii) 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;
  - b) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public;
  - c) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by a peace officer or custodial, and,
  - d) Officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence. (*Pen. Code, § 832.7, subd. (b).*)

- 8) States that an agency shall redact a disclosed record for specified purposes, including anonymity of witnesses and complainants. (Pen. Code, § 832.7, subd. (b)(5)(A)-(D).)
- 9) Provides also that an agency may redact a record disclosed “where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.” (Pen. Code, § 832.7, subd. (b)(6).) Allows an agency to temporarily withhold records of incidents involving an officer’s discharge of a firearm or use of force resulting in death or great bodily injury by delaying disclosure when the incidents are the subject of an active criminal or administrative investigation. (Pen. Code, § 832.7, subd. (b)(7).)

This bill:

- 1) Makes personnel records related to the following categories of incidents subject to disclosure under the CPRA:
  - a) Records of every incident involving unreasonable uses of force, or excessive uses of force.
  - b) Records related to sustained findings that an officer failed to intervene against another officer using unreasonable or excessive force.
  - c) Records related to sustained findings of unlawful arrests and unlawful searches.
  - d) Records related to sustained findings of officers engaged in conduct involving prejudice or discrimination on the basis of specified protected classes.
- 2) Permits the disclosure of records that would be otherwise subject to disclosure when they relate to an incident in which an officer resigned before an investigation is completed.
- 3) Requires that agencies retain all complaints and related report or findings currently in the possession of a department or agency.
- 4) Clarifies that the identity of victims and whistleblowers may be redacted in addition to witnesses and complainants.
- 5) Codifies existing California Supreme Court case-law requiring law enforcement agencies to cover the costs of editing records.

- 6) Prohibits assertion of the attorney-client privilege to limit the disclosure of factual information provided by the public entity to its attorney, factual information discovered by any investigation done by the public entity's attorney, or billing records related to the work done by the attorney.
- 7) Requires records subject to disclosure be provided at the earliest possible time and no later than 45-days from the date of a request for their disclosure.
- 8) Eliminates the limitation on judges to only consider misconduct complaints against officers from the previous five years when determining relevancy for admissibility in criminal proceedings.
- 9) Requires that each law enforcement agency request and review the prior personnel files of any officer they hire.
- 10) Requires that every officer employed as a peace officer immediately report all uses of force by the officer to the officer's employing agency.
- 11) Phases-in implementation of this bill so that records relating to incidents that relate to the new categories of offenses added by this bill that occurred before January 1, 2022, shall not be required to be disclosed until January 1, 2023. However, records of incidents that occur after January 1, 2022, shall be subject to disclosure pursuant to the provisions of this bill.

## **Background**

California law has long kept secret records held by law enforcement agencies after making police personnel records completely confidential in 1978 — a benefit provided only to this class of public employee. In 2018, the Legislature passed SB 1421 (Skinner, Chapter 988), which represented a paradigm shift in how local and state police agencies must disclose information when police use of force, or are subject to sustained findings of misconduct related to sexual assault and dishonesty.

When SB 1421 went into effect on January 1, 2019, every single law enforcement agency in California received a request for records made subject to disclosure by the new law. Many of the requests sought a comprehensive release of all existing and relevant records from the agencies. Despite changes to the law, agencies across the state have taken actions that have delayed or denied the public access to records for which disclosure should be mandated. For example, cities such as Downey, Inglewood, Fremont and Morgan Hill destroyed records before January 1, 2019, to avoid producing responsive documents.

Additional attempts to thwart disclosure have taken numerous forms. By March 2019, the Los Angeles Times reported that 170 agencies were in active litigation or refusing to disclose records arguing, among other things, that the law did not apply to records created before 2019. This litigation has created substantial delays in access, and has encouraged agencies to fight in court rather than invest in resources to disclose the records. Agencies are also setting up roadblocks to disclosure. For example, the City of Anaheim demanded a \$3,000 deposit before it would begin the process to disclose records to a mother about the death of her unarmed son at the hands of police.

This bill seeks to respond to agencies flouting of the law by allowing a court to impose civil penalties on an agency for delaying disclosure of SB 1421 records, and increasing attorney's fees for litigation over those records to discourage violations of the law and increase compliance.

In the flurry of litigation over SB 1421, one court of appeal discussed an open legal question regarding interpretation of the law: whether the Public Record Act's discretionary (i.e. voluntary) exemptions can be asserted to withhold records that are mandated for disclosure by SB 1421. In *Bacerra v. Superior Court*, 44 Cal. App. 5th 897 (2020), the court recognized that the interest behind exemptions in the PRA could be asserted through the balancing test language in 832.7(b)(6). Through that exemption, an agency may redact records as necessary based on another law that protects that information from disclosure. However, the court also said the discretionary exemptions in the PRA do not swallow SB 1421's mandate to disclose specified documents and information. This bill clarifies the application of the attorney-client privilege to SB 1421 records. This provision specifically incorporates the privilege into the 832.7 disclosure scheme. The provision is intended to prevent the redaction of factual information that is uncovered in an investigation that is conducted by a public entity simply because they hire an attorney to conduct the investigation. This bill permits the redaction of legal opinions and the arguments or reasoning for these opinions. The purpose of this provision is prevent the prevention of disclosure of factual information that would otherwise be subject to disclosure if the agency hired an investigator that was not an attorney.

Even though California has radically shifted its confidential treatment of police records, it remains an outlier when it comes to the public's right to know about police misconduct and use of force. At least 20 other states have far more open access, including New York, which completely eliminated its statutory scheme for confidentiality in police personnel records this summer. California's law remains narrowly focused in disclosing only specified categories of misconduct and uses of

force. By expanding the categories of disclosure, this bill adds on to SB 1421's structure of mandating disclosure about the most important incidents, including all uses of force, wrongful arrests and wrongful searches, and records related to an officer's biased or discriminatory actions.

Unlike the recent New York legislation, this bill takes a modest approach to broadening the categories of personnel records that become subject to disclosure under the public records act. This bill expands the categories in three moderate ways. First it expands the use of force disclosures that are currently permissible to include uses of force by peace or custodial officers that are used to make a person comply, unreasonable force, and excessive force. Second, this bill allows for release of sustained findings of unlawful searches and unlawful arrests. Finally this bill permits the release of records that show racist or discriminatory conduct that has been sustained by the agency are also subject to disclosure. On top of all of this, this bill contains significant privacy protections that permit the redaction of the identifying information of victims, witnesses, and complainants. Had the New York approach been taken, this bill would have simply eliminated Penal Code Section 832.7 completely and all peace officer personnel records would be public records, with no limitations or protections. This bill is a modest expansion of existing law.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee:

- 1) Costs (General Fund (GF) and Legal Services Revolving Fund) of \$5.6 million dollars in fiscal year (FY) 2020-21 and \$9.7 million dollars annually thereafter to the Department of Justice in staff and infrastructure to review, redact and litigate CPRA cases related to an expanded universe of law enforcement personnel records.
- 2) Possible non-reimbursable costs, possibly in the millions of dollars, to local public entities statewide, including cities, counties and special districts to review and redact peace officer personnel records and litigate PRA cases. Local costs related to compliance with the CPRA are non-reimbursable pursuant to Proposition 40 (2012).

**SUPPORT:** (Verified 9/1/21)

Advancement Project  
Alameda County Public Defender's Office  
American Association of Independent Music

American Civil Liberties Union/northern California/Southern California/San Diego  
and Imperial Counties  
American Federation of Musicians  
Artist Rights Alliance  
Asian Americans Advancing Justice - California  
Asian Solidarity Collective  
Black Music Action Coalition  
Borderlands for Equity  
California Attorneys for Criminal Justice  
California Black Media  
California Broadcasters Association  
California Civil Liberties Advocacy  
California Faculty Association  
California Federation of Teachers, AFL-CIO  
California Immigrant Policy Center  
California Innocence Coalition: Northern California Innocence Project, California  
Innocence Project, Loyola Project for the Innocent  
California Labor Federation, AFL-CIO  
California News Publishers Association  
California Newspaper Publishers Association  
California Nurses Association  
California Pan - Ethnic Health Network  
California Police Chiefs Association  
California Public Defenders Association  
California Rural Legal Assistance Foundation, INC.  
Californians for Safety and Justice  
Change Begins With Me Indivisible Group  
City of Alameda  
City of Los Altos  
City of Oakland  
Coalition of California Welfare Rights Organizations  
Community Advocates for Just and Moral Governance  
Conference of California Bar Associations  
County of Los Angeles Board of Supervisors  
Del Cerro for Black Lives Matter  
Democratic Club of Vista  
Democratic Woman's Club of San Diego County  
Disability Rights California  
Drug Policy Alliance  
East Bay Young Democrats



Ella Baker Center for Human Rights  
Equal Rights Advocates  
Ethnic Media Services  
First Amendment Coalition  
Friends Committee on Legislation of California  
Hillcrest Indivisible  
League of Women Voters of California  
Legal Services for Prisoners with Children  
Los Angeles County Chief Executive Office  
Los Angeles County District Attorney's Office  
Mission Impact Philanthropy  
Multi-faith Action Coalition  
Music Artists Coalition  
National Association of Social Workers, California Chapter  
NextGen California  
Oakland Privacy  
Partnership for the Advancement of New Americans  
Pillars of the Community  
Prosecutors Alliance of California  
Racial Justice Coalition of San Diego  
Recording Industry Association of America  
Riseup  
SAG-AFTRA  
San Diego Progressive Democratic Club  
San Francisco District Attorney's Office  
San Francisco Public Defender  
San Leandro for Accountability, Transparency and Equity  
Screen Actors Guild-American Federation of Television and Radio Artists  
SD QTPOC Colectivo  
SEIU California  
Showing Up for Racial Justice North County San Diego  
Showing Up for Racial Justice San Diego  
Smart Justice California  
Social Workers for Equity & Leadership  
Songwriters of North America  
Team Justice  
Think Dignity  
UAW Local 2865  
UC Berkeley's Underground Scholars Initiative  
University of California Student Association

Uprise Theatre  
Voices for Progress  
We the People - San Diego  
Young Women's Freedom Center

**OPPOSITION:** (Verified 9/1/21)

California Association of Joint Powers Authorities  
California Law Enforcement Association of Records Supervisors  
California Narcotic Officers' Association  
California State Sheriffs' Association  
City of Fountain Valley  
City of Oceanside  
City of Thousand Oaks  
League of California Cities  
Los Angeles Professional Peace Officers Association  
Public Risk Innovation, Solutions, and Management

**ASSEMBLY FLOOR:** 57-13, 9/1/21

**AYES:** Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner  
Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Cooley,  
Cunningham, Daly, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia,  
Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra,  
Lee, Levine, Low, Maienschein, Mayes, McCarty, Medina, Mullin, Muratsuchi,  
Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz  
Rivas, Robert Rivas, Blanca Rubio, Santiago, Stone, Ting, Villapudua, Ward,  
Akilah Weber, Wicks, Wood, Rendon

**NOES:** Bigelow, Chen, Megan Dahle, Davies, Flora, Fong, Gallagher, Lackey,  
Patterson, Seyarto, Smith, Valladares, Voepel

**NO VOTE RECORDED:** Choi, Cooper, Frazier, Kiley, Mathis, Nguyen,  
Rodriguez, Salas, Waldron

Prepared by: Gabe Caswell / PUB. S. /  
9/1/21 19:25:05

\*\*\*\* **END** \*\*\*\*