



POST

GAVIN NEWSOM
GOVERNOR

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ATTORNEY GENERAL

COMMISSION ON

PEACE OFFICER STANDARDS AND TRAINING

Date: February 26, 2019

To: Chiefs, Sheriffs, and Directors
Cc: EDI Operators

Subject: **CALIFORNIA PUBLIC RECORDS ACT REQUESTS
(CPRA), RELEASE OF PEACE OFFICERS' INFORMATION**

IMMEDIATE ACTION REQUIRED

The Commission on Peace Officer Standards and Training (POST) has received a California Public Records Act (CPRA) request from KQED News, a Bay Area news media outlet, requesting information on all peace officers' (active and inactive) training records. The requested report will include current agency (if applicable), former agency (if applicable), the name of each officer, employment start date, employment end date, current rank (if applicable), full or part time status, provisional or seasonal status and paid or unpaid status.

Background:

On August 27, 2007, the California Supreme Court ruled that certain information in the Peace Officer Database, maintained by POST, is public information subject to release in response to a CPRA request pursuant to California Government Code sections 6250 *et seq.* (See Commission on Peace Officer Standards and Training v. Superior Court (2007) 42 Cal.4th 278 [names of peace officers, their employing departments and dates of employment are public records subject to disclosure]. (Hereafter "the *POST* decision.")

For the full text of the court's decision, go to:

<http://caselaw.lp.findlaw.com/data2/californiastatecases/s134072.pdf>

In its decision, the California Supreme Court acknowledged that there may be some peace officers "who, because of their particular responsibilities require anonymity in order to perform their duties effectively or to protect their own safety." For example, the Court left open the possibility that a particular officer, working undercover, could be at risk if the officer was operating under his or her true name and he or she was publicly identified as a peace officer. To protect the identity of peace officers who require anonymity to perform their duties

effectively or to protect their own safety, departments are being offered by this notice the opportunity to exclude the names of those individuals. Any such requested exemptions are made through the POST's encrypted Electronic Data Interchange (EDI) system.

Current Request:

As mentioned above, KQED News has filed a public records act request seeking disclosure of all peace officers' (active and inactive) training records.

Prior to providing responsive records, POST will provide all affected departments the opportunity to claim an exemption of individual officer's names from release in response to this request through the EDI system if the Department believes that the disclosure of the requested information is exempt under the CPRA and the *POST* decision. Current agency rosters for each department will be uploaded to the EDI system.

It is recommended that each department designate only one EDI operator to process the department's response back to POST. Once you, the department head, have decided which, if any, names are to be claimed as exempt from release, the designated EDI operator must use the CPRA function in EDI to check the names in order to claim the exemption and click "Save." If no names are to be excluded, the EDI operator will click the "Do Not Withhold" button to verify they have received this notice. POST will then generate the reports, without the excluded names, and provide the remaining information requested.

Departments wishing to withhold any names from the response to the CPRA requests should contact their legal advisor to determine whether the exemption is legally justified under the California Public Records Act. POST is not the custodian of, nor would it normally be aware of, specific factual information that would justify a department's decision that a particular officer's name should be exempt from disclosure. The officer's employer is the only entity that would be able, in the event of a challenge, to fully support the claimed exemption by providing the factual and legal justifications for withholding a particular name from disclosure. For this reason, if the excluded names are challenged in legal proceedings, the department that claimed the exemption will become involved in the legal proceeding in order to justify the exemption. Departments should not request exclusion of any particular name unless a proper statutory basis for the particular exemption has been identified, and unless the Department is willing to fully participate in any litigation in order to justify each exemption, if necessary. In making a request for exclusion, the Department is affirming that: 1) A proper statutory basis for the exemption exists under the California Public Records Act, and 2) Should the

exemption be challenged, the Department will fully cooperate with POST in any actual or threatened litigation arising out of the Department's exemption request, and that it will take all steps deemed necessary by POST in order to justify the exemption in response to any such challenge.

Alternatively, a Department may instead seek appropriate relief from any court of competent jurisdiction prior to the date of POST's response to the CPRA request. Please notify the below listed individuals immediately if any such order is being sought.

To allow departments sufficient time to respond, it is requested that EDI operators should transmit the requested information to POST, or alternatively, to serve POST with a court order restraining the production of the information, no later than **5 P.M. on Wednesday, March 13, 2019.** If departments do not respond to this request, it will be assumed there are no names to be excluded.

The requested reports are scheduled for release to KQED News on **Monday, March 25, 2019.** Questions regarding EDI access may be directed to the POST EDI Helpdesk at (877) 275-5872. Questions regarding this CPRA request may be directed to Dave Althausen at (916) 227- 2804 or dave.althausen@post.ca.gov, or me at (916) 227-2807 or scott.loggins@post.ca.gov.

Thank you for your assistance and cooperation in responding to the request.

Sincerely,

SCOTT W. LOGGINS
Assistant Executive Director
Standards and Development Division