SENATE COMMITTEE ON PUBLIC SAFETY

Senator Jesse Arreguín, Chair
2025 - 2026 Regular

Bill No:	AB 1178	**Hearing Date:**	June 10, 2025
Author:	Pacheco		
Version:	April 28, 2025		
Urgency:	No	**Fiscal:**	No
Consultant:	AB		

Subject: ***Peace officers: confidentiality of records***

HISTORY

Source: Los Angeles County Sheriff's Department; Association of Los Angeles Deputy Sheriffs

Prior Legislation: SB 400 (Wahab), Ch. 3, Stats. of 2024
AB 2557 (Bonta), not heard in Assembly Judiciary Committee, 2022
SB 16 (Skinner), Ch. 402, Stats. of 2021
SB 2 (Bradford), Ch. 409, Stats. of 2021
AB 17 (Cooper), not heard in Assembly Public Safety Committee, 2021
SB 776 (Skinner), 2020, never heard on Senate concurrence
SB 1421 (Skinner), Ch. 988, Stats. of 2018
SB 1286 (Leno, 2016) held in Senate Appropriations
AB 1106 (Horton), Ch. 102, Stats. of 2003
AB 1873 (Koretz), Ch. 65, Stats. of 2002

Support: California Association of Highway Patrolmen; California District Attorneys Association; Los Angeles County Professional Peace Officers Association; Public Risk Innovation, Solutions, and Management (PRISM)

Opposition: ACLU California Action; American Community Media; California News Publisher's Association; First Amendment Coalition; Freedom of the Press Foundation; Industrial Workers of the World Freelance Journalists Union; Initiate Justice; Justice2Jobs Coalition (unless amended); La Defensa; League of Women Voters of California; Media Alliance; National Press Photographer's Association; Orange County Press Club; Pacific Media Workers Guild; Radio Television Digital News Association; San Francisco Public Defender (unless amended); Society of Professional Journalists, Northern California Chapter

Assembly Floor Vote: 60 - 2

PURPOSE

The purpose of this bill is to require a court to consider whether a particular peace officer is operating undercover such that their duties demand anonymity when determining whether to redact a peace officer personnel record, as specified.

Existing law establishes 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.)

Existing law establishes the California Public Records Act (CPRA), which 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, and requires government agencies to disclose government records to the general public upon request, unless such records are exempted from disclosure. (Gov. Code, § 7920.000 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. (Gov. Code § 7922.525.)

Existing law provides that the CPRA does not require the disclosure of records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, 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. (Gov. Code, § 7923.600.)

Existing law provides that the CPRA does not require the disclosure of peace officer personnel files and background investigation files gathered by law enforcement agencies pursuant to existing law that are in the custody of the Commission on Peace Officer Standards and Training (POST) in connection with the commission's authority to verify eligibility for the issuance of certification and investigate grounds for decertification of a peace officer including any and all investigative files and records relating to complaints of, and investigations of, police misconduct, and all other investigative files and materials. (Gov. Code, § 7923.601.)

Existing law specifies the particular circumstances under which an audio or video recording that relates to a "critical incident" may be withheld. (Gov. Code, § 7923.625.)

Existing law requires each department or agency in this state that employs peace officers to make a record of any investigations of misconduct involving a peace officer in the officer's general personnel file or a separate file designated by the department or agency. A peace officer seeking employment with a department or agency in this state that employs peace officers shall give written permission for the hiring department or agency to view the officer's general personnel file and any separate file designated by a department or agency. (Pen. Code, § 832.12.)

Existing law sets forth the following definitions for the purpose of the provisions below:

- "Personnel records" means any file maintained under that individual's name by his or her employing agency and containing records relating to personal data, employee advancement, appraisal or discipline, complaints or investigations of complaints concerning specified events, and other specified topics. (Pen. Code §832.8, subd. (a).)

- "Sustained" means a final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for

an administrative appeal pursuant to specified provisions of the Peace Officer's Bill of Rights, that the actions of the peace officer or custodial officer were found to violate law or department policy. (Pen. Code §832.8, subds. (a), (b).)

Existing law generally provides that the personnel records of peace officers and custodial officers and records maintained by a state or local agency or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery. This provision does not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, the Attorney General's office, or the POST . (Pen. Code, § 832.7, subd. (a).)

Existing law specifies that notwithstanding the above provision or any other law, the following peace officer or custodial officer personnel records and records maintained by a state or local agency are not confidential and shall be made available for public inspection pursuant to the CPRA:

- A record relating to the report, investigation, or findings of any of the following:
    - An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
    - An incident involving the use of force against a person by a peace officer or custodial officer that resulted in death or in great bodily injury.
    - A sustained finding involving a complaint that alleges unreasonable or excessive force.
    - A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.
- Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public.
- Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency involving dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any false statements, filing false reports, destruction, falsifying, or concealing of evidence, or perjury.
- Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

- Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that the peace officer made an unlawful arrest or conducted an unlawful search. (Pen. Code, § 832.7, subd. (b)(1).)

Existing law specifies which types of documents and records shall be released pursuant to the provision above. (Pen. Code, § 832.7, subd. (b)(3).)

Existing law provides that an agency may withhold a record of an incident otherwise subject to disclosure if there is an active criminal or administrative investigation, as specified. (Pen. Code § 832.7, subd. (b)(8).)

Existing law provides that an agency shall redact a disclosed record only for any of the following purposes:

- To remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace and custodial officers.

- To preserve the anonymity of whistleblowers, complainants, victims, and witnesses.

- To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about possible misconduct and use of force by peace officers and custodial officers.

- Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person. (Pen. Code § 832.7, subd. (b)(6).)

Existing law provides that notwithstanding the above provision, an agency may redact a disclosed record, including personal identifying information, where, on the facts of a particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information. (Pen. Code § 832.7, subd. (b)(7).)

This bill provides that in determining whether to redact a record pursuant to the provision allowing redaction where there is a specific reason to believe that disclosure would pose a significant danger to the physical safety of the peace officer or another person, a court shall consider whether a particular peace officer is currently operating undercover and their duties demand anonymity.

COMMENTS

1. Need for This Bill

According to the Author:

> Transparency is essential for public trust. At the same time, we also need to protect the safety of officers engaged in undercover, dangerous work that protects our

communities. AB 1178 simply closes an unintended loophole by ensuring that undercover peace officers receive appropriate consideration for the redaction of their identifying information from public records requests.

This bill carefully balances accountability with safety by preserving judicial discretion in determining when an officer's undercover status warrants such protection. When an undercover officer's identity is compromised, the exposure jeopardizes active criminal investigations and places the officer and their family in danger. AB 1178 maintains full disclosure of all records related to sustained misconduct while protecting the safety of officers working in sensitive undercover operations that are essential to public safety and community well-being.

2. Access to Police Personnel Records

In 1968, the Legislature passed the California Public Records Act (CPRA), declaring that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in the state."[1] The purpose of the CPRA is to prevent secrecy in government and to contribute significantly to the public understanding of government activities.[2] Under the law, virtually all public records are open to public inspection unless express exempted in statute. However, even if a record is not expressly exempted, an agency may refuse to disclose records if on balance, the interest of nondisclosure outweighs disclosure. Generally, "records should be withheld from disclosure only where the public interest served by not making a record public outweighs the public interest served by the general policy of disclosure."[3]

In the context of peace officer records, the CPRA contains several relevant exemptions to the general policy requiring disclosure, namely 1) records of complaints to, or investigations conducted by any state or local police agency, 2) personnel records, if disclosure would constitute an unwarranted invasion of personal privacy, and 3) records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including records deemed confidential under state law.[4]

In 1974, the California Supreme Court decided *Pitchess v. Superior Court* (1974) 11 Cal. 3d 531, which allowed a criminal defendant to access to certain kinds of information in citizen complaints against law enforcement officers contained in the officers' personnel records. After *Pitchess* was decided, several law enforcement agencies launched record-destruction campaigns, leading the Legislature to enact record-retention laws and codify the privileges and discovery procedures related to *Pitchess* motions.[5] In a natural response, law enforcement agencies began pushing for stronger confidentiality measures, many of which are currently still in effect. The relevant Penal Code provisions define peace officer "personnel records" and, prior to 2018, provided that such records are confidential and subject to discovery only pursuant to the procedures set forth in the Evidence Code.

In 2006, the California Supreme Court re-interpreted a key Penal Code provision, Section 832.7, to hold that the record of a police officer's administrative disciplinary appeal from a sustained

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[1] California Government Code §7921.000
[2] *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1016-1017.
[3] Gov. Code, § 7922.000
[4] Gov. Code, §§ 7923.600; 7927.700, 7927.705
[5] These were primarily codified in Penal Code §§ 832.7 and 832.8, and Evidence Code §§1043 through 1045.

finding of misconduct was confidential and could not be disclosed to the public.[6] This decision had the practical effect of preventing the public from learning the extent to which police officers had been disciplined as a result of misconduct, and closed to the public all independent oversight investigations, hearings and reports. This decision also rendered California one of the most secretive states in the nation in terms of transparency into peace officer misconduct, and carved out a unique confidentiality exception for law enforcement that does not exist for public employees, doctors and lawyers, whose records on misconduct and resulting discipline are public records.

3. Recent Legislation Requiring Increased Transparency

In 2018, the Legislature passed SB 1421 (Skinner, Ch. 988, Stats. of 2018), which represented a paradigm shift in the public's ability to access previously confidential peace officer personnel records. SB 1421 removed *Pitchess* protection from records pertaining to officer-involved shootings, uses of force resulting in death or great bodily injury, and sustained findings of sexual assault or dishonesty. SB 1421 led to a surge in CPRA requests submitted to law enforcement agencies across the state, posing a logistical challenge of unprecedented proportions. Not only was universe of responsive records massive, but determining the responsiveness of a particular record could prove to be a lengthy process. Moreover, SB 1421 required agencies to redact specified personal information, information the release of which "would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about possible misconduct," and information that, if unredacted, would pose a significant danger to the physical safety of the peace officer or another person.[7] This latter provision is the focus of this bill.

In 2021, the Legislature passed SB 16 (Skinner, Ch. 402, Stats of 2021), building upon the transparency provisions enacted by SB 1421, and responding to widespread criticism that law enforcement agencies were flouting the law via litigation and other tactics to delay the release of records. SB 16 exempted four additional categories of peace officer records from the confidentiality requirement in Penal Code Section 832.7, including those pertaining to sustained findings of unreasonable or excessive use of force, sustained findings that an officer failed to intervene in another officer's unreasonable or excessive use of force, sustained findings that an officer engaged in prejudice or discrimination on the basis of a protected characteristic, and sustained findings that an officer made an unlawful arrest or conducted an unlawful search.

4. Redaction of Records and Effect of This Bill

To summarize the relevant portions of existing law outlined above, the following types of police officer records are now subject to disclosure under the CPRA: records relating to incidents involving an officer's discharge of a firearm at a person or an officer's use of force that results in great bodily injury or death, as well as records of records of sustained findings that an officer used excessive or unreasonable force, failed to intervene when another officer clearly used excessive or unreasonable force, sexually assaulted a member of the public, engaged in specified dishonesty, engaged in prejudicial or discriminatory conduct, or made an unlawful arrest or search.[8] When such personnel records are subject to disclosure, existing law requires law enforcement agencies to redact those records under various specified circumstances, including

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[6] *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272
[7] Pen. Code § 832.7, subd. (b)(6).
[8] Pen. Code § 832.7, subd. (b)(1)(A)-(E).

"where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person."[9] In addition to these redaction requirements, an agency may redact a record subject to disclosure where, on the facts of a particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.[10]

The CPRA contains a substantially similar balancing test permitting public agencies to withhold records where the public interest in withholding the record clearly outweighs the public interest in disclosure.[11] The California Supreme Court has stated that this balancing test may be utilized to protect the identities of undercover officer whose duties are such that they demand anonymity to protect their safety and effectiveness. In *Commission on Peace Officer Standards & Training v. Superior Court* the California Supreme Court stated the following:

> We readily acknowledge that throughout the state there are some officers working in agencies who, because of their particular responsibilities, require anonymity in order to perform their duties effectively or to protect their own safety… If the duties of a particular officer, such as one who is operating undercover, demand anonymity, the need to protect the officer's safety and effectiveness certainly would justify the Commission in withholding information identifying him or her under [the CPRA], which permits records to be withheld if "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.[12]

This permits agencies to withhold identifying information such as officer names, which are otherwise subject to disclosure.[13] However, it is important to note that this is not a blanket exemption for every officer that has ever worked undercover, but rather a case-by-case determination based on an agency's ability to prove, on the facts of a particular case, that the interest in withholding the record outweighs he interest in disclosure. Accordingly, the California Supreme Court has rejected general claims that an undercover officer's record should be withheld without any facts demonstrating why disclosure would threaten their safety.[14]

According to the Author, "a plain reading of the law does not recognize undercover status alone as grounds for a redacting an officer's identity. The current framework endangers officers working undercover on critical missions such as combating weapons trafficking, child exploitation and infiltrating organized crime rings. Disclosure of their identities not only compromises dangerous investigations, but may put officers and their families at risk of retaliation from criminal networks." As mentioned above, one of the circumstances in which a law enforcement agency must redact officer records is where there is a specific, articulable, and

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[9] Pen. Code, § 832.7, subd. (b)(6)(D)
[10] Pen. Code § 832.7, subd. (b)(7).
[11] Gov. Code, § 7922.000
[12] *Commission on Peace Officer Standards & Training v. Superior Court*, 42 Cal.4th 278, 301 (2007)
[13] See *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 337 ("[i]f an officer's anonymity is essential to his or her safety, the need to protect the officer would outweigh the public interest in disclosure and would justify withholding the officer's name") *Long Beach Police Officers Ass'n. v. City of Long Beach, supra,* 59 Cal. 4th 59 (2014), at p. 74 ("Of course, if it is essential to protect an officer's anonymity for safety reasons or for reasons peculiar to the officer's duties—as, for example, in the case of an undercover officer—then the public interest in disclosure of the officer's name may need to give way."
[14] *Id.*; *Commission on Peace Officer Standards & Training v. Superior Court*, *supra*, at 301.

particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person. This bill provides that "in determining whether to redact a record pursuant to this provision, a court shall consider whether a particular peace officer is currently operating undercover and their duties demand anonymity." The fundamental problem with this language is that it is formulated in such a way as to imply that the court is the entity redacting the record in question, when it is in fact the law enforcement agency that performs the redactions. If the intention is to provide courts with guidance regarding how to determine whether a given redaction is appropriate, the bill should state as much. The Author and Committee may wish to consider amending the bill accordingly:

> *(D) (i) Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person.*
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> *(ii) In determining whether ~~to redact a record~~* ***a redaction made*** *pursuant to clause (i)* ***is appropriate****, a court shall consider whether a particular peace officer is currently operating undercover and their duties demand anonymity.*

5. Argument in Support

According to the Los Angeles Sheriff's Department, one of the bill's sponsors:

> Certain records, such as those that contain personal identifying information of law enforcement officers are considered confidential and exempt from public disclosure unless the officer is involved in specified matters of serious misconduct or significant uses of force. Even in cases when an officer's records are eligible for disclosure, current law allows the redaction of an officer's record but only when an articulated, specific reason to believe the disclosure of the record would pose a significant danger to the physical safety of the officer exists. As currently worded, this exemption has led to the legal argument that an actual threat had to exist at the time a public record was requested before the request could be denied.
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> Compounding the issue, existing law repeatedly characterizes law enforcement personnel as one body of persons, with presumably one set of duties common to all officers. No specific consideration of the unique duties of an undercover officer currently exists. This has left the door open to the continuance of legal challenges that could result in photographs or other identifying information of undercover law enforcement officers being released. Although a simple, clearly stated federal statute; Title 50 USC 3121, is in place to protect the identities of federal undercover personnel, no such provision exists in California law that protects our own law enforcement personnel.
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> Threats to our undercover officers, who infiltrate violent criminal organizations, are a nearly an inevitable part of a successful operation. Undercover officers usually face threats after their work is done, and their testimony is required in court. They do not face the same threat while their operation is underway because their identity as an officer is concealed. An undercover officer who is discovered as such prior to the conclusion of an operation is likely to be immediately targeted with violence, if not murdered due to their status as a peace officer. Therein resides the need for this bill.

Officers who have conducted an undercover operation at great risk to themselves, and the timing of the threats they will likely receive must be uniquely recognized, and must be factors that are considered when that officer's record is requested by someone not normally entitled to have it.

6. Argument in Opposition

According to La Defensa:

Penal Code 832.7's transparency provisions reflect the fact that where Californians' tax dollars fund law enforcement officers who are sworn to protect our communities, the public has an undeniable right to hold police accountable through review of their misconduct files. Any amendments to the provisions allowing for redactions of these public records must be carefully drafted to be consistent with the rest of the law. Unfortunately, as currently written, AB 1178's amendments are inconsistent with the current provisions of Penal Code 832.7 and may cause confusion. For example, AB 1178 amends Penal Code Section 832.7(b)(6) which begins with "an agency shall…", yet the bill refers to "a court". Additionally, where AB 1178 seeks to amend the portion of Penal Code Section 832.7(b)(6)(D) that allows for redactions of public records where the disclosure would pose a significant danger to the physical safety of an officer, the bill should explicitly restate this language. To avoid any confusion and ensure the public's right to access crucial public records, AB 1178 should be amended to read:

(D) (i) Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person.

(ii) In determining whether to redact a record pursuant to clause (i), ~~a court~~ **an agency** shall consider whether a particular peace officer is currently operating undercover and their **current** duties demand anonymity **to protect against a significant danger to their physical safety**.

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