

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 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 § 7920.000 et seq.). This policy should be interpreted in a way that is most consistent with Government Code section 7920.000 et seq. and Penal Code section 832.7. 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, although arrangements should be made to notify the requester of the Department's response to his/her request.

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 § 7922.545.
7. Ensuring that public records posted on the Department website meet the requirements of Government Code § 7922.680 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.

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8. Ensuring that a list and description, when applicable, of enterprise systems (as defined by Government Code § 7922.700) is publicly available upon request. This list and description are posted on the County of Orange's website.

805.4 PROCESSING REQUESTS FOR PUBLIC RECORDS

Any Department Member, except for personnel from the Coroner Division, who receives a request for any record shall route the request to the Records Division CPRA Unit. Coroner's related requests for records shall be routed directly to the Coroner Division for processing.

805.4.1 REQUESTS FOR RECORDS

Public records are open to inspection 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 § 7922.530).

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 Records Division at:

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

E-mailed CPRA requests should be sent to: prarequests@ocsheriff.gov. Oral CPRA requests should be directed to or transferred to the Records Division at: (714) 834-3223 or (714) 834-4497. 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 Records Division.

The processing of requests for any record is subject to the following (Government Code § 7922.530):

1. The Department is not required to create records that do not exist.
2. If the Department can reasonably construct the requested record through data compilation, extraction, or programming, then the requester is required to pay for the cost of producing the record before the Department begins any data compilation, extraction, or programming. (Government Code § 7922.575.)
3. When requesting information under Government Code section 7923.600 et seq, 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 § 7923.655).

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4. The Department shall determine whether it has responsive records 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. (Government Code § 7922.535)
 - (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 Records shall also assist in describing the information technology and physical location in which the record exists (Government Code § 7922.600).
 - (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. (Government Code § 7922.540).
5. Upon request, a record shall be provided in an electronic format utilized by the Department. (Government Code § 7922.570).
6. 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.
7. 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 (Government Code § 7922.000).
8. 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. Social Security numbers (Government Code § 7922.200).
2. Personnel records, medical records, and similar records, when disclosure would result in an unwarranted invasion of personal privacy (Government Code § 7927.700). Peace officer personnel records not subject to disclosure under Penal Code section 832.7, subd (b) (Penal Code § 832.7(a); Penal Code § 832.8; Evidence Code § 1043 et seq.).
3. Victim information that may be protected by statutes, including victims of certain crimes who have requested that their identifying information be kept confidential (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

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in a criminal action shall not be disclosed, unless it is required by law (Government Code § 7923.615; Penal Code § 841.5).

- (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)).
4. 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 § 7923.750.
 5. 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.
 6. Certain types of records involving but not limited to child abuse or neglect reports to the Social Services Agency (Penal Code § 11167.5), elder and dependent abuse (Welfare and Institutions Code § 15633), and juveniles (Welfare and Institutions Code § 827).
 7. 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).
 8. Information contained in applications for licenses to carry firearms that indicates when or where the applicant is vulnerable to attack or which contains medical or psychological information (Government Code § 7293.800).
 9. 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.
 10. Any record created exclusively in anticipation of existing or potential litigation involving this Department (Government Code § 7927.200).
 11. Records relating to the security of the Department's electronic technology systems, if, on the facts of the particular case, disclosure of that record would reveal vulnerabilities to, or otherwise increase the potential for an attack on, an information technology system (Government Code § 7929.210).
 12. 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)(9)).

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13. 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 § 7927.705).
14. 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).
15. Member's personal data or information, e.g., home address, telephone numbers, identities of family members.
16. 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.
17. 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 § 7922.000).
18. Information where disclosure would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation. (Government Code §§ 7923.605; 7923.610; 7923.615)

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

It is the responsibility of the Division Commander of the employee under investigation to determine whether a record is disclosable under Penal Code section 832.7, subd. (b). This determination shall be noted on the Internal Investigation Administrative Worksheet.

When the Department receives a request for records subject to Penal Code section 832.7, subd. (b), Internal Affairs shall locate the applicable records and provide to the Custodian of Records only those files determined to be disclosable under Penal Code section 832.7, subd. (b).

Records relating to the categories below shall not be confidential and shall be made available for public inspection.

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.

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5. An incident in which a sustained finding was made involving force that is unreasonable or excessive, and any sustained finding that an officer failed to intervene against another officer using clearly unreasonable or excessive force.
6. An incident in which a sustained finding was made of unlawful arrest and unlawful searches.
7. An incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct involving prejudice or discrimination on the basis of specified protected classes.

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 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)

It is the responsibility of the Custodian of Records to review responsive records for applicable redactions. The following information shall be redacted from records to be released pursuant to a 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 whistleblowers, complainants, victims, 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.

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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 a finding regarding that officer that is itself subject to disclosure.

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 a finding against another officer that is subject to release.

805.9 CPRA REQUESTS FOR A CIVILIAN COMPLAINT PURSUANT TO PENAL CODE § 832.7(B)(9)

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)(9) 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 (AB 748)

Within the limitations of Government Code section 7923.625, 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

The Department may redact portions of the video if the public interest in nondisclosure clearly outweighs the public interest in disclosure because the release of the recording would violate the reasonable expectation of privacy of a subject depicted in the recording. Redactions may include blurring or distorting images or audio, but shall not interfere with the viewer's ability to fully, completely, and accurately comprehend the events captured in the recording and the recording shall not otherwise be edited or altered.

Recordings may be withheld from release in their entirety 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 § 7923.625(b)(1). 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 § 7293.625(b)(2)(A),
2. The parents or guardian of a minor depicted in the recordings. Government Code § 7923.625(b)(2)(B), or

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3. The heirs, beneficiaries, designated family member, or legal representative of a deceased person depicted in the recordings. Government Code § 7923.625(b)(2)(C).

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 § 7923.625 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 ACLEM. The email notification shall include a copy of the CPRA request.

Members with records subject to disclosure under Penal Code § 832.7 and Government Code § 7923.625 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 ACLEM. The email notification shall include a link to the records to be released.

For separated Members, the SAFE Division shall obtain a link to the records to be disclosed from the Records Division and 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 ACLEM, and the Records Division CPRA unit 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 Records Division for the separated member to call for questions regarding 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 § 7923.625 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. The Records Division CPRA unit 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 § 7923.625

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 7923.625 do

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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: For the purposes of Penal Code section 832.7, subd. (b)(1)(B), 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.

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).

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).