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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF KERN**

15 BAKERSFIELD POLICE OFFICERS
16 ASSOCIATION

17 Petitioner/Plaintiff,

18 vs.

19 CITY OF BAKERSFIELD; LYLE D.
20 MARTIN, Chief of Police; and DOES 1
21 through 20, inclusive,

22 Respondents/Defendants.

CASE NO. BCV-19-100718

**VERIFIED PETITION FOR WRIT OF
MANDATE [CCP Section 1085];
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

[UNLIMITED CIVIL ACTION]

23 **FIRST CAUSE OF ACTION FOR PETITION FOR WRIT OF MANDATE**

24 1. For a First Cause of Action by Petitioner/Plaintiff Bakersfield Police Officers
25 Association (“Petitioner”, “Plaintiff” or “BPOA”) against Respondents/Defendants, City of
26 Bakersfield (“City”); Lyle D. Martin, Chief of Police (“Chief of Police”) and Does 1 through
27 20, inclusive, for a Petition for Peremptory Writ of Mandate pursuant to Code of Civil
28 Procedure Section 1085, Petitioner alleges as follows:

2. BPOA was and is the employee organization as defined in Government Code
Section 3500 *et seq.*, recognized by the City as the exclusive representative of the Police
Bargaining Unit including Police Officers, Senior Police Officers, Training Officers, and

1 Detectives, employed by the City with regard to all matters relating to employment conditions
2 and employer-employee relations. (Gov. Code § 3504). Petitioner's sworn members are peace
3 officers as defined in Penal Code Sections 830.1, 830.35, and 830.5.

4 3. At all times mentioned herein, the City was organized and existing under the laws
5 of the State of California and was a local employing agency within the meaning of Penal Code
6 Section 832.5 et seq. maintaining peace officer personnel information, as well a local agency
7 within the meaning of Government Code Section 6252, a part of the California Public Records
8 Act (Gov. Code § 6250 *et seq.*, "CPRA").

9 4. At all times mentioned herein, the Chief of Police was charged with the general
10 supervision, administration and management and operations of the City's Police Department.

11 5. At all times mentioned herein, Respondents Does 1 through 20, inclusive, were the
12 agents, servants and employees of Respondent City, and in doing the things hereinafter alleged
13 were acting within the scope of their authority of such agents, servants and employees with
14 their permission and consent of the City. Petitioner will amend this Petition to allege the true
15 names and capacities of Does 1 through 20, inclusive when ascertained.

16 6. Prior to January 1, 2019, California Penal Code Section 832.7, subdivision (a)
17 provided that "peace officer or custodial officer personnel records and records maintained by
18 any state or local agency pursuant to Section 832.5, or information obtained from those records,
19 are confidential and shall not be disclosed in any criminal or civil proceedings, except by
20 discovery pursuant to Sections 1043 and 1046 of the Evidence Code."

21 7. California Penal Code Section 832.8 provides that, as used in Section 832.7,
22 "personnel records" includes "any file maintained under that individual's name by his or her
23 employing agency and containing records relating to any of the following: ... (d) Employee
24 advancement, appraisal, or discipline; (e) Complaints, or investigations of complaints,
25 concerning an event or transaction in which he or she participated, or which he or she
26 perceived, and pertaining to the manner in which he or she performed his or her duties."

27 8. On September 30, 2018, Governor Brown approved Senate Bill 1421 which
28 amended Penal Code Sections 832.7 and 832.8 relating to peace officer personnel records.

1 Senate Bill 1421 provides that peace officer or custodial officer personnel records and
2 information concerning the following categories of incidents shall *not* be confidential, and shall
3 be made available for public inspection pursuant to the CPRA: a) an incident involving the
4 discharge of a firearm at a person by a peace officer or custodial officer; b) an incident in which
5 the use of force by a peace officer or custodial officer against a person resulted in death, or in
6 great bodily injury; c) an incident in which a sustained finding was made by any law
7 enforcement agency or oversight agency that a peace officer or custodial officer engaged in
8 sexual assault involving a member of the public; d) an incident in which a sustained finding
9 was made by any law enforcement agency or oversight agency of dishonesty by a peace officer
10 or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or
11 directly relating to the reporting of, or investigation of misconduct by, another peace officer or
12 custodial officer, including, but not limited to, any sustained finding of perjury, false
13 statements, filing false reports, destruction, falsifying, or concealing of evidence. (Attached
14 hereto as **Exhibit A** and made a part hereof as though fully set forth is a true and correct copy
15 of Chapter 988 of the 2017-2018 Regular Session, Senate Bill 1421.)

16 9. Senate Bill 1421 was enacted during the regular legislative session, and not
17 designated as "urgent." Accordingly, its amendments are effective January 1, 2019. (Gov. Code
18 § 9600.)

19 10. Senate Bill 1421 contains no legislative direction for a retroactive application of the
20 amendments to Penal Code Sections 832.7 and 832.8, including no such direction as to the
21 amendment's application to peace officer personnel records reflecting conduct or arising out of
22 incidents occurring prior to January 1, 2019 – information deemed confidential as a matter of
23 law.

24 11. Based upon communications between the BPOA and the City, BPOA is informed
25 and believes that the City intends to apply and has been applying SB 1421's amendments
26 retroactively, such that beginning January 1, 2019, the City of Bakersfield's Police Department
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1 intends to release records created before January 1, 2019 absent a court order or stay otherwise
2 prohibiting the release.

3 12. Senate Bill 1421 amends Penal Code Section 832.7, effective January 1, 2019, to
4 eliminate the longstanding statutory confidentiality of specified peace officer personnel
5 records, and the information contained therein, maintained by public agencies in order to make
6 such records and information available for public inspection pursuant to the CPRA effective
7 January 1, 2019.

8 13. Senate Bill 1421 does not contain any express provision or language requiring
9 retroactivity or any clear indication that the Legislature intended the statute to operate
10 retroactively so as to be applied and enforced with respect to peace officer personnel records
11 and information which arose out of incidents involving peace officer conduct occurring prior to
12 January 1, 2019.

13 14. The amendments constitute a substantial and adverse change to the existing privacy
14 rights of the Petitioner's represented peace officers. The right to privacy is enshrined in Article
15 1, Section 1 of the California Constitution, which states: "All people are by nature free and
16 independent and have inalienable rights. Among these are enjoying and defending life and
17 liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety,
18 happiness, and privacy." Section 3 of Article 1 then explicitly acknowledges that peace officers
19 have a Constitutional right to privacy in their personnel records, as that Section states:

20 Nothing in this subdivision supersedes or modifies the right of privacy
21 guaranteed by Section 1 or affects the construction of any statute, court
22 rule, or other authority to the extent that it protects that right to privacy,
23 including any statutory procedures governing discovery or disclosure of
information concerning the official performance or professional
qualifications of a peace officer.

24 (Cal. Const., Art. 1, § 3, subd. (b)(3).) The constitutional nature of this right for public
25 employees has been repeatedly recognized by the California courts. Moreover, the Constitution
26 recognizes that the right to privacy is not superseded or even modified by the concurrent right
27 possessed by the people to have access to information concerning the conduct of the people's
28 business, thereby securing the right detailed in the *Pitchess* statutes. Pursuant to California

1 Constitution, Article I, Section 3(b)(3), any broad construction of statutes pertaining to the right
2 of access to information of public agencies (such as the CPRA) does *not* supersede the
3 construction of statutes that protect the constitutional right of privacy, including any statutory
4 procedures governing discovery or disclosure of information concerning the official
5 performance or professional qualifications of a peace officer.

6 15. Petitioner's represented peace officers will suffer irreparable injury and damage by
7 the retroactive application of Senate Bill 1421, in that such an application would unlawfully
8 violate the constitutional and statutory protection of peace officers to the confidentiality of their
9 peace officer personnel records regarding incidents or reflecting conduct occurring prior to
10 January 1, 2019.

11 16. Petitioner has a beneficial interest in Respondents' compliance with their
12 ministerial duties not to violate Petitioner's represented peace officers' confidentiality rights by
13 applying Senate Bill 1421 retroactively.

14 **SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF,**

15 17. For a Second Cause of Action by Plaintiff BPOA against the City; Chief of Police
16 and Does 1 through 20, inclusive, for Declaratory Relief, Plaintiff realleges paragraphs 1- 16
17 and further alleges as follows:

18 18. An actual and justiciable controversy has arisen and now exists, between Plaintiff
19 on one hand, and Defendants on the other hand, regarding the following: (1) whether
20 Defendants' intention to apply Senate Bill 1421 to peace officer personnel records and
21 information reflecting specified peace officer conduct occurring prior to January 1, 2019 is a
22 retroactive application and enforcement of Senate Bill 1421; (2) whether such application
23 violates the right of confidentiality and privacy of such peace officers to information in their
24 personnel files protected by California Constitution Article 1, Section 1 and Article 1, Section
25 3, subdivision (b), paragraph (3) and by the pre-existing statutory provisions of Penal Code
26 Sections 832.7, 832.8 and Evidence Code Sections 1043 and 1045; and (3) whether such
27 retroactive application is contrary to the purpose of any applicable judicial protective orders
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1 issued prior to January 1, 2019 during in-camera proceedings conducted pursuant to *Pitchess v.*
2 *Superior Court* (1974) 11 Cal.3d 531 to protect the right of privacy of peace officers.

3 19. Such a judicial determination is necessary and proper in order that the parties may
4 ascertain their respective legal rights and duties where: a.) Senate Bill 1421 amending Penal
5 Code Section 832.7 eliminates the well-established statutory and constitutional confidentiality
6 of specified peace officer and custodial peace officer personnel records and does not contain an
7 express retroactivity provision nor legislative intent to rescind previously conferred privacy
8 rights to peace officers; and b.) Defendants intend to make such peace officer personnel records
9 and information arising prior to January 1, 2019 available for public inspection in response to
10 requests under the CPRA.

11 20. There are no effective administrative remedies available to compel the relief sought
12 herein against Defendants.

13 **THIRD CAUSE OF ACTION FOR INJUNCTIVE RELIEF,**

14 21. For a Third Cause of Action by Plaintiff BPOA against Defendants City; Chief of
15 Police; and Does 1 through 20, inclusive, for Injunctive Relief, Plaintiff realleges paragraphs 1-
16 20, and further alleges as follows:

17 22. Unless and until Plaintiff's request for injunctive relief, including a Temporary
18 Restraining Order, Preliminary Injunction and Permanent Injunction are granted by this Court
19 restraining and enjoining Defendants from retroactively enforcing or applying the Senate Bill
20 1421 amendments to California Penal Code Sections 832.7 and 832.8, Plaintiff's represented
21 employees will suffer irreparable harm to their statutory and constitutional privacy rights that
22 far outweighs any alleged detriment to Defendants or the public.

23 23. As a consequence of the exceedingly short ten (10) day time frame for Defendants to
24 respond to public records requests under Government Code Section 6253(c), a regularly
25 noticed hearing on a preliminary injunction would not provide timely relief to Plaintiff's
26 represented peace officers whose statutory and constitutional privacy rights are imminently
27 jeopardized. Therefore, a Temporary Restraining Order is appropriate and necessary to
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1 maintain the status quo pending a declaratory adjudication by this Court as to the rights and
2 obligations of the parties.

3 24. There is no adequate legal remedy to compensate Plaintiff's represented peace
4 officers for the unlawful disclosure of their confidential personnel file information.

5 WHEREFORE, Petitioner/Plaintiff BPOA requests the following relief against
6 Respondents/Defendants, and each of them as follows:

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9 **FIRST CAUSE OF ACTION**

- 10 1. That following the hearing upon the Petition, the Court issue a Peremptory
11 Writ of Mandate directing Respondents and their agents, employees and
12 representatives to refrain from retroactively enforcing or applying the amendments
13 to California Penal Code Sections 832.7 and 832.8 implemented by Senate Bill
14 1421 in any manner which would result in the disclosure or production of peace
15 officer personnel records regarding incidents or reflecting conduct occurring prior
16 to January 1, 2019;
- 17 2. That Petitioner be awarded attorneys' fees pursuant to Code of Civil
18 Procedure Section 1021.5;
- 19 3. Petitioner be awarded and costs of suit; and
- 20 4. For such other and further relief as the Court may deem just and proper.

21
22 **SECOND CAUSE OF ACTION**

- 23 1. This Court render a judicial determination that Senate Bill 1421's
24 amendments to Penal Code Sections 832.7 and 832.8 cannot legally be enforced
25 or applied by Defendants or their agents, employees and representatives in any
26 manner which would result in the disclosure or production of peace officers
27 personnel records regarding incidents or reflecting conduct occurring prior to
28 January 1, 2019 that would not have previously been subject to disclosure or

1 production;

2 2. That Plaintiff be awarded attorneys' fees pursuant to Code of Civil Procedure
3 Section 1021.5;

4 3. Plaintiff be awarded and costs of suit; and

5 4. For such other and further relief as the Court may deem just and proper.

6 **THIRD CAUSE OF ACTION**

7 1. That this Court issue an Order requiring Defendants, and each of them, to
8 show cause why a Preliminary Injunction should not issue, pending a judicial
9 determination on the Second Cause of Action for Declaratory Relief;

10 2. That pending the hearing on the Order to Show Cause, and until this Court
11 otherwise directs, the Court issue a Temporary Restraining Order prohibiting any
12 retroactive enforcement or application of Senate Bill 1421 by Defendants or their
13 agents, employees and representatives in any manner which would result in the
14 disclosure or production of peace officer personnel records and information
15 regarding incidents or reflecting conduct described in Senate Bill 1421 occurring
16 prior to January 1, 2019 that would not have previously been subject to disclosure
17 or production;

18 3. That following the hearing on the Order to Show Cause, the Court issue a
19 Preliminary Injunction restraining and enjoining Defendants and their agents,
20 employees and representatives from retroactively enforcing or applying the
21 amendments to California Penal Code Sections 832.7 and 832.8 implemented by SB
22 1421 in any manner which would result in the disclosure or production of peace
23 officer personnel records regarding incidents or reflecting conduct occurring prior to
24 January 1, 2019 that would not have previously been subject to disclosure or
25 production;

26 4. That following a trial on the merits, the Court issue a Permanent Injunction
27 ordering, restraining and enjoining Defendants and their agents, employees and
28 representatives from retroactively enforcing or applying the amendments to

1 California Penal Code Sections 832.7 and 832.8 implemented by Senate Bill 1421 in
2 any manner which would result in the disclosure or production of peace officer
3 personnel records regarding incidents or reflecting conduct occurring prior to
4 January 1, 2019 that would not have previously been subject to disclosure or
5 production;

- 6
- 7 5. That Plaintiff be awarded attorneys' fees pursuant to Section 1021.5 of the
8 California Code of Civil Procedure;
 - 9 6. Plaintiff be awarded and costs of suit; and
 - 10 7. For such other and further relief as the Court may deem just and proper.

11 **RAINS LUCIA STERN ST. PHALLE & SILVER, PC**

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13 Dated: March 15, 2019

/s/ Brian P. Ross

Brian P. Ross, Esq.
Attorneys for Petitioner/Plaintiff
Bakersfield Police Officers Association

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VERIFICATION


STATE OF CALIFORNIA, COUNTY OF KERN,

I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE [CCP Section 1085]; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I am an Officer of the BAKERSFIELD POLICE OFFICERS ASSOCIATION, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matter I believe them to be true.

Executed on March 14, 2019, in BAKERSFIELD, California.
City

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


SANTIAGO BALTAZAR
Secretary of the Bakersfield Police Officers Association



Senate Bill No. 1421

CHAPTER 988

. An act to amend Sections 832.7 and 832.8 of the Penal Code, relating to peace officer records.

[Approved by Governor September 30, 2018. Filed with Secretary of State September 30, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1421, Skinner. Peace officers: release of records.

The California Public Records Act requires a state or local agency, as defined, to make public records available for inspection, subject to certain exceptions. Existing law requires any peace officer or custodial officer personnel records, as defined, and any records maintained by any state or local agency relating to complaints against peace officers and custodial officers, or any information obtained from these records, to be confidential and prohibits the disclosure of those records in any criminal or civil proceeding, except by discovery. Existing law describes exceptions to this requirement for investigations or proceedings concerning the conduct of peace officers or custodial officers, and for an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office.

This bill would require, notwithstanding any other law, certain peace officer or custodial officer personnel records and records relating to specified incidents, complaints, and investigations involving peace officers and custodial officers to be made available for public inspection pursuant to the California Public Records Act. The bill would define the scope of disclosable records. The bill would require records disclosed pursuant to this provision to be redacted only to remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace officers and custodial officers, to preserve the anonymity of complainants and witnesses, or to protect confidential medical, financial, or other information in which disclosure would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct by peace officers and custodial officers, or where there is a specific, particularized reason to believe that disclosure would pose a significant danger to the physical safety of the peace officer, custodial officer, or others. Additionally the bill would authorize redaction where, on the facts of the particular case, the public interest served by nondisclosure clearly outweighs the public interest served by disclosure. The bill would allow the delay of disclosure, as specified, for records relating to an open investigation or court proceeding, subject to certain limitations.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

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 no reimbursement is required by this act for a specified reason.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Peace officers help to provide one of our state's most fundamental government services. To empower peace officers to fulfill their mission, the people of California vest them with extraordinary authority — the powers to detain, search, arrest, and use deadly force. Our society depends on peace officers' faithful exercise of that authority. Misuse of that authority can lead to grave constitutional violations, harms to liberty and the inherent sanctity of human life, as well as significant public unrest.

(b) The public has a right to know all about serious police misconduct, as well as about officer-involved shootings and other serious uses of force. Concealing crucial public safety matters such as officer violations of civilians' rights, or inquiries into deadly use of force incidents, undercuts the public's faith in the legitimacy of law enforcement, makes it harder for tens of thousands of hardworking peace officers to do their jobs, and endangers public safety.

SEC. 2. Section 832.7 of the Penal Code is amended to read:

832.7. (a) Except as provided in subdivision (b), the personnel records of peace officers and custodial officers 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) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5

(commencing with Section 6250) of Division 7 of Title 1 of the Government Code):

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

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

(ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury.

(B) (i) Any record relating to 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 sexual assault involving a member of the public.

(ii) As used in this subparagraph, "sexual assault" means 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 the 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.

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

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

(2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

(3) 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 pursuant to this subdivision.

(4) If an investigation or incident involves multiple officers, information about allegations of misconduct by, or the analysis or disposition of an investigation of, an officer shall not be released pursuant to subparagraph (B) or (C) of paragraph (1), unless it relates to a sustained finding against that officer. However, factual information about that action of an officer during an incident, or the statements of an officer about an incident, shall be released if they are relevant to a sustained finding against another officer that is subject to release pursuant to subparagraph (B) or (C) of paragraph (1).

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

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

(B) To preserve the anonymity of complainants and witnesses.

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

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

(6) Notwithstanding paragraph (5), an agency may redact a record disclosed pursuant to this section, including personal identifying information, 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 of the information.

(7) An agency may withhold a record of an incident described in subparagraph (A) of paragraph (1) that is the subject of an active criminal or administrative investigation, in accordance with any of the following:

(A) (i) During an active criminal investigation, disclosure may be delayed for up to 60 days from the date the use of force occurred or until the district attorney determines whether to file criminal charges related to the use of force, whichever occurs sooner. If an agency delays disclosure pursuant to this clause, the agency shall provide, in writing, the specific basis for the agency's determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. This writing shall include the estimated date for disclosure of the withheld information.

(ii) After 60 days from the use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer who used the force. If an agency delays disclosure pursuant to this clause, the agency shall, at 180-day intervals as necessary, provide, in writing, the specific basis for the agency's determination that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding. The writing shall include the estimated date for the disclosure

of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner.

(iii) After 60 days from the use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against someone other than the officer who used the force. If an agency delays disclosure under this clause, the agency shall, at 180-day intervals, provide, in writing, the specific basis why disclosure could reasonably be expected to interfere with a criminal enforcement proceeding, and shall provide an estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner, unless extraordinary circumstances warrant continued delay due to the ongoing criminal investigation or proceeding. In that case, the agency must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding outweighs the public interest in prompt disclosure of records about use of serious force by peace officers and custodial officers. The agency shall release all information subject to disclosure that does not cause substantial prejudice, including any documents that have otherwise become available.

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

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

(C) During an administrative investigation into an incident described in subparagraph (A) of paragraph (1), the agency may delay the disclosure of records or information until the investigating agency determines whether the use of force violated a law or agency policy, but no longer than 180 days after the date of the employing agency's discovery of the use of force, or allegation of use of force, by a person authorized to initiate an investigation, or 30 days after the close of any criminal investigation related to the peace officer or custodial officer's use of force, whichever is later.

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

(c) Notwithstanding subdivisions (a) and (b), 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.

(d) Notwithstanding subdivisions (a) and (b), 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.

(e) Notwithstanding subdivisions (a) and (b), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement he or she knows to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace or custodial officer's employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer's personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or his or her agent or representative.

(f) (1) The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.

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

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

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

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

SEC. 3. Section 832.8 of the Penal Code is amended to read:

832.8. As used in Section 832.7, the following words or phrases have the following meanings:

(a) "Personnel records" means any file maintained under that individual's name by his or her employing agency and containing records relating to any of the following:

(1) Personal data, including marital status, family members, educational and employment history, home addresses, or similar information.

(2) Medical history.

(3) Election of employee benefits.

(4) Employee advancement, appraisal, or discipline.

(5) 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.

(6) Any other information the disclosure of which would constitute an unwarranted invasion of personal privacy.

(b) "Sustained" means 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 or custodial officer were found to violate law or department policy.

(c) "Unfounded" means that an investigation clearly establishes that the allegation is not true.

SEC. 4. The Legislature finds and declares that Section 2 of this act, which amends Section 832.7 of the Penal Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

The public has a strong, compelling interest in law enforcement transparency because it is essential to having a just and democratic society.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district under this act would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.