

LAW ENFORCEMENT INFORMATION ACCESS LAWS

What makes the audit-requested information public

POLICE/SHERIFFS' DEPARTMENTS

CRIME/INCIDENT INFORMATION

Government Code Section 6254 (f) (2)

“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:

“ . . . 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. The name of a victim of (a sexual assault, child abuse, spousal abuse, elder abuse or hate crime) 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.”

ARREST INFORMATION

Government Code Section 6254 (f) (1)

“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:

“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.”

Note: You will be asking for crime/incident and arrest *information*—the contents of the records or reports, whether provided by simply showing you these original documents (complete or redacted) or made available in some other form. The California Supreme Court has stated that the legislation creating the provisions quoted above “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).

ASSET FORFEITURE FUND AUDITS AND RELEASES TO DEPARTMENTS

Health and Safety Code Section 11495. (a)

“The funds received by the law enforcement agencies under Section 11489 shall be deposited into an account maintained by the Controller, county auditor, or city treasurer. These funds shall be distributed to the law enforcement agencies at their request. The Controller, auditor, or treasurer shall maintain a record of these disbursements which records shall be open to public inspection, subject to the privileges contained in Sections 1040, 1041, and 1042 of the Evidence Code.”

Note: As stated by Attorney General Bill Lockyer,

“The goal of asset forfeiture is to remove the profits from those who benefit from illegal drug trade. Illegal drug trafficking diverts money from lawful commerce to illegal activity. While drug seizures and arrests present a temporary setback for drug traffickers, asset forfeiture is effective in permanently taking away proceeds from these traffickers and diminishes their ability to continue the illegal enterprise. Asset forfeiture proceeds are used to fund education and drug abuse prevention programs. The law also permits law enforcement agencies to use the proceeds of forfeiture to purchase safe, more effective equipment that they otherwise could not afford. Thus, law enforcement is able to convert criminal profits into supplemental funding to inhibit the illegal drug trade.”

A full description of asset forfeiture fund management can be found at <http://www.oaklandnet.com/government/PolicePubs/GO%20PDF/F-06-15Aug00.pdf> This policy of the Oakland Police Department notes:

“Unlike federal programs under which federal agencies generally take custody of seized property and money, under state programs, local law enforcement agencies usually either retain custody of items subject to potential forfeiture or identify such items for potential forfeiture action. Consequently, state asset forfeiture programs place the burden of protecting seizures and the property rights of innocent parties on local law enforcement agencies.”

As for who gets what, under Health and Safety Code Section 11489 a portion of any court-declared forfeited cash or property proceeds not reverting to the “bona fide or innocent purchaser, conditional sales vendor, or mortgagee of the property” goes to one or more local law enforcement agencies that participated in the seizure. And of this share, under Section 11489 fifteen percent is to be set aside “for the sole purpose of funding programs designed to combat drug abuse and divert gang activity, and shall wherever possible involve educators, parents, community-based organizations and local businesses, and uniformed law enforcement officers. Those programs that have been evaluated as successful shall be given priority.”

OFFICER DISCIPLINE STATS

Penal Code Section 832.7 (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.”

Note: The “subdivision (a)” referred to is the rule that makes the contents of peace officer personnel files confidential and, consequently, exempt from disclosure under the California Public Records Act. Since the reporting governed by subdivision (c) is discretionary, not mandatory, the object of your request for it is to determine which departments, if any, are willing to share this bare-bones information with the public.

OFFICER SALARY SCHEDULE, OFFICER PAYROLL*, SECOND JOBS HELD BY OFFICERS*, OFFICERS’ WORK COMP STRESS CLAIMS *

* Showing individuals by rank but otherwise identified only by unique number, e.g. Captain 1, Captain 2, Captain 3 etc.

Note: No one contends that the salary schedule of any California government agency, including law enforcement departments, is confidential. If that were the case, departments could not present comparative salary data to argue for wage increases to keep up with the market. As for the three categories in which officer-specific data *are* requested, there is case law concluding that the actual compensation of identifiable peace officers is as confidential as other information derived from their personnel files—on privacy grounds. *City of Los Angeles v. Superior Court*, 111 Cal.App.4th 883 (2003); *Teamsters Local 856 v. Priceless, LLC*, 112 Cal.App.4th 1500 (2003). But this request avoids that contention by stipulating that specifically identifying information—name and even rank if the number of officers in a given rank is three or fewer—can be withheld

and substituted by numbers if necessary. If departments are going to balk at releasing even these anonymous figures, that is one outcome this audit is designed to expose.

POLICE CHIEF'S, SHERIFF'S FORM 700 STATEMENT OF ECONOMIC INTERESTS

Government Code Section 81008 (a)

“Every report and statement filed pursuant to this title is a public record open for public inspection and reproduction during regular business hours ... No conditions whatsoever shall be imposed upon persons desiring to inspect or reproduce reports and statements filed under this title, nor shall any information or identification be required of these persons. Copies shall be provided at a charge not to exceed ten cents (\$0.10) per page.”

Note: The Form 700 is required to be filed with the city or county clerk by police and sheriff's officers respectively. Your request asks to inspect the latest filings, a copy of which may or may not be kept within the department. Which (if any) other officers in these departments are required to file is set by local policy.

DEATH IN CUSTODY REPORTS

Government Code Section 12525

“In any case in which a person dies while in the custody of any law enforcement agency or while in custody in a local or state correctional facility in this state, the law enforcement agency or the agency in charge of the correctional facility shall report in writing to the Attorney General, within 10 days after the death, all facts in the possession of the law enforcement agency or agency in charge of the correctional facility concerning the death. These writings are public records within the meaning of subdivision (d) of Section 6252 of the California Public Records Act . . . , are open to public inspection pursuant to Sections 6253, 6256, 6257, and 6258. Nothing in this section shall permit the disclosure of confidential medical information that may have been submitted to the Attorney General's office in conjunction with the report . . .”

Note: Based on these accumulated reports the Attorney General has published a nine-year summary at

<http://ag.ca.gov/newsalerts/release.php?id=1196&year=2005&month=7&PHPSESSID=ba363f33cd151120cb467b9518f07173>

CHIEF'S, SHERIFF'S CONTRACT OF EMPLOYMENT

Government Code Section 6254.8.

“Every employment contract between a state or local agency and any public official or public employee is a public record which is not subject to the provisions of Sections 6254 and 6255.”