

**From:** [Anonymous](#)  
**To:** [Cityattorney](#); [Henderson, Paul \(DPA\)](#); [SOTF, \(BOS\)](#); [SFPD, Commission \(POL\)](#)  
**Subject:** DPA SB 1421 Public Interest Balancing - Request for Legal Opinion under SFAC 67.21(i)  
**Date:** Friday, November 8, 2019 11:03:12 PM  
**Attachments:** [PoliceCommissionLtr\\_SB1421.docx](#)  
[SB 1421 Symposium Workshop - As Presented to A.pdf](#)

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City Attorney Herrera,

*[cc: DPA, SOTF - for entry into communication file for next agenda, Police Commission - for entry into communication file]*

This is a request for a published legal opinion under SFAC 67.21(i) from the City Attorney.

**Question:**

Can police misconduct records (made public by SB 1421) be withheld, redacted, or delayed from disclosure by DPA on the basis "that the interest in delaying clearly outweighs the public interest in disclosure" or that "the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information"?

**Background:**

DPA Executive Director Henderson claimed in a Jan 16, 2018 memo to Police Commissioners (attached, released to us as a public record by the Commission in request P008994-091119) regarding SB 1421:

"If DPA does decide to delay disclosure, we must explain in writing the specific basis for our independent determination that the interest in delaying clearly outweighs the public interest in disclosure, and the delay provisions only apply to ongoing and prospective investigations."

DPA further claims that there is a permissive exemption to SB 1421 records for the following, in a presentation (attached, also released in request P008994-091119):

"Personal identifying information, 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"

However SF Admin Code 67.24 prohibits public interest balancing exemptions (emphasis mine):

(g) Neither the City nor any office, employee, or agent thereof may assert California Public Records Act Section 6255 **or any similar provision** as the basis for withholding any documents or information requested under this ordinance.

...

(i) Neither the City, nor any office, employee, or agent thereof, may assert an exemption for withholding for any document or information based on a finding or showing that **the public interest in withholding the information outweighs the public interest in disclosure**. All withholdings of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question or on an express and specific exemption provided by California Public Records Act that is not

forbidden by this ordinance.

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Sincerely,

Anonymous