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Public Law 101 Conference

PRA, Part II

Wednesday, November 15, 2023
2:15 p.m. – 3:15 p.m.

Speakers:

Katey Rusch, Investigative Reporting Program at UC-Berkeley

Conference Reference Materials

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Katey Rusch is a reporter at UC Berkeley's Investigative Reporting Program. Her work focuses on police misconduct. In 2019, she was part of a team of reporters at the Investigative Reporting Program, the Mercury News, and the Center for Investigative Reporting, who worked on a series of stories related to a "secret list" of California's criminal cops. The series was a finalist for a Scripps Howard Award.

Before joining the Investigative Reporting Program, Katey spent a decade as an on-air reporter and writer in local television newsrooms, including stops in Seattle, Phoenix, Bakersfield, California, Duluth, Minnesota, and Topeka, Kansas. As a video journalist, Katey won numerous awards, including several Emmys and an Edward R. Murrow award for a series about fracking and the potential energy in shale oil reserves. She is a graduate of the Medill School of Journalism at Northwestern University and UC Berkeley's Graduate School of Journalism.



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TRANSPARENCY: POLICE & TECHNOLOGY

Katey Rusch / November 15, 2023

Private devices, public records

- City of San Jose v. Superior Court, (2017) 2 Cal 5th
 - Emails and text messages relating to local agency business on local agency and/or personal accounts and devices are public records
 - “..an agency’s public records ‘do not lose their agency character just because the official who possesses them takes them out the door.’”

Private devices, public records

- City of San Jose v. Superior Court (2017) 2 Cal.5th 608
 - GC 7920.530: “Public records ’includes any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”
 - Minimum: “must relate in some substantive way to the conduct of the public’s business”

Private devices, public records

- How to search, guidance from *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608
 - Communicate the request to that employee
 - Employee is allowed to search their own files but they should be trained in what is a public record vs. private record
 - If a potentially responsive document is held, the employee can submit an affidavit as to why the records withheld were personal records
- The court suggested agencies develop policies to limit public records stored on personal devices/accounts

SECRECY: POLICE RECORDS

- 1978: CA legislature enacts Penal Code sections **832.7 and 832.8** to mandate the confidentiality of peace officer personnel records
- Before 2006: limited access to records from law enforcement oversight agencies
- August 2006: the California Supreme Court made a police officer's administrative disciplinary appeal confidential again (*Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272)
- August 2007: names of peace officers, their employing departments, and dates of employment are public records subject to disclosure (*Commission Peace Officer Standards and Training v. Superior Court* (2007) 42 Cal. 4th 278)

LIFTING SECRECY: POLICE RECORDS

Records Laws

- SB 1421 (Right to Know Act): Enacted January 1, 2019
- SB 16: Enacted January 1, 2022 (some provisions took effect January 1, 2023)

Decertification Law

- SB 2: Enacted January 1, 2022 (most provisions took effect January 1, 2023)

SB 1421: What's disclosable?

- An incident where an officer fired a gun at a person (PC 832.7(b)(1)(A)(i))
- An incident where an officer used force that resulted in serious injury or death (PC 832.7(b)(1)(A)(ii))

Sustained Findings

- Committed sexual assault with a member of the public. Includes any attempts to have sex on duty. (PC 832.7(b)(1)(B))
- Dishonest in the investigation, reporting, or prosecution of a crime or police misconduct (PC 832.7(b)(1)(C))



Concealing crucial public safety matters such as officer violations of civilians' rights, or inquiries into deadly use of force incidents, undercuts the public's faith in the legitimacy of law enforcement, makes it harder for tens of thousands of hardworking peace officers to do their jobs, and endangers public safety.

- Senate Bill 1421

SB 16: What's disclosable?

Sustained Findings

- Unreasonable or excessive force (PC 832.7(b)(1)(A)(iii))
- Failed to intervene against another officer using unreasonable or excessive force (PC 832.7(b)(1)(A)(iv))
- Speech or writings involving prejudice or discrimination (PC 832.7(b)(1)(D))
- Unlawful arrest or search (PC 832.7(b)(1)(E))

Incomplete Investigations

- Records will be released if the officer resigns during the investigation (PC 832.7(b)(3))

SB 2: Police Decertification Act

- Decertify or revoke the licenses of officers who committed serious misconduct
- California Commission on Peace Officer Standards & Training (POST) decertifies BUT does not have to release records until 2027 (GC 7923.601(g))
 - Requests will be forwarded to local agencies to release records (GC 7923.601 (b))

Types of Police Records Released

- Investigative reports
- Photographic, audio, and video evidence
- Transcripts or recordings of interviews
- Autopsy reports
- Reports submitted to the DA
- Documents regarding discipline (Notice of Proposed Discipline, Notice of Discipline)
- Documents reflecting modifications of discipline due to the Skelly or grievance process

Source: PC 832.7(b)(3)

Redactions in Police Records

- Personal data: home address, phone number
- Whistleblowers, complainants, victims, and witnesses
- Confidential medical or financial information
- Information that would pose a physical danger to someone

Source: PC 832.7(b)(6)

Retention of Police Records

- Before 2022: Records involving a citizen complaint where there
 - WAS NOT a sustained finding retained for 2 years
 - WAS a sustained finding retained for 5 years
- After 2022: Records involving a citizen complaint where there
 - WAS NOT a sustained finding retained for 5 years
 - WAS a sustained finding retained for 15 years

Source: PC 832.5

Disclosure Deadlines

- CPRA dictates public agencies have 10 days (plus a 14-day optional extension) to determine if disclosable records exist (GC 7922.535)
- As of January 1, 2023, records that fit the categories shall be provided at the “earliest possible time,” no later than 45 days from the date the request was received (PC 832.7(b)(11))
 - May withhold if (PC 832.7(b)(8)):
 - There is an active criminal investigation
 - There is an active administrative investigation (not longer than 180 days)

Becerra v. Superior Court

- *Does it matter which agency initially created the records?*
 - *No.* If an agency has records subject to disclosure, it must release those records even if they pertain to officers employed by a different agency.

Source: Becerra v. Superior Court, 44 Cal. App. 5th 897, 920 (2020)

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