

Memorandum

TO: ALL DEPARTMENT PERSONNEL **FROM: Dave Knopf**
Acting Chief of Police

SUBJECT: DUTY MANUAL REVISIONS: **DATE: January 20, 2021**
SEE BELOW

APPROVED

Memo# 2021-002

SUBJECT

**C 2205 POLICE RECORDS EXEMPT FROM DISCLOSURE UNDER SUBDIVISION
(F) OF GOVERNMENT CODE SECTION 6254**

R 1302 SYNOPSIS

BACKGROUND

To comply with the California Public Records Act (CPRA), the Department is required to provide a response to requestors containing information required to be released. In certain requests, the information required to be released includes a synopsis of the event containing “substance” and “factual circumstances.” However, the CPRA does not clearly define what constitutes as “substance” and “factual circumstances.” The City of San Jose’s Council Resolution No. 77135 defines “substance” and “factual circumstances” as:

Substance: Information about the "substance" of complaint or request for assistance will include:

- a. The type of crime or activity involved; and
- b. The actions which constitute the elements of the crime.

Factual Circumstances: Information about the "factual circumstances" surrounding the crime or incident will include:

- a. Whether the suspect is known or unknown to the victim;
- b. Whether the crime appears to be gang-related, if the SJPD believes such disclosure is appropriate;
- c. Whether force was used, and if so, the type of force used (e.g. physical force, baton, electronic control weapon, etc.) and the circumstances which resulted in the use of force (e.g. challenge to fight, resistance to arrest, etc.);
- d. Whether any specialized resources (e.g. Helicopter, K-9, MERGE, Bomb, or BOI units, etc.) provided significant assistance; and

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- e. Whether the suspect was arrested.

On certain CPRA request where the police report is not releasable, OSSD is required to provide the requestor a synopsis of the event, which usually originates from the General Offense report's Synopsis section. During incidents where a Synopsis is missing details or is not written, OSSD personnel are forced to author a Synopsis for the requestor. To avoid OSSD personnel from having to author a synopsis, Department Members shall author a Synopsis with the required information on all General Offense reports.

As currently written, Duty Manual section C 2205 places a time-based limit on disclosure of information that the Public Records Act requires to be provided to the public about arrests, complaints, requests for assistance, and the Department's response. On an administrative level, OSSD in the past had a rule that limited creation of arrest synopses to incidents that occurred within 90 days of the Public Records Act request. Old case law allowed law enforcement agencies to limit responses to "current information on contemporaneous police activity," which was the basis for the administrative 90-day limitation. More recent amendments to the Public Records Act and current case law acknowledging the impact of these amendments require deletion of the "current information on contemporaneous police activity" rule, which includes the 90-day administrative rule. Therefore, Duty Manual Section C 2205 is being revised to delete the "current information on contemporaneous police activity" limitation on incident information that the PRA requires to be disclosed to the public.

ANALYSIS

The Duty Manual has been revised to reflect changes described below. Additions are show in *italics and underlined*. Deletions are shown in ~~strike-through~~ form.

C 2205 POLICE RECORDS EXEMPT FROM DISCLOSURE UNDER SUBDIVISION (F) OF GOVERNMENT CODE SECTION 6254

Revised 1-20-21

Government Code Section 6254, subdivision (f), allows the Department to exempt from public disclosure police records of complaints to and investigations by the Department, criminal intelligence investigations and records of security procedures. However, as discussed below, the public is generally entitled to specific information about complaints to or request for assistance and the Department's response ("Police calls") and arrests made by San Jose Police Officers and calls for service to the Department.

In addition, since the exemptions under Government Code Section 6254 are discretionary, the Chief of Police may, on a *case-by-case* basis, make the determination to provide greater public disclosure of information or records that are otherwise exempt from disclosure due to the exemption under subdivision (f), unless disclosure is otherwise prohibited by law.

- A. Public Information that the Department is Required to Release on Arrests, Complaints, or Requests for Assistance and the Department's Response:

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While police reports themselves are exempt from disclosure under GC 6254(f), except to the victim of a crime, the victim's authorized representative, a person suffering bodily injury or property damage or loss as a result of a criminal incident, or an insurance carrier against which a claim has been or might be made, the Public Records Act requires the Department to make available to the public the following ~~current information on contemporaneous police activity~~ to the extent it exists in San Jose Police Department records:

1. Arrest Information:

- a. The full name and occupation of every individual arrested by the agency;
- b. The individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest;
- c. The time and date of booking;
- d. The location of the arrest;
- e. The substance and factual circumstances (see Note below) surrounding the arrest;
- f. The amount of bail set;
- g. The time and manner of release or the location where the individual is currently being held; and
- h. All charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

Note:

Substance to be Included:

- a. The type of crime or activity involved
- b. The actions which constitute the elements of the crime.

Factual Circumstances to be Included:

- a. Whether the suspect was known or unknown to the victim;
- b. Whether the crime was gang related, if the Department believes such disclosure is appropriate;
- c. Was forced used, and if so, the type of force used (e.g. physical force, baton, electronic control weapon, etc.) and the circumstances that lead to the force used (e.g. challenge to fight, resisting arrest, etc.);
- d. Whether any specialized resources (e.g. Air Support, K-9, MERGE, Bomb, or BOI units, etc.) provided assistance; and
- e. Disposition of the suspect (e.g. arrested, cited, released, or at large)

B. Police Calls (Complaints or Requests for Assistance and the Department's Response):

1. Subject to the disclosure restriction in Penal Code Section 841.5:

- a. The time, substance and location of all complaints or requests for assistance received by the agency
- b. The time and nature of the response thereto, including:
 - i. The time, date and location of occurrence;

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- ii. The time and date of the report;
 - iii. The name and age of the victim;
 - iv. The substance and factual circumstances (see Note above) surrounding the crime or incident; and
 - v. A general description of any injuries, property or weapons involved.
- c. The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 288.4, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9 or 647.6 of the Penal Code may be withheld at the request of the victim or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined in any of the sections of the Penal Code set forth in this paragraph may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

The name of a victim of the above specified crimes shall not be disclosed to any person, except the prosecutor, parole officers of the Department of Corrections and Rehabilitation, hearing officers of county probation departments, or other persons or public agencies where authorized or required by law.

- d. The names and images of a victim of human trafficking, as defined in Section 236.1 of the Penal Code, and of that victim's immediate family, other than a family member who is charged with a criminal offense arising from the same incident, may be withheld from public disclosure at the victim's request until the investigation or any subsequent prosecution is complete.

Note: "Immediate family" means any spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

The name and images of a victim of human trafficking, as defined in Penal Code Section 236.1, and of that victim's immediate family, other than a family member who is charged with a criminal offense arising from the same incident, may only be disclosed to the prosecutor, parole officers of the Department of Corrections and Rehabilitation, hearing officers of county probation departments, or other persons or public agencies where authorized or required by law. See Subsection E. below for further restrictions on disclosure to parole officers, probation hearing officers, and parole officers.

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C. Scholarly, journalistic, political, governmental, or private investigator requests

1. Subject to the disclosure restrictions under Penal Code Section 841.5, persons who execute a written declaration under penalty of perjury that the request is being made for scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator, and further declares that the information provided will not be used directly or indirectly, or furnished to another, to sell a product or service to any individual or group of individuals may obtain the following ~~current~~ information ~~on contemporaneous police activity~~:
 - a. The current address of every individual arrested by the agency; and
 - b. The current address of the victim of a crime.
2. The address of the victim of any crime defined by Section 220, ~~236.1~~, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 288.4, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of the Penal Code shall remain confidential. The address of a victim of any of the above specified crimes may only be disclosed to the prosecutor, parole officers of the Department of Corrections and Rehabilitation, hearing officers of the parole authority, probation officers of county probation departments, or other persons or public agencies where authorized or required by law. See Subsection E below for further restrictions on disclosure to parole officers, probation hearing officers, and parole officers.

D. Exceptions to the Requirement to Release Public Information

1. Prohibition on Disclosure of Victim or Witness Address or Telephone Number to Any Arrested Person or to a Criminal Defendant
 - Under Penal Code Section 841.5, no law enforcement officer or employee of a law enforcement agency may disclose to any arrested person, or to any person who may be a defendant in a criminal action, the address or telephone number of any person who is a victim or witness in the alleged offense.
2. Withholding of Information that would Endanger the Safety of a Person Involved in an Investigation or endanger Successful Completion of an Investigation or a Related Investigation
 - A particular item of information that the Department is required to release to the public concerning arrests, police calls, and requests for scholarly, journalistic, political or governmental purposes or from a licensed private investigator can be withheld if the Department determines that public disclosure of the particular item of information will endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation.
 - The decision to withhold release of otherwise public information is based upon the reasonable belief of the investigating officer or the Public Records Act Coordinator or other designated officer or other Department employee

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responding to the request, based on specific facts regarding the circumstances of the particular case and the officer's professional judgment, that release of a particular item of information or record would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation.

E. Restriction on Disclosure of Exempt Crime Victim Information to Parole Officer, Parole Authority Hearing Officers, and County Probation Officers Per Penal Code Section 293(g)

Subdivision (g) of Penal Code Section 293 limits release of information pursuant to subdivisions (c), (d), and (e) of Penal Code Section 293 [DM Sections C 2205 C. 2., C 2205 B. 1. c., and C 2205 B. 1. d.]. Parole officers of the Department of Corrections and Rehabilitation, hearing officers of the parole authority, and probation officers of county probation departments shall be entitled to receive information pursuant to subdivisions (c), (d), and (e) of Penal Code Section 293 only if the person to whom the information pertains alleges that he or she is a victim of an offense specified in C 2205 C.2. above, or is the victim of human trafficking, as defined in Penal Code Section 236.1, the alleged perpetrator of which is a parolee who is alleged to have committed the offense while on parole, or in the case of a county probation officer, the person who is alleged to have committed the offense is a probationer or is under investigation by a county probation department.

R 1302

SYNOPSIS:

Revised 1-20-21

This section *of the General Offense report* is designed to provide the reader with a very brief overview of the incident or crime. To accomplish this, ~~it should explain the nature of the report by giving a brief statement of what happened, including the elements of the crime.~~ *the synopsis shall contain the following:*

1. *Date, time, and location of event;*
2. *Substance to be Included:*
 - a. *The type of crime or activity involved; and*
 - b. *The actions which constitute the elements of the crime*
3. *Factual Circumstances to be Included:*
 - a. *Whether the suspect was known or unknown to the victim;*
 - b. *Whether the crime was gang related, if the Department believes such disclosure is appropriate;*
 - c. *Was force used, and if so, the type of force used (e.g. physical force, baton, electronic control weapon, etc.) and the circumstances that lead to the force used (e.g. challenge to fight, resisting arrest, etc.);*
 - d. *Whether any specialized resources (e.g. Air Support, K-9, MERGE, Bomb, or BOI units, etc.) provided assistance; and*
 - e. *Disposition of the suspect (e.g. arrested, cited, released, or at large)*

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This section ~~should normally consist of a single paragraph containing 5-7 sentences.~~ It is not designed to provide all of the details of the incident or crime. It is a summarization of the facts and information necessary to understand the event. Therefore, a more complex crime does not mean a longer synopsis. No names shall be included in a synopsis. Specific details or actions taken by officers would be documented in the narrative section of the report.

A synopsis is required on all General Offense reports.

Example - On 8-20-92, at 1000 hours, an armed robbery occurred at the 7-11 Store located at 5152 Monterey Road. An unknown suspect entered the store, pointed a handgun at the clerk and demanded money from the cash register. The clerk feared for his life and put the money on the counter. The suspect took the money and went out the front door, fleeing in an unknown direction. Officers located no other witnesses. The Robbery Unit was notified. The suspect is still outstanding.

Example - On 8-20-92, at 1130 hours, an armed robbery occurred at the Wells Fargo Bank located at 2170 Tully Road. Two unknown suspects entered the bank, pointed handguns at the tellers and demanded money from their drawers. The tellers feared for their lives, took money from their drawers, and placed the money on the counter. The suspects took the money, went out the west doors and left in a vehicle with no plates. There were ten witnesses from the bank. The Robbery Unit was notified and responded to the scene. The suspects and vehicle are still outstanding.

ORDER

Effective immediately, all Department personnel shall adhere to the above Duty Manual sections.



Dave Knopf
Acting Chief of Police

DK:SD:MB