

First Supplement to Memorandum 2018-26

**California Public Records Act Clean-Up:
Part 5. Specific Types of Public Records
(Chapter 1. Crimes, Weapons, and Law Enforcement)**

The Commission¹ has just received a letter from the League of California Cities, commenting on the recodification of Government Code Section 6254(f).

The letter is attached as an Exhibit.

Respectfully submitted,

Steve Cohen
Staff Counsel

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.



1400 K Street, Suite 400 • Sacramento, California 95814
Phone: 916.658.8200 Fax: 916.658.8240
www.cacities.org

May 3, 2018

VIA EMAIL

Steve Cohen
California Law Revision Commission
c/o UC Davis School of Law
Davis, CA 95616
Email: scohen@clrc.ca.gov

Re: California Law Revision Commission Study of California Public Records Act

Dear Mr. Cohen:

I write on behalf of the California Public Records Act Committee (“Committee”) of the City Attorneys’ Department of the League of California Cities (“League”), an association of 475 California cities united in promoting the general welfare of cities and their citizens, regarding the California Law Revision Commission’s (“CLRC”) study of the California Public Records Act (“CPRA”). The Committee appreciates the opportunity to comment on Memorandum 2018-26 and we look forward to working with CLRC on this CPRA revision project.

As you are aware, this Committee, which was formed in 2008, has drafted and published a comprehensive Guide to the California Public Records Act, “The People’s Business”, which is widely used and relied upon by thousands of public agencies throughout California. The Second Edition of the Guide was published in 2017, and continues to be updated on a regular basis. Members of the Committee are experienced attorneys from public agencies and law firms specializing in municipal law throughout the State of California. In addition to updating the Guide, the Committee members are also responsible for annually updating the public records sections of the Municipal Law Handbook, providing input and assistance on appellate cases involving public records issues, review and comment on pending legislation and regularly provide and participate in training and seminars for City Attorneys, City Clerks, Police Departments and other public agency personnel relating to public records laws and issues.

We would like to respectfully offer the following comments on the CLRC’s proposed approach to Government Code § 6254(f), which addresses the very complex and myriad types of records developed, maintained (in various formats and media), compiled and utilized by law enforcement agencies throughout the state. Unlike many other types of public records, which, under the CPRA are considered to be open to public disclosure with only limited exception, law enforcement records are the opposite. Generally, most law enforcement records are considered confidential under various state laws. Section 6254(f) actually carves out exemptions to this blanket of confidentiality, and requires that only certain and limited information contained in those

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confidential records be disclosed. The type of information that must be disclosed differs depending upon whether it relates to, for example, calls to the police department for assistance, the identity of an arrestee, information relating to a traffic accident, or certain types of crimes, including car theft, burglary, or arson. And, if the disclosure would endanger a witness or interfere with the successful completion of the investigation, even this limited information is allowed to be withheld.

We agree that the provisions of Government Code § 6254(f) may seem at first blush, particularly to those who are not actively engaged in law enforcement, to be a tangle of run-on sentences and repetitious incongruities. For that reason, there may be room for some syntactical or organizational improvements, but we would strongly recommend against any attempt to make any substantive changes at this time. In the context of the day-to-day management of law enforcement records, these provisions carefully balance the needs of preserving and promoting the integrity of law enforcement investigations and privacy rights of victims and witnesses, against the needs of the public to obtain copies of accident information for insurance claims and pending litigation, and/or to obtain information about important events involving police agencies (shootings), etc. There are numerous provisions in other codes (including the California Penal Code, Vehicle Code and Welfare and Institutions Code) that are incorporated by reference, and a body of case law, which all form the expertise of those who are required to address the many and varied requests for these records.

Law enforcement agencies generally receive tenfold the numbers of requests made to other agencies. Most, if not all, law enforcement agencies have detailed records policies and staff trained specifically to handle the many daily requests they receive for these records. Many agencies have developed computer programs, daily desk logs and other resources to make the required information available to the public as quickly as possible with as little disruption to the actual work of the law enforcement agencies. It is for that reason alone, that we would strongly advocate that if you are inclined to make any changes to these sections, whether substantive or non-substantive, that you invite the law enforcement community, along with representatives from the public agency law community (city attorneys, attorneys general, county counsel, etc.) to participate in what could turn out to be a complicated and daunting project. These groups would be able to provide the expertise and in many cases help explain how and why these exemptions were crafted and how they serve the integrity of the entire process of the administration of justice. You and your staff have raised a number of interesting and thought-provoking questions in Memorandum 2018-26 and these representatives and stakeholders from the law enforcement community would welcome the opportunity to respond to these questions.

We have attached excerpts from our most recent edition of the Guide to the California Public Records Act, "The People's Business" relating to the disclosure requirements for confidential law enforcement records referenced in Government Code § 6254(f) for your review. We hope you find these sections helpful in your eventual decision in revising § 6254(f). We remain committed to offering as much professional assistance as you might need or want for this important project, and our Committee members would be more than happy to appear and discuss any of these issues as you move forward, if you would find that helpful. We appreciate the generous opportunities you have

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given us to participate in this very important project. Should you have any questions or comments please feel free to contact the Committee.

Very Truly Yours,

BERLINER COHEN



JOLIE HOUSTON

Chair, California Public Records Act Committee,
League of California Cities

Email: jolie.houston@berliner.com

(408) 286-5800

JH

Identity of Informants

A local agency also has a privilege to refuse to disclose and to prevent another from disclosing the identity of a person who has furnished information in confidence to a law enforcement officer or representative of a local agency charged with administration or enforcement of the law alleged to be violated.²¹⁶ This privilege applies where the information purports to disclose a violation of a federal, state, or another public entity's law, and where the public's interest in protecting an informant's identity outweighs the necessity for disclosure.²¹⁷ This privilege extends to disclosure of the contents of the informant's communication if the disclosure would tend to disclose the identity of the informant.²¹⁸

Information Technology Systems Security Records

An information security record is exempt from disclosure if, on the facts of a particular case, disclosure would reveal vulnerabilities to attack, or would otherwise increase the potential for an attack on a local agency's information technology system.²¹⁹

Disclosure of records stored within a local agency's information technology system that are not otherwise exempt under the law do not fall within this exemption.²²⁰

Law Enforcement Records

Overview

Law enforcement records are generally exempt from disclosure.²²¹ That is, the actual investigation files and records are themselves exempt from disclosure, but the PRA does require local agencies to disclose certain information derived from those files and records.²²² For example, the names of officers involved in a police shooting are subject to disclosure, unless disclosure would endanger an officer's safety (e.g., if there is a specific threat to an officer or an officer is working undercover).²²³

The type of information that must be disclosed differs depending upon whether it relates to, for example, calls to the police department for assistance, the identity of an arrestee, information relating to a traffic accident, or certain types of crimes, including car theft, burglary, or arson. The identities of victims of certain types of crimes, including minors and victims of sexual assault, are required to be withheld if requested by the victim or the victim's guardian, if the victim is a minor.²²⁴ Those portions of any file that reflect the analysis and conclusions of the investigating officers may also be withheld.²²⁵ Certain information that may be required to be released may be withheld where the disclosure would endanger a witness or interfere with the successful completion of the investigation. These exemptions extend indefinitely, even after the investigation is closed.²²⁶

216 Evid. Code, § 1041

217 Evid. Code, § 1041; *People v. Navarro* (2006) 138 Cal.App.4th 146, 164.

218 *People v. Hobbs* (1994) 7 Cal.4th 948, 961–962.

219 Gov. Code, § 6254.19

220 Gov. Code, § 6254.19; see also Gov. Code, § 6254, subd. (aa).

221 Gov. Code, § 6254, subd. (f).

222 *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1068; 65 Ops.Cal.Atty.Gen. 563 (1982).

223 *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59, 63–68.

224 Gov. Code, § 6254, subd. (f)(2).

225 *Rackauckas v. Superior Court* (2002) 104 Cal.App.4th 169, 174.

226 *Rivero v. Superior Court* (1997) 54 Cal.App.4th 1048, 1052; *Williams v. Superior Court* (1993) 5 Cal.4th 337, 361–362; *Office of the Inspector General v. Superior Court* (2010) 189 Cal.App.4th 695 (Office of the Attorney General has discretion to determine which investigatory records are subject to disclosure in connection with its investigations, and investigatory records in that context may include some documents that were not prepared as part of, but became subsequently relevant to, the investigation).

Release practices vary by local agencies. Some local agencies provide a written summary of information being disclosed, some release only specific information upon request, while others release reports with certain matters redacted. Other local agencies release reports upon request with no redactions except as mandated by statute. Some local agencies also release 911 tapes and booking photos, although this is not required under the PRA.²²⁷

► **PRACTICE TIP:**

If it is your local agency's policy to release police reports upon request, it is helpful to establish an internal process to control the release of the identity of minors or victims of certain types of crimes, or to ensure that releasing the report would not endanger the safety of a person involved in an investigation or endanger the completion of the investigation.

Exempt Records

The PRA generally exempts most law enforcement records from disclosure, including, among others:

- Complaints to or investigations conducted by a local or state police agency;
- Records of intelligence information or security procedures of a local or state police agency;
- Any investigatory or security files compiled by any other local or state police agency;
- Customer lists provided to a local police agency by an alarm or security company; and
- Any investigatory or security files compiled by any state or local agency for correctional, law enforcement, or licensing purposes.²²⁸

► **PRACTICE TIP:**

Many departments that choose not to release entire reports develop a form that can be filled out with the requisite public information.

Information that Must be Disclosed

There are three general categories of information contained in law enforcement investigatory files that must be disclosed: information which must be disclosed to victims, their authorized representatives and insurance carriers, information relating to arrestees, and information relating to complaints or requests for assistance.

Disclosure to Victims, Authorized Representatives, Insurance Carriers

Except where disclosure would endanger the successful completion of an investigation or a related investigation, or endanger the safety of a witness, certain information relating to specific listed crimes must be disclosed upon request to:

- A victim;
- The victim's authorized representative;
- An insurance carrier against which a claim has been or might be made; or
- Any person suffering bodily injury, or property damage or loss.

The type of crimes listed in this subsection to which this requirement applies include arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime defined by statute.²²⁹

²²⁷ *Haynie v. Superior Court*, *supra*, 26 Cal.4th 1061 (911 tapes); 86 Ops.Cal.Atty.Gen. 132 (2003) (booking photos).

²²⁸ Gov. Code, § 6254, subd. (f); *Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271, 1276 (coroner and autopsy reports).

²²⁹ Gov. Code, § 6254, subd. (f).

The type of information that must be disclosed under this section (except where it endangers safety of witnesses or the investigation itself) includes:

- Name and address of persons involved in or witnesses to incident (other than confidential informants);
- Description of property involved;
- Date, time, and location of incident;
- All diagrams;
- Statements of parties to incident; and
- Statements of all witnesses (other than confidential informants).²³⁰

Local agencies may not require a victim or a victim's authorized representative to show proof of the victim's legal presence in the United States to obtain the information required to be disclosed to victims.²³¹ However, if a local agency does require identification for a victim or authorized representative to obtain information disclosable to victims, the local agency must, at a minimum, accept a current driver's license or identification card issued by any state in the United States, a current passport issued by the United States or a foreign government with which the United States has a diplomatic relationship, or a current Matricula Consular card.²³²

The Vehicle Code addresses the release of traffic accident information. A law enforcement agency to whom an accident was reported is required to disclose the entire contents of a traffic accident report to persons who have a "proper interest" in the information, including, but not limited to, the driver(s) involved in the accident, or the authorized representative, guardian, or conservator of the driver(s) involved; the parent of a minor driver; any named injured person; the owners of vehicles or property damaged by the accident; persons who may incur liability as a result of the accident; and any attorney who declares under penalty of perjury that he or she represents any of the persons described above.²³³ The local enforcement agency may recover the actual cost of providing the information.

Information Regarding Arrestees

The PRA mandates that the following information be released pertaining to every individual arrested by the local law enforcement agency, except where releasing the information would endanger the safety of persons involved in an investigation or endanger the successful completion of the investigation or a related investigation:

- Full name and occupation of the arrestee;
- Physical description including date of birth, color of eyes and hair, sex, height and weight;
- Time, date, and location of arrest;
- Time and date of booking;
- Factual circumstances surrounding arrest;
- Amount of bail set;
- Time and manner of release or location where arrestee is being held; and
- All charges the arrestee is being held on, including outstanding warrants and parole or probation holds.²³⁴

As previously stated, a PRA request applies only to records existing at the time of the request.²³⁵ It does not require a local

²³⁰ Gov. Code, § 6254, subd. (f); *Buckheit v. Dennis* (ND Cal. 2012) 2012 U.S. Dist. LEXIS 49062 (noting that Government Code section 6254, subd. (f) requires disclosure of certain information to a victim. Suspects are not entitled to that same information).

²³¹ Gov. Code, § 6254.30.

²³² Gov. Code, § 6254.30.

²³³ Veh. Code, § 20012.

²³⁴ Gov. Code, § 6254, subd. (f)(1).

²³⁵ Gov. Code, § 6254, subd. (c).

agency to produce records that may be created in the future. Further, a local agency is not required to provide requested information in a format that the local agency does not use.

► **PRACTICE TIP:**

Most police departments have some form of a daily desk or press log that contains all or most of this information.

Complaints or Requests for Assistance

The Penal Code provides that except as otherwise required by the criminal discovery provisions, no law enforcement officer or employee of a law enforcement agency may disclose to any arrested person, or to any person who may be a defendant in a criminal action, the address or telephone number of any person who is a victim of or witness to the alleged offense.²³⁶

Subject to the restrictions imposed by the Penal Code, the following information must be disclosed relative to complaints or requests for assistance received by the law enforcement agency:

- The time, substance, and location of all complaints or requests for assistance received by the agency, and the time and nature of the response thereto;
- To the extent the crime alleged or committed or any other incident is recorded, the time, date, and location of occurrence, and the time and date of the report;
- The factual circumstances surrounding crime/incident;
- A general description of injuries, property, or weapons involved; and
- The names and ages of victims, except the names of victims of certain listed crimes may be withheld upon request of victim or parent of minor victim. These listed crimes include various Penal Code sections which relate to topics such as sexual abuse, child abuse, hate crimes, and stalking.²³⁷

Requests for Journalistic or Scholarly Purposes

Where a request states, under penalty of perjury, that (1) it is made for a scholarly, journalistic, political, or governmental purpose, or for an investigative purpose by a licensed private investigator, and (2) it will not be used directly or indirectly, or furnished to another, to sell a product or service, the PRA requires the disclosure of the name and address of every individual arrested by the local agency and the current address of the victim of a crime, except for specified crimes.²³⁸

Coroner Photographs or Video

No copies, reproductions, or facsimiles of a photograph, negative, print, or video recording of a deceased person taken by or for the coroner (including by local law enforcement personnel) at the scene of death or in the course of a post mortem examination or autopsy may be disseminated except as provided by statute.²³⁹

²³⁶ Pen. Code, § 841.5, subd. (a).

²³⁷ Gov. Code, § 6254, subd. (f)(2).

²³⁸ Gov. Code, § 6254, subd. (f); Pen. Code, § 841.5; *Los Angeles Police Dept. v. United Reporting Pub. Corp.* (1999) 528 U.S. 32.

²³⁹ Code Civ. Proc., § 129.

Mental Health Detention Information

All information and records obtained in the course of providing services to a mentally disordered individual who is gravely disabled or a danger to others or him or herself, and who is detained and taken into custody by a peace officer, are confidential and may only be disclosed to enumerated recipients and for the purposes specified in state law.²⁴⁰ Willful, knowing release of confidential mental health detention information can create liability for civil damages.²⁴¹

► **PRACTICE TIP:**

All information obtained in the course of a mental health detention (often referred to as a “5150 detention”) is confidential, including information in complaint or incident reports that would otherwise be subject to disclosure under the PRA.

Elder Abuse Records

Reports of suspected abuse or neglect of an elder or dependent adult, and information contained in such reports, are confidential and may only be disclosed as permitted by state law.²⁴² The prohibition against unauthorized disclosure applies regardless of whether a report of suspected elder abuse or neglect is from someone who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not for compensation (a mandated reporter), or from someone else.²⁴³ Unauthorized disclosure of suspected elder abuse or neglect information is a misdemeanor.²⁴⁴

Juvenile Records

Records or information gathered by law enforcement agencies relating to the detention of, or taking of, a minor into custody or temporary custody are confidential and subject to release only in certain circumstances and by certain specified persons and entities.²⁴⁵ Juvenile court case files are subject to inspection only by specific listed persons and are governed by both statute and state court rules.²⁴⁶

► **PRACTICE TIP:**

Some local courts have their own rules regarding inspection and they may differ from county to county and may change from time to time. Care should be taken to periodically review the rules as the presiding judge of each juvenile court makes their own rules.

Different provisions apply to dissemination of information gathered by a law enforcement agency relating to the taking of a minor into custody where it is provided to another law enforcement agency, including a school district police or security department, or other agency or person who has a legitimate need for information for purposes of official disposition of a case.²⁴⁷ In addition, a law enforcement agency must release the name of and descriptive information relating to any juvenile who has escaped from a secure detention facility.²⁴⁸

240 Welf. & Inst. Code, §§ 5150, 5328.

241 Welf. & Ins. Code, § 5330.

242 Welf. & Inst. Code, § 15633.

243 Welf. & Inst. Code, § 15633.

244 Welf. & Inst. Code, § 15633.

245 Welf. & Inst. Code, §§ 827, 828; see Welf & Inst. Code, § 827.9 (applies to Los Angeles County only); see also *T.N.G. v. Superior Court* (1971) 4 Cal.3d 767 (release of information regarding minor who has been temporarily detained and released without any further proceedings.)

246 Welf. & Inst. Code, § 827.

247 Welf & Inst. Code, § 828, subd. (a); Cal. Rules of Court, rule 5.552(g).

248 Welf & Inst. Code, § 828, subd. (b).