
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 345 **Hearing Date:** April 25, 2017
Author: Bradford
Version: March 30, 2017 As Proposed to be Amended
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Law Enforcement Agencies: Regulations*

HISTORY

Source: California Public Defenders Association

Prior Legislation: None

Support: Electronic Frontier Foundation

Opposition: California State Sheriffs' Association

PURPOSE

The purpose of this legislation is to require a number of law enforcement agencies to post policies and procedures on their websites, as specified.

Existing law, the California Constitution, declares the people's right to transparency in government. ("The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny....") (Cal. Const., art. I, Sec. 3.)

Under existing law the California Public Records Act generally provides that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Government Code § 6250 et. seq.)

Existing law provides that public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law. (Government Code § 6253)

Under existing law there are 30 general categories of documents or information that are exempt from disclosure, essentially due to the character of the information, and unless it is shown that the public's interest in disclosure outweighs the public's interest in non-disclosure of the information, the exempt information may be withheld by the public agency with custody of the information. (Government Code § 6254 et seq.)

Under existing law California Public Records Act does not require disclosure of investigations conducted by the office of the Attorney General and the Department of Justice, the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. (Government Code § 6254(f).)

Existing law requires that any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the proportions that are exempted by law. (Government Code § 6253(a).)

Existing law, for records not subject to an exemption, may be withheld if the agency demonstrates that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Government Code § 6255.)

This bill requires that, commencing January 1, 2019, the Department of Alcoholic Beverage Control, the Department of the California Highway Patrol, the Department of Corrections and Rehabilitation, the Department of Fish and Wildlife, the Department of Justice, the Commission on Peace Officer Standards and Training, and each local law enforcement agency to, to the fullest extent required by the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), conspicuously post on their Internet Web site, in a searchable manner, all current standards, policies, practices, operating procedures, education and training materials.

COMMENTS

1. Need for This Legislation

According to the author:

Although existing law provides that members of the public may use CPRA to request an opportunity to inspect police department training, policies and procedures, there are currently wide gaps in compliance. Moreover, community groups and individuals have voiced frustration that these orders are not all currently available online. Unless these state and local regulations are publicly available online, individual state and local law enforcement agencies must spend considerable staffing and time to respond to requests for access to police regulations, which are already covered under CPRA.

This legislation is, essentially, *low hanging fruit*. It covers no more and no less than what is already covered by CPRA while (1) improving transparency in policing in the State of California, (2) saving law enforcement agencies valuable time and staffing, and (3) enhancing police-community relations consistent with Pres. Obama's Task Force on 21st Century Policing.

2. Effect of this Legislation

On December 18, 2014, amid protests in Ferguson, Missouri, where a grand jury declined to criminally charge police officer Darren Wilson in the fatal shooting of Michael Brown, President Barack Obama signed an Executive Order establishing the Task Force on 21st Century Policing. “The mission of the task force was to examine how to foster strong, collaborative relationships between local law enforcement and the communities they protect and to make recommendations to the President on how policing practices can promote effective crime reduction while building public trust. The president selected members of the task force based on their ability to contribute to its mission because of their relevant perspective, experience, or subject matter expertise in policing, law enforcement and community relations, civil rights, and civil liberties.” (U.S. Department of Justice's Office of Community Oriented Policing Service, *Interim Report of the President's Task Force on 21st Century Policing* (Mar. 2015), at 1.) In addressing the issue of transparency, the task force recommended that law enforcement agencies make all department policies available for public review. (*Id.* at 11.) This legislation implements this recommendation by requiring law enforcement agencies to post a variety of department policies on-line. The California Public Defenders Association, who is the sponsor of this legislation, explains:

SB 345 will enhance the transparency of each law enforcement agency, assist in educating the public about law enforcement department policies and procedures, and allow statewide and local law enforcement agencies to promote best policies and greater accountability in law enforcement, thereby enhancing police-community relations consistent with President Obama's Task Force on 21st Century Policing.

SB 345 codifies and clarifies existing state law. On March 2, 2017, in a unanimous decision, the California Supreme Court emphasized the breadth and depth of the California Public Records Act ["CPRA"] in *City of San Jose v. Sup. Court (Smith)* (S218066) [broad reading of CPRA includes private emails of public officials.] The Court highlighted CPRA's strong presumption that all public records are open for inspection and copying, except those categories of records specifically designated as “exempt” from disclosure. (Gov't Code sections 6253(b), 6254):

Given the strong public policy of the people's right to information concerning the people's business (Gov. Code, § 6250), and the constitutional mandate to construe statutes limiting the right of access narrowly (Cal. Const., art. I, § 3, subd. (b)(2)), 'all public records are subject to disclosure unless the Legislature has expressly provided to the contrary.' [Smith, supra, at p. 5, citing *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 166, emphasis in original.]

SB 345 sets a uniform standard in statewide and local CPRA compliance. Although existing law provides that members of the public may use the CPRA to request department training, policies and procedures, there are currently wide gaps in compliance with such requests. Moreover, community groups and individuals have voiced frustration that these orders are not all currently available online. Unless these state and local trainings and regulations are publicly available online, individual state and local law enforcement agencies will continue to spend considerable staffing and time responding to requests for access to police regulations already covered under CPRA. [Footnotes omitted.]

3. Author's Amendments

Penal Code Section 13650 of this legislation will be amended to read:

Commencing January 1, 2019, the Department of Alcoholic Beverage Control, the Department of the California Highway Patrol, the Department of Corrections and Rehabilitation, the Department of Fish and Wildlife, the Department of Justice, the Commission on Peace Officer Standards and Training, and each local law enforcement agency shall, to the fullest extent required by the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), conspicuously post on their Internet Web site, in a searchable manner, all current standards, policies, practices, operating procedures, education and training materials.

4. Argument in Opposition

The California Sheriffs' Association states:

While we understand your desire for transparency, this bill casts a wide net and could require the public disclosure of potentially sensitive information. Based on the provisions of the bill, documents that detail tactical procedures, investigative techniques, and specific training methods could be required to be made public.

Many law enforcement standards and policies are already publicly available, but SB 345 potentially jeopardizes operational and investigative security of sensitive information that should not be accessible by the public. To the extent any of the items contemplated by the bill are already public records, SB 345 represents an additional, unfunded mandate to provide an alternative method of access. For these reasons, CSSA must respectfully oppose SB 345.

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