

BERKELEY POLICE DEPARTMENT

DATE ISSUED: November 2, 2009

GENERAL ORDER R-23

SUBJECT: RELEASE OF PUBLIC RECORDS AND INFORMATION

PURPOSE

- 1 - The purpose of this Order is to establish the policy for release of public records to the public.

POLICY

- 2 - It shall be the policy of the Berkeley Police Department to release copies of public records, unless release would endanger a private person or law enforcement personnel, harm a law enforcement investigation, constitute an unwarranted invasion of privacy, or is prohibited by law.

DEFINITIONS

- 3 - Public Record: any writing or archival record 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.
- 4 - Member of the Public: any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.
 - (a) Notwithstanding the definition of "member of the public," an elected member or officer of any state or local agency is entitled to access public records of that agency on the same basis as any other person.
- 5 - Person: any natural person, corporation, partnership, limited liability company, firm, or association.
- 6 - Custodian of Records: The Support Services Division Captain, or his/her designee, shall serve as Custodian of Records for written incident and investigative reports. For all other records maintained by this department, the Administrative Division Captain, or his/her designee, shall serve as Custodian of Records.

PROCEDURES

- 7 - The Custodian of Records shall be the person responsible for release of public records. No record shall be released to the public without his/her approval.
 - (a) Release of information by the Public Information Officer, in accordance with General Order P-29, shall adhere to the standards set forth in this Order.
- 8 - A request for a public record shall be received in any form, including an oral request.

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- (a) Any question or concern regarding the nature or propriety of a public record request shall be forward to the Custodian of Records for review and determination.
- 9 - The Support Services Division Service Bureau will be primarily responsible for receiving public record requests and disseminating records authorized for release.
- 10 - The following reports, documents or information shall not be released unless specifically authorized by law or Court Order:
- (a) The name or address of a juvenile arrested, detained, or who is a suspect in a police investigation, or any information which might lead to his/her identification;
 - (b) Vehicle collision reports involving death or personal injury, except to “persons with a proper interest therein” (Vehicle Code §20012);
 - (c) Incidents or investigations involving child neglect or abuse, either physical or emotional (Penal Code §§11167 and 11167.5);
 - (d) Incidents or investigations regarding violent or abusive conduct reported by a health care provider (PC §11163.2(b));
 - (e) The name and address of a victim of a sex crime, domestic violence, child abuse, stalking, or a hate crime, if confidentiality is requested by the victim, or if a minor, his/her parent or guardian (Government Code §6254(f)(2));
 - (f) Reports of suspected abuse of an elder or dependent adult (Welfare and Institutions Code §15633);
 - (g) Reports or information received from other agencies; and,
 - (h) Any other report or other information not listed above, the release of which is prohibited by Federal or State law.
- 11 - The Department has discretion to withhold release of a police report, document or information contained therein, when its release would:
- (a) Endanger the safety of a witness or other person involved in an investigation;
 - (b) Endanger the safety of law enforcement personnel;
 - (c) Impede the successful completion of an investigation;
 - (d) Reveal confidential investigative techniques or procedures;

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- (e) Reveal the identity of confidential informants or sources of information, including names, statements, and locations;
 - (f) Reveal information constituting an unwarranted invasion of privacy;
 - (g) Reveal the name and address of any person detained pursuant to WIC §5150, where disclosure would constitute an unwarranted invasion of privacy;
 - (h) Reveal information maintained in confidential or law enforcement sensitive databases or information management systems (e.g., NCIC, CLETS, DMV files, etc.); or,
 - (i) Reveal a person's criminal history information.
- 12 - The following public information shall be released subsequent to administrative review of the Custodian of Records, unless release would endanger the safety of a person involved in an investigation, or endanger the successful completion of the investigation or a related investigation:
- (a) Arrest information for arrests made within six (6) months of the date of the public information request (GC §6254(f)(1)):
 - (1) The arrestee's name, occupation, date of birth, and physical description, including gender, height, weight, and color of eyes and hair;
 - (2) The date, time and location of arrest, and the date and time of booking;
 - (3) The factual circumstances surrounding the arrest, the amount of bail set, the location where the individual is currently being held, or the time and manner of release; and,
 - (4) All charges the individual is being held upon, including any outstanding warrants from other jurisdictions, and parole or probation holds.
 - (b) Complaints and requests for assistance made within six (6) months of the date of the public information request (GC §6254(f)(2)):
 - (1) The time, substance, and location of all complaints or requests for assistance received by this department, and time and nature of response thereto, including, to the extent the information is recorded, the time, date and location of occurrence, and the time and date of the report.

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- (2) The victim's name, age and address, unless his/her name and address are not be disclosed pursuant to paragraph 10(e) of this Order.
 - (3) Factual circumstances surrounding the crime or incident, and a general description of any injuries, property or weapons involved.
 - (c) Information **required to be released to misdemeanor or felony crime** victims, their agents, and insurers (GC §6254(f)):
 - (1) Names and addresses of persons involved in the incident;
 - (2) Names and addresses of witnesses (other than confidential informants) to the incident;
 - (3) The description of any property involved;
 - (4) The date, time and location of the incident;
 - (5) Statements of parties involved in the incident;
 - (6) Statements of witnesses (other than confidential informants); and,
 - (7) All diagrams.
 - (d) Release of a complete copy, without redaction, of an identity theft (PC §530.5) police report to the victim of said offense (PC §530.6(a)).
- 13 - Appeals relating to a denied request for the release of public records shall be forwarded to the Custodian of Records for review and disposition.
- 14 - Supervisory and command personnel may release verbatim excerpts from the General Orders, Training and Information Bulletins, or written policy directives of their particular command, and may quote statutory law which effects this Department and its conduct of public business.
- 15 - Subsequent to the approval of the Chief of Police, the Public Information Officer, his/her designee, and command personnel may respond to criticism of their particular command, of the activities of members of their command, or of the department, except when the criticism has resulted in an Internal Affairs investigation of alleged misconduct.
- 16 - Guideline Matrix. A guideline matrix for public record release is attached to this Order, and is provided to facilitate clarity and efficiency regarding the evaluation and satisfaction of public record requests.

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References: Evidence Code §§1040 – 1042
Government Code §§6251 – 6265 and 13960
Penal Code §§530.5, 530.6(a), 841.5, 964, 11075, 11076, 11105,
11163.2(b), 11167, 11167.5 and 13300 et seq.
Welfare and Institutions Code §§5328 and 15633
Vehicle Code §§16005 and 20012
TNG v. Superior Court (4 C.3d 767 (1971))
City of Berkeley Administrative Regulations
General Order P-29
Support Services Division Manual