

Your Rights to Know about Our Department

By Chief/Sheriff _____

Welcome!

As a resident of this area, as a Californian, or even just as an inquiring person from anywhere,ⁱ you have the legal right to know as much about our department as we can make public without invading the rights of others or preventing us from keeping the public safe and apprehending lawbreakers.

Our Information Is Generally Presumed Public

Your rights are set forth in the California Public Records Act (beginning at Government Code Section 6250). For free help in understanding the Act you can contact the nonprofit group Californians Aware, at (916) 487-7000 or by e-mail: info@calaware.org or on the Internet at <http://www.calaware.org>. That law requires us and any other state or local agency in California to honor your request to review or get copies of our documents (paper, film or electronic)ⁱⁱ unless some specific law says otherwise.ⁱⁱⁱ If it does, we must be prepared to quote or cite that law so you can look it up for yourself if you like.^{iv}

Our Main Restrictions on Disclosure

Subdivision (f) of Section 6254—the main law restricting public access to our records—says basically three things.

1. Generally speaking, while not required to, we may and normally will withhold records of complaints we receive, investigations we conduct, intelligence information we develop or security procedures we adopt related to law enforcement, correctional or licensing purposes. We cannot share this information with law-abiding individuals only—if released to you, by law it becomes open to anyone, and you can imagine how those planning a crime or hoping to avoid detection might use such information.^v

2. On the other hand, if you have been involved in a vehicle mishap of some kind, you are entitled to certain information from any report we have concerning it, for a fee that does not exceed the actual cost of providing the copy.^{vi} And if you are the victim of a crime reported to us, much of the information from our report is available to you at the cost of making a copy.^{vii}

3. Finally, you have the right to certain basic facts about any crime or other incident we have responded to, or any arrest we have made, unless we are prepared to show that disclosure of a particular fact would keep us from successfully completing an investigation or would threaten the safety of someone involved.^{viii} We need not share our full reports on these matters so long as we somehow provide you with the following specifics:^{ix}

Crimes or Incidents -- The time, substance, and location of all complaints or requests for assistance we receive and the time and nature of our response, including (to the extent we have a record of a crime or incident) the time, date, and location of the occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved.^x Victims of sexual assaults or child, spousal or elder abuse or hate crimes need not be named and seldom are.^{xi}

Arrests -- The full name, date of birth, sex and occupation of everyone we arrest as well as his or her eye and hair color, height and weight; also the time, date of and location of the arrest, and the surrounding factual circumstances; the time and date of booking, the time and manner of release or the location where the person is currently being held; and the amount of bail set and all charges he or she is being held on, including any outstanding warrants from other jurisdictions and parole or probation holds.^{xii} We may not identify minors detained for delinquency or otherwise made subject to juvenile court jurisdiction.^{xiii} Also, we are not permitted to do arrest searches (for public release) keyed to people's names, because criminal history information about individuals is confidential except for certain official purposes or upon request of the person in question.^{xiv}

Addresses – The address of a person arrested or a crime victim is available only to those who sign a sworn declaration that the information is sought for a scholarly, journalistic, political, or governmental purpose, or by a licensed private investigator, and will not be used to sell a product or service.^{xv}

Complaints about Peace Officers

You have the right to submit a complaint to this department about how our officers perform their duties, and to get a copy of that complaint. But otherwise the law makes a complaint about a peace officer—and really any other information entered in his or her personnel file—confidential and unavailable as a public record. It can be obtained only by the district attorney or grand jury in a criminal investigation of the officer’s conduct, or by a criminal defendant or civil lawsuit plaintiff, using a special motion for discovery. The law does allow us to issue periodic statistical summaries of the number and types of complaints received and how they were resolved, however.^{xvi}

Responding to Your Request

You need not make a written request^{xvii} or otherwise disclose your name, affiliation, or purpose^{xviii} for requesting the information, unless you want addresses of crime victims or those arrested. In that case you must sign a sworn declaration that you are seeking the information for a scholarly, journalistic, political, or governmental purpose and not for marketing or other business uses^{xix}. But although anonymity is otherwise your legal right, we encourage you to use our form to ease processing of the request. At a minimum you should provide us with a phone number or e-mail address and some kind of name to call you, if not your real one.

The simpler your request and the better you describe it, the sooner we can get back to you. Some very routine information may be yours for the asking on the same day that you stop by or call us up—no written request required. The advantages putting it in writing—in your letter or on our form—is that it helps to clarify a larger or more complicated request, and it legally entitles you to a written response from us in case we have to deny all or part of your request.^{xx}

That denial notice, if we have to make it, must be made within 10 days of your request unless one or more of four situations exist, in which case we must let you know in writing that we may have to take up to 14 more days for a final determination. The four justifications for taking extra time are:

- having to get the records from a separate location,
- having to process a large number of records sought in a single request,
- having to check with other departments or agencies with a right to be consulted, or
- having to compile data, to write new code or a computer program, or to construct a computer

report to extract data.

But if we must take this extra time, we must give you a date when we expect to have the determination for you—as well as, we hope, all the records you are entitled to.^{xxi}

By the way, if there’s a clearly public record concerning this department or its employees that is normally filed or kept somewhere else, we will tell you where that is and you can either get it there yourself or, if you’re willing to wait or come back in an hour or so, we’ll have the record faxed here and ready for you to pick up—or just faxed to a number you supply.^{xxii}

Let Me Know If There’s a Problem or Question

Our office personnel are trained and expected to understand and carry out this policy in a friendly, timely and professional manner, but the best policy and the best intentions don’t always do the job. If you think your request is not being handled as I have described, let me know by phone at _____ (you may need to leave a message) or by e-mail at _____.

Sincerely,

s/ _____

ⁱ While we often speak of “citizens” as having access rights, one need not be a California resident or even a U.S. citizen to inspect or copy state or local records. “(W)hen (Government Code) section 6253 declares every person has a right to inspect any public record, when section 6257 commands state and local agencies to make records promptly available to any person on request, and when section 6258 expressly states any person may institute proceedings to enforce the right of inspection, they mean what they say.” *Connell v. Superior Court*, 56 Cal.App.4th 601, 611 (1997).

ⁱⁱ Government Code Section 6252, subdivision (e) defines “public records” to include “any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” Subdivision (f) then defines “writing” to include “any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.”

ⁱⁱⁱ Government Code Section 6253, subdivision (a) states: “Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided.”

^{iv} Government Code Section 6255, subdivision (a) states: “The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.”

^v Government Code Section 6254, subdivision (f) exempts from disclosure, in pertinent part: “Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes . . .”

^{vi} Vehicle Code Section 20012 states, in pertinent part: “. . . the Department of the California Highway Patrol or the law enforcement agency to whom the accident was reported shall disclose the entire contents of the reports, including, but not limited to, the names and addresses of persons involved or injured in, or witnesses to, an accident, the registration numbers and descriptions of vehicles involved, the date, time and location of an accident, all diagrams, statements of the drivers involved or occupants injured in the accident and the statements of all witnesses, to any person who may have a proper interest therein, including, but not limited to, the driver or drivers involved, or the guardian or conservator thereof, the parent of a minor driver, the authorized representative of a driver, or to any named person injured therein, the owners of vehicles or property damaged thereby, persons who may incur civil liability, including liability based upon a breach of warranty arising out of the accident, and any attorney who declares under penalty of perjury that he or she represents any of the above persons. A request for a copy of an accident report shall be accompanied by payment of a fee, provided such fee shall not exceed the actual cost of providing the copy.”

^{vii} Government Code Section 6254, subdivision (f) states, in pertinent part: “. . . except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the

date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or (other misdemeanor or felony for which state law authorizes payment by the California Victim Compensation and Government Claims Board) , unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflect the analysis or conclusions of the investigating officer.” These report extracts are subject to the general copy fee provisions of the California Public Records Act stated in Government Code Section 6253, subdivision (b): “Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable.” The phrase “direct costs of duplication” has been defined by a court as “the cost of running the copy machine, and conceivably also the expense of the person operating it. It does not include the ancillary tasks necessarily associated with the retrieval, inspection and handling of the file from which the copy is extracted.” *North County Parents Organization v. Department of Education*, 23 Cal.App.4th 146, 148 (1994).

^{viii} Government Code Section 6254, subdivision (f) states, in pertinent part: “Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation . . .”

^{ix} The California Supreme Court has concluded with respect to Government Code Section 6254 that “the Legislature . . . adopted a series of amendments that required the disclosure of information derived from the records while, in most cases, preserving the exemption for the records themselves.” *Williams v. Superior Court (Freedom Newspapers, Inc.)*, 5 Cal.4th 337, 353 (1993).

^x Government Code Section 6254, subdivision (f), paragraph (2) presumes to be public “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, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved.” This paragraph references Penal Code 841.5, which prohibits law enforcement agencies from disclosing “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 or witness in the alleged offense,” but then that contact information is not required to be disclosed to any person in any event, unless he or she makes the sworn declaration referred to in footnote 15, which specifies purposes other than use by a criminal defendant.

^{xi} Government Code Section 6254, subdivision (f), paragraph (2) provides: “The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor.” The listed offenses are various kinds of sexual assault, or the criminal abuse of a child, spouse or elderly person, or stalking.

^{xii} Government Code Section 6254, subdivision (f), paragraph (2) presumes to be public the “full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.”

^{xiii} Welfare and Institutions Code Section 827.9, subdivision (a) states: “It is the intent of the Legislature to reaffirm its belief that records or information gathered by law enforcement agencies relating to the taking of a minor into custody, temporary custody, or detention (juvenile police records) should be confidential.” No case, attorney general’s opinion or departmental policy we are aware of interprets this to mean, in the arrest report context, anything more than that the disclosure of a minor’s arrest shall not include the minor’s name or other uniquely identifying information.

^{xiv} Penal Code Section 13300, subdivision (a) defines “local summary criminal history information” as “the master record of information compiled by any local criminal justice agency . . . pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.” Subdivisions (b) and (c) list the authorized recipients and purposes for release of such information.

^{xv} Government Code Section 6254, subdivision (f), paragraph (3) states that “the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code. However, the address of the victim of (sexual assault, or the criminal abuse of a child, spouse or elderly person, or stalking) shall remain confidential. Address information obtained pursuant to this paragraph may not be used directly or indirectly, or furnished to another, to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury.”

^{xvi} Penal Code Section 832.7 provides, in pertinent part: “(a) Peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office.

“(b) Notwithstanding subdivision (a), a department or agency shall release to the complaining party a copy of his or her own statements at the time the complaint is filed.

“(c) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.”

^{xvii} “It is clear from the requirements for writings in the same and other provisions of the Act that when the Legislature intended to require a writing, it did so explicitly. The California Public Records Act

plainly does not require a written request.” *Los Angeles Times v. Alameda Corridor Transportation Authority*, 88 Cal.App.4th 1381 (2001).

^{xviii} Nothing in the California Public Records Act precludes an anonymous request, and it requires identification (by a signed affirmation or declaration, respectively) only when the requester is seeking information about pesticides (Government Code Section 6254.2) or seeking the addresses of persons arrested or crime victims (Government Code Section 6254, subdivision (f), paragraph (3) — see footnote 15). Likewise, apart from those provisions, demanding to know the purpose of the request or the intended use of the information is not something the agency may do, especially in light of Government Code Section 6257.5, which states: “This chapter does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure.”

^{xix} See footnote 15.

^{xx} Government Code Section 6255, subdivision (b) states: “A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.”

^{xxi} Government Code Section 6253, subdivision (c) states: “Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, “unusual circumstances” means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.
- (4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.”

^{xxii} While this kind of rapid turnaround service is not expressly mandated in the California Public Records Act, the Legislature clearly expected agencies to make some efforts to obtain records pertaining to them that were filed or stored elsewhere. Government Code Section 6253, subdivision (c), paragraph 1 allows agencies to take extra time “to search for and *collect the requested records from field facilities or other establishments* that are separate from the office processing the request.” (Emphasis added)