

From: [Anonymous](#)
To: [SFPD, Commission \(POL\)](#)
Subject: Re: Legality of Delaying or Preventing Disclosure of DPA Police Misconduct Records - Letter to the Police Commission, BoS, and SOTF
Date: Wednesday, November 27, 2019 11:43:47 PM
Attachments: [signature.asc](#)

Please confirm you have distributed my Nov 21 letter, with attachments, to the police commissioners and added it to the 30-day communication file. I do not see it at: <https://sfgov.org/policecommission/30-day-correspondence-police-commission>

Also, I would like to anonymously provide public comment during Dec. 4, Agenda Item #3 (SB 1421 Policies) via telephone. I'm aware other City commissions do this (such as SOTF), but I'm not sure what phone number do I call for the Police Commission's public comment?

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Sincerely,

Anonymous

----- Original Message -----

On Thursday, November 21, 2019 3:56 PM, Anonymous <arecordsrequestor@pm.me> wrote:

Honorable Members of the Police Commission, Sunshine Ordinance Task Force, and Board of Supervisors,

[This letter is sent for distribution to each of your board's members, and for entry with attachments into each of your public communication files.]

Earlier this month, I requested that City Attorney Herrera issue a public legal opinion (under SF Admin Code 67.21(i)) regarding the purported authority of the Department of Police Accountability to withhold, redact or delay from disclosure SB 1421 police misconduct records on either of two bases (which appear to be prohibited by the Sunshine Ordinance):

- "that the interest in delaying clearly outweighs the public interest in disclosure" or
- "the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information."

On Nov. 21, Mr. Herrera declined to issue a legal opinion. Therefore, I ask that each of your governing bodies take up this matter, including consultation with

your legal counsel and legislative aides.

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 the Sunshine Ordinance 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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Anonymous

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On Thursday, November 21, 2019 10:52 AM, CityAttorney
<cityattorney@SFCITYATTY.ORG> wrote:

Dear requester,

I am responding on behalf of the City Attorney's Office to your below request. Please note we respectfully decline to issue the requested public opinion.

Please send replies to cityattorney@sfcityatty.org

Sincerely,

Elizabeth A. Coolbrith

Paralegal

Office of City Attorney Dennis Herrera

(415) 554-4685 Direct

www.sfcityattorney.org

Find us on: [Facebook](#) [Twitter](#) [Instagram](#)

From: Anonymous <arecordsrequestor@pm.me>

Sent: Friday, November 8, 2019 11:03 PM

To: CityAttorney <cityattorney@SFCITYATTY.ORG>; Henderson, Paul (DPA) <paul.henderson@sfgov.org>; SOTF, (BOS) <sotf@sfgov.org>; SFPD, Commission (POL) <SFPD.Commission@sfgov.org>

Subject: DPA SB 1421 Public Interest Balancing - Request for Legal Opinion under SFAC 67.21(i)

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:

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