



NOTIFICATION

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The Attorney General has just released the following information regarding DOJ's responsibilities under SB 1421:

Penal Code section 832.7, as amended by SB 1421, requires the disclosure of certain personnel records of peace officers and custodial officers, as well as records maintained by any state or local agency as required by Penal Code section 832.5. To the extent that the Attorney General has obtained records from other state and local law enforcement agencies, the Attorney General is not the agency that "maintains" those documents. A requester may properly seek disclosure from the employing agency, which not only maintains the records, but will be best situated to assess any applicable exceptions to the disclosure requirement and any statutorily required redactions concerning sensitive and private information. Further, to the extent that the Attorney General has obtained such records in relation to investigations or proceedings that the Attorney General is conducting, the disclosure provisions in section 832.7 do not apply to the Attorney General under section 832.7, subdivision (a). Thus, the Department will produce only those non-exempt records, if any, relating to peace officers employed by the Department of Justice. In producing such records, DOJ will redact certain private identifying information, as provided in Penal Code section 832.7, subdivision (b)(5).

Historically, peace officers have had a significant privacy right in their personnel records. Several cases currently pending in the California superior courts raise the issue whether SB 1421 requires the disclosure of records relating to conduct occurring before January 1, 2019, which is the effective date of SB 1421. In two of those cases, the courts have directed local law enforcement agencies not to disclose documents until further proceedings on the issue. (*Los Angeles Police Protective League v. City of Los Angeles* (Super. Ct. Los Angeles County, 2018, No. 18-STCP-03495); *Richmond Police Officers' Association v. City of Richmond* (Super. Ct. Contra Costa County, 2019, No. 19-0169). Therefore, until the legal question of retroactive application of the statute is resolved by the courts, the public interest in accessing these records is clearly outweighed by the public's interest in protecting privacy rights. (Gov. Code, § 6255.) We will not disclose any records that pre-date January 1, 2019 at this time.

Lastly, SB 1421 provides for the disclosure of responsive records "pursuant to the California Public Records Act" (Pen. Code, § 832.7, subd. (b)(1).) Attorney work product, attorney client privilege, deliberative process privilege, and official information privilege are incorporated into the Public Records Act as an exemption from disclosure. (Gov. Code, section 6254, subd. (k); *County of Los Angeles v. Superior Court* (2000) 82 Cal.App.4th 819, 833.) In particular, the attorney work product exception protects the confidentiality of any writing that is maintained as confidential and that reflects an attorney's impressions, conclusions, opinions, legal research, or legal theories. (Code Civ. Proc. section 2018.030.) Some of the records you have requested are exempt from disclosure because they are protected by the attorney work product doctrine and privileges listed above. These records will not be disclosed.