

IN THE SAN FRANCISCO  
SUNSHINE ORDINANCE TASK FORCE

Anonymous

v.

Paul Henderson, Diana Rosenstein,  
Stephanie Wargo-Wilson, Mary Polk,  
Department of Police Accountability

Sunshine Ordinance Petition and  
Complaint

Dec. 25, 2019

SOTF No.

**COMPLAINT [SFAC 67.21, 67.24, 67.26, 67.27]**

I allege Respondents failed to respond to a Nov. 28, 2019 records request in a timely or complete manner, failed to assist in a timely or complete manner, failed to cite lawful justifications for exemption, failed to key redactions by footnotes or other clear references to justifications, and failed to withhold the minimal portion of records. Because pending complaint *SOTF 19127 Anonymous vs DPA, et al.* has not been heard on its merits by a committee as of the filing of this complaint, I request that SOTF combine this complaint into *SOTF 19127* for efficiency. The topics, requests, and violations at issue are different.

**FACTS OF THE CASE**

I made a Nov. 28, 2019 immediate disclosure request for (part 1) the SB 1421 records DPA already released to others, and also a regular request for (part 2) all records of firearm discharge, use of force resulting in death/great bodily injury, and sustained findings of sexual assault or dishonesty (all of which SB 1421 turned into disclosable public records under the CPRA and thus also the Sunshine Ordinance), and issued a SFAC 67.21(c) request for a 7-day statement for the quantity, nature, existence, and form of responsive records. DPA timely acknowledged my request on Dec. 2 and rejected immediate disclosure. On Dec. 3, DPA published on MuckRock.com 24 records (containing a few duplicates) records already released to others to fulfill my request part #1.

While part #2 is indeed a very large request, DPA has acknowledged it is also providing to various other requesters all such records made disclosable via SB 1421, and I am now one of the recipients. DPA started providing rolling responses to part #2 on Dec. 5, and on Dec. 9 asserted a rule-of-reason based extended timeline. I am not in this complaint contesting the extended timeline to produce records given the quantity of records, nor am I willing to narrow my request (DPA in fact specifically recommended that I do not waive my right to receive every single SB 1421-disclosable record, and I will not in fact waive any rights). My goal, like many other media and civil liberties organizations, is to receive all SB 1421-disclosable records.

The following disclosures have been made. These numbers will be used to refer to the records as “Disclosure #X” in the allegations below. DPA directly published them online using MuckRock.com’s upload interface so there are not generally any emails, but MuckRock maintains a timeline nevertheless (Exhibit A). A bitly shortlink is provided to better survive SOTF’s printing and scanning of complaints.

- D1.** Dec. 3, 2019 - Part 1 - 24 records (Exhibit B, productions only, no justifications)
- D2.** Dec. 5, 2019 - Part 2 -SF DPA 0090-00- <https://bit.ly/2SnD6FA> (Production only, no justifications)
- D3.** Dec. 10, 2019 -Part 2 - SF DPA 0040-15 - <https://bit.ly/2s78ei6> (Production only, no justifications)

On Dec. 10, after receiving multiple productions lacking required justifications, footnotes, or other clear references, in violation of SFAC 67.26 and SFAC 67.27, I sent a letter to Respondent Rosenstein warning DPA about this issue (Exhibit C).

- D4.** Dec. 18, 2019 - Part 2 - SF DPA 0168-01- <https://bit.ly/2QdDZht> (Production only, no justifications)
- D5.** Dec. 18, 2019 - Part 2 - supplement to Disclosure #2 - <https://bit.ly/2tMjEbr> (Production only, no justifications)

On Dec. 18, I filed a Supervisor of Records petition regarding Disclosure #4 - since no justifications were provided, I challenged all withholding as unlawful.

- D6.** Dec. 23, 2019 - Part 2 - SF DPA 0441-12 - <https://bit.ly/372msPP> (letter); <https://bit.ly/2MlncYn> (production)

On Dec. 23, I filed a Supervisor of Records petition regarding Disclosure #6 - since no specific justifications were provided, I challenged all withholding as unlawful. On Dec. 23, I also indicated my priorities<sup>1</sup> for disclosure to DPA, as they requested.

## **ALLEGATIONS**

### **1. Violation of SFAC 67.27 - failure to provide lawful exemption justifications**

Disclosures #D1, #D2, #D3, #D4, and #D5 had no justifications whatsoever for any redaction or full record withholding. SFAC 67.27 requires written justification for every withholding of information.

Disclosures #D6 had the sole, generic justification: "The records contain information redacted based on subdivisions of Penal Code Section 832.7 that mandate and allow redactions of certain information listed in the code section." SFAC 67.27 requires that justification be cited as a "**specific** permissive exemption" in the CPRA or elsewhere or "**specific** statutory authority" prohibiting disclosure (emphasis mine). This is a violation since PC 832.7 has, as DPA states, numerous subdivisions, and I have no idea which they are using. This is analogous to exempting information based on citing simply the familiar Gov Code section 6254 which has dozens of exemptions inside it. Furthermore, there are clearly redactions in these records that involve other exemptions than PC 832.7 (such as the complainant's privacy, not the officer's), but none were cited.

### **2. Violation of SFAC 67.26 - failure to key redactions by footnote or other clear reference to justifications; non-minimal withholding**

Redactions (called by the law a masking of exempt information) in Disclosures #D1, #D2, #D3, #D4, #D5, and #D6 had no footnotes or other clear references to exemption justifications.

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<sup>1</sup> (highest priority on top):

1. Any sustained unnecessary force (UF) findings, resulting in death or great bodily injury
2. Sustained findings of sexual assault
3. Any sustained unnecessary force (UF) findings, related to firearm discharge
4. Sustained findings of dishonesty
5. All remaining requested records (i.e. unsustained death/GBI/firearm discharges)

As I alleged in each of my Supervisor of Records petitions (Exhibit B, which are all incorporated by reference herein), numerous redactions appear to be suspect and not truly exempt. This is non-minimal withholding.

### **3. Violation of SFAC 67.27/67.24(g,i) - unlawful use of public interest balancing test**

DPA and/or its governing authority, the Police Commission, assert in various public policy documents a right to withhold or delay disclosure of information based on various justifications that involve a public-interest balancing test. I believe this is prohibited by SFAC 67.24(g,i) (which is also a SFAC 67.27 violation). However, because Respondents refuse to follow SFAC 67.26 and key their redactions by footnotes or clear references to justifications and also refuse to follow SFAC 67.27 and cite specific provisions of law to redact/withhold records, it is unknown which redactions, withholdings, delays, etc. are based on unlawful justifications vs lawful ones.

### **4. Violations of SFAC 67.21(c) - failure to assist**

The statement of quantity, nature, existence, and form of responsive records was due in 7 days on Dec. 9. No statement was provided as of filing this complaint.

### **5. Violations of SFAC 67.21(k), CPRA Gov Code 6253(d) - person who withheld information is not identified**

The CPRA requires that denials in whole *or in part* must “set forth the names and titles or positions of each person responsible for the denial.” Because Disclosures #D2, D3, D4, and D5 were not accompanied by release letters, it is unknown who has is held responsible for withholding the information. D1 and D6 were accompanied by release letters.<sup>2</sup>

## **REQUEST FOR RELIEF**

Please find that the Respondents violated SF Admin Code sections 67.21, 67.24, 67.26, and/or 67.27, determine that some or all of the records or portions thereof withheld or not yet disclosed are public, and issue all appropriate orders.

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<sup>2</sup> Disclosures D1 and D6 were redacted by Mary Polk and Stephanie Wargo-Wilson, respectively.

Respectfully submitted,

ANONYMOUS

Complainant/Petitioner

## **EXHIBIT A**

From: Anonymous Person

11/27/2019

Subject: None

None

Paul Henderson and DPA,

\*\* Note that all of your responses (including disclosed records) may be automatically and instantly available to the public on the [MuckRock.com](https://www.muckrock.com) FOIA web service used to issue this request (though I am not a MuckRock representative). Redact your responses correctly - once you send them to us there is no going back. Nothing herein is legal, IT, or professional advice of any kind. The author disclaims all warranties, express or implied, including but not limited to all warranties of merchantability or fitness. In no event shall the author be liable for any special, direct, indirect, consequential, or any other damages whatsoever. The digital signature, if any, in this email is not an indication of a binding agreement or offer; it merely authenticates the sender. Please do not include any confidential information, as I intend that these communications with the City all be public records.\*\*

This is a new Immediate Disclosure Request under the San Francisco Sunshine Ordinance and the CPRA, made on November 27, 2019, to Paul Henderson as an individual custodian of public records and to the Department of Police Accountability as a public agency.

This is also an SFAC 67.21(c) request for statements of quantity, nature, existence, and form (even if content is exempt) of records responsive to each of 1 and 2 -- you must provide these statements within 7 days without any form extension.

All records must be provided in a rolling fashion (SFAC 67.25). If you use a web portal, you must publish all records openly without login or terms and conditions; or you may provide records as attachments to emails. You may not impose any conditions on me beyond than those of the CPRA (including any conditions that I must use a private entity's website which imposes terms and conditions).

A warning: every record you release to this publicly viewable email mailbox may become automatically visible to the public via the [Muckrock.com](https://www.muckrock.com) FOIA service, and via other journalistic services that publish FOIA and public records documents for searching and indexing online. Please be absolutely certain you have correctly redacted all records prior to transmitting them to us, because there is no going back.

Please read carefully the exact wording of my request. Please follow the Sunshine Ordinance and CPRA precisely as I am auditing your agency's public records regimen. As the City is aware, every violation of the Sunshine Ordinance or CPRA will be appealed immediately, including:

- any untimely or incomplete response, failure to provide records in a rolling fashion as soon as they are available, or failing to indicate whether you have responsive records or not for each request and whether you withheld any records for each request (SFAC 67.21, 67.25, Gov Code 6253(c)),
- withholding more than the minimum exempt portion of any record (SFAC 67.26),
- failure to justify with "clear reference" to an exemption statute or case law for each and every redaction or withholding, including any so-called 'metadata' (SFAC 67.26, 67.27),
- failure to provide "exact copies" of records (Gov Code 6253(b)),
- failure to provide the "electronic format in which [you] hold[] the information" (Gov Code 6253.9),
- failure to provide any "easily generated" format that we requested (SFAC 67.21(l)),
- refusing to provide the quantity of exempt records (SFAC 67.21(c)),
- unlawful use of the exemptions prohibited by SFAC 67.24, including but not limited to GC 6255, any public interest balancing test,
- redacting or withholding information whose exemption you have already waived by producing it to the public before (Gov Code 6254.5).

Please provide:

- 1) IMMEDIATE DISCLOSURE: all responsive records DPA has already provided under SB 1421 to any other requestor. Since you should not redact more information for me than you have provided any other member of the public (Gov Code 6254.5), you should be able to immediately provide these.
- 2) REGULAR DISCLOSURE: every record retained, owned, prepared, or used by DPA of: all records of officer's discharge of a firearm at a person, all records of an officer's use of force that results in death or great bodily injury, sustained findings of officer's sexual assault of a member of the public, sustained findings of officer's dishonesty that are disclosable under DB 1421. This is of course a very large request, and you may provide rolling responses. You stated in a letter ([https://sfgov.org/sunshine/sites/default/files/sotf\\_120419\\_item12.pdf](https://sfgov.org/sunshine/sites/default/files/sotf_120419_item12.pdf), page 12) that others have made similar expansive requests and I expect you to treat me with no less priority than anyone else. Please note, I expect you to redact these records in accordance with the Sunshine Ordinance - and you must justify each and every redaction or withholding with a clear reference, such as a footnote (SFAC 67.26), to a statute or case law (SFAC 67.27). If you provide only a general list of justifications, I will appeal, and you will eventually have to do all of the redaction work again as other City agencies have had to do. (For example, consider the functionality of Adobe Acrobat that allows you to put a redaction code in every redaction.) Please do not destroy any records during the pendency of my request or appeals. All records must be provided in their original electronic record, or .EML/.MSG formats, and with all metadata and headers. Please perform record production correctly the first time, as appeals and Orders from Court, SOTF, or Sup. of Records, will be quite time-consuming to have to re do.

For the sake of building a good record for any appeals I would ask that you issue formal letters detailing your expected timelines and a notice if you would like to negotiate any part of this request, if you need to.

Please provide only those copies of records available without any fees. If you determine certain records would require fees, please instead provide the required notice of which of those records are available and non-exempt for inspection in-person if we so choose.

I look forward to your immediate disclosure.

Sincerely,  
Anonymous

From: Anonymous Person

11/28/2019 

Subject: RE: California Public Records Act Request: DPA SB 1421 Police Misconduct Records - Immediate Disclosure Re...

Email

Paul Henderson and DPA,

\*\* Note that all of your responses (including disclosed records) may be automatically and instantly available to the public on the [MuckRock.com](https://muckrock.com) FOIA web service used to issue this request (though I am not a MuckRock representative). Redact your responses correctly - once you send them to us there is no going back. Nothing herein is legal, IT, or professional advice of any kind. The author disclaims all warranties, express or implied, including but not limited to all warranties of merchantability or fitness. In no event shall the author be liable for any special, direct, indirect, consequential, or any other damages whatsoever. The digital signature, if any, in this email is not an indication of a binding agreement or offer; it merely authenticates the sender. Please do not include any confidential information, as I intend that these communications with the City all be public records.\*\*

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Please read carefully the exact wording of my request. Please follow the Sunshine Ordinance and CPRA precisely as I am auditing your agency's public records regimen. As the City is aware, every violation of the Sunshine Ordinance or CPRA will be appealed immediately, including:

- any untimely or incomplete response, failure to provide records in a rolling fashion as soon as they are available, or failing to indicate whether you have responsive records or not for each request and whether you withheld any records for each request (SFAC 67.21, 67.25, Gov Code 6253(c)),
- withholding more than the minimum exempt portion of any record (SFAC 67.26),
- failure to justify with "clear reference" to an exemption statute or case law for each and every redaction or withholding, including any so-called 'metadata' (SFAC 67.26, 67.27),
- failure to provide "exact copies" of records (Gov Code 6253(b)),
- failure to provide the "electronic format in which [you] hold[] the information" (Gov Code 6253.9),
- failure to provide any "easily generated" format that we requested (SFAC 67.21(l)),
- refusing to provide the quantity of exempt records (SFAC 67.21(c)),
- unlawful use of the exemptions prohibited by SFAC 67.24, including but not limited to GC 6255, any public interest balancing test,
- redacting or withholding information whose exemption you have already waived by producing it to the public before (Gov Code 6254.5).

Please provide:

1) IMMEDIATE DISCLOSURE: all responsive records DPA has already provided under SB 1421 to any other requestor. Since you should not redact more information for me than you have provided any other member of the public (Gov Code 6254.5), you should be able to immediately provide these.

2) REGULAR DISCLOSURE: every record retained, owned, prepared, or used by DPA of: all records of officer's discharge of a firearm at a person, all records of an officer's use of force that results in death or great bodily injury, sustained findings of officer's sexual assault of a member of the public, sustained findings of officer's dishonesty that are disclosable under DB 1421. This is of course a very large request, and you may provide rolling responses. You stated in a letter ([https://sfgov.org/sunshine/sites/default/files/sotf\\_120419\\_item12.pdf](https://sfgov.org/sunshine/sites/default/files/sotf_120419_item12.pdf), page 12) that others have made similar expansive requests and I expect you to treat me with no less priority than anyone else. Please note, I expect you to redact these records in accordance with the Sunshine Ordinance - and you must justify each and every redaction or withholding with a clear reference, such as a footnote (SFAC 67.26), to a statute or case law (SFAC 67.27). If you provide only a general list of justifications, I will appeal, and you will eventually have to do all of the redaction work again as other City agencies have had to do. (For example, consider the functionality of Adobe Acrobat that allows you to put a redaction code in every redaction.) Please do not destroy any records during the pendency of my request or appeals. All records must be provided in their original electronic record, or .EML/.MSG formats, and with all metadata and headers. Please perform record production correctly the first time, as appeals and Orders from Court, SOTF, or Sup. of Records, will be quite time-consuming to have to re do.

For the sake of building a good record for any appeals I would ask that you issue formal letters detailing your expected timelines and a notice if you would like to negotiate any part of this request, if you need to.

Please provide only those copies of records available without any fees. If you determine certain records would require fees, please instead provide the required notice of which of those records are available and non-exempt for inspection in-person if we so choose.

I look forward to your immediate disclosure.

Sincerely,  
Anonymous

From: Department Of Police Accountability

12/02/2019 

Subject: November 28, 2019 Immediate Disclosure and Public Records Act Request

Email

Dear Requestor,

We received your emailed request, dated November 28, 2019, for immediate disclosure of the following records:

1) IMMEDIATE DISCLOSURE: all responsive records DPA has already provided under SB 1421 to any other requestor. Since you should not redact more information for me than you have provided any other member of the public (Gov Code 6254.5), you should be able to immediately provide these.

2) REGULAR DISCLOSURE: every record retained, owned, prepared, or used by DPA of: all records of officer's discharge of a firearm at a person, all records of an officer's use of force that results in death or great bodily injury, sustained findings of officer's sexual assault of a member of the public, sustained findings of officer's dishonesty that are disclosable under DB 1421. This is of course a very large request, and you may provide rolling responses. You stated in a letter ([https://sfgov.org/sunshine/sites/default/files/sotf\\_120419\\_item12.pdf](https://sfgov.org/sunshine/sites/default/files/sotf_120419_item12.pdf), page 12) that others have made similar expansive requests and I expect you to treat me with no less priority than anyone else. Please note, I expect you to redact these records in accordance with the Sunshine Ordinance - and you must justify each and every redaction or withholding with a clear reference, such as a footnote (SFAC 67.26), to a statute or case law (SFAC 67.27). If you provide only a general list of justifications, I will appeal, and you will eventually have to do all of the redaction work again as other City agencies have had to do. (For example, consider the functionality of Adobe Acrobat that allows you to put a redaction code in every redaction.) Please do not destroy any records during the pendency of my request or appeals. All records must be provided in their original electronic record, or .EML/.MSG formats, and with all metadata and headers. Please perform record production correctly the first time, as appeals and Orders from Court, SOTF, or Sup. of Records, will be quite time-consuming to have to re do.

We cannot treat this as an immediate disclosure request because it is not, "simple, routine, or otherwise readily answerable request." Admin. Code 67.25(a). Rather, it is extensive, demanding, and voluminous. Thus, the maximum deadlines under the Public Records Act and the Sunshine Ordinance for responding to a request apply. Admin. Code § 67.25(a).

Diana Rosenstein  
Attorney  
[dpa]  
(T) 415-241-7750  
(F) 415-241-7733  
<http://sfgov.org/dpa/>

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From: Anonymous Person

12/02/2019

Subject: RE: California Public Records Act Request: DPA SB 1421 Police Misconduct Records - Immediate Disclosure Re... [Email](#)

\*\* Note that all of your responses (including disclosed records) may be automatically and instantly available to the public on the [MuckRock.com](https://muckrock.com) FOIA web service used to issue this request (though I am not a MuckRock representative). Redact your responses correctly - once you send them to us there is no going back. Nothing herein is legal, IT, or professional advice of any kind. The author disclaims all warranties, express or implied, including but not limited to all warranties of merchantability or fitness. In no event shall the author be liable for any special, direct, indirect, consequential, or any other damages whatsoever. The digital signature, if any, in this email is not an indication of a binding agreement or offer; it merely authenticates the sender. Please do not include any confidential information, as I intend that these communications with the City all be public records.\*\*

Please do not forget the SFAC 67.21(c) statement due Dec. 7.

From: Anonymous Person

12/02/2019

Subject: RE: California Public Records Act Request: DPA SB 1421 Police Misconduct Records - Immediate Disclosure Re... [Email](#)

I apologize - its due Dec. 9.

From: Department Of Police Accountability

12/03/2019

Subject: None

[Web](#)

Dear Requestor,

We received your November 28, 2019 Immediate Disclosure and Public Records Act request on December 2, 2019. We responded to your request on that same day, rejecting your request for immediate disclosure in light of the circumstances. However, we are prepared to provide you with all disclosable records responsive to your request for, "all responsive records DPA has already provided under SB 1421 to any other requestor." We are using the electronic link you provided to upload all responsive documents. We will provide you with information early next week regarding compliance with the rest of your request.



Gongora20-200164-1620-20Final20Production20-207.1.2019.pdf

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From: Department Of Police Accountability

12/03/2019

Subject: California Public Records Act Request: DPA SB 1421 Police Misconduct Records - Immediate Disclosure Reque...

[Email](#)

Dear Requestor,

We received your November 28, 2019 Immediate Disclosure and Public Records Act request on December 2, 2019. We responded to your request on that same day, rejecting your request for immediate disclosure in light of the circumstances. However, we are prepared to provide you with all disclosable records responsive to your request for, "all responsive records DPA has already provided under SB 1421 to any other requestor." We are using the electronic link you provided to upload all responsive documents. We will provide you with information early next week regarding compliance with the rest of your request.

Mary Polk for Attorney Diana Rosenstein  
Senior Clerk  
[1517861123573\_PastedImage]

T: 415.241.7711 | F: 415.241.7733

<http://sfgov.org/dpa/>

image001

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From: Anonymous Person

12/03/2019

Subject: RE: California Public Records Act Request: DPA SB 1421 Police Misconduct Records - Immediate Disclosure Re...

[Email](#)

DPA,

\*\* Note that all of your responses (including disclosed records) may be automatically and instantly available to the public on the [MuckRock.com](http://MuckRock.com) FOIA web service used to issue this request (though I am not a MuckRock representative). Redact your responses correctly - once you send them to us there is no going back. Nothing herein is legal, IT, or professional advice of any kind. The author disclaims all warranties, express or implied, including but not limited to all warranties of merchantability or fitness. In no event shall the author be liable for any special, direct, indirect, consequential, or any other damages whatsoever. The digital signature, if any, in this email is not an indication of a binding agreement or offer; it merely authenticates the sender. Please do not include any confidential information, as I intend that these communications with the City all be public records.\*\*

Thank you very much. On Dec. 3, you published online the 24 records listed below on MuckRock's FOIA service.

It appears the records marked with asterisks appear to be duplicates. Were there other records you intended to publish instead of the duplicates?

[https://cdn.muckrock.com/outbound\\_request\\_attachments/DepartmentOfPoliceAccountability/83876/0081-1920-20File20220of203.pdf](https://cdn.muckrock.com/outbound_request_attachments/DepartmentOfPoliceAccountability/83876/0081-1920-20File20220of203.pdf) \*

[https://cdn.muckrock.com/outbound\\_request\\_attachments/DepartmentOfPoliceAccountability/83876/0081-1920-20File20320of203.pdf](https://cdn.muckrock.com/outbound_request_attachments/DepartmentOfPoliceAccountability/83876/0081-1920-20File20320of203.pdf) \*

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[https://cdn.muckrock.com/outbound\\_request\\_attachments/DepartmentOfPoliceAccountability/83876/Lopez20-200134-1520-20Final20Production.pdf](https://cdn.muckrock.com/outbound_request_attachments/DepartmentOfPoliceAccountability/83876/Lopez20-200134-1520-20Final20Production.pdf)

[https://cdn.muckrock.com/outbound\\_request\\_attachments/DepartmentOfPoliceAccountability/83876/Prepared20for20Production20-200006-07.pdf](https://cdn.muckrock.com/outbound_request_attachments/DepartmentOfPoliceAccountability/83876/Prepared20for20Production20-200006-07.pdf)

[https://cdn.muckrock.com/outbound\\_request\\_attachments/DepartmentOfPoliceAccountability/83876/Prepared20for20Production20-200068-06.pdf](https://cdn.muckrock.com/outbound_request_attachments/DepartmentOfPoliceAccountability/83876/Prepared20for20Production20-200068-06.pdf)

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[d20for20Production20-20184-04.pdf](https://cdn.muckrock.com/outbound_request_attachments/DepartmentOfPoliceAccountability/83876/REDAC%20TED20-200503-0520SWW.pdf)  
[https://cdn.muckrock.com/outbound\\_request\\_attachments/DepartmentOfPoliceAccountability/83876/REDAC](https://cdn.muckrock.com/outbound_request_attachments/DepartmentOfPoliceAccountability/83876/REDAC%20TED20-200503-0520SWW.pdf)  
[CTED20-200503-0520SWW.pdf](https://cdn.muckrock.com/outbound_request_attachments/DepartmentOfPoliceAccountability/83876/Duarte20ACLU20production20-20Part205.pdf)  
[https://cdn.muckrock.com/outbound\\_request\\_attachments/DepartmentOfPoliceAccountability/83876/Duarte2](https://cdn.muckrock.com/outbound_request_attachments/DepartmentOfPoliceAccountability/83876/Duarte20ACLU20production20-20Part205.pdf)  
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[https://cdn.muckrock.com/outbound\\_request\\_attachments/DepartmentOfPoliceAccountability/83876/Duarte2](https://cdn.muckrock.com/outbound_request_attachments/DepartmentOfPoliceAccountability/83876/Duarte20ACLU20production20-20pdf20220of204.pdf)  
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[a20-200164-1620Third20Production20-2011.27.2019.pdf](https://cdn.muckrock.com/outbound_request_attachments/DepartmentOfPoliceAccountability/83876/Gongora20Redacted20OIS20-200164-1620-20Sustained20Report20and20Exhibits.pdf)  
[https://cdn.muckrock.com/outbound\\_request\\_attachments/DepartmentOfPoliceAccountability/83876/Gongor](https://cdn.muckrock.com/outbound_request_attachments/DepartmentOfPoliceAccountability/83876/Gongora20Redacted20OIS20-200164-1620-20Sustained20Report20and20Exhibits.pdf)  
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[https://cdn.muckrock.com/outbound\\_request\\_attachments/DepartmentOfPoliceAccountability/83876/0081-](https://cdn.muckrock.com/outbound_request_attachments/DepartmentOfPoliceAccountability/83876/0081-1920-20File20120of203.pdf)  
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[https://cdn.muckrock.com/outbound\\_request\\_attachments/DepartmentOfPoliceAccountability/83876/Duarte2](https://cdn.muckrock.com/outbound_request_attachments/DepartmentOfPoliceAccountability/83876/Duarte20ACLU20production20-20pdf20120of204.pdf)  
[0ACLU20production20-20pdf20120of204.pdf](https://cdn.muckrock.com/outbound_request_attachments/DepartmentOfPoliceAccountability/83876/Duarte20ACLU20production20-20pdf20120of204.pdf)

Sincerely,  
Anonymous

From: Department Of Police Accountability

12/03/2019

Subject: RE: California Public Records Act Request: DPA SB 1421 Police Misconduct Records - Immediate Disclosure Re...

Email

No.



~WRD000

Download

From: Department Of Police Accountability

12/05/2019

Subject: None

Web

Please see the attached file disclosed in the GBI category.



0090-0020-20Prepared20for20Production.pdf

View Embed Download

From: Department Of Police Accountability

12/05/2019

Subject: None

Web

Please see the attached file disclosed in the GBI category.

From: Anonymous Person

12/05/2019



Subject: RE: California Public Records Act Request: DPA SB 1421 Police Misconduct Records - Immediate Disclosure Re...

[Email](#)

Hi,

You published two responses today. Only one had a file. Is that just a duplicate again?

From: Department Of Police Accountability

12/05/2019 

Subject: RE: California Public Records Act Request: DPA SB 1421 Police Misconduct Records - Immediate Disclosure Re...

[Email](#)

Yes.

From: Department Of Police Accountability

12/09/2019 

Subject: November 28, 2019 SB 1421 Request

[Email](#)

Dear Requestor,

Please direct all further correspondence regarding the above-referenced request to the undersigned.

On November 28, 2019, you made two requests. The request for documents under the Immediate Disclosure category have previously been provided to you. This will address the remainder of your request for, "every record retained, owned, prepared, or used by DPA of: all records of officer's discharge of a firearm at a person, all records of an officer's use of force that results in death or great bodily injury, sustained findings of officer's sexual assault of a member of the public, sustained findings of officer's dishonesty that are disclosable under DB 1421."

DPA will, of course, respond to your request in compliance with the law. But, as explained below, we will face time constraints in doing so.

Prior to January 1, 2019, California Penal Code Section 832.7 protected from public disclosure peace officer personnel records and the information in those records subject to certain narrow exceptions. But on September 30, 2018, Governor Brown signed into law SB 1421, which, effective January 1, 2019, amended Section 832.7 to create additional exceptions to the confidentiality for peace officer personnel records, thus making available to the public a broad range of records that previously could not be disclosed. These new exceptions relate to specific incidents or determinations, allowing for the public release of:

- \* the report, investigation, or findings regarding an officer's discharge of a firearm at a person;
- \* the report, investigation, or findings regarding an officer's use of force that results in death or great bodily injury;
- \* a sustained finding that an officer engaged in sexual assault involving a member of the public; and
- \* a sustained finding that an officer was dishonest directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another officer. (See Penal Code § 832.7(b)(1)(A)-(C).)

Unfortunately, DPA has not maintained personnel records according to the above listed categories. Rather, DPA has maintained records under the names of individual officers. This makes our search for records responsive to your request exceedingly time-consuming, as we must manually look through the personnel file of every officer covered by your request to determine if it contains responsive records. And, in reviewing a responsive record covered by SB 1421, we must be careful to redact information that may be confidential for other reasons, before releasing the record. You have requested all records in our possession. This includes officers that have retired or separated from the SFPD. Our records go back to 1982. Therefore, your request requires us to review thousands of files.

Complicating this problem is that DPA has received a number of requests for previously confidential peace officer records made public as a result of the passage of SB 1421. Despite our best efforts to respond promptly, a backlog has quickly developed and will remain for some time.

DPA must balance its duty to respond to public records requests with its duty to perform the broad range of tasks performed by DPA personnel that result in keeping the peace and maintaining safety in our communities. Responding to your request will be quite burdensome and time-consuming, especially when coupled with our duty also to respond to like public records requests from others. DPA will not be able to respond within the customary time frame without unreasonably impinging on its ability to perform its other duties.

It is in this rare circumstance that we find it necessary to invoke a rule of reason to guide the timing of our response to your public records request. As the City Attorney has stated on pages 97-98 of the Good Government Guide, which is available on the City Attorney's website, the law recognizes that when there is a conflict between a department's performance of its wide range of duties, and its responsibilities under public records laws, reason demands flexibility in the timing of responses to requests. Under this rule and given DPA's other public obligations, we will not be able to devote an unlimited amount of staff time to your request and like requests. Nevertheless we intend to provide a complete response to your request, but it will take longer than ordinarily is the case.

Over time, we expect this backlog problem to recede, and expect to be able to move more quickly on requests such as yours, particularly if the records being sought have already been reviewed in order to respond to an earlier request. But we are not there yet. For now, we intend to provide records in response to your request, and other like requests, on a rolling basis. We will be providing you with periodic updates

You have the option to narrow your request, for example, confining it to a particular officer or small number of officers, which might allow us to complete our response to your request sooner. However, we do not suggest you should forgo your rights to obtain the full range of records to which you are entitled under SB 1421.

In addition, you have the option to tell us which records you have sought that are your highest priority. In that event, we would do what we reasonably could to honor your preferences, in sequencing our provision of responsive records to you.

Please let me know if you have any questions pertaining to this letter, or any suggestions you might have that could expedite our response to your request.

Thank you,

Diana Rosenstein  
Attorney  
[dpa]  
(T) 415-241-7750  
(F) 415-241-7733  
<http://sfgov.org/dpa/>

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image001

Download

From: Anonymous Person

12/09/2019

Subject: RE: California Public Records Act Request: DPA SB 1421 Police Misconduct Records - Immediate Disclosure Re... [Email](#)

Thanks, Diana. I will respond substantively to your letter later on, but just for our information, is [diana.rosenstein@sfgov.org](mailto:diana.rosenstein@sfgov.org) the email address to be used for ALL records requests to DPA, or just this one? I am asking because I want to make sure all IDRs, including about your executive director, will get timely response even if sent to [diana.rosenstein@sfgov.org](mailto:diana.rosenstein@sfgov.org). Also note that when your email comes from other addresses (like the Legal Team mailing list), we just naturally reply to the email address that sent the response.

\*\* Note that all of your responses (including disclosed records) may be automatically and instantly available to the public on the [MuckRock.com](http://MuckRock.com) FOIA web service used to issue this request (though I am not a MuckRock representative). Redact your responses correctly - once you send them to us there is no going back. Nothing herein is legal, IT, or professional advice of any kind. The author disclaims all warranties, express or implied, including but not limited to all warranties of merchantability or fitness. In no event shall the author be liable for any special, direct, indirect, consequential, or any other damages whatsoever. The digital signature, if any, in this email is not an indication of a binding agreement or offer; it merely authenticates the sender. Please do not include any confidential information, as I intend that these communications with the City all be public records.\*

Sincerely,  
Anonymous

From: Department Of Police Accountability

12/09/2019

Subject: RE: California Public Records Act Request: DPA SB 1421 Police Misconduct Records - Immediate Disclosure Re... [Email](#)

Dear Requestor,

Please direct all record requests related to SB 1421 to me. Please be so kind as to carbon copy (cc) me on all other requests and if they don't go to me, I will do my best to make sure they are assigned to someone who can respond.

Thank you,

Diana Rosenstein  
Attorney  
[dpa]  
(T) 415-241-7750  
(F) 415-241-7733  
<http://sfgov.org/dpa/>

This communication, along with any attachments, is covered by federal and state laws governing electronic communications and may contain confidential and legally provided information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use, or copying of

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image001

[Download](#)**From: Department Of Police Accountability****12/10/2019**

Subject: None

Web

Please see the attached file disclosed in the GBI category.



Prepared20for20Production20-200040-1520-2012.9.2019.pdf

[View](#) [Embed](#) [Download](#)**From: Anonymous Person****12/10/2019**

Subject: RE: California Public Records Act Request: DPA SB 1421 Police Misconduct Records - Immediate Disclosure Re... Email

Diana,

\*\* Note that all of your responses (including disclosed records) may be automatically and instantly available to the public on the [MuckRock.com](https://www.muckrock.com) FOIA web service used to issue this request (though I am not a MuckRock representative). Redact your responses correctly - once you send them to us there is no going back. Nothing herein is legal, IT, or professional advice of any kind. The author disclaims all warranties, express or implied, including but not limited to all warranties of merchantability or fitness. In no event shall the author be liable for any special, direct, indirect, consequential, or any other damages whatsoever. The digital signature, if any, in this email is not an indication of a binding agreement or offer; it merely authenticates the sender. Please do not include any confidential information, as I intend that these communications with the City all be public records.\*

You will receive a letter response from another email address shortly. Please continue to keep your disclosed records on this email address.

Thanks,  
Anonymous

**From: Department Of Police Accountability****12/18/2019**

Subject: None

Web

Please see the attached file disclosed in the GBI category.



Prepared20for20Production20-200168-01.pdf

[View](#) [Embed](#) [Download](#)**From: Department Of Police Accountability****12/18/2019**

Subject: None

Web

Please see the attached transcripts that accompany the file disclosed on December 9, 2019 in the GBI category.



Prepared20for20Production20-200040-1520-20Transcripts.pdf

[View](#) [Embed](#) [Download](#)

From: Anonymous Person

12/18/2019

Subject: RE: California Public Records Act Request: DPA SB 1421 Police Misconduct Records - Immediate Disclosure Re...

[Email](#)

Supervisor of Records,

Please see the attached 67.21(d) petition against DPA.

Sincerely,  
Anonymous



Dec18-DPA-SF-83876-6721d202.pdf

[View](#) [Embed](#) [Download](#)

From: Department Of Police Accountability

12/23/2019

Subject: None

[Web](#)

Please see the two attachments.



Prepared20for20Production20-200441-12.pdf

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12\_23\_201920MuckRock20Disclosure20Letter20-200441-1220-20MJPP20SWW.pdf

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From: Anonymous Person

12/23/2019

Subject: RE: California Public Records Act Request: DPA SB 1421 Police Misconduct Records - Immediate Disclosure Re...

[Email](#)

Supervisor of Records,

Please see the attached NEW 67.21(d) petition against DPA.

This is an additional, distinct petition re: different records than our past DPA petition and does not replace those petitions.

Sincerely,  
Anonymous



Dec23-DPA-SF-83876-6721d.pdf

[View](#) [Embed](#) [Download](#)

From: Anonymous Person

12/23/2019

Subject: RE: California Public Records Act Request: DPA SB 1421 Police Misconduct Records - Immediate Disclosure Re...

Email

DPA,

On Dec. 9 you asked if I would like to prioritize or narrow this request. This applies only to the request made Nov 28 from this email address. I will not narrow my request, but I would like to prioritize the records as follows (highest priority on top):

1. Any sustained unnecessary force (UF) findings, resulting in death or great bodily injury
2. Sustained findings of sexual assault
3. Any sustained unnecessary force (UF) findings, related to firearm discharge
4. Sustained findings of dishonesty
5. All remaining requested records (i.e. unsustained death/GBI/firearm discharges)

\*\* Note that all of your responses (including disclosed records) may be automatically and instantly available to the public on the [MuckRock.com](https://www.muckrock.com) FOIA web service used to issue this request (though I am not a MuckRock representative). Redact your responses correctly - once you send them to us there is no going back. Nothing herein is legal, IT, or professional advice of any kind. The author disclaims all warranties, express or implied, including but not limited to all warranties of merchantability or fitness. In no event shall the author be liable for any special, direct, indirect, consequential, or any other damages whatsoever. The digital signature, if any, in this email is not an indication of a binding agreement or offer; it merely authenticates the sender. Please do not include any confidential information, as I intend that these communications with the City all be public records.\*

Thanks,  
Anonymous

From: Department Of Police Accountability

12/23/2019

Subject: Automatic reply: California Public Records Act Request: DPA SB 1421 Police Misconduct Records - Immediate ...

Email

I am away from my desk from my desk from December 20, 2019 to January 6, 2020. I will respond to your emails when I return. If you need immediate assistance, please contact the front desk at (415)241-7711

Thank you,

Diana Rosenstein

From: Anonymous Person

12/23/2019

Subject: RE: California Public Records Act Request: DPA SB 1421 Police Misconduct Records - Immediate Disclosure Re...

Email

DPA,

On Dec. 9 you asked if I would like to prioritize or narrow this request. This applies only to the request made Nov 28 from this email address. I will not narrow my request, but I would like to prioritize the records as follows (highest priority on top):

1. Any sustained unnecessary force (UF) findings, resulting in death or great bodily injury
2. Sustained findings of sexual assault
3. Any sustained unnecessary force (UF) findings, related to firearm discharge

4. Sustained findings of dishonesty
5. All remaining requested records (i.e. unsustained death/GBI/firearm discharges)

\*\* Note that all of your responses (including disclosed records) may be automatically and instantly available to the public on the [MuckRock.com](https://muckrock.com) FOIA web service used to issue this request (though I am not a MuckRock representative). Redact your responses correctly - once you send them to us there is no going back. Nothing herein is legal, IT, or professional advice of any kind. The author disclaims all warranties, express or implied, including but not limited to all warranties of merchantability or fitness. In no event shall the author be liable for any special, direct, indirect, consequential, or any other damages whatsoever. The digital signature, if any, in this email is not an indication of a binding agreement or offer; it merely authenticates the sender. Please do not include any confidential information, as I intend that these communications with the City all be public records.\*

Thanks,  
Anonymous

## **EXHIBIT B**

Anonymous

[83876-31149286@requests.muckrock.com](mailto:83876-31149286@requests.muckrock.com)

December 18, 2019

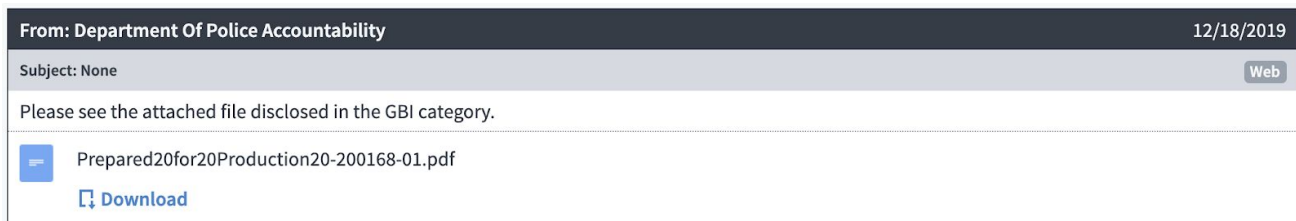
Supervisor of Records

San Francisco, CA

[supervisor.records@sfcityatty.org](mailto:supervisor.records@sfcityatty.org)

Supervisor of Records,

This is a new SFAC 67.21(d) petition for written determination that parts of specific records are public and an order for their disclosure. On December 18, 2019 an unknown employee of the Department of Police Accountability published online on MuckRock.com a record in response to our request<sup>1</sup> of Nov. 28, 2019:



This response “in the GBI category” appears to be one of many rolling responses to our request #2, clause “all records of an officer's use of force that results in death or great bodily injury” and is DPA’s investigation record “SF DPA - 0168-01”. DPA uploaded the file to:

[https://cdn.muckrock.com/outbound\\_request\\_attachments/DepartmentOfPoliceAccountability/83876/Prepared20for20Production20-200168-01.pdf](https://cdn.muckrock.com/outbound_request_attachments/DepartmentOfPoliceAccountability/83876/Prepared20for20Production20-200168-01.pdf) which I have not attached due to the large size of the file, but which I will describe as Exhibit A and is incorporated by reference herein.

---

<sup>1</sup> 1) IMMEDIATE DISCLOSURE: all responsive records DPA has already provided under SB 1421 to any other requestor. Since you should not redact more information for me than you have provided any other member of the public (Gov Code 6254.5), you should be able to immediately provide these.

2) REGULAR DISCLOSURE: every record retained, owned, prepared, or used by DPA of: all records of officer's discharge of a firearm at a person, all records of an officer's use of force that results in death or great bodily injury, sustained findings of officer's sexual assault of a member of the public, sustained findings of officer's dishonesty that are disclosable under DB 1421 (*sic*). This is of course a very large request, and you may provide rolling responses. You stated in a letter ([https://sfgov.org/sunshine/sites/default/files/sotf\\_120419\\_item12.pdf](https://sfgov.org/sunshine/sites/default/files/sotf_120419_item12.pdf), page 12) that others have made similar expansive requests and I expect you to treat me with no less priority than anyone else. Please note, I expect you to redact these records in accordance with the Sunshine Ordinance - and you must justify each and every redaction or withholding with a clear reference, such as a footnote (SFAC 67.26), to a statute or case law (SFAC 67.27). If you provide only a general list of justifications, I will appeal, and you will eventually have to do all of the redaction work again as other City agencies have had to do. (For example, consider the functionality of Adobe Acrobat that allows you to put a redaction code in every redaction.) Please do not destroy any records during the pendency of my request or appeals. All records must be provided in their original electronic record, or .EML/.MSG formats, and with all metadata and headers. Please perform record production correctly the first time, as appeals and Orders from Court, SOTF, or Sup. of Records, will be quite time-consuming to have to re do.

Because none of the withholding of information has been justified in writing (SFAC 67.27), and none of the redactions have footnotes or other clear references to justifications (SFAC 67.26), I ask for the following parts to be deemed public in writing, and ordered disclosed.

1. I allege all redactions are unlawful and must be unredacted (i.e. disclosed). While I am aware you have no jurisdiction to force DPA to justify their redactions pursuant to SFAC 67.26/67.27, if they did, this entire process would be much easier. I urge you or someone in their office to speak to DPA about their Sunshine process.
2. Because you have in the past requested examples (though I do not believe I have to provide them), I also provide this incomplete list of examples of redactions that are unlawful since they have no justifications. All references are to page numbers in Exhibit A. If a page is listed without further info, all redactions on that page are challenged.
  - a. Pg 1, Item 9 and, Columns 13 and 14
  - b. Pg 5, all redactions of DPA's typing at the bottom of the page
  - c. Pg 28
  - d. Pg 29
  - e. Pg 32
  - f. Pg 33
  - g. Pg 36, item 9 and Column 13
  - h. Pg 38, typing at bottom of the page
  - i. Pg 40, all (note govt phone numbers are not private)
  - j. Pg 41, 42, 43, "AS:" heading
  - k. Pg 46, report number
  - l. Pg 56, 57, 58, 59
  - m. Pg 62 - govt phone number
  - n. Pg 67
  - o. Pg 78 case number
  - p. Pg 79, 80, 81
  - q. Pg 82, items 5, 9, and 13
  - r. Pg 86, typing at bottom
  - s. Pg 87, items 9, 13
  - t. Pg 90-100 inclusive
  - u. Pg 102, redactions 1, 2, 5, 6 (top to bottom)
  - v. Pg 103, redactions 1, 5 (top to bottom)
  - w. Pg 107, redactions 1, 2 (is this a peace officer?), 13, 14, 15 (top to bottom)
  - x. Pg 108, bottom 2 redactions large rectangles
  - y. Pg 109, middle 2 large rectangles
  - z. Pg 110, bottom 2 large rectangles
  - aa. Pg 155, 2nd redaction

**NOTE:** Please be certain you have properly redacted all of your responses. Once you send them to us, there is no going back. The email address sending this request is a publicly- viewable mailbox. All of your responses (including all responsive records) may be instantly and automatically available to the public online via the MuckRock.com FOIA service used to issue



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Sincerely,

ANONYMOUS

Requestor/Petitioner

Anonymous

[83876-31149286@requests.muckrock.com](mailto:83876-31149286@requests.muckrock.com)

December 23, 2019

Supervisor of Records  
San Francisco, CA  
[supervisor.records@sfcityatty.org](mailto:supervisor.records@sfcityatty.org)

**SUBJECT: Request #83876 / DPA - SB 1421 / Petition #2**

Supervisor of Records,

This is a new SFAC 67.21(d) petition for written determination that parts of specific records are public and an order for their disclosure. We previously sent a DPA-related petition on Dec. 18, 2019 and this is a distinct petition that does not replace the prior one and is about distinct records. On December 23, 2019, Stephanie Wargo-Wilson of the Department of Police Accountability published online on MuckRock.com a record in DPA's continuing rolling response to our request<sup>1</sup> of Nov. 28, 2019:



<sup>1</sup> 1) IMMEDIATE DISCLOSURE: all responsive records DPA has already provided under SB 1421 to any other requestor. Since you should not redact more information for me than you have provided any other member of the public (Gov Code 6254.5), you should be able to immediately provide these.

2) REGULAR DISCLOSURE: every record retained, owned, prepared, or used by DPA of: all records of officer's discharge of a firearm at a person, all records of an officer's use of force that results in death or great bodily injury, sustained findings of officer's sexual assault of a member of the public, sustained findings of officer's dishonesty that are disclosable under DB 1421 (*sic*). This is of course a very large request, and you may provide rolling responses. You stated in a letter ([https://sfgov.org/sunshine/sites/default/files/sotf\\_120419\\_item12.pdf](https://sfgov.org/sunshine/sites/default/files/sotf_120419_item12.pdf), page 12) that others have made similar expansive requests and I expect you to treat me with no less priority than anyone else. Please note, I expect you to redact these records in accordance with the Sunshine Ordinance - and you must justify each and every redaction or withholding with a clear reference, such as a footnote (SFAC 67.26), to a statute or case law (SFAC 67.27). If you provide only a general list of justifications, I will appeal, and you will eventually have to do all of the redaction work again as other City agencies have had to do. (For example, consider the functionality of Adobe Acrobat that allows you to put a redaction code in every redaction.) Please do not destroy any records during the pendency of my request or appeals. All records must be provided in their original electronic record, or .EML/.MSG formats, and with all metadata and headers. Please perform record production correctly the first time, as appeals and Orders from Court, SOTF, or Sup. of Records, will be quite time-consuming to have to re do.

This response is one of many rolling responses to our request #2 in the footnote above, and is DPA's investigation record "SF DPA - 0441-12". DPA published the record to:

[https://cdn.muckrock.com/outbound\\_request\\_attachments/DepartmentOfPoliceAccountability/83876/Prepared20for20Production20-200441-12.pdf](https://cdn.muckrock.com/outbound_request_attachments/DepartmentOfPoliceAccountability/83876/Prepared20for20Production20-200441-12.pdf)

and a letter to:

[https://cdn.muckrock.com/outbound\\_request\\_attachments/DepartmentOfPoliceAccountability/83876/12\\_23\\_201920MuckRock20Disclosure20Letter20-200441-1220-20MJPP20SWW.pdf](https://cdn.muckrock.com/outbound_request_attachments/DepartmentOfPoliceAccountability/83876/12_23_201920MuckRock20Disclosure20Letter20-200441-1220-20MJPP20SWW.pdf)

which I have not attached due to the large size of the files, but which I will describe as Exhibit A and Exhibit B respectively and are incorporated by reference herein.

Because:

- the withholding of information has been justified in writing using a completely generic reason "based on subdivisions of Penal Code Section 832.7 that mandate and allow redactions of certain information listed in the code section" (Exhibit B, para 1) which does not actually meet the requirement that it be a "specific permissive exemption" in the CPRA or elsewhere or "specific statutory authority" prohibiting disclosure (SFAC 67.27) since PC 832.7 has, as DPA states, numerous subdivisions, and
- not all of the redactions are in fact being withheld based on any subdivisions of PC 832.7 as some are clearly being redacted for the privacy of the OCC complainant (just as an example),
- none of the "masking" of purportedly exempt information (aka redactions) are "keyed by footnote[s] or other clear reference[s]" to justifications (SFAC 67.26),

therefore, I ask for the following parts of Exhibit A to be deemed public in writing, and ordered disclosed.

1. All redactions are unlawful due to violations of SFAC 67.26, 67.27 and must be unredacted (i.e. disclosed). While I am aware you have no jurisdiction to force DPA to justify their redactions correctly pursuant to SFAC 67.26/67.27, if they did, this entire process would be much easier. I urge you or someone in your office to speak to DPA about their Sunshine process.
2. It is entirely unknown which records in investigation "SF DPA - 0441-12" were deemed exempt or withheld. No justification for withholding entire records was provided, so all withheld records (if any) should be deemed public and disclosable.
3. Because you have in the past requested examples (though I do not believe I have to provide them), I also provide this incomplete list of examples of redactions that are unlawful since they have no justifications. All references are to page numbers in Exhibit A. If a page is listed without further info, all redactions on that page are challenged. Redactions are numbered from top to bottom, left to right.
  - a. Pg 1, form Items 5 and 9
  - b. Pg 5, redactions 2, 3, 5, 6
  - c. Pg 7, form items 13, 14, 19, and last redaction
  - d. Pg 8, form items 13, 14, 19, and last redaction

- e. Pg 12, all redactions except the “work address”
- f. Pg 13, the fully hidden row on “Cited 1” - we can’t even see the names of the fields to challenge their redaction
- g. Pg 19, all redactions, we can’t even see the names of the fields to challenge their redaction
- h. Pg 21-25 - all photos must be reproduced so as to not withhold any information. These are completely illegible. (If DPA possesses no better copies, then there is nothing better to produce).
- i. Case numbers, incident numbers, report numbers, and similar must be disclosed. It is unknown what exemption these could possibly be exempt under for long-closed investigations.
- j. Pg. 34 - all redactions, we can’t even see the names of the fields to challenge their redaction
- k. Pg. 68-72 - all redactions
- l. Pg 77-81 - all redactions
- m. Pg 92 - bottom redaction
- n. Pg 99-103 - all redactions

**NOTE:** Please be certain you have properly redacted all of your responses. Once you send them to us, there is no going back. The email address sending this request is a publicly-viewable mailbox. All of your responses (including all responsive records) may be instantly and automatically available to the public online via the MuckRock.com FOIA service used to issue this request (though the requester is an anonymous user, not a representative of MuckRock). Nothing herein is legal, IT, or professional advice of any kind. The author disclaims all warranties, express or implied, including but not limited to all warranties of merchantability or fitness. In no event shall the author be liable for any special, direct, indirect, consequential, or any other damages whatsoever. The digital signature, if any, in this email is not an indication of a binding agreement or offer; it merely authenticates the sender. Please do not include any confidential information, as I intend that these communications with the City all be disclosable public records.

Sincerely,

ANONYMOUS

Requestor/Petitioner

## **EXHIBIT C**

Anonymous  
[arecordsrequestor@pm.me](mailto:arecordsrequestor@pm.me)

December 10, 2019

Diana Rosenstein, Attorney  
Paul Henderson, Executive Director  
Department of Police Accountability  
San Francisco, CA  
via email to [diana.rosenstein@sfgov.org](mailto:diana.rosenstein@sfgov.org)

Ms. Rosenstein and DPA,

*Nothing herein is legal, IT, or professional advice of any kind. The author disclaims all warranties, express or implied, including but not limited to all warranties of merchantability or fitness. In no event shall the author be liable for any special, direct, indirect, consequential, or any other damages whatsoever. The digital signature, if any, in this email is not an indication of a binding agreement or offer; it merely authenticates the sender. Please do not include any confidential information, as I intend that these communications with the City all be disclosable public records.*

Thank you for your 'rule of reason' letter. Note that we do not concede that your invocation is legally valid, nor do we waive any rights, including but not limited to before any administrative or judicial tribunal to appeal your invocation and/or file petition for mandamus for disclosure of non-exempt SB 1421 records. Your invocation of the rule of reason may allow (but we do not concede) you to provide the records over a longer time period, in a rolling fashion; however, your invocation does not abrogate any other requirements of the CPRA or Sunshine Ordinance.

With that out of the way: I am trying to understand how your department is complying with SF Admin Code 67.26 and 67.27. As you are likely aware, these provisions require that:

- no document be entirely withheld if any part is non-exempt (SFAC 67.26, sentence 1), and
- every withholding of information be justified using a specific CPRA (or case law) exemption that is not prohibited in SF (SFAC 67.27, see also SFAC 67.24 for prohibited exemptions), and
- each of your redactions (called a "mask[ing]") shall be "keyed by footnote or other clear reference" to an appropriate justification (SFAC 67.26, sentence 2)

Nothing in SFAC 67.26/67.27 requires a requestor to remind DPA to follow these provisions or file a complaint or appeal before DPA is required to provide these justifications. They are due upon "any withholding of information" (SFAC 67.27, sentence 1) and/or when you "masked" the information (SFAC 67.26, sentence 2). These procedures help ensure that no non-exempt information is ever withheld by forcing specific justification.

Different agencies do this in different ways, including but not limited to:

- (a) by putting in a short redaction code, such as "GC 6254(f)", in the black redaction boxes; or
- (b) by providing an associated letter with each record listing page and line numbers for all redactions and their justification laws.

My preference is (a) because Adobe Acrobat's redaction tools have this footnote/code functionality built-in and its less work for the City than hand-writing letters, but DPA can do as it wishes as long as the "clear reference" for each redaction's justification is provided.

You can see one example of proper redactions here from DPW:

<https://sanfrancisco.nextrequest.com/documents/437993/>

Each redaction has the code 'privacy' and then the citation to law is in a table later. Attached in Exhibit A is an excerpt of a properly justified public record by the SFPD, using a different method.

At this time, I believe DPA has already committed violations of SFAC 67.26/67.27, and I will have to file complaints to SOTF to find violations and issue orders of determination.

If SOTF eventually issues an order months later, DPA will have to *twice* produce many more documents - which is much more labor for the City than if DPA can fix the process earlier. This issue is not specific to the previously-exempt SB 1412 records - it applies to all public records disclosed by DPA.

Please let me know if you would like to solve this by negotiation instead of via further complaints. The end result of such a negotiation would be a letter signed by the Executive Director, addressed to myself and (as public communications, and published on their websites) to SOTF and the Police Commission.

I am happy to work with anyone in the City who in good faith is maximizing transparency pursuant to local and state law. I believe the DPA's mission explicitly includes transparency to the public, and I hope we can resolve this without further complaints. If the resulting letter's scope is sufficient it may also allow me to withdraw certain allegations from earlier complaint SOTF 19127 as well.

Please use this pm.me email address for any negotiations about your policies or procedures, but still use the [83876-31149286@requests.muckrock.com](mailto:83876-31149286@requests.muckrock.com) email address for records disclosures. As always, note that all of your responses (including disclosed records) to the MuckRock.com email address may be automatically and instantly available to the public on the MuckRock.com FOIA web service used to issue the request (though I am not a MuckRock representative). Remember to redact your responses correctly - once you send them to us there is no going back.

Sincerely,

Anonymous



**EXHIBIT A** - Excerpt of SFPD Production “P9438 - responsive 3.pdf” responsive to records request “P009438-101619”

**SAN FRANCISCO POLICE DEPARTMENT**

Response - Public Records Request #P009438-101619

Redactions Made to Chief William Scott Calendar

**September 30, 2019**

9:00 am Information related to personnel files redacted per Government Code §6254(c), Penal Code §832.7, Peace Officer Records.

10:00 am Information related to personnel files redacted per Government Code §6254(c), Penal Code §832.7, Peace Officer Records.

2:00 pm Information related to personnel files redacted per Government Code §6254(c), Penal Code §832.7, Peace Officer Records.

3:30 pm Personal information redacted per Government Code §6254(c).

**October 1, 2019**

9:00 am Personal information redacted per Government Code §6254(c).

**October 2, 2019**

9:00 am Information related to personnel files redacted per Government Code §6254(c), Penal Code §832.7, Peace Officer Records.

10:00 am Information relating to law enforcement sensitive information redacted per Government Code §6254(f).

11:00 am Information relating to law enforcement sensitive information redacted per Government Code §6254(f).

1:00 pm Information relating to personal information redacted per Government Code §6254(c), information related to law enforcement sensitive information redacted per Government Code §6254(f).

3:00 pm Information related to personnel files redacted per Government Code §6254(c), Penal Code §832.7, Peace Officer Records.