
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 978 **Hearing Date:** March 13, 2018
Author: Bradford
Version: February 1, 2018
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Law Enforcement Agencies: Public Records*

HISTORY

Source: California Public Defenders Association

Prior Legislation: SB 345 (Bradford), 2016 - vetoed

Support: American Civil Liberties Union of California, California New Publishers Association, Electronic Frontier Foundation

Opposition: California State Sheriffs' Association

PURPOSE

The purpose of this bill is to mandate that the Commission on Peace Officer Standards and Training (POST) and local law enforcement agencies to post policies and procedures on their websites, as specified.

Existing law, the California Constitution, declares the people's right to transparency in government. ("The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny....") (Cal. Const., art. I, Sec. 3.)

Under existing law the California Public Records Act generally provides that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Government Code § 6250 et. seq.)

Existing law provides that 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 provided. Any 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. (Government Code § 6253)

Under existing law there are 30 general categories of documents or information that are exempt from disclosure, essentially due to the character of the information, and unless it is shown that the public's interest in disclosure outweighs the public's interest in non-disclosure of the information, the exempt information may be withheld by the public agency with custody of the information. (Government Code § 6254 et seq.)

Under existing law California Public Records Act does not require disclosure of investigations conducted by the office of the Attorney General and the Department of Justice, the Office of Emergency Services 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. (Government Code § 6254(f).)

Existing law requires that any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the proportions that are exempted by law. (Government Code § 6253(a).)

Existing law, for records not subject to an exemption, may be withheld if the agency demonstrates 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. (Government Code § 6255.)

This bill requires the POST and every local law enforcement agencies to conspicuously post on their websites all current standards, policies, practices, operating procedures, and education and training materials that would otherwise be available to the public if a request was made pursuant to the California Public Records Act (CPRA).

This bill finds and declares the following:

- Law enforcement agencies, including the Commission on Peace Officer Standards and Training and local law enforcement agencies, establish standards of physical, mental, and moral fitness for peace officers, develop and implement programs to increase the effectiveness of law enforcement by peace officers, and provide ongoing education and training for peace officers.
- Law enforcement agencies have numerous sets of regulations, including, but not limited to, educational materials, manuals, policies, practices, and procedures, that guide employees in their duties. Regulations should be based on best policing policies and practices, current legal standards, and community safety needs.
- Currently, across California and the country, many local law enforcement agencies conspicuously post their training, policies, practices, and operating procedures on their Internet Web sites.
- Making regulations of law enforcement agencies easily accessible to the public helps educate the public about law enforcement policies, practices, and procedures, increases communication and community trust, and enhances transparency, while saving costs and labor associated with responding to individual requests for this information.

COMMENTS

1. Need for This Bill

According to the author:

Although existing law provides that members of the public may use CPRA to request an opportunity to inspect police department training, policies and procedures, there are currently wide gaps in compliance. Moreover, community groups and individuals have voiced frustration that these orders are not all currently available online. Unless these state and local regulations are publicly available online, individual state and local law enforcement agencies must spend considerable staffing and time to respond to requests for access to police regulations, which are already covered under CPRA.

This legislation is, essentially, *low hanging fruit*. It covers no more and no less than what is already covered by CPRA while (1) improving transparency in policing in the State of California, (2) saving law enforcement agencies valuable time and staffing, and (3) enhancing police-community relations consistent with Pres. Obama's Task Force on 21st Century Policing.

Last year, Sen. Bradford introduced a similar measure, SB 345, which was ultimately vetoed by Governor Brown. This year's bill directly and specifically is tailored to address Governor Brown's veto message that suggested "a more targeted and precise approach."

2. Effect of this Bill

On December 18, 2014, amid protests in Ferguson, Missouri, where a grand jury declined to criminally charge police officer Darren Wilson in the fatal shooting of Michael Brown, President Barack Obama signed an Executive Order establishing the Task Force on 21st Century Policing. "The mission of the task force was to examine how to foster strong, collaborative relationships between local law enforcement and the communities they protect and to make recommendations to the President on how policing practices can promote effective crime reduction while building public trust. The president selected members of the task force based on their ability to contribute to its mission because of their relevant perspective, experience, or subject matter expertise in policing, law enforcement and community relations, civil rights, and civil liberties." (U.S. Department of Justice's Office of Community Oriented Policing Service, *Interim Report of the President's Task Force on 21st Century Policing* (Mar. 2015), at 1.) ***In addressing the issue of transparency, the task force recommended that law enforcement agencies make all department policies available for public review.*** (*Id.* at 11.) This legislation implements this recommendation by requiring law enforcement agencies to post a variety of department policies on-line. The California Public Defenders Association, who is the sponsor of this legislation, explains:

The California Public Records Act, or "CPRA", requires each state and local agency to make its public records available for inspection by a member of the

public, unless the public record is specifically exempted from disclosure. (See e.g., “Summary of the California Public Records Act 2004,” California Attorney General’s Office, August 2004.)

On March 2, 2017, in a unanimous decision, the California Supreme Court emphasized the breadth and depth of CPRA in *City of San Jose v. Sup. Court (Smith)* (2017) 2 Cal.5th 608 [broad reading of CPRA includes private emails of public officials.] The Court highlighted CPRA’s strong presumption that all public records are open for inspection and copying, except those categories of records specifically designated as “exempt”¹ from disclosure. (Gov’t Code sections 6253(b), 6254):

“ ‘Given the strong public policy of the people’s right to information concerning the people’s business (Gov. Code, § 6250), and the constitutional mandate to construe statutes limiting the right of access narrowly (Cal. Const., art. I, § 3, subd. (b)(2)), “all public records are subject to disclosure unless the Legislature has *expressly* provided to the contrary.” ’ [Smith, supra, at p. 5, citing *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 166, emphasis in original.]

Existing law, through CPRA, provides the public with “identifiable public records,” (California Government Code Section 6253,) defined as information, rather than merely documents and files. *Police operating policies, procedures and training manuals are identifiable public records which are subject to disclosure through CPRA. (San Gabriel Tribune v. Superior Court (1983) 143Cal.App.3d 762, 774; Cook v. Craig (1976) 55 Cal.App.3d 773, 782.)*

Existing law, through CPRA, requires state and local governments to comply with requests for publicly available documents and requires state and local governments to pay in full the costs of those requests.

Existing law also provides that California Police Officer Standards and Training Commission (“POST”) set forth policies and procedures for most California peace officers. Existing law also requires most California law enforcement officers to obtain a California POST Basic Certificate within a certain amount of time in order to continue to exercise peace officer powers. (Penal Code section 830.1(a).) *However, existing law does not require the actual substantive content of this California POST training to be made currently publically available online, and such online materials are currently password protected and only available to members of law enforcement.*

Similarly, existing law allows individual California local law enforcement department to create their own regulations, including policies and procedures, training and department general orders. Theoretically, this allows for different law enforcement agencies to develop their own models and best practices. *However, existing law does not require the actual substantive content of these regulations to be made publicly available in a searchable format and kept current online, which makes it cumbersome for members of the public to access and compare these different models and practices.*

3. This Bill Narrows the Applicability of the Provisions Contained in SB 345 (Bradford)

In 2017 SB 345 (Bradford) was substantially similar to this bill. However, SB 345 was more broad in the application of the provisions to state agencies such as the Department of Alcoholic Beverage Control, the Department of the California Highway Patrol, the Department of Corrections and Rehabilitation, the Department of Fish and Wildlife, and the Department of Justice. Governor Brown vetoed SB 345 stating the following:

This bill is too broad in scope and vaguely drafted. I appreciate the author's desire for additional transparency of police practices and local law enforcement procedures, but I believe this goal can be accomplished with a more targeted and precise approach.

SB 978 is an attempt to narrow the scope of the bill to local law enforcement agencies and POST in order to address the concerns of the Governor as expressed in his veto message of SB 345.

4. Argument in Support

The California Public Defender's Association states:

By posting these policies online, law enforcement agencies cut down staff time and resources necessary to respond to each and every CPRA request. For example, the Seattle Office of Professional Accountability (OPA) notes many tangible benefits from the Seattle Police Department's (SPD) posting of its orders online. The OPA reported that media and citizen inquiries into police conduct are better informed because the public and news outlets can learn how the department operates prior to contacting the OPA or SPD. OPA can direct citizens to the website for examination of relevant policies at their convenience, and community outreach is made more meaningful by the ability to reference the publicly available manual.¹

Providing access to these local policies and procedures increases transparency by allowing members of the public to review policies and procedures that affect their encounters with local police. It also fosters better community relations by providing the public with information about each department's procedures and policies. Additionally, online access permits each law enforcement agency to display its own innovative policies in areas such as crowd control, prohibition against biased policing and language access. See, for example, this statement posted on the Santa Ana Police Department website:

The Santa Ana Police Department has numerous policies that guide its employees in their duties enhancing safety in our community. Policies are based on policing best practices, current legal standards and community safety needs. *The department strives to achieve the upmost transparency in providing public safety services to the community. Department policies ensure that the community has the opportunity to be well informed and that our police officers receive the most up to date guidance available in*

¹ See Washington, D.C.'s Police Complaint Board's Recommendation for Publication of MPD Orders on the Internet (July 14, 2005), p. 2, available at: http://policecomplaints.dc.gov/sites/default/files/dc/sites/police%20complaints/publication/attachments/policy_rec_mpd_general_orders.pdf

policing. We believe placing these policies in a location easily accessible to the community helps broaden communication and increase community trust. For more information or to contact the Training Division, call (714) 245-8089 or send an e-mail to TrainingCenter@santa-ana.org. (Emphasis added.)

Citizens, communities and law enforcement agencies each benefit by electronic access to police policies and procedures. Unnecessary costs, labor and paperwork associated with requests for these materials would be greatly reduced. By posting these policies online, law enforcement agencies significantly cut down staff time and resources necessary to respond to public record requests. Providing access to these policies and procedures on each Department's public website would increase transparency by allowing residents to review policies and procedures that affect their encounters with police. It also fosters better community relations by providing the public with information about each department's procedures and procedures. Additionally, online access would permit each law enforcement agency to display its own innovative policies in areas such as crowd control, prohibition against biased policing and language access. Finally, the only way communities can participate in the development and the evaluation of their police department's policies is to actually know what these policies, practices and trainings are. Electronic access to police policies and procedures is consistent with the goals of enhancing police-community relations and furthers procedural justice efforts set out in the President's Task Force on 21st Century Policing, Action Item 1.5.1: "In order to achieve external legitimacy, law enforcement agencies should involve the community in the process of developing and evaluating policies and procedures."²

This legislation will go a long way towards (1) improving transparency in policing in the State of California, (2) saving law enforcement agencies valuable time and staffing, and (3) enhancing police-community relations consistent with Pres. Obama's Task Force on 21st Century Policing.

For all of the foregoing reasons, the California Public Defenders Association strongly supports SB 345 and urges the legislature to pass this bill.

5. Argument in Opposition

According to the California State Sheriffs' Association,

The bill's ill-identified requirement could result in agencies pouring over thousands of documents to ascertain whether they would otherwise be disclosable under the PRA. Additionally, upon completion of that task, agencies will be saddled with yet another unfunded mandate to affirmatively make documents available that are already accessible by the public via alternative means.

While we understand the desire for additional transparency, SB 978 is simply another burdensome legislative mandate that will sap public funds, resources, and time.

² http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

-- END --

ⁱ CPRA's exemptions for "personnel...or similar files," "investigatory files" or "records of...investigations," and "records, the disclosure of which is exempted or prohibited pursuant to federal or state law" are the most relevant, and the exemptions most readily employed to protect confidential law enforcement related information. (Gov't Code sections 6254(c), (f), and (k).) Penal Code section 832.7 designates as confidential the contents of peace officer "personnel records," and any information "obtained from these records." Notably, none of these exemptions apply to state and local law enforcement training records (including California POST Training) and regulations, including procedural materials, policy and training manuals, and Department General Orders.