

ASSEMBLY BILL

No. 2557

Introduced by Assembly Member Mia Bonta

February 17, 2022

An act to amend Section 832.7 of the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2557, as introduced, Mia Bonta. Peace officers: records.

Existing law, the California Public Records Act, requires a state or local public agency to make public records available for public inspection and to make copies available upon request and payment of a fee, unless the records are exempt from disclosure. Existing law makes peace officer and custodial officer personnel records and specified records maintained by any state or local agency, or information obtained from these records, confidential and prohibits these records from being disclosed in any criminal or civil proceeding except by discovery.

This bill would make records and information obtained from records maintained by an agency or body established by a city, county, city and county, local government entity, state agency, or state department for the purpose of civilian oversight of peace officers subject to disclosure pursuant to the California Public Records Act. The bill would require those records to be redacted only as specified. By increasing duties on local entities, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that public
2 access to information concerning civilian complaints regarding
3 peace officers, including the records of proceedings of civilian law
4 enforcement review agencies, is crucial to safe and effective law
5 enforcement in the state. It is the intent of the Legislature, in
6 enacting this act, to abrogate the decision in *Copley Press, Inc. v.*
7 *Superior Court* (2006) 39 Cal.4th 1272, to restore public access to
8 peace officer records, and to restore public access to meetings and
9 hearings that were open to the public prior to the *Copley Press*
10 decision.

11 SEC. 2. Section 832.7 of the Penal Code is amended to read:
12 832.7. (a) Except as provided in subdivision (b), the personnel
13 records of peace officers and custodial officers and records
14 maintained by a state or local agency pursuant to Section 832.5,
15 or information obtained from these records, are confidential and
16 shall not be disclosed in any criminal or civil proceeding except
17 by discovery pursuant to Sections 1043 and 1046 of the Evidence
18 Code. This section does not apply to investigations or proceedings
19 concerning the conduct of peace officers or custodial officers, or
20 an agency or department that employs those officers, conducted
21 by a grand jury, a district attorney’s office, or the Attorney
22 General’s office, or the Commission on Peace Officer Standards
23 and Training.

24 (b) (1) Notwithstanding subdivision (a), subdivision (f) of
25 Section 6254 of the Government Code, or any other law, the
26 following peace officer or custodial officer personnel records and
27 records maintained by a state or local agency shall not be
28 confidential and shall be made available for public inspection
29 pursuant to the California Public Records Act (Chapter 3.5
30 (commencing with Section 6250) of Division 7 of Title 1 of the
31 Government Code):

32 (A) A record relating to the report, investigation, or findings of
33 any of the following:

1 (i) An incident involving the discharge of a firearm at a person
2 by a peace officer or custodial officer.

3 (ii) An incident involving the use of force against a person by
4 a peace officer or custodial officer that resulted in death or in great
5 bodily injury.

6 (iii) A sustained finding involving a complaint that alleges
7 unreasonable or excessive force.

8 (iv) A sustained finding that an officer failed to intervene against
9 another officer using force that is clearly unreasonable or excessive.

10 (B) (i) Any record relating to an incident in which a sustained
11 finding was made by any law enforcement agency or oversight
12 agency that a peace officer or custodial officer engaged in sexual
13 assault involving a member of the public.

14 (ii) As used in this subparagraph, “sexual assault” means the
15 commission or attempted initiation of a sexual act with a member
16 of the public by means of force, threat, coercion, extortion, offer
17 of leniency or other official favor, or under the color of authority.
18 For purposes of this subparagraph, the propositioning for or
19 commission of any sexual act while on duty is considered a sexual
20 assault.

21 (iii) As used in this subparagraph, “member of the public” means
22 any person not employed by the officer’s employing agency and
23 includes any participant in a cadet, explorer, or other youth program
24 affiliated with the agency.

25 (C) Any record relating to an incident in which a sustained
26 finding was made by any law enforcement agency or oversight
27 agency involving dishonesty by a peace officer or custodial officer
28 directly relating to the reporting, investigation, or prosecution of
29 a crime, or directly relating to the reporting of, or investigation of
30 misconduct by, another peace officer or custodial officer, including,
31 but not limited to, false statements, filing false reports, destruction,
32 falsifying, or concealing of evidence, or perjury.

33 (D) Any record relating to an incident in which a sustained
34 finding was made by any law enforcement agency or oversight
35 agency that a peace officer or custodial officer engaged in conduct
36 including, but not limited to, verbal statements, writings, online
37 posts, recordings, and gestures, involving prejudice or
38 discrimination against a person on the basis of race, religious creed,
39 color, national origin, ancestry, physical disability, mental
40 disability, medical condition, genetic information, marital status,

1 sex, gender, gender identity, gender expression, age, sexual
2 orientation, or military and veteran status.

3 (E) Any record relating to an incident in which a sustained
4 finding was made by any law enforcement agency or oversight
5 agency that the peace officer made an unlawful arrest or conducted
6 an unlawful search.

7 (2) Records that are subject to disclosure under clause (iii) or
8 (iv) of subparagraph (A) of paragraph (1), or under subparagraph
9 (D) or (E) of paragraph (1), relating to an incident that occurred
10 before January 1, 2022, shall not be subject to the time limitations
11 in paragraph (8) until January 1, 2023.

12 (3) Records that shall be released pursuant to this subdivision
13 include all investigative reports; photographic, audio, and video
14 evidence; transcripts or recordings of interviews; autopsy reports;
15 all materials compiled and presented for review to the district
16 attorney or to any person or body charged with determining
17 whether to file criminal charges against an officer in connection
18 with an incident, or whether the officer's action was consistent
19 with law and agency policy for purposes of discipline or
20 administrative action, or what discipline to impose or corrective
21 action to take; documents setting forth findings or recommended
22 findings; and copies of disciplinary records relating to the incident,
23 including any letters of intent to impose discipline, any documents
24 reflecting modifications of discipline due to the Skelly or grievance
25 process, and letters indicating final imposition of discipline or
26 other documentation reflecting implementation of corrective action.
27 Records that shall be released pursuant to this subdivision also
28 include records relating to an incident specified in paragraph (1)
29 in which the peace officer or custodial officer resigned before the
30 law enforcement agency or oversight agency concluded its
31 investigation into the alleged incident.

32 (4) A record from a separate and prior investigation or
33 assessment of a separate incident shall not be released unless it is
34 independently subject to disclosure pursuant to this subdivision.

35 (5) If an investigation or incident involves multiple officers,
36 information about allegations of misconduct by, or the analysis or
37 disposition of an investigation of, an officer shall not be released
38 pursuant to subparagraph (B), (C), (D), or (E) of paragraph (1),
39 unless it relates to a sustained finding regarding that officer that
40 is itself subject to disclosure pursuant to this section. However,

1 factual information about that action of an officer during an
2 incident, or the statements of an officer about an incident, shall be
3 released if they are relevant to a finding against another officer
4 that is subject to release pursuant to subparagraph (B), (C), (D),
5 or (E) of paragraph (1).

6 (6) An agency shall redact a record disclosed pursuant to this
7 section only for any of the following purposes:

8 (A) To remove personal data or information, such as a home
9 address, telephone number, or identities of family members, other
10 than the names and work-related information of peace and custodial
11 officers.

12 (B) To preserve the anonymity of whistleblowers, complainants,
13 victims, and witnesses.

14 (C) To protect confidential medical, financial, or other
15 information of which disclosure is specifically prohibited by federal
16 law or would cause an unwarranted invasion of personal privacy
17 that clearly outweighs the strong public interest in records about
18 possible misconduct and use of force by peace officers and
19 custodial officers.

20 (D) Where there is a specific, articulable, and particularized
21 reason to believe that disclosure of the record would pose a
22 significant danger to the physical safety of the peace officer,
23 custodial officer, or another person.

24 (7) Notwithstanding paragraph (6), an agency may redact a
25 record disclosed pursuant to this section, including personal
26 identifying information, where, on the facts of the particular case,
27 the public interest served by not disclosing the information clearly
28 outweighs the public interest served by disclosure of the
29 information.

30 (8) An agency may withhold a record of an incident described
31 in paragraph (1) that is the subject of an active criminal or
32 administrative investigation, in accordance with any of the
33 following:

34 (A) (i) During an active criminal investigation, disclosure may
35 be delayed for up to 60 days from the date the misconduct or use
36 of force occurred or until the district attorney determines whether
37 to file criminal charges related to the misconduct or use of force,
38 whichever occurs sooner. If an agency delays disclosure pursuant
39 to this clause, the agency shall provide, in writing, the specific
40 basis for the agency's determination that the interest in delaying

1 disclosure clearly outweighs the public interest in disclosure. This
2 writing shall include the estimated date for disclosure of the
3 withheld information.

4 (ii) After 60 days from the misconduct or use of force, the
5 agency may continue to delay the disclosure of records or
6 information if the disclosure could reasonably be expected to
7 interfere with a criminal enforcement proceeding against an officer
8 who engaged in misconduct or used the force. If an agency delays
9 disclosure pursuant to this clause, the agency shall, at 180-day
10 intervals as necessary, provide, in writing, the specific basis for
11 the agency's determination that disclosure could reasonably be
12 expected to interfere with a criminal enforcement proceeding. The
13 writing shall include the estimated date for the disclosure of the
14 withheld information. Information withheld by the agency shall
15 be disclosed when the specific basis for withholding is resolved,
16 when the investigation or proceeding is no longer active, or by no
17 later than 18 months after the date of the incident, whichever occurs
18 sooner.

19 (iii) After 60 days from the misconduct or use of force, the
20 agency may continue to delay the disclosure of records or
21 information if the disclosure could reasonably be expected to
22 interfere with a criminal enforcement proceeding against someone
23 other than the officer who engaged in misconduct or used the force.
24 If an agency delays disclosure under this clause, the agency shall,
25 at 180-day intervals, provide, in writing, the specific basis why
26 disclosure could reasonably be expected to interfere with a criminal
27 enforcement proceeding, and shall provide an estimated date for
28 the disclosure of the withheld information. Information withheld
29 by the agency shall be disclosed when the specific basis for
30 withholding is resolved, when the investigation or proceeding is
31 no longer active, or by no later than 18 months after the date of
32 the incident, whichever occurs sooner, unless extraordinary
33 circumstances warrant continued delay due to the ongoing criminal
34 investigation or proceeding. In that case, the agency must show
35 by clear and convincing evidence that the interest in preventing
36 prejudice to the active and ongoing criminal investigation or
37 proceeding outweighs the public interest in prompt disclosure of
38 records about misconduct or use of force by peace officers and
39 custodial officers. The agency shall release all information subject

1 to disclosure that does not cause substantial prejudice, including
2 any documents that have otherwise become available.

3 (iv) In an action to compel disclosure brought pursuant to
4 Section 6258 of the Government Code, an agency may justify
5 delay by filing an application to seal the basis for withholding, in
6 accordance with Rule 2.550 of the California Rules of Court, or
7 any successor rule, if disclosure of the written basis itself would
8 impact a privilege or compromise a pending investigation.

9 (B) If criminal charges are filed related to the incident in which
10 misconduct occurred or force was used, the agency may delay the
11 disclosure of records or information until a verdict on those charges
12 is returned at trial or, if a plea of guilty or no contest is entered,
13 the time to withdraw the plea pursuant to Section 1018.

14 (C) During an administrative investigation into an incident
15 described in of paragraph (1), the agency may delay the disclosure
16 of records or information until the investigating agency determines
17 whether misconduct or the use of force violated a law or agency
18 policy, but no longer than 180 days after the date of the employing
19 agency's discovery of the misconduct or use of force, or allegation
20 of misconduct or use of force, by a person authorized to initiate
21 an investigation.

22 (9) A record of a complaint, or the investigations, findings, or
23 dispositions of that complaint, shall not be released pursuant to
24 this section if the complaint is frivolous, as defined in Section
25 128.5 of the Code of Civil Procedure, or if the complaint is
26 unfounded.

27 (10) The cost of copies of records subject to disclosure pursuant
28 to this subdivision that are made available upon the payment of
29 fees covering direct costs of duplication pursuant to subdivision
30 (b) of Section 6253 of the Government Code shall not include the
31 costs of searching for, editing, or redacting the records.

32 (11) Except to the extent temporary withholding for a longer
33 period is permitted pursuant to paragraph (8), records subject to
34 disclosure under this subdivision shall be provided at the earliest
35 possible time and no later than 45 days from the date of a request
36 for their disclosure.

37 (12) (A) For purposes of releasing records pursuant to this
38 subdivision, the lawyer-client privilege does not prohibit the
39 disclosure of either of the following:

- 1 (i) Factual information provided by the public entity to its
2 attorney or factual information discovered in any investigation
3 conducted by, or on behalf of, the public entity’s attorney.
- 4 (ii) Billing records related to the work done by the attorney so
5 long as the records do not relate to active and ongoing litigation
6 and do not disclose information for the purpose of legal
7 consultation between the public entity and its attorney.
- 8 (B) This paragraph does not prohibit the public entity from
9 asserting that a record or information within the record is exempted
10 or prohibited from disclosure pursuant to any other federal or state
11 law.
- 12 (c) Notwithstanding subdivisions (a) and (b), a department or
13 agency shall release to the complaining party a copy of the
14 complaining party’s own statements at the time the complaint is
15 filed.
- 16 (d) Notwithstanding subdivisions (a) and (b), a department or
17 agency that employs peace or custodial officers may disseminate
18 data regarding the number, type, or disposition of complaints
19 (sustained, not sustained, exonerated, or unfounded) made against
20 its officers if that information is in a form that does not identify
21 the individuals involved.
- 22 (e) Notwithstanding subdivisions (a) and (b), a department or
23 agency that employs peace or custodial officers may release factual
24 information concerning a disciplinary investigation if the officer
25 who is the subject of the disciplinary investigation, or the officer’s
26 agent or representative, publicly makes a statement that they know
27 to be false concerning the investigation or the imposition of
28 disciplinary action. Information may not be disclosed by the peace
29 or custodial officer’s employer unless the false statement was
30 published by an established medium of communication, such as
31 television, radio, or a newspaper. Disclosure of factual information
32 by the employing agency pursuant to this subdivision is limited
33 to facts contained in the officer’s personnel file concerning the
34 disciplinary investigation or imposition of disciplinary action that
35 specifically refute the false statements made public by the peace
36 or custodial officer or their agent or representative.
- 37 (f) (1) The department or agency shall provide written
38 notification to the complaining party of the disposition of the
39 complaint within 30 days of the disposition.

1 (2) The notification described in this subdivision is not
2 conclusive or binding or admissible as evidence in any separate
3 or subsequent action or proceeding brought before an arbitrator,
4 court, or judge of this state or the United States.

5 (g) *Notwithstanding subdivision (a), subdivision (f) of Section*
6 *6254 of the Government Code, or any other law, or the holding in*
7 *Copley Press, Inc. v. Superior Court (2006) 39 Cal.4th 1272,*
8 *records and information obtained from records maintained by an*
9 *agency or body established by a city, county, city and county, local*
10 *government entity, state agency, or state department for the*
11 *purpose of civilian oversight of peace officers shall not be*
12 *confidential and shall be made available for public inspection*
13 *pursuant to the California Public Records Act (Chapter 3.5*
14 *(commencing with Section 6250) of Division 7 of Title 1 of the*
15 *Government Code). A record disclosed pursuant to this paragraph*
16 *shall be redacted only to remove personal data or information*
17 *such as a home address, telephone number, or identities of family*
18 *members, other than the names and work-related information of*
19 *peace and custodial officers, to preserve the anonymity of*
20 *complainants and witnesses, or to protect confidential medical,*
21 *financial, or other information in which disclosure would cause*
22 *an unwarranted invasion of personal privacy that clearly outweighs*
23 *the strong public interest in records about misconduct by peace*
24 *officers and custodial officers, or where there is a specific,*
25 *particularized reason to believe that disclosure of the record would*
26 *pose a significant danger to the physical safety of the peace officer,*
27 *custodial officer, or others.*

28 ~~(g)~~

29 (h) This section does not affect the discovery or disclosure of
30 information contained in a peace or custodial officer's personnel
31 file pursuant to Section 1043 of the Evidence Code.

32 ~~(h)~~

33 (i) This section does not supersede or affect the criminal
34 discovery process outlined in Chapter 10 (commencing with
35 Section 1054) of Title 6 of Part 2, or the admissibility of personnel
36 records pursuant to subdivision (a), which codifies the court
37 decision in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

38 ~~(i)~~

1 (j) Nothing in this chapter is intended to limit the public’s right
2 of access as provided for in Long Beach Police Officers
3 Association v. City of Long Beach (2014) 59 Cal.4th 59.

4 SEC. 3. If the Commission on State Mandates determines that
5 this act contains costs mandated by the state, reimbursement to
6 local agencies and school districts for those costs shall be made
7 pursuant to Part 7 (commencing with Section 17500) of Division
8 4 of Title 2 of the Government Code.

O