

File No. N/A

Item No. 12

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: December 4, 2019

| | | |
|-------------------------------------|---|---------------------|
| <input type="checkbox"/> | Petition/Complaint | Page: <u> </u> |
| <input type="checkbox"/> | Memorandum - Deputy City Attorney | Page: <u> </u> |
| <input type="checkbox"/> | Petitioner/Complainant Supporting Documents | Page: <u> </u> |
| <input type="checkbox"/> | Respondent's Response | Page: <u> </u> |
| <input type="checkbox"/> | Public Correspondence | Page: <u> </u> |
| <input type="checkbox"/> | Order of Determination | Page: <u> </u> |
| <input checked="" type="checkbox"/> | Minutes | Page: <u>1120</u> |
| <input checked="" type="checkbox"/> | Administrator's Report | Page: <u> </u> |
| <input type="checkbox"/> | No Attachments | |

OTHER

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Completed by: C. Leger Date 11/26/19

* An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file on a disk

SUNSHINE ORDINANCE
TASK FORCE



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

MEMORANDUM

TO: Sunshine Ordinance Task Force

DATE: November 25, 2019

SUBJECT: Staff Report, Complaints and Communications

1. Tentative Hearings Schedule for 2019-2020:
 - December 17, 2019 - Complaint Committee – 5:30 PM
 - December 24, 2019 - Compliance and Amendments – (Cancelled)
 - January 1, 2020 - Sunshine Ordinance Task Force – Cancelled (Holiday)
 - January 21, 2020 – Special/Sunshine Ordinance Task Force (In place of Complaint Committee) – 4:00 PM
 - January 28, 2020 - Compliance and Amendments – 4:30 PM
 - February 5, 2020 - Sunshine Ordinance Task Force – 4:00 PM
 - February 17, 2020 - Complaint Committee – 5:30 PM
 - February 25, 2020 – Compliance and Amendments Committee – 4:30 PM
2. Petitions/Complaints Submitted and Hearings Files Created *(Submitted 11/5/19 through 11/22/19) (The summaries provided are based on the Administrator's review of the complaint and does not express the opinion of the Task Force.)*

| | | |
|-------|---------------------|--|
| 19117 | Conrad Wu | SFPUC; Public Records |
| 19118 | Paul Ondik | Police Department; Public Records |
| | Anonymous | |
| 19119 | (Muckrock/metadata) | Dept. of Technology; Public Records |
| | Anonymous | |
| 19120 | (Muckrock) | City Attorney's Office; Public Records |
| | Anonymous | |
| | Anonymous | |
| | (Muckrock; no | |
| 19121 | metadata) | Police Commission; Public Records |
| 19122 | Anonymous | Public Library; Public Records |
| | | SF Municipal Executives Assn. (Labor Union); |
| 19123 | Paul Kniha | Public Records |
| | Anonymous (no | |
| 19124 | metadata) | Police Dept.; Public Records |
| | Anonymous (no | |
| 19125 | metadata) | Controller's Office; Public Records |
| 19117 | Conrad Wu | PUC; Public Records |

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| | | |
|-------|---------------------|---|
| 19118 | Paul Ondik | Police Department; Public Records |
| | Anonymous | |
| 19119 | (Muckrock/metadata) | Dept. of Technology; Public Records |
| | Anonymous | |
| 19120 | (Muckrock) | City Attorney's Office; Public Records |
| | Anonymous | |
| | (Muckrock; no | |
| 19121 | metadata) | Police Commission; Public Records |
| 19122 | Anonymous | Public Library; Public Records |
| | | SF Municipal Executives Assn. (Labor Union) ; |
| 19123 | Paul Kniha | Public Records |
| 19124 | Anonymous (no | |
| | metadata) | Police Dept.; Public Records |
| 19125 | Anonymous (no | |
| | metadata) | Controller's Office; Public Records |

3. Pending Petitions/Complaints before the Sunshine Ordinance Task Force (SOTF) and/or Committee –

2016 - 0
2017 - 4
2018 - 0
2019 - 53

Last Month's Total pending SOTF Complaints – 61

This Month's Total pending SOTF Complaints – 57

(Pending Full Task Force Hearing – 15)

(Pending Committee Hearing -42)

4. Pending Petitions/Complaints referred from SOTF to Committee -

- **File Nos. 19019, 19020, 19021 and 19022** (*Javad Mirsaidi v. Public Works*)
The SOTF referred the matter to Compliance and Amendments Committee to ensure compliance.
- **File No. 17086** – pending legal research from SOTF DCAs re whether SOTF proceedings are legal proceedings and whether the requirement of the City Attorney under the Charter supersedes 67.21(i). 9/4/19 the SOTF referred the matter to EOTC and requested that the question of whether the SOTF proceedings are a legal proceeding, whether the requirement of the City Attorney under the Charter supersedes Administrative Code (Sunshine Ordinance), Section 67.21(i), and report their findings to the SOTF.

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5. Pending Issues:

- **File No. 17110:** Hearing – DataSF report on the implementation of Sunshine request management system. (Joy Bonaguro, Chief Data Officer, Mayors Office) (*Compliance and Amendments Committee*)
- **File Nos. 17079 – 17081:** Mary Miles v. SFMTA – *Tentatively scheduled for February 5, 2020 SOTF hearing* (*The SOTF discussed the matter and determine that an opinion from the Office of the City Attorney is needed to clarify the issue. Are individual city employees required to respond to public records requests personally or are they allowed to have a representative respond on their behalf? The SOTF would like advice and citations of relevant law/policy as to whether or not it is acceptable for a departmental representative to respond to a public records request on behalf of individual staff members.*)

6. Communications: (*attachment*)

- Communication from Anonymous; November 8, 2019
- Communication from Anonymous; November 21, 2019

7. Requests from community persons:

From October 26, 2019, through November 15, 2019, the Task Force's office responded to approximately 109 e-mails and numerous phone calls/office visits from persons requesting information regarding the Sunshine Ordinance, pending complaints, or to mediate request for records. (*attachment*)

Leger, Cheryl (BOS)

From: Anonymous <arecordsrequestor@protonmail.com>
Sent: Friday, November 8, 2019 6:03 PM
To: SOTF, (BOS); Leger, Cheryl (BOS)
Subject: Error in your Complaint Procedure

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

SOTF and Clerk Leger,

I'm not sure if this is something that can be fixed by Ms. Leger, the Chair, or needs the full SOTF, but your latest complaint procedure C4 reads:

"Upon receipt of the referral/recommendation from its Committees, the SOTF shall conduct a public hearing. The Respondent is required to attend the SOTF hearings. However, accommodations can be made due to special circumstance by consensus of the SOTF or its committees. Members of the public who attend meetings of the Sunshine Ordinance Task Force are expected to behave responsibly and respectfully. Persons who engage in threatening and/or menacing behavior may be asked to leave. Any member of the Task Force may call for decorum due to disorderly conduct of meeting participants. This provision supplements the rules and policies adopted by City Hall, the Sheriff's Office, or the Board of Supervisors related to decorum, prohibited conduct or activities, noise, etc. and is not meant to be exhaustive."

The underlined portion is wrong. The SOTF approved a motion on Oct. 2 for only: "Any member of the Sunshine Ordinance Task Force may call for decorum due to disorderly conduct of meeting participants. Persons who engage in threatening and/or menacing behavior may be asked to leave." The other sentences about respectfulness and other policies should not be there.

NOTE: Nothing herein is legal, IT, or professional advice of any kind. The author disclaims all warranties, express or implied, including but not limited to all warranties of merchantability or fitness. In no event shall the author be liable for any special, direct, indirect, consequential, or any other damages whatsoever. The digital signature, if any, in this email is not an indication of a binding agreement or offer; it merely authenticates the sender. Please do not include any confidential information, as I intend that these communications with the City to all be public records.

Sincerely,

Anonymous

Leger, Cheryl (BOS)

From: Anonymous <arecordsrequestor@pm.me>
Sent: Thursday, November 21, 2019 3:56 PM
To: SOTF, (BOS); Board of Supervisors, (BOS); Brown, Vallie (BOS); Fewer, Sandra (BOS); Haney, Matt (BOS); MandelmanStaff, [BOS]; Mar, Gordon (BOS); Peskin, Aaron (BOS); Ronen, Hillary; Safai, Ahsha (BOS); Stefani, Catherine (BOS); Walton, Shamann (BOS); Yee, Norman (BOS); Henderson, Paul (DPA); SFPD, Commission (POL)
Subject: Legality of Delaying or Preventing Disclosure of DPA Police Misconduct Records - Letter to the Police Commission, BoS, and SOTF
Attachments: PoliceCommissionLtr_SB1421.docx; SB 1421 Symposium Workshop - As Presented to A.pdf; signature.asc

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.

NOTE: Nothing herein is legal, IT, or professional advice of any kind. The author disclaims all warranties, express or implied, including but not limited to all warranties of merchantability or fitness. In no event shall the author be liable for any special, direct, indirect, consequential, or any other damages whatsoever. The digital signature, if any, in this email is not an indication of a binding agreement or offer; it merely authenticates the sender. Please do not include any confidential information, as I intend that these communications with the City all be public records.

Sincerely,

Anonymous

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

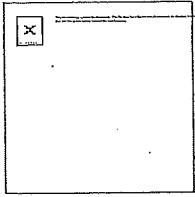
On Thursday, November 21, 2019 10:52 AM, CityAttorney <cityattorney@SFCITYATTY.ORG> wrote:

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:

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"?

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"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"

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NOTE: Nothing herein is legal, IT, or professional advice of any kind. The author disclaims all warranties, express or implied, including but not limited to all warranties of merchantability or fitness. In no event shall the author be liable for any special, direct, indirect, consequential, or any other damages whatsoever. The digital signature, if any, in this email is not an indication of a binding agreement or offer; it merely authenticates the sender. Please do not include any confidential information, as I intend that these communications with the City to all be public records.

Sincerely,

Anonymous



DPA

San Francisco Department of Police Accountability

Paul David Henderson
Executive Director

January 16, 2018

Hon. Thomas Mazzucco, Vice President
Members, San Francisco Police Commission
San Francisco Police Headquarters
1245 3rd Street
San Francisco, CA 94158

Re: Overview of SB 1421 and its Impact on the *Department of Police Accountability* and San Francisco Law Enforcement Agencies

Dear Vice President Mazzucco and Commissioners:

This letter explains how SB 1421 changed the law by granting widespread public access to reports and findings of police officer misconduct which were previously confidential. It also addresses the monumental administrative burden this change in the law will impose on City agencies like the *Department of Police Accountability* (DPA) and all San Francisco law enforcement agencies as they begin to comply with the legal mandate that thousands of records be disclosed in response to requests made by the public.

I. Under the Old Law, DPA Records Involving Investigations of Police Officer Misconduct were not Disclosable to the Public Because They Were Considered Confidential Personnel Records

On September 30, 2018, former Governor Jerry Brown, signed SB 1421, which went into effect on January 1, 2019. This law made sweeping changes to the California Penal Code which resulted in greater transparency and public access to records regarding complaints and investigations of police officers' misconduct which were previously deemed confidential.

Before SB 1421 became the law, records maintained by DPA regarding DPA's investigations of citizen complaints of police misconduct and officer involved shootings were considered confidential personnel records. Legally, these records could not be disclosed at all without a court order after a confidential evidentiary hearing. In the rare circumstances where judges granted litigants access to these records, only a fraction of available records were released, such as the name and address of the complainant, while the lion share of the records were withheld. Also, the litigants who received the records were under a court order not to disseminate the records to the press or public. In fact, before the enactment of SB 1421, it was a misdemeanor to disclose records regarding police misconduct unless authorized by a judge.

II. Under SB 1421, Four Categories of DPA Records Involving the Most Serious Reports and Findings of Police Officer Misconduct are Now Available to the Public.

In a historically unprecedented step, SB 1421 changed the law by amending the California Penal Code. In doing so, it created four new categories of records which DPA and law enforcement agencies are now required to disclose upon request by a citizen via the *California Public Records Act* and/or San Francisco's *Sunshine Ordinance*. The four categories of previously confidential records which now must be disclosed are the following:

- 1.) The report, investigation, or findings regarding an officer's discharge of a firearm at a person;
- 2.) The report, investigations, or findings regarding an officer's use of force that results in death or great bodily injury;
- 3.) A sustained finding that an officer engaged in sexual assault involving a member of the public; and,
- 4.) A sustained finding that an officer was dishonest directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another officer.

Notably, DPA must disclose investigation records in categories 1 and 2 regarding officers' discharge of a firearm or use of force resulting in death or great bodily injury, even if misconduct charges are not sustained. In other words, City agencies will be required to disclose relevant records even if the allegations were without merit. As for categories 3 and 4, sexual assault involving a member of the public and dishonest conduct, the records can only be disclosed if the charges are sustained.

Additionally, the new law only allows delays in turning over relevant records where the delay can be justified under very specific circumstances. Importantly, the DPA is not obligated to delay disclosure of records under proscribed circumstances in the law. This is true even if there is a parallel criminal investigation by the District Attorney's Office or a parallel administrative investigation by the Internal Affairs Division of the San Francisco Police Department (SFPD), which often occurs. That said, the DPA *may* delay disclosure in use of force cases for up to 60 days from the date the force occurred or until the District Attorney determines to file criminal charges, whichever is sooner. 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.

Additional information regarding SB 1421 can be found in the DPA FAQ sheet appended to this letter.

III. DPA Strongly Supports SB1421. Nevertheless, the Administrative Challenges Compliance Places on DPA will be Colossal and Ongoing

DPA strongly supports SB 1421 because it provides greater transparency and public access to police misconduct records and it is consistent with our mission to promptly and fairly

investigate citizen complaints as well as all officer involved shootings. Unquestionably, greater transparency will ensure that justice will be done in every case. Nevertheless, the administrative burden that SB 1421 compliance places on DPA is colossal and cannot be overemphasized.

A. DPA Records are Voluminous and Date Back to 1983

One challenge to timely compliance with current and prospective public records requests is that DPA investigation records are voluminous and date back to 1983 when our agency was founded as the *Office of Citizen Complaints*. While some aspects of DPA records have been digitized, the vast majority of all records are paper files, and not electronically stored. Therefore, DPA staff will have to manually review both paper and electronic files, spanning 36 years, to determine which cases fall under the four categories of disclosable records. Importantly, if records that are now disclosable under SB 1421 were in the possession of DPA or other affected law enforcement agencies on January 1, 2019, we cannot hide behind a retention policy to avoid our responsibility to provide public access to records, even if these records were marked for destruction at the time SB 1421 went into effect. Since DPA possesses both paper and electronic records that date back to 1983, compliance with SB 1421 will be a massive and time-consuming undertaking.

B. SB 1421 is Retroactive and Public Records Requests Need not be Limited in Time

In addition to the problems created by the sheer volume of records to review, the DPA compliance problem is further compounded by the fact that SB 1421 is retroactive and does not set age parameters on records that must be disclosed. Therefore, a private citizen, a public defender's office, or media outlet can lawfully request *all records* in DPA's possession that fall under all four categories, even for incidents that occurred decades ago and involved deceased officers or officers that no longer work for SFPD. In fact, DPA has already received requests for records that date back to 1983 when our agency was founded. Therefore, in order to legally comply with SB 1421, DPA staff has no choice but to manually review all paper and electronic files to determine which cases fall within the ambit of the four disclosable categories. This will also require digitizing evidence previously stored on outdated medium such as cassette tapes.

C. DPA Case Files are not Coded or Categorized in a Manner that makes it Immediately Clear Whether or Not Each Case Falls Under the Four Disclosable Categories. Thus, a Manual Review of Each and Every Case File is Required to Comply with SB 1421.

DPA case files are not organized in a manner that falls neatly within the four categories of disclosable records under SB 1421. Our files are categorized by the DPA case number, name of the citizen complainant, and the name of the involved officer, not by type of allegations made against the officer. Therefore, DPA staff must open each case file we possess, both paper and electronic, and review each case to determine if the underlying conduct falls within the four disclosable categories.

To further complicate matters, many of the allegations DPA investigates, do not fall squarely under the four categories enumerated in the new law based on the language of the allegation alone. For example, if an officer has a sustained allegation of “conduct reflecting discredit on the police department” or “neglect of duty” for writing an inaccurate police report, DPA staff will have to manually review the file and evaluate the underlying conduct to determine if the officer engaged in dishonest conduct within the meaning of the fourth category of disclosable records. Thus, determining whether a particular case falls within the four categories of disclosable records will be time-consuming and labor-intensive process because DPA staff cannot simply look at the name of the allegation that was investigated or sustained against a particular officer to determine if it falls within the four categories. A thorough review of each case file is required.

D. Once DPA Identifies the Cases that Fall within One of the Four Disclosable Categories, DPA Must Thereafter Prioritize the Cases for Disclosure and then Undertake the Laborious Task of Manually Redacting the File as Required by SB 1421.

After DPA identifies the cases that fall within the four disclosable categories, we must then prioritize which type of cases we will review, redact, and release first. For example, should DPA disclose all discharge of a firearm cases first regardless of when the incident occurred, or should we prioritize recent misconduct investigations that fall within any of the four categories but limit our initial review to the past five years? Once we prioritize the cases, DPA staff must manually review the files and redact certain portions that cannot be disclosed by law. SB 1421 requires that a myriad of information be redacted which includes, but is not limited to, medical records protected by HIPAA, juvenile records, confidential criminal history information, address and telephone numbers of officers, information which would create a safety risk for witnesses and officers, and information which identify witnesses and complainants who are to remain anonymous. DPA staff must also redact other information from the files that is privileged such as attorney work-product.

Finally, and most importantly, DPA staff must comb through each file and redact portions of the files that deal with allegations and investigations that are not disclosable. At DPA, each file reflects the investigation of an entire incident. DPA investigations often involve multiple officers who are investigated for multiple types of misconduct in a single case. DPA staff must evaluate each officer individually and determine if his or her conduct falls within one of the four categories and whether the charges against that officer were sustained or not sustained. Records pertaining to officers whose conduct does not fall within the four categories of the disclosable records must be redacted from a case file in which other officers’ conduct does fall within the ambit of the four categories of records that must be disclosed. Thus, each case file involving multiple officers must be carefully analyzed and redacted to comply with SB 1421 and also protect the privacy rights of officers whose records should not be disclosed.


IV. Inter-Agency Collaboration in Applying SB 1421 is Required as We Move Forward

Moving forward, SB 1421 will require coordination and cooperation between DPA and affected law enforcement agencies such as SFPD, the District Attorney's Office (SFDA), and the Sheriff's Department all of which hold records potentially subject to disclosure. Particularly problematic is interpreting the meaning of imprecise terms under the new law such as "great bodily injury", "findings," and "dishonest conduct." Each agency is in the process of consulting with our respective Deputy City Attorney to interpret and apply SB 1421 in a fair manner that is consistent with our differing missions, goals, and priorities.

Finally, the affected agencies must cooperate when there are multiple parallel investigations occurring involving a single incident. For example, DPA, SFDA and Internal Affairs Division of SFPD often investigate the same incident involving alleged police officer misconduct simultaneously. Importantly, DPA is under no obligation to delay disclosing records to the public once our investigation is completed. However, our disclosure of our investigation results may negatively affect the ongoing investigation of the same conduct by other City agencies. Complicating the issue further, delays in disclosure under the new law may only be invoked under very specific circumstances. To be clear, DPA intends to stay true to our mission to grant public access to these records as soon as possible, but we envision situations where delaying disclosure of our records based on compelling reasons promulgated by other investigating agencies; may require us to come up with collaborative solutions where disclosure is fair and prompt and all competing interests are all considered. Thus, it is incumbent on SFPD and SFDA to cooperate with DPA when a delay in disclosure is sought as parallel investigations occur. In short, clear channels of communication must be maintained between the affected agencies to facilitate that process and to ensure investigations are not compromised. To that end, DPA is in the process of developing criteria and disclosure policies that are consistent with our mission and responsibility to the citizenry, but we are willing to consider ideas from SFPD and SFDA on how best to balance our need for disclosure with their potential need to delay our disclosure based on principles of public interest and safety. Therefore, collaboration and coordination between the agencies is essential as we apply SB 1421 going forward.

Sincerely,

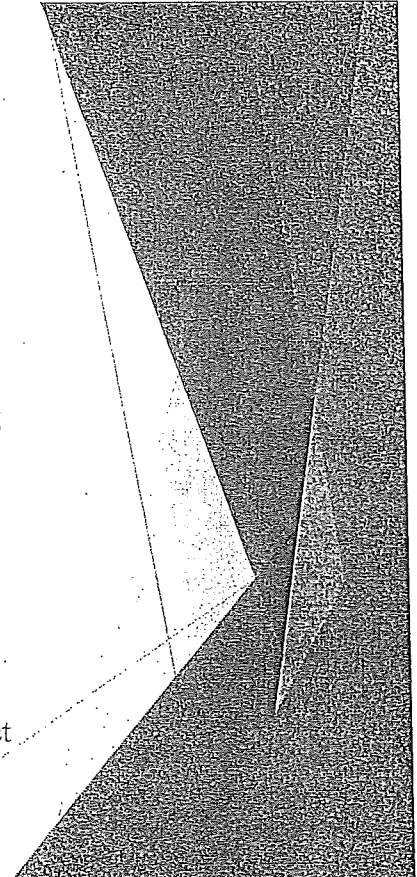
Paul Henderson
Executive Director



SB 1421

(aka Penal Code § 832.7)

History of SB1421:

- Historically, California had the most restrictive set of laws governing disclosure of police misconduct records.
 - Authored by State Sen. Nancy Skinner (D-Berkeley)
 - Signed into law by Gov. Brown on September 30, 2018.
 - Became effective on January 1, 2019.
 - Significantly amended Penal Code § 832.7.
 - Created categories of police misconduct records that could be subject to disclosure under the California Public Records Act (“CPRA”).
- 

Types of records subject to disclosure pursuant to a CPRA request:

- Cases that involve the **discharge of a firearm** by an officer at a person
- Cases that involve use of force by an officer resulting in death
- Cases that involve **use of force** by an officer **resulting in great bodily injury**
- Cases that involve **sexual assault** of a member of the public by an officer.
- Cases that involve **dishonesty** by a peace officer directly relating to the reporting, investigation, or prosecution of a crime.
- Cases that involve dishonesty by a peace officer directly relating to the reporting of, or investigation of, misconduct committed by another officer.

Are all cases that fall into the enumerated categories disclosable?

No!

Penal Code § 832.7 puts the cases into two categories:

1. Cases that involve allegations of specifically enumerated uses of force require disclosure of records regardless of the outcome of the investigation.
2. Cases that involve allegations of dishonesty and sexual assault only allow disclosure of records in which a sustained finding was made.

* Sustained findings for purposes of disclosure under this new bill, are defined as, "a final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal pursuant to (Gov't. Code) sections 3304 and 3304.5...that the actions of the officer...violate law or department policy."

The case fits into one of the new disclosure categories, so what should be disclosed?

1. investigative report
2. photographic, audio, and video evidence
3. transcripts or recordings of interviews
4. autopsy reports
5. all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take
6. documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

Should any information be redacted from the records before disclosure?

Yes!

Mandatory redactions:

- ▶ personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace and custodial officers.
- ▶ Information necessary to preserve the anonymity of complainants and witnesses.
- ▶ confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest
- ▶ Information where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person

Permissive redactions:

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.

Delays in disclosure of records

- Disclosure timelines generally governed by CPRA
 - (10 days with a 14 day extension under specified circumstances)
- No mandatory situations where disclosure must be delayed.
- Permissive disclosure delays:
 - Incident is the subject of an active criminal or administrative investigation.
 - Continued delays require specific, articulated justifications.
 - Maximum amount of delay is 18 months after the date of the incident, unless extraordinary circumstances warrant continued delay due to the ongoing criminal investigation or proceeding

Does this apply to records created before
January 1, 2019?

Yes.

Although the records may have been created prior to 2019, the event necessary to “trigger application” of the new law—a request for records maintained by an agency—necessarily occurs after the law’s effective date. Thus the law can be applied retroactively.

Walnut Creek Police Officers' Assn v. City of Walnut Creek, 33 Cal. App. 5th 940, 941–42, 245 Cal. Rptr. 3d 398, 399 (Ct. App. 2019)

Problems and challenges created by SB 1421's amendment of Penal Code § 832.7

Manual Labor:

- Identifying and reviewing old files that are not digital
- Scanning and digizing old files and outdated media for efficient production
- Redacting information that may and/or should be redacted

Costs:

- Additional man(woman/person)power!
- Equipment costs to digitize, organize and convert old media for production (i.e., scanners, conversion of cassette tapes to digital records, etc.)
- Electronic storage and storage recall fees

Legal challenges to the meaning of certain terms within
the newly amended sections

Specific examples of challenges faced by the DPA

- Cases were never categorized, identified or stored based on the categories of misconduct enumerated in the new law.
- Thousands of cases have to be pulled out of storage and manually reviewed by someone with specialized legal knowledge to cases that fall into the new categories can be identified and flagged.
- What is great bodily injury? (Self-identified injuries? Medical records? Bruising? Scrapes?)
- What is dishonesty? (Inaccurate report writing? Two versions of the facts relating to the same event?)
- Redactions (handwritten reports with illegible writing.)
- Interviews recorded on cassette tapes
- Are we an "oversight agency" who's "sustained findings" about sexual misconduct and/or dishonesty require disclosure of our records?
- How do we identify situations, "Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person?"

Email Communications from October 26, 2019 through November 15, 2019

| From | Subject | Received |
|--------------------------------|--|------------|
| | RE: Demand to Comply with California Public | |
| Thompson, Marianne (ECN) | Records Act | 11/15/2019 |
| Ann Treboux | Re: Public Records Request | 11/15/2019 |
| | RE: WITHDRAWAL OF COMPLAINTS; File Nos. | |
| Strawn, William (DBI) | 19100 and 19107 | 11/15/2019 |
| | RE: SOTF - Complaint Filed with the Sunshine | |
| Heckel, Hank (MYR) | Ordinance Task Force - Complaint No. 19103 | 11/15/2019 |
| James Stark | Subj.: Successful Opening (pun intended) | 11/15/2019 |
| James Stark | Subj.: See this | 11/15/2019 |
| James Stark | Re: Complaint Procedures | 11/15/2019 |
| | Subj.: "Triumph of the Will" - a TRIBUTE to | |
| James Stark | Leni Reiiefenstahl | 11/15/2019 |
| Kniha, Paul | RE: MEA Public records disclosure request | 11/15/2019 |
| James Stark | Re: Complaint Procedures | 11/15/2019 |
| | You're going 'out of your way' TO TORTURE | |
| James Stark | ME! | 11/15/2019 |
| James Stark | Re: FW: Our Conversation | 11/15/2019 |
| | Re: SOTF - Complaint filed with Sunshine | |
| terence kerrisk | Ordinance Task Force | 11/15/2019 |
| | RE: ATTN: SF Deferred Compensation Plan | |
| | presentation and individual counseling | |
| Owens, Anna (BOS) | sessions : November 15, 2019 | 11/15/2019 |
| James Stark | Fwd: Subj.: BLOOD-THIRSTY | 11/15/2019 |
| | Fwd: In The Heart of Bayview Hunters Point! | |
| | Hunters Point Community Biomonitoring | |
| Ahimsa Porter Sumchai MD NSCA- | Program - Alignable | 11/15/2019 |
| | Re: SOTF - Notice of Appearance, December | |
| | 4, 2019 - Sunshine Ordinance Task Force; | |
| Fatima Zehra Ladha | 4:00 PM | 11/15/2019 |
| | SOTF Request for Malloy DHR Appeal to | |
| | Supervisor of Records 11-15-19 Fwd: Records | |
| grovestand2012@gmail.com | Request Immediate Disclosure | 11/15/2019 |
| | 11-15-19 Malloy FIRE Appeal Fwd: SOTF | |
| | complaint-San Francisco Fire Department | |
| grovestand2012@gmail.com | response file no: 19110 | 11/15/2019 |
| | RE: SOTF recommendation on vacant NAM | |
| Hepner, Lee (BOS) | seat | 11/14/2019 |

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| Mary Miles | RE: SOTF - Notice of Appearance, December 4, 2019 - Sunshine Ordinance Task Force; 4:00 PM | 11/14/2019 |
| Breed, London (MYR) | Automatic reply: SOTF - Notice of Appearance, December 4, 2019 - Sunshine Ordinance Task Force; 4:00 PM | 11/14/2019 |
| Mary Miles | RE: SOTF - Notice of Appearance, December 4, 2019 - Sunshine Ordinance Task Force; 4:00 PM | 11/14/2019 |
| tom hartz | File 19116 please withdraw complaint | 11/14/2019 |
| Givner, Jon (CAT) | RE: Formal resignation from Sunshine Ordinance Task Force | 11/14/2019 |
| Anonymous | Re: SOTF - Request for Postponement for file no. 19108 scheduled for November 26. | 11/14/2019 |
| Javeria Jamil | Out of office Re: SOTF - Notice of Appearance, December 4, 2019 - Sunshine Ordinance Task Force; 4:00 PM | 11/14/2019 |
| Docs, SF (LIB) | RE: SOTF - Complaint Committee Agenda packet; November 19, 2019; 5:30 PM | 11/14/2019 |
| Heckel, Hank (MYR) | RE: SOTF - Notice of Appearance - Compliance and Amendments Committee; November 26, 2019 4:30 p.m. | 11/14/2019 |
| Heckel, Hank (MYR) | FW: SOTF - Notice of Appearance - Compliance and Amendments Committee; November 26, 2019 4:30 p.m. | 11/14/2019 |
| Somera, Alisa (BOS) | FW: Formal resignation from Sunshine Ordinance Task Force | 11/14/2019 |
| Somera, Alisa (BOS) | RE: Formal resignation from Sunshine Ordinance Task Force | 11/14/2019 |
| James Stark | Acknowledgement of LACK of | 11/14/2019 |
| Somera, Alisa (BOS) | Acknowledgement | 11/14/2019 |
| | RE: Cancelling Meetings | 11/14/2019 |
| Coolbrith, Elizabeth (CAT) | RE: SOTF - Complaint Filed with the Sunshine Ordinance Task Force - Complaint No. 19108 | 11/14/2019 |
| Wong, Linda (BOS) | RE: Cancelling Meetings | 11/14/2019 |
| Somera, Alisa (BOS) | Cancelling Meetings | 11/14/2019 |
| Ng, Wilson (BOS) | Staffing Update | 11/14/2019 |
| Ng, Wilson (BOS) | Staffing Update | 11/14/2019 |
| Bedard, Meiling (CAT) | RE: SOTF - Compliance and Amendments Committee hearing; November 26, 2019 | 11/14/2019 |

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| | RE: SOTF - Compliance and Amendments | |
| Bedard, Meiling (CAT) | Committee hearing; November 26, 2019 | 11/14/2019 |
| Google Forms | New Response Complaint Form | 11/13/2019 |
| | RE: California Public Records Act Request: | |
| | Adachi Communications Audit (SF City Atty) | |
| '80695-54486849@requests.muck | and 67.21(c) request | 11/13/2019 |
| | RE: California Public Records Act Request: | |
| | Adachi Communications Audit (SF City Atty) | |
| '80695-54486849@requests.muck | and 67.21(c) request | 11/13/2019 |
| Calvillo, Angela (BOS) | RE: Show Cause Hearing | 11/13/2019 |
| | SOTF 19103 and 19108 - Notice of | |
| Anonymous | appearance | 11/13/2019 |
| | Automatic reply: SOTF - Notice of | |
| | Appearance - Compliance and Amendments | |
| Cote, John (CAT) | Committee; November 26, 2019 4:30 p.m. | 11/13/2019 |
| Pantoja, Gabriela (CPC) | RE: Case #2018-000468AHB, 3945 Judah St. | 11/13/2019 |
| | RE: SOTF - Complaint Filed with the Sunshine | |
| Bastian, Alex (DAT) | Ordinance Task Force - File No. 19104 | 11/13/2019 |
| Blackman, Sue (LIB) | Pasquariello requests Case number 19107 | 11/13/2019 |
| | Re: SOTF 19112 and 19113 - re: Notice to | |
| Anonymous | appear at Complaint Committee | 11/13/2019 |
| | Re: SOTF - Complaint Filed with the Sunshine | |
| MICHAEL PETRELIS | Ordinance Task Force - File No. 19104 | 11/13/2019 |
| | RE: SOTF 19112 and 19113 - re: Notice to | |
| Anonymous | appear at Complaint Committee | 11/13/2019 |
| | RE: SOTF 19112 and 19113 - re: Notice to | |
| Anonymous | appear at Complaint Committee | 11/13/2019 |
| James Stark | Re: Your Emails | 11/13/2019 |
| | Re: SOTF 19112 and 19113 - re: Notice to | |
| Anonymous | appear at Complaint Committee | 11/13/2019 |
| | SOTF 19112 and 19113 - re: Notice to appear | |
| Anonymous | at Complaint Committee | 11/13/2019 |
| | RE: SUNSHINE ORDINANCE REQUEST Fwd: | |
| Public Records | Re: FOI Request | 11/13/2019 |
| | Sink.: FW: FW: Housing for Mr. Stark and | |
| James Stark | phone conversation of 11/5/19 | 11/13/2019 |
| | RE: SOTF - Response from Ray Hartz re Hartz | |
| Summers, Ashley (REC) | v. Joint Zoo Committee; File No. 19101 | 11/13/2019 |
| James Stark | Re: Our Conversation | 11/13/2019 |
| Stewart-Kahn, Abigail (HOM) | Re: Our Conversation | 11/13/2019 |

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| Ray Hartz | RE: Show Cause Hearing | 11/13/2019 |
| James Stark | Fwd: Your Emails | 11/13/2019 |
| Young, Victor (BOS) | FW: Show Cause Hearing | 11/13/2019 |
| Ray Hartz Jr | Re: Show Cause Hearing | 11/13/2019 |
| | RE: Becoming a Member of the Sunshine | |
| dylan.crosby@bakerbotts.com | Ordinance Task Force | 11/13/2019 |
| | Re: SOTF complaint-San Francisco Fire | |
| grovestand2012@gmail.com | Department response file no: 19110 | 11/13/2019 |
| | Additionally, one day you are ALSO going to | |
| | have to confront the moribund | |
| | dysfunctionality inherent in the Adult | |
| | Protection Services' present destruction of | |
| | their mandate designated by State | |
| James Stark | Legislation - God knows how long ago! | 11/12/2019 |
| | Re: SOTF complaint-San Francisco Fire | |
| grovestand2012@gmail.com | Department response file no: 19110 | 11/12/2019 |
| James Stark | Attempted Murder by Proxy | 11/12/2019 |
| | Re: FW: FW: Metadata in Public Records - For | |
| Anonymous | forwarding to SOTF members | 11/12/2019 |
| James Stark | Fwd: Our Conversation | 11/12/2019 |
| | SOTF complaint-San Francisco Fire | |
| Tucker, John (FIR) | Department response file no: 19110 | 11/12/2019 |
| | SOTF complaint-San Francisco Fire | |
| Tucker, John (FIR) | Department response file no: 19110 | 11/12/2019 |
| | Subj.: Re-Application of a SIMPLE-MINDED | |
| | REQUEST as to whether Ms. BREED was | |
| | 'blowing smoke out her ass' when she gave | |
| | her WORD that she would "IMPLEMENT" A | |
| | UNIFIED DATABASE; which is CRUCIALLY | |
| | REQUIRED FOR INDIVIDUALIZING SINGULAR | |
| James Stark | NEEDS of SF homeless. | 11/12/2019 |
| | Re: FW: FW: Immediate Disclosure Request - | |
| Anonymous | Peskin Letters | 11/12/2019 |
| Licudine-Barker, Arlene (TIS) | Anonymous PRR | 11/12/2019 |
| | FW: Amending - Re: Immediate disclosure | |
| | request: Corrupt Mandelman's calendar, | |
| Temprano, Tom (BOS) | emails, texts. | 11/12/2019 |
| Google Forms | New Response Complaint Form | 11/11/2019 |
| | New Complaint - Anonymous vs Dept. of | |
| Anonymous | Tech, et al. | 11/11/2019 |
| Anonymous | SOTF 19105 - Further files for record | 11/11/2019 |
| | Re: SOTF complaint - Re: Immediate | |
| | disclosure request: Corrupt Mandelman's | |
| MICHAEL PETRELIS | calendar, emails, texts. | 11/11/2019 |
| James Stark | Re-version: | 11/10/2019 |

| | | |
|------------------------------|---|------------|
| James Stark | Sunday Morning BLOOD Fest:: | 11/10/2019 |
| | Please add this to the file for all three | |
| Robert M. Smith | matters:-- | 11/9/2019 |
| Google Forms | New Response Complaint Form | 11/9/2019 |
| | RE: California Public Records Act Request | |
| 80239-52834911@requests.muck | #P008994-091119 | 11/8/2019 |
| | DPA SB 1421 Public Interest Balancing - | |
| | Request for Legal Opinion under SFAC | |
| Anonymous | 67.21(i) | 11/8/2019 |
| | Re: SOTF - Complaint filed with Sunshine | |
| terence kerrisk | Ordinance Task Force | 11/8/2019 |
| Thoreen, Peder (CAT) | 19017 | 11/8/2019 |
| Thoreen, Peder (CAT) | Complaint No. 19112 | 11/8/2019 |
| sanderries@andgolaw.com | RE: SOTF - Response of the Public Defender | 11/8/2019 |
| | RE: Chapter 12L.4 - Online Meetings (Via | |
| Hagos, Daniel (ECN) | Internet) | 11/8/2019 |
| | RE: Chapter 12L.4 - Online Meetings (Via | |
| Hagos, Daniel (ECN) | Internet) | 11/8/2019 |
| | Re: SOTF - Complaint filed with Sunshine | |
| terence kerrisk | Ordinance Task Force | 11/8/2019 |
| | Metadata in Public Records - For forwarding | |
| Anonymous | to SOTF members | 11/8/2019 |
| | Re: SOTF - Complaint filed with Sunshine | |
| terence kerrisk | Ordinance Task Force | 11/8/2019 |
| | Re: Immediate Disclosure Request - Peskin | |
| Anonymous | Letters | 11/8/2019 |
| | Immediate Disclosure Request - Peskin | |
| Anonymous | Letters | 11/8/2019 |
| | RE: SOTF - Notice of Appearance - Complaint | |
| Stewart-Kahn, Abigail (HOM) | Committee: November 19, 2019, 5:30 p.m. | 11/7/2019 |
| | Re: FW: FW: Housing for Mr. Stark and phone | |
| James Stark | conversation of 11/5/19 | 11/7/2019 |
| | FW: Please Respond by Nov. 8: Board and | |
| Young, Victor (BOS) | Commission Updates for 1st Quarter FY20 | 11/7/2019 |
| | RE: SOTF - Notice of Appearance - Complaint | |
| Blackman, Sue (LIB) | Committee: November 19, 2019, 5:30 p.m. | 11/7/2019 |
| | Sunshine Complaint 1902: Redpondents | |
| | Response? — Re: SOTF - Notice of | |
| | Appearance - Complaint Committee: | |
| pmonette-shaw | November 19, 2019, 5:30 p.m. | 11/7/2019 |

| | | |
|---------------------|--|-----------|
| pmonette-shaw | Sunshine Complainnt 1902: Redpondents Response? — Re: SOTF - Notice of Appearance - Complaint Committee: November 19, 2019, 5:30 p.m. | 11/7/2019 |
| Blackman, Sue (LIB) | RE: SOTF - Notice of Appearance - Complaint Committee: November 19, 2019, 5:30 p.m. | 11/7/2019 |

