

Records Maintenance and Release

805.1 PURPOSE AND SCOPE

This policy provides guidance for compliance with the California Public Records Act (CPRA) and other applicable laws and legal decisions, by which Sheriff reports and other Department records may be inspected by the news media and the public, without compromising the legal rights of any individual, the public, news media representatives or the criminal justice system.

805.2 POLICY

It is the policy of the Orange County Sheriff's Department to comply with the State and Federal law regarding disclosure of Sheriff records (Government Code § 6250 et seq.). CPRA requests may be made orally or in writing. Persons making CPRA requests are not required to identify themselves or state the reasons why they want the records.

805.3 CUSTODIAN OF RECORDS RESPONSIBILITIES

The Sheriff shall designate a Custodian of Records. The responsibilities of the Custodian of Records include but are not limited to:

1. Managing the records management system for the Department, including the retention, archiving, release, and destruction of Department public records.
2. Maintaining and updating the Department records retention schedule including:
 - (a) Identifying the minimum length of time the Department must keep records.
 - (b) Identifying the Department division responsible for the original record.
3. Establishing rules regarding the inspection and copying of Department public records as reasonably necessary for the protection of such records.
4. Identifying records or portions of records that are confidential under state or federal law and not open for inspection or copying.
5. Establishing rules regarding the processing of subpoenas for the production of records.
6. Determining how the Department's website may be used to post public records in accordance with Government Code § 6253.
7. Ensuring that public records posted on the Department website meet the requirements of Government Code § 6253.10 including but not limited to posting in an open format where a record may be retrieved, downloaded, indexed, and searched by a commonly used internet search application.
8. Ensuring that a list and description, when applicable, of enterprise systems (as defined by Government Code § 6270.5) is publicly available upon request. This list and description are posted on the County of Orange's website.

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805.4 PROCESSING REQUESTS FOR PUBLIC RECORDS

Any Department Member who receives a request for any record shall route the request to the Support Services Division CPRA Unit.

805.4.1 REQUESTS FOR RECORDS

Public records are open to inspection at all times during the Department's regular office hours and every person has a right to inspect any public record, except those records or portions thereof that are exempted by law. The Department shall provide a copy of non-exempt public records upon request that reasonably describes each record sought and upon payment of any direct costs of duplication or associated fees (Government Code § 6253).

805.4.2 RECEIVING CPRA REQUESTS

CPRA requests may be made in writing, via electronic mail, or orally. Written CPRA requests should be sent or directed to the Support Services Division at:

Orange County Sheriff's Department
ATTN: Support Services Division/CPRA Request
320 North Flower Street
Santa Ana, CA 92703

E-mailed CPRA requests should be sent to: prarequests@ocsd.org. Oral CPRA requests should be directed to or transferred to the Support Services Division at: (714) 834-6480 or (714) 834-6449. If requester does not wish to be transferred, the Member who receives the oral CPRA request shall document the request and immediately forward it to the Support Services Division.

The processing of requests for any record is subject to the following (Government Code § 6253):

1. The Department is not required to create records that do not exist.
2. Victims of an incident or their authorized representative shall not be required to show proof of legal presence in the United States to obtain Department records or information. If identification is required, 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 current Matricula Consular card is acceptable (Government Code § 6254.30).
3. Either the requested record or the reason for non-disclosure shall be provided promptly, but no later than 10 days from the date of request, unless unusual circumstances preclude doing so. If more time is needed, an extension of up to 14 additional days may be authorized by the Custodian of Records or the authorized designee. If an extension is authorized, the Department shall provide the requester written notice that includes the reason for the extension and the anticipated date of the response.
 - (a) When the request does not reasonably describe the records sought, the Custodian of Records shall assist the requester in making the request focused and effective in a way to identify the records or information that would be responsive to the request including providing assistance for overcoming any practical basis for denying access to the records or information. The Custodian of

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Records shall also assist in describing the information technology and physical location in which the record exists (Government Code § 6253.1).

- (b) If the record requested is available on the Department website, the requester may be directed to the location on the website where the record is posted. If the requester is unable to access or reproduce the record, a copy of the record shall be promptly provided.
4. Upon request, a record shall be provided in an electronic format utilized by the Department. Records shall not be provided only in electronic format unless specifically requested (Government Code § 6253.9).
5. When a record contains material with release restrictions and material that is not subject to release restrictions, the restricted material shall be redacted and the unrestricted material released.
6. If a record request is denied in whole or part, the requester shall be provided a written response that includes the statutory exemption for withholding the record or facts that the public interest served by nondisclosure outweighs the interest served by disclosure (Government Code § 6255). The written response shall also include the names, titles or positions of each person responsible for the denial.
7. After the CPRA request has been completed, staff responsible for checking CPRA requests each day shall forward a hard copy of the original request, all responsive records and the Department's written response to the requester to the Quality Assurance unit to be imaged for retention in accord with the Department's records retention schedule.

805.5 GENERAL CPRA REQUEST RELEASE RESTRICTIONS

Examples of release restrictions include:

1. Personal identifying information, including an individual's photograph; Social Security and driver identification numbers; name, address, and telephone number; and medical or disability information that is contained in any driver license record, motor vehicle record, or any Department record, including traffic collision reports, are restricted except as authorized by the Department, and only when such use or disclosure is permitted or required by law to carry out a legitimate law enforcement purpose (18 USC § 2721; 18 USC § 2722).
2. Social Security numbers (Government Code § 6254.29).
3. Personnel records, medical records, and similar records which would involve an unwarranted invasion of personal privacy except as allowed by law (Government Code § 6254; Penal Code § 832.7; Penal Code § 832.8; Evidence Code § 1043 et seq.).
4. Victim information that may be protected by statutes, including victims of certain crimes who have requested that their identifying information be kept confidential, victims who are minors, and victims of certain offenses (e.g., sex crimes or human trafficking, Penal Code § 293). Addresses and telephone numbers of a victim or a witness to any arrested person or to any person who may be a defendant in a criminal action shall not be disclosed, unless it is required by law (Government Code § 6254; Penal Code § 841.5).

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- (a) Victims of certain offenses (e.g., domestic violence, sexual assault, stalking, human trafficking, adult abuse) or their representatives shall be provided, upon request and without charge, one copy of all incident report face sheets, one copy of all incident reports, or both, pursuant to the requirements and time frames of Family Code § 6228.
 - (b) Victims of sexual assault, upon written request, shall be provided a free copy of the initial crime report regardless of whether the report has been closed. Personal identifying information may be redacted (Penal Code § 680.2(b)).
5. Video or audio recordings created during the commission or investigation of the crime of rape, incest, sexual assault, domestic violence, or child abuse that depicts the face, intimate body part, or voice of a victim of the incident except as provided by Government Code § 6254.4.5.
6. Local criminal history information including but not limited to arrest history and disposition, and fingerprints shall only be subject to release to those agencies and individuals set forth in Penal Code § 13300.
7. Certain types of reports involving but not limited to child abuse and molestation (Penal Code § 11167.5), elder and dependent abuse (Welfare and Institutions Code § 15633), and juveniles (Welfare and Institutions Code § 827).
8. Sealed autopsy and private medical information concerning a murdered child with the exceptions that allow dissemination of those reports to law enforcement agents, prosecutors, defendants, or civil litigants under state and federal discovery laws (Code of Civil Procedure §130).
9. Information contained in applications for licenses to carry firearms or other files that indicates when or where the applicant is vulnerable or which contains medical or psychological information (Government Code § 6254).
10. Traffic collision reports (and related supplemental reports) shall be considered confidential and subject to release only to the California Highway Patrol, Department of Motor Vehicles (DMV), other law enforcement agencies, and those individuals and their authorized representatives set forth in Vehicle Code § 20012.
11. Any record created exclusively in anticipation of potential litigation involving this Department (Government Code § 6254).
12. Records relating to the security of the Department's electronic technology systems (Government Code § 6254.19).
13. A record of a civilian complaint, or the investigations, findings, or dispositions of that complaint if the complaint is frivolous, as defined by Code of Civil Procedure § 128.5, or if the complaint is unfounded (Penal Code § 832.7 (b)(8)).
14. Any other record not addressed in this policy shall not be subject to release where such record is exempt or prohibited from disclosure pursuant to state or federal law, including but not limited to provisions of the Evidence Code relating to privilege (Government Code § 6254).

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15. Information connected with juvenile court proceedings or the detention or custody of a juvenile. Federal officials may be required to obtain a court order to obtain certain juvenile information (Welfare and Institutions Code § 827.9; Welfare and Institutions Code § 831).
16. Member's personal data or information, e.g., home address, telephone numbers, identities of family members.
17. Complainant's and witness's personal data or information, e.g., home address, telephone numbers, identities of family members.
18. Information where there is a "specific, articulable and particularized" reason to believe that disclosure would pose a significant danger to the safety of the Member or another.
19. Information where, on the particular facts of the case, the public interest in not disclosing the information clearly outweighs the public interest in disclosing it (Government Code § 6255).
20. Information where the incident described in the records is the subject of an active criminal or administrative investigation.

805.6 CPRA REQUESTS FOR RECORDS PURSUANT TO PENAL CODE § 832.7(B)(1) (SB 1421)

Records relating to the categories below shall be released pursuant to a request under the California Public Records Act.

1. An incident involving the discharge of a firearm at a person by a peace officer.
2. An incident in which the use of force by a peace officer against a person resulted in death or great bodily injury.
3. An incident in which a sustained finding was made that a peace officer engaged in sexual assault involving a member of the public.
4. An incident in which a sustained finding was made of dishonesty by a peace officer including but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing evidence directly relating to, one of the following:
 - (a) the reporting, investigation, or prosecution of a crime; or
 - (b) the reporting of, or investigation of misconduct by another peace officer.

A record from a separate and prior investigation or assessment of a separate incident shall not be released unless it is independently subject to disclosure.

Records to be released include all investigative reports (including Initial Crime Reports, Internal Affairs Reports and Internal Criminal Reports); photographic, audio and video recordings and evidence; interview transcripts or recordings; autopsy reports; all materials presented to the District Attorney's Office or any person or body charged with filing criminal charges against a deputy in connection with an incident; all materials presented to any person or body charged with determining whether the deputy's actions were within policy for purposes of discipline or

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administrative action, including, but not limited to, all disciplinary records such as any letters of intent to impose discipline, any modifications of discipline due to the Skelly or grievance process and documentation reflecting final imposition of discipline or reflecting implementation of corrective action.

805.7 RELEASE RESTRICTIONS FOR RECORDS SUBJECT TO RELEASE UNDER PENAL CODE § 832.7(B)(1)

The following information shall be redacted from records to be released pursuant to a CPRA request under this section:

1. Personal data or information such as home address, phone numbers, identities of family members, but not names and work related information of peace officers.
2. Information about the identity of the complainant and witnesses.
3. Confidential medical, or financial information.
4. Other information where the disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in disclosure.
5. Where disclosure would pose a significant danger to the physical safety of the officer or another person based upon a “specific, articulable, and particularized” belief.
6. 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.
7. Personal data or information such as home address, phone numbers, identities of family members, but not names and work related information of peace officers.

805.8 CPRA INVOLVING MULTIPLE PEACE OFFICERS PURSUANT TO PENAL CODE § 832.7(B)(1)

If an investigation or incident involves multiple peace officers, information about allegations of misconduct by, or the analysis or disposition of an investigation of, a peace officer shall not be released unless it relates to:

1. A sustained finding that the peace officer engaged in sexual assault involving a member of the public; or
2. A sustained finding of dishonesty by the peace officer including but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing evidence directly relating to, one of the following:
 - (a) the reporting, investigation, or prosecution of a crime; or
 - (b) the reporting of, or investigation of misconduct by another peace officer.

Factual information about the action of a peace officer during an incident, or the statements, of a peace officer about an incident, shall be released if the action or statements are relevant to either:

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1. A sustained finding that another peace officer engaged in sexual assault involving a member of the public; or
2. A sustained finding of dishonesty by another peace officer including but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing evidence directly relating to, one of the following:
 - (a) the reporting, investigation, or prosecution of a crime; or
 - (b) the reporting of, or investigation of misconduct by another peace officer.

805.9 CPRA REQUESTS FOR A CIVILIAN COMPLAINT PURSUANT TO PENAL CODE § 832.7(B)(1)

A record of a civilian complaint, or the investigations, findings, or dispositions of that complaint, shall not be released pursuant to Penal Code section 832.7(b)(1) if the complaint is frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or if the complaint is unfounded.

805.10 CPRA REQUESTS FOR AUDIO AND VIDEO RECORDINGS OF CRITICAL INCIDENTS (GOVERNMENT CODE § 6254(F)(4) (AB 748 EFFECTIVE JULY 1, 2019))

All audio and video recordings of critical incidents shall be released pursuant to a request under the California Public Records Act.

805.11 RELEASE RESTRICTIONS FOR AUDIO AND VIDEO RECORDINGS OF CRITICAL INCIDENTS

Recordings may be withheld from release if a person depicted in the recording has a reasonable expectation of privacy that cannot be adequately protected by redacting the recordings and that interest outweighs the public interest in disclosure Government Code § 6254(f)(4)(B)(ii). Redactions cannot interfere with viewer's ability to fully, completely, and accurately comprehend the events depicted in the recording. Notwithstanding any privacy rights of the person depicted, the recordings shall be promptly disclosed to:

1. The person depicted in the recordings, or his/her representative. Government Code § 6254(f)(4)(B)(ii)(I),
2. The parents or guardian of a minor depicted in the recordings. Government Code § 6254(f)(4)(B)(ii)(II), or
3. The heirs, beneficiaries, designated family member, or legal representative of a deceased person depicted in the recordings. Government Code § 6254(f)(4)(B)(ii)(III)

805.12 NOTIFICATIONS TO MEMBERS AND SEPARATED MEMBERS

When the Department receives a CPRA request for records under Penal Code § 832.7 and Government Code § 6254(f)(4) and the Department identifies the Members with records subject to disclosure, the Members shall receive an email notification about the pending CPRA request with a cc on the email to the Executive Director of AOCDS and/or ACLEMS. The email notification shall include a copy of the CPRA request.

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Members with records subject to disclosure under Penal Code § 832.7 and Government Code § 6254(f)(4) shall receive an email notification 7 calendar days prior to the release of any records, with a cc on the email to the Executive Director of AOCDS and/or ACLEMS. The email notification shall include a link to the records to be released.

For separated Members, the Professional Standards Division shall send a notification to the separated Member's last known email address or, if an email address is not known, to the separated Member's last known home address 7 calendar days prior to the release of any records. The Executive Director of AOCDS and/or ACLEMS shall be notified via email, either as a cc on the email to the separated Member, or directly if the Member is notified by letter. The notification shall include contact information for the Support Services Division for the separated member to call to obtain a link to the records to be disclosed.

Any concerns may be brought to the attention of the Undersheriff or Assistant Sheriff of the Professional Services Command for review.

805.13 DELAYED DISCLOSURE AND WRITTEN UPDATES TO THE REQUESTER

There are circumstances set forth in Penal Code § 832.7 and Government Code § 6254(f)(4) under which disclosure may be delayed within certain timeframes. If disclosure is delayed, there is specific information that is to be included in a written update to the requester. Support Services shall keep track of the timeframes and shall provide any necessary written updates to the requester.

805.14 DEFINITIONS OF TERMS FOR RECORDS SUBJECT TO RELEASE UNDER PENAL CODE § 832.7 AND GOVERNMENT CODE § 6254(F)(4)

Critical Incident: An incident involving the discharge of a firearm at a person by a peace officer, or an incident in which the use of force by a peace officer against a person resulted in death or great bodily injury.

Great Bodily Injury: A bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ. Because Penal Code section 832.7 and Government Code section 6254(f)(4) do not define "great bodily injury," the Department is using the definition of serious bodily injury in Government Code section 12525.2.

Member of the Public: Any person not employed by the officer's employing agency and includes participants in a cadet, explorer, or other youth program affiliated with the agency. Penal Code § 832.7(b)(1)(B)(iii).

Sexual Assault: The "commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under color of authority. For purposes of this definition, the propositioning for or commission of any sexual act while on duty is considered a sexual assault." Penal Code § 832.7(b)(1)(B)(ii).

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Sustained Finding: 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 Sections 3304 and 3304.5 of the Government Code, that the actions of the peace officer were found to violate law or department policy.” Penal Code § 832.8(b).

Personnel Records: Any file maintained under that individual’s name by his or her employing agency and containing records relating to any of the following: Personal data, including marital status, family members, educational and employment history, home addresses, or similar information; Medical history; Election of employee benefits; Employee advancement, appraisal, or discipline; Complaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties; and any other information the disclosure of which would constitute an unwarranted invasion of personal privacy. Penal Code § 832.8(a).

Unfounded: An investigation clearly establishes that the allegation is not true. Penal Code § 832.8(c).