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13  
 14  
 15 **SUPERIOR COURT OF CALIFORNIA**  
 16 **COUNTY OF ALAMEDA**

17 **Berkeleyside, and**  
**American Civil Liberties Union of**  
 18 **Northern California**  
 Plaintiffs,  
 19  
 v.  
 20 **City of Berkeley,**  
 21 Defendant.

Case No. \_\_\_\_\_  
**Verified Petition for Writ of Mandate And**  
**Complaint for Equitable Relief to Enforce**  
**California Public Records Act**  
 By fax  
 Judge:  
 Department:

**FILED BY FAX**  
 ALAMEDA COUNTY  
 January 30, 2019  
 CLERK OF  
 THE SUPERIOR COURT  
 By Cheryl Clark, Deputy  
 CASE NUMBER:  
**RG19004749**

- 1 1. Before this year, public access to peace-officer personnel files and other documents related to the  
2 conduct of California peace officers was extremely limited. But as of January 1, 2019, certain peace-  
3 officer personnel files relating to discharge of a firearm, the use of force, sexual misconduct, and  
4 dishonesty are no longer confidential; instead, these records “shall be made available for public  
5 inspection pursuant to the California Public Records Act [PRA]” “notwithstanding ... any other  
6 law.” Penal Code § 827(b)(1), as amended by Stats. 2018, ch. 988 § 2 (Senate Bill 1421).
- 7  
8 2. Although the language of this statute, the law’s legislative history, and longstanding legal principles  
9 make it clear that these new provisions apply to all existing records regardless of when those records  
10 were originally created, the City of Berkeley has refused to release any records covered by the new  
11 law that “predate” January 1, 2019.
- 12 3. Specifically, on January 2, 2019 Plaintiff Berkeleyside requested some of the records now available  
13 under the PRA after passage of SB 1421 from Defendant City of Berkeley. On January 18, the  
14 Berkeley City Attorney responded, asserting that the new law does not require disclosure of records  
15 created before January 1, and that the City therefore would not comply with the request.
- 16 4. Although the City has since tried to walk-back its assertion that the new law does not require  
17 production of pre-existing records, it is still refusing to provide any of these records within the  
18 deadlines mandated by the Public Records Act, instead stating that it will notify Berkeleyside “if the  
19 request seeks copies of disclosable public records in the City’s possession by not later than February  
20 11, 2019.”
- 21  
22 5. Similarly, on or about January 1, 2019, a request was submitted to the City on behalf of Plaintiff  
23 American Civil Liberties Union of Northern California, asking for a broad array of documents going  
24 back to 2009—and in some cases 1999—that are available because of the passage of SB 1421. The City  
25 responded by asserting that the new law does not require production of records predating January  
26 2019, and that in any event it had searched as far back as 2014 and not located any responsive  
27 records.

- 1 6. The ACLU wrote back, asserting that the City was incorrect that it need not produce documents prior  
2 to January 1 and asking for information about why the City had only searched records going back to  
3 2014, when the request was for a broader range of records.
- 4 7. The following day, January 25, the Berkeley City Attorney responded to this letter, stating that her  
5 “office is evaluating the applicability of SB 1421 to records created before January 1, 2019.” This  
6 response asked for “an opportunity to complete our analysis” but did not provide any records, state  
7 that any records would be provided, explain why the City had only searched for 5 years of records, or  
8 provide any date by which any of this information would be provided.
- 9 8. The City’s responses to these requests violate the Public Records Act. The initial responses are  
10 improper because the passage of SB 1421 makes the responsive documents in the possession of the  
11 City disclosable under the PRA and because the City attempted to limit the scope of the requests to a  
12 5-year period, making it impossible to know whether there were responsive records predating that  
13 period. Plaintiff ACLU is also concerned that the City did not do an adequate search because there  
14 appear to be responsive documents from the last 5 years. For example, a letter from the National  
15 Lawyers Guild to the City that was made part of a City Council agenda complains that a “protester  
16 sustained a broken clavicle when he was forcefully tackled by an officer” sometime after 2014.<sup>1</sup>
- 17 9. The City’s subsequent responses are improper because they violate the law’s requirement that the  
18 government decide, and inform the requestor, whether it will comply with the request within 10, or at  
19 most 24, calendar days after receiving a request. Gov’t Code § 6253(c). They also violate the Act’s  
20 prohibitions against permitting an agency to “delay or obstruct the inspection or copying of public  
21 records.” Gov’t Code § 6253(d).
- 22  
23

24 \_\_\_\_\_  
25 <sup>1</sup> August 24, 2018, Open Letter to Berkeley Mayor Arreguin, City Council, City Attorney, and  
26 Police Department, available at  
27 [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/09\\_Sep/Documents/9-25-  
28 2018\\_Item\\_D\\_Policy\\_Limiting\\_the\\_Publishing\\_of\\_Photos\\_\(doxing\)\\_of\\_people\\_arrested.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/09_Sep/Documents/9-25-2018_Item_D_Policy_Limiting_the_Publishing_of_Photos_(doxing)_of_people_arrested.aspx);  
see also Berkeley City Council September 25, 2018, Regular Meeting eAgenda Item D, available at  
[https://www.cityofberkeley.info/Clerk/City\\_Council/2018/09\\_Sep/City\\_Council\\_09-25-2018\\_-  
Regular\\_Meeting\\_Agenda.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/09_Sep/City_Council_09-25-2018_-_Regular_Meeting_Agenda.aspx)

1 10. Plaintiffs therefore ask the Court to order the City to release the records they requested, regardless of  
2 when they were created, allowing it to withhold only those portions that the current law makes  
3 exempt from disclosure. They also ask the Court to declare that the City violated the PRA by failing  
4 to conduct searches based on the time frame set forth in the requests, by unilaterally giving itself  
5 until February 11 to decide whether to comply with Berkeleyside’s January 2 request, and by failing  
6 to provide the ACLU-NC with any compliance date. If necessary, the Court should enjoin the City  
7 from committing similar violations in the future.  
8

9 **Parties<sup>2</sup>**

10 11. Plaintiff Berkeleyside is an independently owned online news organization, incorporated as a benefit  
11 corporation in, and under the laws of, California. As its name suggests, its reporting focuses on  
12 Berkeley and other parts of the East Bay. In 2018, Berkeleyside’s website,  
13 <https://www.berkeleyside.com>, averaged 900,000 pageviews, and about 270,000 unique visitors,  
14 each month. It routinely publishes articles on the Berkeley Police Department and has reported on its  
15 lack of transparency. *See, e.g.,* Emilie Raguso, *Police Review Commission to Berkeley police: Show*  
16 *us the data* (May 26, 2017).<sup>3</sup>

17 12. Plaintiff American Civil Liberties Union of Northern California (“ACLU”) is a non-profit  
18 corporation that defends the fundamental rights outlined in the United States Constitution and the  
19 Bill of Rights.  
20

21 13. Berkeleyside and the ACLU are members of the public under Government Code §§ 6252 and are  
22 beneficially interested in the outcome of these proceedings; they have a clear, present and substantial  
23 right to the relief sought herein and no plain, speedy and adequate remedy at law other than that  
24 sought herein.  
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26 <sup>2</sup> This Petition and Complaint refers to the parties as Plaintiffs and Defendants as authorized by Code  
27 of Civil Procedure § 1063.

28 <sup>3</sup> available at <https://www.berkeleyside.com/2017/05/26/prc-berkeley-police-show-us-data>

1 14. Defendant City of Berkeley (“City”) is a public agency within the meaning of Government Code  
2 § 6252(d) and is the parent entity of the Berkeley Police Department.

3 15. Defendant prepared and possesses the records sought by this Petition.  
4

### 5 **Jurisdiction and Venue**

6 16. This Court has jurisdiction under Government Code §§ 6258, 6259, Code of Civil Procedure §§ 1060  
7 and 1085, and Article VI section 10 of the California Constitution.

8 17. Venue is proper in this Court: The records in question, or some portion of them, are situated in this  
9 County. *See* Gov. Code § 6259(a); Code Civ. Proc. § 401(1). In addition, the Defendants reside in,  
10 and the acts and omissions complained of herein occurred in, this County. *See* Code Civ. Proc.  
11 §§ 393, 395(a).

### 12 **The California Public Records Act and SB 1421’s New Disclosure Requirements**

13 18. Under the California Public Records Act, Government Code §§ 6250 *et seq.* (“PRA”), all records that  
14 are prepared, owned, used, or retained by any public agency must be made publicly available for  
15 inspection and copying upon request, unless they are exempt from disclosure. Gov. Code §§ 6253(a)  
16 and (b), 6252(e). If documents contain both exempt and non-exempt material, the government must  
17 disclose all non-exempt material. *Id.* § 6253(a).

18 19. The PRA contains strict deadlines for the government’s responses to a request for records. An agency  
19 that receives a request “shall, within 10 days from receipt of the request, determine whether the  
20 request, in whole or in part, seeks copies of disclosable public records in the possession of the agency  
21 and shall promptly notify the person making the request of the determination and the reasons  
22 therefor.” Gov’t Code § 6253(c).

23 20. “In unusual circumstances,” as defined by the statute, the agency may extend this time limit “by  
24 written notice ... to the person making the request, setting forth the reasons for the extension and the  
25 date on which a determination is expected to be dispatched. No notice shall specify a date that would  
26  
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28

1 result in an extension for more than 14 days.” *Id.*; *see id.* § 6253(c)(1)-(4) (defining “unusual  
2 circumstances”).

3 21. Prior to the enactment of S.B. 1421, PRA requests for peace officer personnel records – defined as all  
4 records related to the “advancement, appraisal and discipline” of peace officers – were exempt from  
5 disclosure. Penal Code § 832.7, 832.8; Gov. Code § 6254(k). This exemption included public records  
6 regarding investigations into police shootings and other serious uses of force, or allegations of  
7 serious misconduct – even when the agency had concluded that the officer had engaged in  
8 misconduct. *City of Hemet v. Superior Court*, 37 Cal. App. 4th 1411, 1431 (1995). But it did not  
9 include records generated when an agency decided on its own to investigate possible officer  
10 misconduct. *Pasadena Police Officers Assn. v. Superior Court*, 240 Cal. App. 4th 268, 274 (2015).

11  
12 22. Thus, for example, the City of Pasadena commissioned an investigation into a 2012 officer-involved  
13 shooting. The resulting report included detailed descriptions of the conduct of each of the officers  
14 involved and a discussion of the administrative and executive reviews of the shooting. After  
15 extensive litigation, *see id.*, it released the report, including the names of each of the officers  
16 involved, with only minor redactions. *See Report to the City of Pasadena Concerning the Officer-*  
17 *Involved Shooting of Kendrec McDade*.<sup>4</sup>

18  
19 23. Similarly, after the notorious incident in which a UC Davis Police Officer used pepper spray on a  
20 group of seated student demonstrators, the University commissioned a report on the incident that  
21 included the names of the officers involved, what each of them had done, and a critique of their  
22 actions. *See U.C. Davis November 18, 2011 “Pepper Spray Incident” Task Force Report* (March  
23 2012).<sup>5</sup> After litigation in this Court and in the Court of Appeal, that report was released in its  
24 entirely.

25  
26 <sup>4</sup> Available at [https://www.documentcloud.org/documents/2515384-redacted-oir-report-approved-](https://www.documentcloud.org/documents/2515384-redacted-oir-report-approved-for-release-in.html)  
27 [for-release-in.html](https://www.documentcloud.org/documents/2515384-redacted-oir-report-approved-for-release-in.html)

28 <sup>5</sup> Available at [http://demonstrationreviews.ucdavis.edu/local\\_resources/pdf\\_documents/reynoso-](http://demonstrationreviews.ucdavis.edu/local_resources/pdf_documents/reynoso-report.pdf)  
[report.pdf](http://demonstrationreviews.ucdavis.edu/local_resources/pdf_documents/reynoso-report.pdf).

1 24. However, these types of reports are rarely commissioned. But because Penal Code § 832.5(a)  
2 requires law-enforcement agencies to investigate complaints by members of the public, these  
3 incidents are instead the subject of internal investigations that were, until this year, confidential, and  
4 would be made public only in limited circumstances. As a result, Californians were unable to obtain  
5 many records relating to these and other police-related incidents.

6  
7 25. In 2018, the Legislature enacted Senate Bill No. 1421 to address this situation, emphasizing that  
8 “[t]he public has a right to know all about serious police misconduct, as well as about officer-  
9 involved shootings and other serious uses of force.” Stats 2018 Chapt. 988 § 1 (declarations and  
10 findings).

11 26. This new law, effective January 1, 2019, provides broad public access to records that were previously  
12 released only in limited circumstances.

13 27. Specifically, the law amended Penal Code § 832.7(b)(1) to require that “[n]otwithstanding ... any  
14 other law, the following peace officer or custodial officer personnel records and records maintained  
15 by any state or local agency shall not be confidential and shall be made available for public  
16 inspection pursuant to the California Public Records Act ...:

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

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

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

22 (B)(i) Any record relating to an incident in which a sustained finding was made by any law  
23 enforcement agency or oversight agency that a peace officer or custodial officer engaged in  
24 sexual assault involving a member of the public.  
25

26 ....  
27  
28

1 (C) Any record relating to an incident in which a sustained finding was made by any law  
2 enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer  
3 directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to  
4 the reporting of, or investigation of misconduct by, another peace officer or custodial officer,  
5 including, but not limited to, any sustained finding of perjury, false statements, filing false  
6 reports, destruction, falsifying, or concealing of evidence.  
7

8 28. The new law specifies that agencies must release a broad range of records relating to these incidents.

9 *See* Penal Code § 832.7(b)(2).

10 29. At the same time, the new law allows agencies to redact or withhold records when necessary to  
11 protect personal privacy, to ensure that release does not interfere with specified judicial or  
12 administrative proceedings, or when the public interest in non-disclosure clearly outweighs the public  
13 interest in disclosure. *See* Penal Code § 832.7(b)(5)-(7).

14 30. The law additionally prohibits the release of complaints that are frivolous or unfounded. Penal Code  
15 § 832.7(b)(8).

### 16 **The City's Record Retention Schedule**

17 31. Berkeley posts its current Citywide Records Retention Schedules online at

18 [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_Records/2018%20Records%20Retention%20Schedule%20web.pdf)  
19 [\\_Records/2018%20Records%20Retention%20Schedule%20web.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_Records/2018%20Records%20Retention%20Schedule%20web.pdf)  
20

21 32. These schedules “set the mandatory minimum retention periods for the record copy of these  
22 documents.” *Id.* at 2. They require the City to maintain some of the records at issue in this case for  
23 far more than 5 years.

24 33. For example, the Office of the Police Chief is required to retain records of “internal affairs  
25 investigations and complaint investigations” for a total of 9 years, 5 years “in office” and an  
26 additional 4 years in off-site storage. *Id.* at 69 (Police schedule page 1 of 5); *see id.* at 4 (Off-site  
27  
28

1 storage means “in an off-site records center maintained specifically for high-density storage of  
2 inactive and permanent records.”).

3 34. Moreover, “civilian complaints investigated by the PRC [Police Review Commission] must be  
4 retained *permanently* in storage.” *Id.* at 36 (City Manager schedule page 2 of 3) (emphasis added).

5 35. The Berkeley Police Review Commission investigates and makes findings and reports relating to  
6 complaints about Berkeley police officers. *See generally* City of Berkeley Regulations for Handling  
7 Complaints Against Members of the Police Department §§ II, III, VI-VIII (April 4, 2018).<sup>6</sup>

8 36. Because SB 1421 requires the disclosure not just of “personnel records” but also of “records  
9 maintained by any ... local agency” relating to the “report, investigation, or findings” of the covered  
10 firearms discharge, use of force, dishonesty, and other covered conduct, PRC records are covered and  
11 are responsive to the requests. *See* Penal Code § 832.7(b); *see also id.* § 832.7(b)(1)(B), (C) (records  
12 in which oversight agency made sustained finding must be disclosed).

13 37. The schedule also require retention of, for example, Documents that are the subject of a PRA request  
14 or involved in current litigation may not be destroyed. *Id.* at 3.

15  
16 **Plaintiff Berkeleyside’s Request and Defendants’ Response**

17 38. On January 2, 2019, Berkeleyside Senior Reporter Emilie Raguso emailed a request to Defendant  
18 City of Berkeley on behalf of Berkeleyside asking for “[f]rom January 1, 2012, through the present,  
19 any documents relating to the following:

20 (1) Incidents involving the discharge of a firearm at a person by a peace officer;

21 (2) Incidents involving the use of force by a peace officer against a person, resulting in death or  
22 great bodily injury;

23  
24  
25  
26  
27 <sup>6</sup> Available at  
28 [https://www.cityofberkeley.info/uploadedFiles/Police\\_Review\\_Commission/Commissions/2018/PRC%20Regulations%204.4.2018.pdf](https://www.cityofberkeley.info/uploadedFiles/Police_Review_Commission/Commissions/2018/PRC%20Regulations%204.4.2018.pdf)

1 (3) Incidents in which a sustained finding was made by any law enforcement agency or oversight  
2 agency that a peace officer or custodial officer engaged in sexual assault involving a member  
3 of the public;

4 (4) Incidents in which a sustained finding was made by any law enforcement agency or oversight  
5 agency of dishonesty by a peace officer or custodial officer directly relating to the reporting,  
6 investigation, or prosecution of a crime, or directly relating to the reporting of, or  
7 investigation of misconduct by, another peace officer or custodial officer, including, but not  
8 limited to, any sustained finding of perjury, false statements, filing false reports, destruction,  
9 falsifying, or concealing of evidence.  
10

11 *See Exhibit A.*

12 39. The request asked for a determination within 10 days. *Id.*

13 40. On January 9, the City acknowledge that it had received this request on January 2. *See Exhibit B.*

14 41. On January 14, 2019, the City emailed Raguso to inform her that it was extending its time limit to  
15 respond until January 28, based on its need to consult. *See Exhibit B.*

16 42. Later that day, Raguso sent a supplemental request to the city, setting forth in more detail the records  
17 she was seeking. *See Exhibit B.*

18 43. On January 18, the Berkeley City Attorney's Office sent a letter to Raguso in response to the two  
19 requests. *See Exhibit C.*

20 44. This letter stated that "the amendments to Penal Code section 832.7, effective January 1, 2019, do  
21 not apply retroactively, and therefore records predating January 1, 2019 are confidential personnel  
22 records and exempt from disclosure." The letter also indicated that the City had searched for records  
23 "going back 5 years" and had determined that there were no responsive records relating to sexual  
24 assault or dishonesty during that time period. It did, however, indicate that there are records from this  
25 time period relating to the use of force by an officer, but refused to release them on the grounds that  
26 they pre-dated January 1, 2019. *See id.*  
27  
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- 1 45. This letter did not indicate why the City had only searched for 5 years of records, when the request  
2 asked for records going back 7 years. Although the City may be allowed to destroy some peace-  
3 officer disciplinary records after 5 years, it must nevertheless search any older records in its  
4 possession in response to a request for them.
- 5 46. The letter concluded by stating that “staff has completed its work to process and respond to your  
6 [PRA] request.” *See id.*
- 7 47. On January 24, after communications between Raguso and the City, Berkeley City Attorney Farimah  
8 Brown sent a letter to Raguso stating that the City was “evaluating the applicability of SB 142 to  
9 records created before January 1, 2019,” and that it would notify Raguso by February 11, 2019, if it  
10 had disclosable records. The letter did not indicate why the City believed it could delay making this  
11 notification until February 11, 40 days after the initial request and 28 days after the supplemental  
12 request, when the PRA requires a determination within 10, or in some cases 24, days. *See Exhibit D;*  
13 *Gov. Code § 6253(c).*
- 14 48. Later on January 24, Raguso responded by email to the City, thanking staff for the response but  
15 noting that “[w]e did make our original request Jan. 2 and renew our request for a determination on  
16 whether the city will provide the existing documents within the time frame set by the Public Records  
17 Act.” *See Exhibit D.*
- 18 49. As of the verification of this Complaint, the City has not responded to this latest email.
- 19 50. The City’s failure to make a final determination of whether it would comply with the PRA request  
20 within the statutory time limits was unlawful, as was the City’s failure to state in its January 24 letter  
21 any unusual circumstances to justify its delay beyond the initial 10-day deadline.
- 22 51. The City’s failure to conduct a search based on the timeframe set forth by Berkeleyside, and instead  
23 to search only 5 years of records, violated the PRA.
- 24 52. The City takes the position that its treatment of Berkeleyside’s PRA requests in this matter was  
25 proper.  
26  
27  
28

1 53. The City has neither provided any records nor notified Raguso that it will provide any records.

2 **Plaintiff ACLU’s Request and Defendants’ Response**

3 54. On or about January 1, 2019, the American Civil Liberties Union of California’s Director of Police  
4 Practices sent a request to the City on behalf of Plaintiff ACLU and other non-profit organizations.  
5 *See* Exhibit E. This request asked for a broad array of records that, the letter explained, were newly  
6 available under SB 1421. *Id.* It set forth a number of requested categories and asked the City to  
7 prioritize some of them, such as decisional documents since 1999 relating to uses of force resulting in  
8 death and records relating to findings of dishonesty. *Id.* at 3-4.

9  
10 55. On January 16, the City responded, stating that would deny the request because it did not believe that  
11 the new law applies to “records predating January 1, 2019,” and that in any event it had searched for  
12 records from January 1, 2014 to December 31, 2019, and had “determined that it has no records  
13 responsive to this request.” *See* Exhibit F. The letter did not explain why it had limited its search to  
14 this 5-year period, or what it meant by this limitation. The limitation presumably would have meant,  
15 for example, that the City did not look for records relating to a June 28, 2010 incident in which  
16 Berkeley Police officers reportedly shot and killed a man who had fired at them. *See* Henry K. Lee,  
17 *Berkeley Cops Shoot, Kill Armed Hit-Run Suspect*, S.F. Chronicle June 30, 2010.<sup>7</sup>

18  
19 56. On January 24, the ACLU wrote back to the City, explaining that the City was wrong in asserting the  
20 records predating January 1, 2019 remain exempt from disclosure and asking that the City withdraw  
21 that claim as a reason for nondisclosure. *See* Exhibit G. This letter also asked the City to notify the  
22 ACLU as to whether it had responsive records predating 2014. *Id.*

23 57. On January 25, the City responded to this letter in an email as follows: “We have received your letter  
24 dated January 24, 2019. Please note that our office is evaluating the applicability of SB 1421 to  
25 records created before January 1, 2019. We ask that you provide us an opportunity to complete our  
26 analysis.” *See* Exhibit H.

27  
28 1. <sup>7</sup> available at <https://www.sfchronicle.com/bayarea/article/Berkeley-cops-shoot-kill-armed-hit-run-suspect-3259853.php>

1 58. The ACLU has not received any of the records it requested, nor has it received any indication of  
2 when the City will make a final determination of whether to disclose any records.

3 59. The City takes the position that its treatment of the ACLU's PRA requests in this matter was proper.  
4

5 **List of Exhibits**

6 60. Exhibit A to this Petition is an accurate copy of Berkeleyside's January 2, 2019 PRA request to  
7 Defendant City.

8 61. Exhibit B to this Petition is an accurate copy of an email chain containing the City's January 9 and  
9 January 14 response to Berkeleyside's PRA request, as well as Berkeleyside's January 14  
10 supplemental request.

11 62. Exhibit C to this Petition is an accurate copy of the City's January 18 response to Berkeleyside's  
12 PRA requests.

13 63. Exhibit D to this Petition is an accurate copy of the City's January 24 response to Berkeleyside's  
14 PRA requests.

15 64. Exhibit E to this Petition is an accurate copy of the PRA request submitted on or about January 1,  
16 2019, on behalf of Plaintiff ACLU.

17 65. Exhibit F to this Petition is an accurate copy of the City's January 16 response to Exhibit E.

18 66. Exhibit G to this Petition is an accurate copy of the ACLU's January 24 response to the City.

19 67. Exhibit H to this Petition is an accurate copy of an email chain containing the City's January 25  
20 response to the ACLU.  
21

22 **FIRST CAUSE OF ACTION**  
23 **Violations of the California Public Records Act and**  
24 **Article I, § 3 of the California Constitution**

(Plaintiffs Berkeleyside and ACLU v. Defendant City of Berkeley)

25 68. Plaintiffs incorporate herein by reference the above allegations, as if set forth in full.

26 69. The PRA and California Constitution require the disclosure of the requested records in whole or in  
27 part.  
28

1 70. Defendants' failure to provide the requested records violates the PRA and Article I, § 3 of the  
2 California Constitution.

3 **SECOND CAUSE OF ACTION**  
4 **Violations of the California Public Records Act and**  
5 **Article I, § 3 of the California Constitution**

6 (Plaintiffs Berkeleyside and ACLU v. Defendant City of Berkeley)

7 71. Plaintiffs incorporate herein by reference the above allegations, as if set forth in full.

8 72. The PRA and The PRA and California Constitution require an agency that receives a records request  
9 to conduct a search based on the criteria set forth in the request.

10 73. The City's limitation of its searches to a 5-year period, rather than the longer period set forth in the  
11 PRA requests, violates the PRA.

12 **THIRD CAUSE OF ACTION**  
13 **Violations of the California Public Records Act and**  
14 **Article I, § 3 of the California Constitution**

15 (Plaintiffs Berkeleyside and ACLU v. Defendant City of Berkeley)

16 74. Plaintiffs incorporate herein by reference the above allegations, as if set forth in full.

17 75. The City's failure to comply with the PRA's deadlines for making a determination of whether it will  
18 provide requested records and informing the requestor of when it will make that determination  
19 violate the PRA.

20 **Wherefore**, Plaintiffs request the following relief:

21 1. That the Court issue a writ of mandate directing Defendant to provide  
22 Plaintiffs with all requested records except those records or parts thereof that the  
23 Court determines may lawfully be withheld;

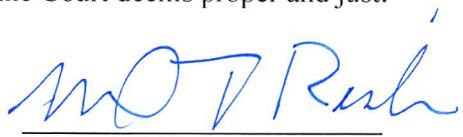
24 2. That the Court declare the rights of the parties, including Plaintiffs' rights to  
25 proper responses to their PRA requests that comply with the time limits and rules for  
26 extensions set forth the in the PRA, to have the City conduct searches based on the  
27 time frames set forth in the request, and to obtain records pre-dating January 1, 2019  
28 under SB 1421.

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3. That Plaintiffs be awarded attorneys' fees and costs under Gov. Code § 6259 and any other applicable statutes or basis;

4. For such other and further relief as the Court deems proper and just.

Dated: 1/29/2019

By:   
Michael T. Risher  
Attorney for Plaintiffs

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**Verification**

I, Lance Knobel, am the Chief Executive Officer of Berkeleyside, Inc., and authorized to verify this Petition as an officer. I have read this Verified Petition for Writ of Mandate in *Berkeleyside v. City of Berkeley* and am informed, and do believe, that the matters herein are true. On that ground I allege that the matters stated herein are true.

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

DATED: 1/21/19

  
\_\_\_\_\_  
Lance Knobel

# Exhibit A



**PRA1**

1 message

**Emilie Raguso** <emilie@berkeleyside.com>  
To: Emilie Raguso <emilie@berkeleyside.com>

Sat, Jan 26, 2019 at 1:29 PM

From: **Emilie Raguso** <emilie@berkeleyside.com>  
Date: Wed, Jan 2, 2019 at 2:20 PM  
Subject: Berkeleyside PRA / SB 1421  
To: Lester Valderas <LValderas@cityofberkeley.info>

To Whom It May Concern: Pursuant to my rights under the California Public Records Act (Government Code Section 6250 et seq.), I ask to obtain a copy of the following, which I understand to be held by your agency:

From Jan. 1, 2012, through the present, any documents related to the following:

- (1) Incidents involving the discharge of a firearm at a person by a peace officer;
- (2) Incidents involving the use of force by a peace officer against a person, resulting in death or great bodily injury;
- (3) Incidents in which a sustained finding was made by a law enforcement agency or oversight agency that a peace officer or custodial officer engaged in the sexual assault of a member of the public; and
- (4) Incidents in which a sustained finding was made by a 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, and the destruction, falsifying, or concealing of evidence.

I ask for a determination on this request within 10 days of your receipt of it, and an even prompter reply if you can make that determination without having to review the record[s] in question.

—Emilie Raguso, [Berkeleyside](#) senior reporter and community engagement chief  
**Love Berkeleyside? Here's how to help**  
c: 510-459-8325  
e: [emilie@berkeleyside.com](mailto:emilie@berkeleyside.com)



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# Exhibit B



**PRA2**

1 message

Emilie Raguso <emilie@berkeleyaside.com>  
To: Emilie Raguso <emilie@berkeleyaside.com>

Sat, Jan 26, 2019 at 1:30 PM

From: Emilie Raguso <emilie@berkeleyaside.com>  
Date: Mon, Jan 14, 2019 at 8:11 PM  
Subject: Re: Berkeleyaside PRA / SB 1421  
To: Valderas, Lester <LValderas@cityofberkeley.info>  
Cc: FD Frances Dinkelspiel <frances@berkeleyaside.com>

Thank you for the update.

We would like to revise our request as follows. But, to the extent the earlier request would result in broader or additional information, please consider that request still active. Please confirm receipt and let us know by email if you have questions.

Under the California Public Records Act §6250 et seq., Berkeleyaside requests access to and copies of the following information in electronic, searchable/sortable format, where applicable.

Each element requested should be considered severable for purposes of invoking a time extension or exemption under local or state law.

**SUSTAINED FINDINGS:**

1. Records from Jan. 1, 2013, to present of sustained findings(1) that a peace officer employed by the Berkeley Police Department committed sexual assault(2) or dishonesty-related misconduct(3).

a. The response should reasonably include all applicable records specified by statute(4), including but not limited to: all investigative reports; photographic, audio and video evidence; transcripts and recordings of interviews; 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.

b. If the Berkeley Police Department would prefer to provide an index of the above cases in compliance with California Government Code Section 6253.1 which requires a public agency to help the requester make a focused request, instead of providing entire case files, that would be acceptable. Such an index should reasonably include, as applicable, the following for each entry:

- i. Any record number used to identify the case
- ii. The date the sustained misconduct took place
- iii. The location the sustained misconduct took place
- iv. The name(s) of any officer(s)/employee(s) found to have committed the sustained misconduct
- v. A summary description of the misconduct
- vi. The specific type of misconduct that was ultimately sustained (e.g. conduct reflecting discredit)
- vii. Any recommendations made by an investigating agency as to discipline or corrective action, and the date any such recommendations were made
- viii. The ultimate disposition of the case, whether it be discipline, nondisciplinary corrective action, or no action whatsoever and the specific kind of discipline or corrective action that was imposed, if any and the date the case was closed or the date of the last adjudication of the case.
- ix. Whether the case file contains video files (yes or no)
- x. Whether the case file contains audio files (yes or no)

c. To the extent that the Berkeley Police Department maintains an index, database or list of cases that includes entries of sustained findings of sexual assaultrelated misconduct and/or dishonestyrelated misconduct, that index, list or database is also separately requested. If such an index, list or database contains information about findings of misconduct that are not subject to disclosure, the index, list, or database should be redacted to remove the information that is not subject to disclosure, and the rest of the record should be provided.

**USE OF FORCE:**

1. Records from Jan. 1, 2013, to present relating to the report, investigation, or findings of incidents in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury(5).

a. The response should reasonably include all applicable records specified by statute(6), including but not limited to: all investigative reports; photographic, audio and video evidence; transcripts and 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.

b. If the Berkeley Police Department would prefer to provide an index of the above cases in compliance with California Government Code Section 6253.1 which requires a public agency to help the requester make a focused request, instead of providing entire case files, that would be acceptable. Such an index should reasonably include, as applicable, the following for each entry:

- i. Any record number used to identify the incident
- ii. The date the use of force took place
- iii. The location the use of force took place
- iv. The name(s) of any officer(s)/employee(s) involved in the incident
- v. A summary description of the incident
- vi. Characterization of injury or injuries sustained to the extent that is tracked
- vii. The type of force used
- viii. Any recommendations made by an investigating agency as to discipline or corrective action, and the date any such recommendations were made
- ix. The ultimate disposition of the case, whether it be discipline, nondisciplinary corrective action, or no action whatsoever and the specific kind of discipline or corrective action that was imposed, if any and the date the case was closed or the date of the last adjudication of the case.
- x. Whether the case file contains video files (yes or no)
- xi. Whether the case file contains audio files (yes or no)

c. To the extent that the Berkeley Police Department maintains an index, database or list of cases that includes entries related to uses of force that resulted in great bodily injury or death, that index, list or database is also separately requested. If such an index, list or database contains information about cases that are not subject to disclosure, the index, list, or database should be redacted to remove the information that is not subject to disclosure, and the rest of the record should be provided.

To the extent the records exist in electronic format, please provide them in that format. We also draw your attention to Government Code section 6253.1, which requires a public agency to assist the public in making a focused and effective request by (1) identifying records and information responsive to the request, (2) describing the information technology and physical location in which the records exist, and (3) providing suggestions for overcoming any practical basis for denying access to the records or information sought. The purpose of this request is to obtain the above-referenced documents. Please provide your full compliance with 6253.1 should the need arise. To the extent that a portion of the information we have requested is not immediately available, we request that whatever documentation is immediately available be turned over first.

Please limit all communications regarding this request to email.

For documents that could be provided in electronic, searchable format, where applicable: We can handle a variety of data formats, and we would be happy to correspond about this request to figure out what would be the easiest or best way to provide the requested records.

If this request is denied in whole or part, we ask that you justify all individual deletions/redactions or withheld records by reference to specific exemptions of the law. We will also expect you to release all segregable portions of otherwise exempt material.

Please email if you have any questions about this request. We look forward to receiving the required determination within 10 days.

1. **"Sustained" finding as defined by Cal.PEN. Code § 832.8(b).**
2. **"Sexual Assault" as defined by Cal. PEN. Code § 832.7(b)(1)(B)(ii).**
3. **Misconduct as defined by Cal. PEN. Code § 832.7(b)(1)(C).**
4. **Cal. PEN. Code § 832.7 (b)(2).**
5. **Cal. PEN. Code § 832.7 (b)(1)(A)(ii).**
6. **Cal. PEN. Code § 832.7 (b)(2).**

—Emilie Raguso, [Berkeleyside](#) senior reporter and community engagement chief

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c: 510-459-8325

e: [emilie@berkeleyside.com](mailto:emilie@berkeleyside.com)



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On Mon, Jan 14, 2019 at 9:11 AM Valderas, Lester <[LValderas@cityofberkeley.info](mailto:LValderas@cityofberkeley.info)> wrote:

Good morning Emilie,

Please be advised that pursuant to Gov't Code §6253(c)(3), the City of Berkeley is extending the response period to this CPRA request by fourteen additional calendar days to January 28, 2019, based on the need for consultation with two or more components of the agency having substantial subject matter interest therein.

Thank you,

**Lester A. Valderas** | *Paralegal*  
City of Berkeley, City Attorney's Office  
2180 Milvia St., 4<sup>th</sup> Floor, CA 94704  
**Phone:** (510) 981-6984 **Fax:** (510) 981-6960  
**Email:** [lvalderas@cityofberkeley.info](mailto:lvalderas@cityofberkeley.info)

**From:** Emilie Raguso [<mailto:emilie@berkeleyside.com>]  
**Sent:** Wednesday, January 09, 2019 1:15 PM  
**To:** Valderas, Lester <[LValderas@cityofberkeley.info](mailto:LValderas@cityofberkeley.info)>  
**Cc:** FD Frances Dinkelspiel <[frances@berkeleyside.com](mailto:frances@berkeleyside.com)>  
**Subject:** Re: Berkeleyside PRA / SB 1421

Thank you!

—Emilie Raguso, [Berkeleyside](#) senior reporter and community engagement chief

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c: 510-459-8325

e: [emilie@berkeleyside.com](mailto:emilie@berkeleyside.com)



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On Wed, Jan 9, 2019 at 8:20 AM Valderas, Lester <[LValderas@cityofberkeley.info](mailto:LValderas@cityofberkeley.info)> wrote:

Hi Emilie,

Yes, your request was received on the 2<sup>nd</sup> of January and we are working on it.

Best,

Lester

**From:** Emilie Raguso [<mailto:emilie@berkeleyside.com>]  
**Sent:** Tuesday, January 08, 2019 10:54 PM  
**To:** Valderas, Lester <[LValderas@cityofberkeley.info](mailto:LValderas@cityofberkeley.info)>

**Cc:** FD Frances Dinkelspiel <[frances@berkeleyside.com](mailto:frances@berkeleyside.com)>  
**Subject:** Re: Berkeleyside PRA / SB 1421

Could you confirm that you received this and are working on it? I will follow up with a phone call Wednesday if I don't hear back.

—Emilie Raguso, [Berkeleyside](#) senior reporter and community engagement chief

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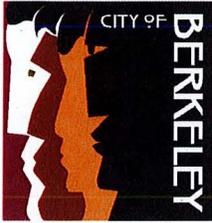
c: 510-459-8325

e: [emilie@berkeleyside.com](mailto:emilie@berkeleyside.com)



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# Exhibit C



Office of the City Attorney

January 18, 2019

Via E-mail at emilie@berkeleyside.com

Emilie Raguso  
Berkeleyside  
(510) 459-8325

**RE: Public Records Act Request Dated January 2, 2019**

Dear Ms. Raguso:

This letter is in response to your California Public Records Act request dated January 2, 2019 which was subsequently revised on January 14, 2019, requesting:

- 1) *Records from January 1, 2013, to present of sustained findings (1) that a peace officer employed by the Berkeley Police Department committed sexual assault or (2) dishonesty-related misconduct... (and the respective subsections).*
- 2) *Records from January 1, 2013, to present relating to the report, investigation, or findings of incidents in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury... (and the respective subsections).*

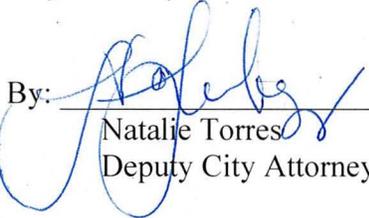
With respect to your first request for records described above, the amendments to Penal Code section 832.7, effective January 1, 2019, do not apply retroactively, and therefore records predating January 1, 2019 are confidential personnel records and exempt from disclosure. However, the City's Police Department was able to perform a good faith and diligent search for records going back 5 years and has determined that there are no responsive records to this request. The City's Police Department has also determined that there are no responsive records post-dating January 1, 2019 to the present date.

Regarding your second request for records described above, the amendments to Penal Code section 832.7, effective January 1, 2019, do not apply retroactively, and therefore records predating January 1, 2019 are confidential personnel records and exempt from disclosure. The City has determined that there are no responsive records post-dating January 1, 2019 to the present date.

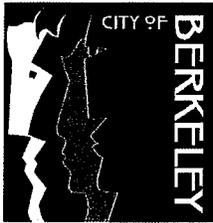
With this response, staff has completed its work to process and respond to your California Public Records Act request.

Sincerely,

Farimah Brown  
City Attorney

By:  \_\_\_\_\_  
Natalie Torres  
Deputy City Attorney

# Exhibit D



Office of the City Attorney

January 24, 2019

Via E-mail at [emilie@berkeleyside.com](mailto:emilie@berkeleyside.com)

Emilie Raguso  
Berkeleyside  
(510) 459-8325

**RE: Public Records Act Request Dated January 2, 2019**

Dear Ms. Raguso:

This letter is in further response to your California Public Records Act request dated January 2, 2019, as amended and supplemented by your request dated January 14, 2019. Please note that our office is evaluating the applicability of SB 1421 to records created before January 1, 2019. Pursuant to government code Section 6253(c), the City will notify you if the request seeks copies of disclosable public records in the City's possession by no later than February 11, 2019.

Sincerely,

A handwritten signature in black ink, appearing to read "Farimah Brown", written over a horizontal line.

Farimah Brown  
City Attorney

# Exhibit E



California

January 1, 2019

Berkeley Police Department  
2100 Martin Luther King Jr Way  
Berkeley, CA 94704

Re: Request for Public Records on Police Use of Force Investigations, Sustained Findings of Police Dishonesty and Sexual Assault

To Whom It May Concern:

I write to respectfully request records related to the investigation and discipline of peace officers employed by the Berkeley Police Department (the "Department") under the California Public Records Act, Gov't Code §§ 6250 et seq., California Penal Code §§832.7-832.8, and Art. I, § 3(b) of the California Constitution, as set forth below.

Last fall, the California legislature passed, and Governor Brown enacted, SB 1421 (Skinner), which amends California Penal Code section 832.7 to provide the public a right of access to records related to investigations into investigations and discipline of peace officers for shootings and serious uses of force, as well as sustained findings of dishonesty related to the investigation, reporting, and prosecution of a crime or police misconduct. We now respectfully request the records newly available under SB 1421. We make this request as the American Civil Liberties Union of Southern California, as requestor, on behalf of the ACLU of California (including the ACLU of Northern California, ACLU of Southern California, and ACLU of San Diego and Imperial Counties) as well as a wide array of civil rights, government transparency, and criminal defense groups, including the Youth Justice Coalition, Justice Teams Network, Anti Police-Terror Project, California Faculty Association, PolicyLink, STOP Coalition, California Public Defender Association, and National Association of Criminal Defense Lawyers.

We have coordinated this request, and will share all records obtained, with this group of organizations, and further commit to making those records available to the public by posting on the Internet and other means, to help facilitate access to the records you produce.

#### **I. Requests for Records**

We understand that this change in the law may result in a significant number of responsive documents, and that you may have received a number of requests for similar documents from other requestors. We have endeavored to tailor our request to a limited selection of the most important documents and most relevant timeframe for incidents.

As set forth below, for purposes Requests 1 through 7, we do not seek all records relating to the underlying incident, but only a limited set of "Decisional Documents" relating to the

administrative investigation of the incident. For purposes of these requests, “Decisional Documents” means all documents<sup>1</sup> reflecting or setting forth:

- The Department’s decision, prior to any administrative appeal, that an officer’s conduct did (or did not) violate the law or agency policy, and any reasons for that decision;
- The final investigative report (prior to any administrative appeal) of the Department, or any division of the Department, or any document setting out factual findings of, or recommended factual findings for, the person or body charged with deciding whether the officer’s conduct was within policy and/or warranted discipline or other corrective action;
- The punishment imposed or corrective action taken as the result of an administrative investigation, including letters of intent to impose discipline or other documents reflecting discipline imposed, changes in rank or assignment, training required, or changes to or examinations of Department policy, training or practice;
- A decision on appeal from the Department’s factual finding, or the discipline or corrective action imposed, including review by a superior or arbitration, including any statement of reasoning by an appeal body and any revised discipline or corrective action imposed, or any documents reflecting modifications of discipline due to the *Skelly* or grievance process,
- Any agreement to resolve an administrative investigation, including any agreement (or lack of agreement) as to the facts of what happened in the incident, or discipline or corrective action to be imposed;
- The final investigative report, factual findings, legal conclusions, or recommendations on discipline, policy, procedures or training, by the district attorney, independent civilian oversight body, or outside law enforcement agency brought on to conduct an investigation into an incident;
- The final imposition of discipline or implementation of corrective action.

For purposes of this request, records include, but are not limited to 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. Cal. Penal Code §832.7(b)(2).

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<sup>1</sup> The term “records” as used in this request is defined as “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.” Cal. Govt. Code § 6252, subsection (e). “Writing” is defined as “any handwriting, typewriting, printing, photostating, 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.” Cal. Govt. Code § 6252 (g).

For purposes of these requests, “Decisional Documents” does not include underlying evidence, expert reports, witness statements, audio or video, unless incorporated by or included in the documents described above.

We also recognize that at some departments, older records may be stored in different recordkeeping systems that may require more time an effort to retrieve. If this is the case with your agency, we are happy to discuss particular obstacles or concerns and a process for retrieving records as efficiently as possible.

**Records Request No. 1:** All DECISIONAL DOCUMENTS related to the administrative investigation of any use of force by a peace officer employed by the Department<sup>2</sup> that resulted in death, from January 1, 1999 to the present. *See* Penal Code § 832.7(b)(1)(A)(ii).

**Records Request No. 2:** All DECISIONAL DOCUMENTS relating to any incident in which a peace officer employed by the Department was found to have committed an act of dishonesty 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, at any time from Jan. 1, 1999, to the present. *See* Penal Code § 832.7(b)(1)(C). Such incidents may also include receipt or solicitation of bribes, loans, favors, or gifts in relation to an investigation; misappropriation of property in an investigation, obstructing an investigation, or influencing a witness.

**Records Request No. 3:** For any officer about whom a sustained finding of dishonesty is disclosed in response to Records Request No. 2, above, all DECISIONAL DOCUMENTS relating to any sustained finding of dishonesty relating to the reporting, investigation, or prosecution of a crime or misconduct by another peace officer, regardless of date.

**Records Request No. 4:** All DECISIONAL DOCUMENTS related to any administrative investigation into the discharge of a firearm at a person by a peace officer employed by the Department, which did not result in death, from January 1, 2014 to the present. *See* Penal Code § 832.7(b)(1)(A)(i).

**Records Request No. 5:** All DECISIONAL DOCUMENTS related to any administrative investigation into a use of force by a peace officer employed by the Department against a person that resulted great bodily injury, from January 1, 2009 to the present. *See* Penal Code § 832.7(b)(1)(A)(ii).

**Records Request No. 6:** For any officer who used force resulting in death at any time since January 1, 1999, all DECISIONAL DOCUMENTS related to any administrative investigation into the discharge of a firearm at a person by that officer that did not result in death, or a use of

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<sup>2</sup> A peace officer is “employed by the Department” for purposes of these requests if that officer has been employed by the Department at any time. The modifying phrase “employed by the Department” does *not* limit the requests only to officers currently employed by the Department, nor does it exclude documents within the position of the Department that concern the incidents that occurred while the peace officer was employed by another agency.

force by that officer against a person that resulted great bodily injury but not death, regardless of date.

**Records Request No. 7:** All DECISIONAL DOCUMENTS relating to any incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer employed by the Department engaged in sexual assault involving a member of the public, from January 1, 2009 to the present. *See* Penal Code § 832.7(b)(1)(B). For purposes of this request, “sexual assault” refers to 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, including unwanted or gratuitous sexual contact such as touching or groping. *See id.* § 832.7(b)(1)(B)(ii).

**Records Request No. 8:** For any officer about whom a sustained finding of sexual assault is disclosed in response to Records Request No. 7, above, all DECISIONAL DOCUMENTS relating to any sustained finding of sexual assault, regardless of date.

## II. Request for Preservation, or in the Alternative, Request for Documents

While we have asked for a limited selection of documents that are newly available pursuant to S.B. 1421, review of those documents will very likely reveal some incidents in which requestors or other members of the public would like additional detail, such as records of investigation, audio, video, expert reports and other documents excluded from the present request. We therefore request that you provide assurances that you will preserve all such documents, at least for a reasonable time after complying with the present set of document requests, to allow targeted requests for additional information on specific cases.

## III. Prioritization of Requests

We understand that this change in the law may result in a significant number of responsive documents, and that you may have received a number of requests for similar documents from other requestors. To help make sure your response serves the public interest in disclosure of these important records as efficiently as possible, we ask that you prioritize in the following order:

First, *please prioritize requests from other requestors who are family members of those killed by police seeking information on how their loved ones died.* We recognize that the change in law in many instances may allow these family members access to this information for the first time, and for the first time provide answers about their losses, and urge you prioritize these disclosures.

Second, for our requests, prioritize in the order of requests, 1 through 8.

Third, if for any reason some categories of documents responsive to a request are more readily disclosable and others more difficult — for example, if older records are in archival storage or stored in a different and harder-to-use system, or documents responsive to one request are not as easily categorized for disclosure and would require more time-intensive searching than another — please contact us to discuss the obstacles to prompt disclosure so that we can work out a

timeline, process, or refined selection criteria for documents that are more difficult to find or produce.

Please respond to this request in ten days, either by providing the requested information or providing a written response setting forth the specific legal authority on which you rely in failing to disclose each requested record, or by specifying a date in the near future to respond to the request. See Cal. Gov't Code § 6255. Pursuant to section 6253, please disclose all reasonably segregable non-exempt information from any portions of records you claim are exempt from disclosure.

If any records requested above are available in electronic format, please provide them in an electronic format, as provided in Govt. Code § 6253.9. To assist with the prompt release of responsive material, we ask that you make records available to us as you locate them, rather than waiting until all responsive records have been collected and copied.

If you would like to discuss these requests, please feel free to call Hermelinda Calderon or Casey Kasher at (213) 977-5265. Otherwise, please send any correspondence or documents in electronic format via email to [prarequest@aclusocal.org](mailto:prarequest@aclusocal.org), or correspondence or documents on CD-ROM or USB drive to:

SB 1421 Records  
ATTN: Casey Kasher  
ACLU of Southern California  
1313 W. 8th Street  
Los Angeles, CA 90017

Because this request is made on behalf of a number of nonprofit public interest organizations, with the intent to make this material easily accessible to the public as promptly as possible, we request that you waive any fees. *North Cty. Parents Ass'n v. Dep't of Ed.*, 23 Cal. App. 4th 144, 148 (1994); Cal. Gov. Code §6253(e). However, should you be unable to do so, ACLU SoCal will reimburse your agency for the "direct costs" of copying these records plus postage. If you anticipate these costs to exceed \$50.00, please notify us prior to making the copies.

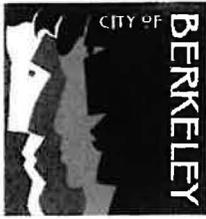
Thank you in advance for providing the records we have requested. Please do not hesitate to contact us with any questions regarding this letter.

Best,



Peter Bibring  
Director of Police Practices  
ACLU of Southern California

# Exhibit F



January 16, 2019

Via U.S. Mail & E-mail at [prarequest@aclusocal.org](mailto:prarequest@aclusocal.org)

ACLU of Southern California  
SB 1421 Records  
ATTN: Casey Kasher  
1313 W. 8<sup>th</sup> Street  
Los Angeles, CA 90017

**RE: Public Records Act Request Dated January 1, 2019**

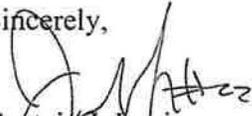
Dear Ms. Casey Kasher:

This letter is in response to your California Public Records Act request dated January 1, 2019 requesting, *"records related to the investigation and discipline of peace officers employed by the Berkeley Police Department (the "Department") under the California Public Records Act, Gov't Code §§ 6250 et seq., California Penal Code §§832.7-832.8, and Art. I, §3(b) of the California Constitution...*

With respect to your request for records listed above, the amendments to Penal Code section 832.7, effective January 1, 2019, do not apply retroactively, and therefore records predating January 1, 2019 are confidential personnel records and exempt from disclosure. However, the Berkeley Police Department has performed a good faith and diligent search for responsive records from the time period of January 01, 2014 to December 31, 2018 and has determined that it has no records responsive to this request. The Berkeley Police Department has also determined that there are no responsive records post-dating January 1, 2019 to the present date.

With this response, staff has completed its work to process and respond to your California Public Records Act request.

Sincerely,

  
Captain J. Louis  
Custodian of Records

# Exhibit G



**Northern  
California**

January 24, 2019

Captain J. Louis  
Custodian of Records  
Berkeley Police Department  
2100 Martin Luther King Jr. Way  
Berkeley, CA 94704

Farimah Brown  
Berkeley City Attorney  
2180 Milvia Street  
Berkeley, CA 94704  
Email: [attorney@cityofberkeley.info](mailto:attorney@cityofberkeley.info)

*Via mail and email*

Dear Captain Louis and Ms. Brown:

I write regarding a Public Records Act Request sent on January 1, 2019, requesting records pursuant to S.B. 1421. The ACLU of Southern California requested the records on our behalf. A copy of that letter is attached to this as Exhibit A.

In that request, we asked for records “related to the investigation and discipline of peace officers employed by the Berkeley Police Department” as made available “under the California Public Records Act, Gov’t Code §§ 6250 et seq., California Penal Code §§832.7-832.8, and Art. I, § 3(b) of the California Constitution.” We asked for several categories of records dating from January 1, 1999 to the present.

Your response dated January 16, 2019, and attached as Exhibit B, stated in part:

“With respect to your request for records listed above, the amendments to Penal Code section 832.7, effective January 1, 2019, do not apply retroactively, and therefore records predating January 1, 2019 are confidential personnel records and exempt from disclosure. However, the Berkeley Police Department has performed a good faith and diligent search for responsive records from the time of January 1, 2014 to December 31, 2018 and has determined that it has no records responsive to this request. The Berkeley Police Department has also determined that there are no responsive records post-dating January 1, 2019 to the present date.”

We think you are wrong as a matter of law that records predating January 1, 2019 remain exempt from disclosure. We would ask that you please withdraw that as a basis for not

**American Civil Liberties Union Foundation of Northern California**

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## Northern California

responding to our request in full. We also note that you do not appear to have conducted a search for responsive records prior to January 1, 2014. On January 24, 2019, I contacted Captain Louis and the Berkeley City Attorney's office via telephone to seek clarification and left voicemails for both but have not heard back.

**By the end of day on Monday, January 28, 2019**, please confirm in writing that you will not be relying on retroactivity as a basis to withhold documents or not perform a search. Additionally, if you do not have records prior to 2014, please let us know that those records do not exist. Alternately, please explain why you are refusing to conduct a search for responsive records prior to January 1, 2014.

If we do not receive a satisfactory response from you by the end of business on Monday, January 28, 2019, we may seek further relief, including judicial resolution of this dispute, as well as attorneys' fees and costs. Please do not hesitate to contact me via email with any questions. I can be reached at [kguneratne@aclunc.org](mailto:kguneratne@aclunc.org).

Regards,

A handwritten signature in blue ink, appearing to read "Kathleen", followed by a long horizontal line extending to the right.

Kathleen Guneratne  
Senior Staff Attorney

# Exhibit H

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**From:** Brown, Farimah F. <[FBrown@cityofberkeley.info](mailto:FBrown@cityofberkeley.info)>  
**Sent:** Friday, January 25, 2019 4:51 PM  
**To:** Kathleen Guneratne <[KGuneratne@aclunc.org](mailto:KGuneratne@aclunc.org)>  
**Subject:** SB 1421 Follow up Letter

Dear Kathleen,

We have received your letter dated January 24, 2018. Please note that our office is evaluating the applicability of SB 1421 to records created before January 1, 2019. We ask that you provide us an opportunity to complete our analysis.

Regards,

Farimah Faiz Brown

City Attorney

---

**From:** Kathleen Guneratne [<mailto:KGuneratne@aclunc.org>]  
**Sent:** Thursday, January 24, 2019 4:40 PM  
**To:** City Attorney's Office <[attorney@cityofberkeley.info](mailto:attorney@cityofberkeley.info)>  
**Cc:** Alec Bahramipour <[ABahramipour@aclunc.org](mailto:ABahramipour@aclunc.org)>  
**Subject:** SB 1421 Follow up Letter

Counsel:

We have received your response to our S.B. 1421 request. Please find attached our response, a copy of which we sent via overnight mail to the Berkeley Police Department and your office.

Regards,

Kathleen



Kathleen Guneratne

Senior Staff Attorney

ACLU Foundation of Northern California

39 Drumm Street, San Francisco, CA 94111

office +1 (415) 293-6312 |

[kguneratne@aclunc.org](mailto:kguneratne@aclunc.org) | [www.aclunc.org](http://www.aclunc.org)

pronouns: she/her/hers

*This message may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply E-mail that this message has been inadvertently transmitted to you and delete this E-mail from your system.*