

**MEMORANDUM OF UNDERSTANDING
REGARDING INFORMATION TO BE RELEASED
PURSUANT TO A THIRD PARTY PUBLIC RECORDS ACT ("PRA") REQUEST**

35591

**I.
PARTICIPANTS**

This Memorandum of Understanding (hereinafter "MOU") is entered into between the Los Angeles County District Attorney's Office (hereinafter "LADA") and the law enforcement agency of the City of Long Beach Police Department (hereinafter "AGENCY").

**II.
PURPOSE**

The purpose of this MOU is to ensure that the AGENCY provide the LADA with relevant, non-confidential records from the personnel files of peace officers when disclosed pursuant to a third-party Public Records Act ("PRA") request. Pursuant to California Senate Bill 1421, as adopted on September 30, 2018, ("SB 1421") records are being requested and provided to the LADA pursuant to the provisions of SB 1421, as codified in Penal Code section 832.7, guided by Penal Code section 832.8.

This MOU is not intended to create or confer any rights, privileges, or benefits to defendants in criminal cases other than what is already mandated by existing constitutional, statutory, and decisional law. Additionally, nothing in this MOU shall apply to, or in any way limit, the LADA's statutory authority to inspect and review personnel files of peace officers pursuant to the procedure set forth in Penal Code Section 832.7(a) when the LADA is investigating a peace officer or police department for alleged criminal conduct.

**III.
AUTHORITY**

Pursuant to SB 1421, effective January 1, 2019, certain peace officer personnel records and records relating to specified incidents, complaints, and investigations involving peace officers and custodial officers became available for public inspection pursuant to the California Public Records Act as codified in Penal Code sections 832.7 and 832.8. Pursuant to *Brady v. Maryland* (1963) 373 U.S. 83, 87, the LADA has the constitutional duty to disclose to criminal defendants all material evidence that is favorable to the defense. This duty "extends to evidence the prosecution or the prosecution team knowingly possesses or has the right to possess." (*People v. Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305, 1314-1315.) Law enforcement agencies that investigate criminal activities and submit reports to the LADA for prosecutions are part of the "prosecution team" as it relates to each specific case. (*In re Brown* (1998) 17 Cal.4th 873, 879.)

Pursuant to Penal Code section 832.7, qualifying records of complaints and investigations related to the following four categories of incidents involving peace officers or custodial officers that are contained in the personnel records and records maintained by law enforcement agencies, referred

to here as "SB 1421 records," are no longer confidential and are required to be made available for public inspection:

1. Discharge of a firearm at a person;
2. Use of force against a person that resulted in death or great bodily injury (GBI);
3. A sustained finding by a law enforcement agency or oversight agency of having engaged in sexual assault involving a member of the public;
4. A sustained finding of dishonesty 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 sustained finding of perjury, false statements, filing false reports, destruction, falsifying or concealing of evidence.

IV. TERMS OF MOU

This MOU shall constitute the LADA's request for SB 1421 records on the AGENCY in furtherance of the parties' mutual interests as joint members of the prosecution team. The AGENCY shall provide the LADA with electronic copies of SB 1421 records that are provided to a third party based upon a third party's PRA request, specifically records that an officer:

1. Discharged a firearm at a person;
2. Used force against a person that resulted in death or GBI;
3. Has a sustained finding by a law enforcement agency or oversight agency of sexual assault involving a member of the public;
4. Has a sustained finding of dishonesty relating to the reporting, investigation, or prosecution of a crime or directly relating to the reporting of, investigation of misconduct by, another peace officer.

The terms "sexual assault", "member of the public", and "sustained" are defined in SB 1421 and shall have the same meanings as those terms are defined in SB 1421. "Great bodily injury" or "GBI" shall have the same meaning as defined by AGENCY policy.

The LADA will carry out its review of the material and any required notification consistent with its procedures. The AGENCY shall provide this information to the Discovery Compliance Unit ("DCU") of the LADA by providing a link to the AGENCY'S public-facing SB 1421 website ("WEBSITE") via electronic mail to DCUPRA@da.lacounty.gov. The AGENCY will notify the DCU via electronic mail contemporaneously to the disclosure of SB 1421 records via the AGENCY'S WEBSITE.

The LADA agrees that if it is notified by the AGENCY that otherwise exempt records were inadvertently or mistakenly disclosed to a third party, then disclosed to the LADA pursuant to this MOU, the LADA will treat such records as confidential pursuant to Government Code section 6254.5(e) and return them to the AGENCY at the earliest opportunity.

The LADA agrees that it is responsible for reviewing records received pursuant to this MOU to determine whether such records constitute *Brady* material required by law to be provided to a criminal defendant through the discovery process established under Penal Code section 1054 et

seq. The LADA agrees that it will notify the AGENCY in advance if the LADA intends to disclose records it has received from the AGENCY pursuant to this MOU to any third party, including a criminal defendant. Advance notification will be given to the Chief of Police as far in advance as practical under the circumstances.

This MOU shall be in effect as of February 1, 2020 until January 31, 2023. Any party may terminate participation in this MOU for any reason by providing written notice 30 days in advance to all other parties. Any amendment to this MOU shall be in writing with the consent of all parties. In the performance of this MOU, the parties shall each be responsible only for the acts and omissions of their own officers, employees, and agents.

IN WITNESS WHEREOF, the PARTIES hereto have caused this MOU to be executed on their behalf by their authorized representatives.

CITY OF LONG BEACH
POLICE DEPARTMENT

By R. Luna
ROBERT LUNA
Chief of Police

Dated 4.30.20

CITY OF LONG BEACH

By Rebecca G. Garner
TOM MODICA
City Manager
**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER**

Dated 5/22/2020

LOS ANGELES COUNTY
DISTRICT ATTORNEY'S OFFICE

By Jackie Lacey
JACKIE LACEY
District Attorney

Dated 7/21/20

APPROVED AS TO FORM

May 19, 2020
CHARLES PARKIN, City Attorney

By Sarah E. Green
SARAH E. GREEN
DEPUTY CITY ATTORNEY