

July 5, 2018

VIA ELECTRONIC MAIL

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San Diego County Sheriff's Department
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Re: Request by KPBS for Disclosure of Public Records

Dear Ms. Lomnicky:

I represent KPBS Public Broadcasting. As you know, KPBS is a non-profit organization involved in investigative newsgathering and reporting, through television, radio and its news website. I am writing to request that the San Diego County Sheriff's Department promptly reconsider its denial of a recent KPBS request for public records and provide the requested records.

On June 22, 2018, Claire Trageser of KPBS asked the Department to provide the following records: (1) The dates all citizen complaints were filed, from 2011 through 2018; and (2) the dates the sheriff's department initially responded to each complaint. On July 2, 2018, you responded on behalf of the Department, asserting that the Department "does not have in its possession a record that identifies the dates of each citizen complaint," and that the requested records were exempt from disclosure under Government Code section 6254, subdivisions (f) and (k) and Penal Code section 832.5. However, these statutes do not exempt from disclosure the information requested by KPBS, and therefore do not justify non-disclosure.

The California Constitution (Cal. Const., Art. I, sec. 3, subd. (b)) and the California Public Records Act (Gov. Code § 6250 et seq., the "CPRA") provide the public and the press with the right to obtain public records, and require that the Department justify withholding records by demonstrating that they are exempt under express provisions of the CPRA 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. (Gov. Code § 6255, subd. (a); *International Fed. Of Prof. & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 329 ("[t]he party seeking to withhold public records bears the burden of demonstrating that an exception [in the CPRA] applies"); *Bakersfield City Sch. Dist. v. Superior Court* (2004) 118 Cal.App.4th 1041, 1045 ("burden of proof is on the proponent of nondisclosure to demonstrate a 'clear overbalance' on the side of confidentiality.") Furthermore, under California law, that "[a]ny reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted

by law.” (Gov. Code § 6253, subd. (a).) As the California Supreme Court has explained, this means that “[t]he fact that parts of a requested document fall within the terms of an exemption does not justify withholding the entire document.” (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 652.)

You have asserted that the requested records are exempt from disclosure under Government Code section 6254(f) (“Section 6254(f)”). They are not. First, Section 6254(f) does not apply. It pertains to “[r]ecords of complaints to, or investigations conducted by, or records of intelligence information or security procedures of . . . any 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.” The focus of this exemption is files compiled for the purpose of “criminal investigations.” (*Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271, 1276.) The California courts have recognized that Government Code section 6254 contains no exemption for “law enforcement personnel investigations.” (*City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1422.) As the citizen complaints that are the subject of the request are directed to the conduct of law enforcement personnel, not criminal investigations or law enforcement, they are not exempt under Section 6254(f). Furthermore, even if they were, the requested information would not be exempt. The only information sought is the date on which the complaint was made and the date of the Department’s initial response. Section 6254(f) requires the disclosure of this information: “Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information . . . 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” (Gov. Code § 6254, subd. (f)(2).) Disclosure of this information is mandatory. (See, e.g., *Williams v. Superior Court* (1993) 5 Cal.4th 337, 361.)

You have also asserted that the requested records are exempt from disclosure under Government Code section 6254(k) and Penal Code section 832.5. First, Penal Code section 832.5 does not impose a requirement that any records or information be kept confidential. I assume you intended to refer to Penal Code sections 832.7 and 832.8 (the “*Pitchess* statutes”). However, those statutes do not prohibit disclosure of the information requested by KPBS. On the contrary, the *Pitchess* statutes prohibit disclosure only of “the types of information enumerated in section 832.8.” (*Comm. on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 293 (“*POST*”). Accord, *Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 72 (“*Long Beach*”).) The categories of information enumerated in Penal Code section 832.8 do not include the dates of citizen complaints or of the initial responses thereto. The only category that could even arguably apply is the following: “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.” (Pen. Code § 832.8, subd. (e).) KPBS is not seeking the complaints themselves, or the contents of any investigation thereof. Furthermore, Penal Code section 832.7, which is the only *Pitchess* statute that imposes any requirement of confidentiality, expressly provides for the disclosure of “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.” (Pen. Code § 832.7, subd. (c).) This is precisely the type of information KPBS has requested.

The fact that the *Pitchess* statutes do not permit non-disclosure of the information KPBS has requested is further demonstrated by the decision in *Pasadena Police Officers Assn. v. Superior Court* (2015) 240 Cal.App.4th 268. In that case, the press sought disclosure of a report commissioned by the City of Pasadena into officer-involved shootings, which drew on the records of prior criminal and administrative (i.e., disciplinary) proceedings involving police officers. (*Id.*, at pp. 274-275.) The court held that while some of that information was exempt from disclosure under the *Pitchess* statutes, much of it—including information obtained from the administrative proceedings—was not, including “descriptions of the PPD’s responsiveness (or the absence thereof).” (*Id.*) The court recognized that, under *POST*, “information does not become confidential simply because it is derived from a personnel file that also contains confidential information.” (*Id.*, at p. 287.) Thus, “the fact that [a record] contains privileged information does not bestow protected status on the entire documents.” (*Id.*, at p. 289.) The court therefore required that information that had previously been redacted from the version of the report ordered by the trial court to be made public had to be disclosed under the CPRA, “including analysis of the PPD’s response to and handling of the investigation of the . . . shooting” (*Id.*, at p. 296.)

In light of this authoritative and binding interpretation of the CPRA, it is beyond reasonable dispute that the information requested by KPBS must be disclosed. The assertion that the Department does not “have in its possession a record that identifies the dates of each citizen complaint” is either evasive or simply incorrect. The Department does not and cannot dispute that it has records of each citizen complaint, and presumably of its initial response. The fact that this information for all such complaints from the beginning of 2011 to the present is not contained in a single record is beside the point. The Department still has an obligation to provide all reasonably segregable information contained in the records of the complaints and its responses thereto. (Gov. Code § 6253, subd. (a).)

I trust the requested records will now be promptly provided. Please contact me as soon as possible to let me know when they will be provided to KPBS. Please include Ms. Trageser in your communications with me, so that there will be no undue delay in KPBS receiving the requested information.

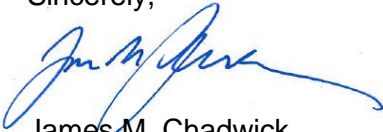
I believe the KPBS request is clear, and you have not indicated that you have any questions about what is being requested. However, if you believe that there is anything about the request that is not clear, I must remind you that under the CPRA, the Department has an obligation to assist the public in making effective requests for records, including the obligations to: (1) assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated; (2) describe the information technology and physical location in which the records exist, and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought. (Gov. Code § 6253.1, subd. (a).)

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If you still have any questions, please contact me before July 6, 2018 so that I can address them. If you cannot reach me, you can also contact my colleague, Matthew Halgren. My contact information is included above. Mr. Halgren can be reached at 619-338-6684.

Sincerely,



James M. Chadwick
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:486948789.1

cc: Ms. Claire Trageser, KPBS
Mr. Matthew Halgren, Sheppard Mullin