

RELEASE OF PUBLIC RECORDS

3.16.01 POLICY

This order describes definitions and overall procedures for employees to follow to ensure the Department's compliance with the California Public Records Act (CPRA), San Francisco's Sunshine Ordinance, and other applicable state and local laws regarding the release of public records. It is the policy of the San Francisco Police Department (Department) to accept all requests for public records, to provide a timely records determination, and promptly produce responsive records or justifications for nondisclosure of documents/information. In all cases, the burden is on the Department to justify nondisclosure.

3.16.02 DEFINITIONS

- A. **Public Record.** 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.
- B. **Writing.** Any handwriting, typewriting, printing, photo stating, 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.
- C. **Person.** "Persons" include corporations, partnerships, limited liability companies, firms, public agencies, or associations.

3.16.03 PROCEDURES

A. GENERAL INFORMATION

- 1. CPRA requests are fulfilled by the Legal Division, Media Relations, and the Crime Information Services Unit. No other unit within the Department is authorized to fulfill CPRA requests.
- 2. This general order provides overall guidance and information for Department members regarding CPRA's. Specific guidance for processing CPRA's will be found within each unit's manuals or orders.

B. RECEIVING CPRA REQUESTS

- 1. CPRA requests for records may be made at any time, orally or in writing, in person, through the mail, via e-mail, online, or over the telephone. There is no required request format. Employees, however, may ask that requestors use the Department's preferred CPRA request method, which is through the Department website.

- a. If a non-authorized Department employee believes that they have received a CPRA request, they must notify a member of SFPD Legal of the request by email by the end of their shift.
- b. Any person has a right to view and copy non-exempt public records. A person does not have to identify themselves and does not have to be involved in an incident to request records relating to it.

C. RESPONDING TO A CPRA

1. The Department must respond to all requests for records, even those requests that do not reasonably describe an identifiable record, where the requested records do not exist, or if the requested record is exempt from disclosure.
2. The Department cannot deny or limit access to records based upon the requestor's purpose or motivation.
3. There are two types of CPRA requests: General and Immediate Disclosure. The type of request governs the Department's response time
 - a. General Requests.
 1. The Department must respond no later than ten (10) calendar days from the receipt of the request. The 10-day response period starts with the first calendar day after the date of receipt. Weekends and holidays are excluded.
 2. The Department may extend the 10-day response period for up to fourteen (14) additional calendar days in order:
 - i. To search for and collect the requested records from facilities or other establishments separate from the office processing the request;
 - ii. To search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request;
 - iii. To consult with agency(s) having a substantial interest in the request, or among two or more parts of the Department with substantial interest in the request;
 - iv. To compile data or to construct a computer report to extract data.
 3. Invoking the 14-day extension must be done in writing and state the reasons for the extension as well as the expected date on which a determination is to be dispatched.
 - b. Immediate Disclosure Requests
 1. Under the Sunshine Ordinance, certain record requests are exempt from the general timelines. "Immediate Disclosure Requests" are for records that are "simple, routine, or otherwise readily answerable." Examples are Department General Orders, blank Department Forms, a member's work email address, etc.
 2. To be considered an "Immediate Disclosure Request" the requester must identify the request specifically as an "Immediate Disclosure Request" within the request.

3. If these conditions are met, the Department must respond and provide the record no later than the close of business on the day following the request.
4. The Department's response must provide the following information:
 - a. Whether the requested records exist;
 - b. Whether the Department will release any of the requested records and, if so, when and how;
 - c. The legal reasons for withholding any requested records or information contained in those records
5. The Department's timeline in responding to a CPRA is different than producing responsive records. The Department may provide responsive records during the initial response if those records are available. If responsive records require further time to produce, the Department must communicate with the requestor regarding the timeline of production.

D. RESEARCHING A CPRA REQUEST

1. The Department must make a reasonable effort to search for and locate responsive records. Upon receipt of a CPRA request, all persons or units that would likely be in possession of responsive records should be consulted to locate the records. Legal/Media Relations/CISU may contact outside units or employees throughout the Department to research or obtain records to fulfill requests. Employees contacted regarding a CPRA shall assist those units in fulfilling requests by either
 - a. Providing requested documents
 - b. Providing requested information
 - c. Approving the release of documents or information
 - d. Directing the unit fulfilling the CPRA to the correct source to obtain responsive documents or information.
2. CPRA applies only to existing records, it does not require an agency to create a record that does not exist at the time of the request. [Haynie v. Superior Court (2001) 26 Cal. 4th 1061, 1075]. Additionally, a request cannot compel the Department to provide a standing or continuing request for documents that are generated in the future.

E. PRODUCING RECORDS FOR CPRA

1. Legal/Media Relations/CISU shall disclose responsive records as soon as reasonably possible. Where applicable, responsive records shall be produced on a rolling basis and as soon as possible by the end of the same day they are reviewed and collected. [SF Admin code 67.25(d)]
2. Information that must be released:
 - a. Incident reports to the victims (or their representatives) of domestic violence, sexual assault, stalking, human trafficking, or elder abuse. [Fam. Code § 6228]

- b. Records pertaining to any investigation, arrest, or other law enforcement activity must be disclosed once the District Attorney or court determines that a prosecution will not be sought or once the statute of limitations for filing charges expires, whichever occurs first. [Admin. Code § 67.24(d)] The following information, however, must be released, so long as release is not otherwise prohibited or would endanger the safety of a person involved in the investigation or the successful completion of the investigation:
1. The full name and occupation of every individual arrested by the Department.
 2. The individual's physical description including date of, color of eyes and hair, sex, height, and weight.
 3. The time and date of the arrest.
 4. The time and date of booking.
 5. The location of the arrest.
 6. The factual circumstances surrounding the arrest.
 7. The amount of bail set.
 8. The time and manner of release or the location where the individual is currently being held.
 9. All the charges the individual is being held upon, including any outstanding warrants from other jurisdictions, parole holds, and probation holds.
 10. The time, date, and location of occurrence.
 11. The time and date of the report.
 12. The name and age of the victim.
 13. The factual circumstances surrounding the crime or incident.
 14. A general description of any injuries, property, or weapons involved.
3. Some records contain information that must be disclosed, along with information that is exempt from disclosure. The Department has a duty to provide such a record to the requestor in redacted form.
 4. Redactions must be consistent with the CPRA and the San Francisco Sunshine Ordinance. Whenever the Department redacts a record, the specific exemption must be cited in the response or production. The person who authorizes the release of a record is responsible for ensuring that the record is properly redacted.
 5. The CPRA, along with other laws, contains numerous disclosure exemptions which cannot entirely be captured here. Common exemptions are described below.
 - a. California Law Enforcement Telecommunications Systems (CLETS). [Cal. Penal Code 11076, 11105(b)]
 - b. Information that would endanger the safety of a person involved in an investigation. [Cal. Gov. Code § 7923.615(a)(1), S.F. Admin. Code § 67.24(d)]
 - c. The address or telephone number of any victim or witness. [Cal. Pen. Code § 841.5(a)]

- d. The name of any victim of a sexual assault, domestic violence, or stalking who requests that it not be disclosed. [Cal. Gov. Code § 7923.615(b)(1)]
 - e. Any report regarding child abuse made confidential by Penal Code sections 11167 and 11167.5, or any report regarding assaultive or abusive conduct made confidential by Penal Code section 11163.2(b) and Welf. & Inst. Code §§ 15633.5(b)
 - f. Medical information constituting an unwarranted invasion of privacy, including the name and address of any person detained pursuant to Welfare & Institutions Code section 5150. [Cal. Gov. Code § 7927.700, Welf. & Inst. Code §§ 5328]
 - g. Records or information relating to the detention or arrest of a minor. [Welf. & Inst. Code §§ 827, 828]
 - h. Vehicle collision reports are disclosable only to persons with a proper interest therein, including the drivers involved, any injured person, the owners of the vehicles or property damaged, persons exposed to civil liability, and any attorney who declares under penalty of perjury that they represent any of the above persons. [Cal. Veh. Code §§ 16005, 20012]
 - i. Peace officer personnel records, including internal affairs investigation reports, with the exemption of specific categories of misconduct or uses of force. [Pen. Code § 832.7(a)]
 - j. Records of investigations conducted by any state or local police agency. [Cal. Gov. Code § 7923.600(a)]
 - k. Security procedures, including secret investigative techniques. [Cal. Gov. Code § 7923.600(a); S.F. Administrative Code § 67.24(d)]
 - l. Records pertaining to pending litigation to which the Department is a party, until the pending litigation has been finally adjudicated or otherwise settled. [Gov. Code § 7927.200(a)]
 - m. Preliminary drafts, notes, or interagency or interagency memoranda that are not retained by the Department in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure. [Gov. Code § 7927.500]
6. The above are not the only laws allowing for redactions. Laws are also subject to change by the Legislature and by judicial review. Nothing in this General Order restricts employees from using the most current law if any are repealed or replaced. If you are preparing a record for release and have questions regarding redaction, you may contact Legal/Media Relations/CISU for guidance.

F. COMMON ISSUES FOUND IN CPRA REQUESTS

1. CPRA requests that are vague or do not clearly identify a responsive record. A CPRA request from a member of the public must be sufficiently specific and focused, such that it reasonably describes an identifiable record or categories of records to help the Department to determine whether it possesses the records described. [Gov. Code § 7922.530(a)]. The Department has a duty to help

- requesters by helping them identify records and information that fulfills their request. [Gov. Code § 7922.600].
2. CPRA requests for records that are not maintained by the Department still require a response. Legal/Media Relations/CISU must direct the requestor to the proper office or person who can provide such records (S.F. Administrative Code § 67.21(c)]
 3. CPRA requests that require the Department to search an enormous volume of data for a “needle in the haystack” or requests that compel the production of a huge volume of material which would be objectionable as unduly burdensome. [*Cal. First Am. Coalition v. Superior Court*, 67 Cal.App.4th 159, 166 (1998)]. In such circumstances, Legal/Media Relations/CISU shall work with the requester to attempt to narrow the request.
 4. CPRA records once disclosed to one member of the public, are generally available upon request to all members of the public. [Gov. Code § 7921.505.]
 - a. Certain disclosures made by the Department—such as confidential disclosures made to another governmental agency in connection with the performance of official duties, or disclosures made in a legal proceeding or otherwise required by law—are not considered disclosures to members of the public under CPRA, and therefore do not constitute a waiver of exempt material. [Gov. Code § 7921.505]