

Law Enforcement Agencies Must Disclose Video and Audio Recordings Relating to a “Critical Incident” and Certain Investigation Records Without Pitchess Process Under New Laws

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ATTORNEYS

Jennifer Petrusis

Governor Brown has signed two new laws to require law enforcement agencies to provide, in response to a California Public Records Act request, certain information that was previously exempt from disclosure and, in some instances, was confidential and subject to Pitchess Motion requirements.

AB 748:

Starting on July 1, 2019, video and audio recordings that relate to a “critical incident” are no longer exempt from disclosure under the California Public Records Act. A “critical incident” is defined as either 1) an incident involving the discharge of a firearm at a person by a peace officer or custodial officer; or 2) an incident in which the use of force by a peace officer or custodial officer against a person resulted in death or great bodily injury. The timing of the disclosure is subject to the deadlines already in place in the Public Records Act, except the agency may take additional time, as specified in amended Government Code section 6254(f), if the agency demonstrates that disclosure would substantially interfere with an active criminal or administrative investigation. However, there are specific requirements set forth in Government Code section 6254(f)(4)(A) to justify the delay in disclosure.

SB 1421:

Penal Code sections 832.7 and 832.8 state that peace officer personnel files are confidential and cannot be disclosed absent compliance with Evidence Code sections 1043 and 1046 (i.e., a Pitchess Motion). However, effective January 1, 2019, certain peace officer or custodial officer personnel records are no longer confidential and shall be made available for public inspection pursuant to the Public Records Act.

Specifically, records relating to the report, investigation, or findings of 1) an incident involving the discharge of a firearm at a person by a peace officer or custodial officer; 2) an incident in which the use of force by a peace officer or custodial officer resulted in death or great bodily injury; 3) an incident in which a sustained finding was made regarding sexual assault involving a member of the public; and 4) incidents relating to sustained findings of dishonesty by a peace officer or custodial officer must be made available pursuant to the Public Records Act.

The amended Penal Code section 832.7 contains important provisions regarding the specific types of records that are subject to disclosure, which information may be redacted from the records, and under what circumstances the agency may delay disclosure and for how long.

Law enforcement agencies and custodians of records should prepare for significant numbers of new requests for this information when the new laws take effect, and should consult with legal counsel regarding the possible need for new policies and procedures.

If you would like more information about these new laws or any other law enforcement legal matters, please contact **Jennifer Petrusis** or any member of the firm's **Police Practices group**.