

INTRADEPARTMENTAL CORRESPONDENCE

May 12, 2021
14.2

TO: The Honorable Board of Police Commissioners

FROM: Chief of Police

SUBJECT: CALIFORNIA PUBLIC RECORDS ACT INSPECTION (AD NO. 20-008)

RECOMMENDED ACTION

It is recommended that the Board of Police Commissioners REVIEW and APPROVE the attached California Public Records Act Inspection.

DISCUSSION

Audit Division conducted the California Public Records Act Inspection to evaluate compliance with Department policies and procedures.

If additional information regarding this audit is required, please contact Trina Unzicker, Commanding Officer, Audit Division, at (213) 486-8480.

Respectfully,


MICHEL R. MOORE
Chief of Police

Attachment

LOS ANGELES POLICE DEPARTMENT

***CALIFORNIA PUBLIC RECORDS ACT
INSPECTION
(AD No. 20-008)***



Conducted by
AUDIT DIVISION

MICHEL R. MOORE
Chief of Police

May 2021

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AD No. 20-008

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CALIFORNIA PUBLIC RECORDS ACT INSPECTION
Conducted by Audit Division

OVERVIEW

Audit Division (AD) evaluated the Los Angeles Police Department's (LAPD; Department) adherence to a settlement agreement (Agreement) with the American Civil Liberties Union (ACLU) and the City of Los Angeles (City). The objectives in this inspection were identified to determine compliance with the Agreement and the California Public Records Act (CPRA).

In assessing a sample of over 50 Department record requests received for the 30-day period between June 1, 2020 through June 30, 2020, auditors found that:

- The Department provided a timely response to the requestor 100 percent of the time. (*Objective No. 1*);
- Additional 14-calendar-day extensions obtained due to unusual circumstances were justified 100 percent of the time. (*Objective No. 2*);
- Reasonable efforts to locate records were made 100 percent of the time. (*Objective No. 3*); and,
- Access and/or copies of documents were provided to the requestor 83 percent of the time. (*Objective No. 4*)

BACKGROUND

The CPRA was enacted in 1968 to:

- Safeguard the accountability of government to the public;
- Promote maximum disclosure of the conduct of governmental operations; and,
- Explicitly acknowledge the principle that secrecy is antithetical to a democratic system of "government of the people, by the people and for the people."¹

In 2019, the City and the LAPD entered into an Agreement with the ACLU to adopt, maintain, and enforce an administrative policy, procedure, and protocol regarding LAPD's compliance with the CPRA. The Agreement stipulates that the Department create and maintain, among other requirements, a public records access policy, a dedicated CPRA unit, and an online records portal that allows the public to access and view LAPD documents. The LAPD is also required to conduct a CPRA inspection for five consecutive years to monitor compliance with the CPRA and the Agreement.

The CPRA Unit, Discovery Section, Risk Management and Legal Affairs Division (RMLAD), has primary responsibility for accepting, processing, and responding to CPRA requests for the Department. The CPRA Unit shall log, process, and respond to every public record request it

¹ See *The People's Business, A Guide to the California Public Records Act*, Revised April 2017.

receives, in accordance with the CPRA.² The CPRA's fundamental precept is that governmental records shall be disclosed to the public, upon request, unless there is a legal basis not to do so.³

The right of access to public records under the CPRA is not unlimited; it does not extend to records that are exempt from disclosure. The CPRA itself contains over 70 exemptions from disclosure. Despite the Legislature's goal of accumulating all the exemptions from disclosure in one place, there are numerous laws outside the CPRA that create exemptions from disclosure.⁴ Government Code (GC) 6254 provides that certain items are to be withheld or disclosed in a redacted form. These are:

- Identifying juvenile information;
- Identifying victim information associated with certain crimes under certain Penal Code Sections 261 through 289;
- Confidential informant identifying information;
- Criminal offender record information;
- Information that may endanger the safety of a witness or other person;
- Information that may jeopardize an investigation, related investigation, or law enforcement proceeding;
- Any portion of the report that reflects analysis, recommendation or conclusion of the investigating officer;
- Information that may disclose investigative techniques;
- Information that may deprive a person of a fair trial;
- Preliminary drafts, notes, or memorandums that are not retained in the ordinary course of business;
- Records pertaining to pending litigation to which the city is a party until the litigation is adjudicated or settled;
- Personnel, medical or similar files; and,
- Follow-ups to initial investigation.⁵

PRIOR INSPECTIONS

The terms of the Agreement provide that a CPRA inspection will be included in LAPD's Annual Audit Plan for a term of five years. This is the first inspection that AD conducted of the Department's compliance with the CPRA.

² See *Department Manual*, 3rd Quarter 2020, Vol. 3, Section 406.30, "Responsibilities of the California Public Records Act Unit".

³ See *California Public Records Act Unit Manual*, 4. Responding to Requests for Records, Section C.

⁴ See *The People's Business, A Guide to the California Public Records Act*, Revised April 2017.

⁵ See http://www.lapdonline.org/home/content_basic_view/36329, California Public Records Act, Records Exempt from Public Requests.

SCOPE AND METHODOLOGY

This inspection focused on the CPRA Unit, Discovery Section, RMLAD and its role in the Agreement regarding the intake and handling of requests submitted for public records. To determine the population for the inspection, AD used data from the NextRequest online system which documents all record requests, related activities, and actions taken. All requests made by mail, online, or phone are input into NextRequest which is used by multiple agencies in the City. Access to the NextRequest system is publicly available at recordsrequest.lacity.org.

Due to the large number of public record requests, AD identified a single month, June 2020, to obtain samples for the review. Auditors identified a total of 393 LAPD public record requests from June 1, 2020 through June 30, 2020. A statistically valid random sample was obtained from the population that yielded 53 requests assessed for this inspection. Of these 53 requests from NextRequest, 50 were received online and three were received by mail.

SUMMARY OF FINDINGS

The Department performed well on Objective Nos. 1-3 (see Table No. 1 – Findings by Objective). Relative to Objective No. 4, where access and/or copies of documents were provided to the requestor, the Department met the standard 83 percent of the time.

Table No. 1 – Findings by Objective

Objective No.	Description of Objectives	Number Meeting Standards/Evaluated	Percent Meeting Standards
1	Timeliness of Initial Response to Requestor	53/53	100%
2	Justification of Additional 14-Day Extensions	22/22	100%
3	Reasonable Effort to Locate Records (Performance Assessment)	52/52	100%
4	Access and/or Copies of Documents Provided to Requestor	30/36	83%

DETAILED FINDINGS

Objective No. 1 – Timeliness of Initial Response to Requestor

Criteria

Time is critical in responding to a request for copies of public records. The Department is obligated by the CPRA to respond in writing to CPRA requests within 10 days, or 24 days in unusual circumstances, with the following information:

- Whether the requested records exist;
- Whether the Department will release any of the requested records, and if so, when and how; and,
- The legal reasons for withholding any requested records.⁶

A local agency may extend the 10-day response period for copies of public records for up to 14 additional calendar days because of the need:

- To search for and collect the requested records from field facilities or other establishments separate from the office processing the request;
- To search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request;
- To consult with another agency having substantial interest in the request (such as a state agency), or among two or more components of the local agency (such as two City departments) with substantial interest in the request; or
- In the case of electronic records, to compile data, write programming language or a computer program, or to construct a computer report to extract data.⁷

It should be noted that while the Department is legally obligated to promptly disclose any responsive and nonexempt records at the same time the Department responds in writing to the requestor, in some cases, immediate disclosure is not possible because of the volume of records encompassed by the request.⁸

Inspection Procedures

Auditors reviewed all 53 requests submitted during the inspection period to determine whether the CPRA unit responded in writing to the requestor within 10 calendar days, or 24 days in unusual circumstances, upon receiving a records request.

The Department met the standard if the CPRA unit responded in writing to the requestor within 10 calendar days or, 24 days in unusual circumstances, upon receiving a records request.

⁶ See *California Public Records Act Unit Manual*, 4.1 Responding to Requests for Records, Procedures.

⁷ See *Government Code*, Section 6253, Subdivisions (c) (1)-(4).

⁸ See *California Public Records Act Unit Manual*, 4.1.B Timing of Disclosure

Findings

Each of the 53 record requests (100%) met the standard.

Additional Assessment

Table No. 2 shows a breakdown of the record requests closed within 10, 24, and over 24-day periods to provide additional insight into how the Department, as a whole, responded to the requests. A review of the 14 requests completed after the initial 24-day response period indicated that the CPRA Unit notified requestors every two weeks of the ongoing search for the requested documents and the reasons for the extension.

Table No. 2 – Breakdown of Requests by Time Periods

Time Period	No. of Requests Closed Within Time Period	No. of Open Requests
10-Day Period	25	0
Additional 14-Day Extension	8	0
Beyond 24-Day Initial Response Period	14	6
Sub-Totals	47	6
Total	53	

Objective No. 2 - Justification of Additional 14-Day Extensions

Criteria

If the Department cannot respond to a record request within 10 calendar days due to unusual circumstances, an extension of 14 calendar days may be added. Unusual circumstances include those listed under Objective No. 1 criteria. If a local agency exercises its right to extend the response time beyond the 10-day period, it must do so in writing, stating the reason or reasons for the extension and the anticipated date of the response within the 14-day extension period.⁹

When a request is received and determined to be voluminous, the CPRA Unit has options to provide and fulfill the request. The CPRA Unit can ask the requestor to narrow the request and/or ask for a later deadline. Another option is to provide requested documents on a “rolling basis” rather than in one complete package. If any of these options are used, it is advisable to document.¹⁰

⁹ See *Government Code*, Chapter 3.5 Inspection of Public Records, Article 1 General Provisions, Section 6253(c).

¹⁰ See *California Public Records Act Unit Manual*, 4. Responding to Requests for Records, Section C.

Inspection Procedures

All 53 record requests were reviewed to determine those that were extended beyond 10 calendar days from receiving the request. Of the 53 record requests, 22 were extended an additional 14 days and were assessed for this Objective. Each request was reviewed to determine whether the unusual circumstances cited were permitted under the CPRA. Additionally, auditors learned that the CPRA Unit's general practice, although not policy, was to notify the requestor every two weeks of the need for an extension in situations beyond a 24-day total period.

The Department met the standard if the reason for the additional 14-day extension was justified based on the above unusual circumstances defined by the CPRA.

Findings

Each of the 22 record requests (100%) met the standard.

Objective No. 3 - Reasonable Effort to Locate Records (Performance Assessment)

Criteria

The Department is legally obligated to make a reasonable effort to search for and locate records related to a CPRA request and notify the requestor. Offices that may be in possession of records must search for said records. No bright-line test exists to determine whether an effort is reasonable. That determination will depend on the facts and circumstances surrounding each request.¹¹

Inspection Procedures

Because reasonable effort is subjective, this Objective was reviewed as a Performance Assessment. Auditors reviewed the 53 record requests received by the CPRA Unit and found that one involved documents maintained by the California Highway Patrol, leaving 52 records to review. Additionally, 46 record requests were fulfilled and closed. Therefore, a total of 47 requests were deselected, and the remaining six record requests were assessed for this Objective. Auditors reviewed these requests to determine if the CPRA Unit made a reasonable effort to locate the records by documenting actions to locate the records, making multiple attempts, and incorporating Department resources to enhance efforts.

The Department was assessed to determine if multiple attempts to locate and identify records were made by the CPRA Unit while incorporating Department resources where necessary to make a reasonable effort to process the request.

¹¹ See *California Public Records Act Unit Manual*, 4. Responding to Requests for Records, Section C, Locating Records.

Conclusions

Each of the six record requests contained documentation that indicated reasonable efforts were made, and continue to be made, to locate the requested records. After a review of the history of activities for each of the requests, it was found that the six open requests required outreach to multiple entities within the Department as well as other City Departments, including the Controller’s Office and Department of General Services, to ascertain the multitude of records and documents. The CPRA Unit is awaiting the many responses from these entities to determine if the records and documents were located. Additionally, these records and documents occasionally consist of thousands of pages that require meticulous review and redaction before release and therefore take significant time to process.

Additional Assessment

The CPRA Unit often requests assistance from Department entities to fulfill record requests. During this inspection period, of the sample of 52 record requests, the CPRA Unit was able to fulfill 26 requests independently and required other Department entities to assist with the remaining 26 requests.

Table No. 3 shows a breakdown of the Department entities’ responses to the CPRA Unit’s requests for assistance. This breakdown provides insight into LAPD’s ability to locate and identify the requested records within the required timeframe:

Table No. 3 – Response to Fulfill CPRA Requests from Other Department Entities

Entity Fulfilling Requests	No. of Requests	No. of Requests by Response Time	Response Time to CPRA
CPRA Unit	26		
Other Department Entities	26	7	Within 5 days
		5	Within 6-10 days
		6	Within 11-20 days
		7	21+ days
		1	Still Open – In Progress
Total	52		

Objective No. 4 - Access and/or Copies of Documents Provided to Requestor

Criteria

Once the Department responds to and notifies the requestor that it is in possession of the requested public records, the Department must then promptly provide the requestor access to or copies of the responsive and non-exempt records.¹²

¹² See *Government Code*, Chapter 3.5 Inspection of Public Records, Article 1 General Provisions, Section 6253(c).

Inspection Procedures

The record requests were reviewed to determine if each was fulfilled by providing access to or copies of the responsive and non-exempt records. Of the 53 record requests, 10 involved records that were exempt from CPRA for investigatory reasons, six involved records that could not be identified,¹³ and one involved records maintained by an entity outside of the Department (California Highway Patrol). Therefore, 36 records requests were assessed for this Objective.

The Department met the standard if the requested records were provided to the requestor.

Findings

Thirty of the 36 record requests (83%) met the standard. Six record requests remained open because records had not been provided to the requestor. These six requests included inquiries for multiple voluminous records. Upon review, AD found the requests complex due to documents spanning several months to several years and required reviewing every page for confidential information and possible redaction.

OTHER RELATED MATTERS

To further assess the implementation of the Agreement, auditors reviewed the following Agreement requirements:¹⁴

A. Public Records Access Policy

According to the Agreement, the LAPD will adopt, maintain, and enforce an administrative policy, procedure and protocol regarding LAPD's compliance with CPRA. The LAPD will issue a written notice to all LAPD employees advising them of the Order. The LAPD will make the Order available to the public online.

Actions Taken

The conditions of the Agreement have been met. The Department created and posted *Administrative Order No. 4*, dated March 18, 2019, and *Department Manual*, 3rd Quarter 2020, Vol. 3, "Management Rules and Procedures," Section 406.30, "California Public Records Act." Both documents were provided to all Department Employees via the E-Learning Management System and posted on the Local Area Network. Additionally, the documents are available online at lapdonline.org.

¹³ The six requests that could not be identified involved information that was dated, missing pertinent data, or too broad to search. Requests were made to the requestor for additional information to assist with the search; however, there was no response.

¹⁴ The Agreement is publicly posted on the ACLU Southern California website at https://www.aclusocal.org/sites/default/files/aclu_socal_winston_20190926_settlement.pdf

B. CPRA Unit

The LAPD will adopt an LAPD CPRA Unit Manual (Manual) that it is fully consistent with the LAPD Order.¹⁵ The LAPD will make the Manual available to the public online. The procedures and protocols set forth in the Manual and relevant training will instruct LAPD staff of their legal obligations under CPRA and the relevant timeframes for responding to CPRA requests.

Actions Taken

The Department created the *California Public Records Act Unit Manual* which is available online at lapdonline.org.

C. Training

Relevant training and/or instruction will include guidance about relevant aspects of LAPD's information technology and the physical locations of various types of records, and assistance with overcoming any logistical or practical barriers in obtaining records.

Actions Taken

The Office of the City Attorney provides training for CPRA Unit employees. CPRA staff then host sectional training workshops and other training sessions for Department entities. The CPRA Unit staff will investigate options for making training available Department-wide such as including information on the Local Area Network or creating roll call training. (See Recommendation No. 1.)

D. Online Public Records Portal

The City will maintain an online public records portal that enables members of the public to do the following as it relates to CPRA Requests to the LAPD:

- Submit public records requests online;
- Browse, search and sort prior requests and records;
- View a timeline of activity that shows the date a request was open and closed and correspondence between the requestor and LAPD staff about the request;
- Date that documents were produced;
- View text of request (subject to redactions to protect privacy); and,
- View staff point of contact for request.

¹⁵ See Administrative Order No. 4, dated March 18, 2019, *Requests by the Public for Information Contained in Police Records – Revised; and, California Public Records Act – Established*.

Actions Taken

Each of these conditions is available online at recordsrequest.lacity.org.

E. Proactive Disclosure

The City will institute and maintain processes for routine proactive disclosure of LAPD records and information in the public interest. The City will:

- Post online LAPD's current Special Orders and entire policy manual;
- Indicate online the date it last confirmed that the Special Orders and policy manual available online reflect the most updated versions;
- Make available to the public online all statistical data that LAPD reports to the California Department of Justice or the Bureau of Justice Statistics;
- Continue to publish online, archive, and keep current the arrest incident data, crime incident data, drug possession arrest incident data, and vehicle and pedestrian stop data it currently maintains on the Los Angeles Open Data website; and,
- Publish online, archive, and keep current LAPD's jail booking data.

Actions Taken

The above information is available online at lapdonline.org and data.lacity.org with two exceptions. First, the Special Orders are only current through mid-2020. Second, the Special Orders and policy manual available online do not have an "updated as of" date indicator to affirm that they are most recent versions. That said, as of February 3, 2021, auditors verified that the most updated versions are online. (See Recommendation Nos. 1 and 2.)

F. Historical Data Preservation

The City will make all reasonable efforts to preserve as "historical" both existing and future documents in certain categories including Statistical Digests, all LAPD annual Use of Force reports, COMPSTAT profiles, Organizational Charts, Categorical Use of Force Investigation Records, Officer Involved Shooting Files, and Board of Police Commission agenda packages and meeting minutes.

Actions Taken

Auditors noted that LAPD maintains historical data online at http://lapdonline.org/home/content_basic_view/62284. As of January 2021, LAPD Annual Reports are up to date.

It should be noted that the CPRA Unit was affected, along with other LAPD entities, by the global pandemic and managed attrition due to significant cuts to LAPD's 2020-21 budget.

RECOMMENDATIONS


1. The California Public Records Act (CPRA) Unit, Discovery Section, Risk Management and Legal Affairs Division (RMLAD), with the assistance of the Field Training Services Unit, Police Training and Education, should create training, such as online or roll-call training, that will provide information to Department personnel regarding the CPRA and related responsibilities when staff are presented with a CPRA request. (See Related Matters C.)
2. The Department, with the assistance of the Information Technology Bureau, should ensure that all Special Orders are up to date and available at lapdonline.org. (See Other Related Matters E.)
3. The Department, with the assistance of the Information Technology Bureau, should incorporate an “updated as of” date for the Special Orders and policy manual at lapdonline.org to reflect the most updated versions. (See Related Matters E.)

ACTIONS TAKEN/MANAGEMENT RESPONSE


Auditors presented these findings to the RMLAD Commanding Officer who agreed with the findings and provided a detailed response. See attached.

APPENDIX I


Audit Division Contact: Police Performance Auditor III Sophia Liu, Serial No. N3298, (213) 486-8480 or N3298@LAPD.online, made key contributions to this report.



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Commanding Officer, Audit Division
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INTRADEPARTMENTAL CORRESPONDENCE

February 11, 2021
14.4

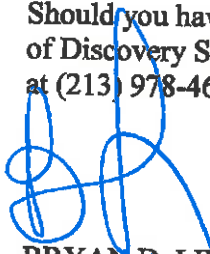
TO: Commanding Officer, Audit Division

FROM: Commanding Officer, Legal Affairs Division

SUBJECT: REVIEW OF CALIFORNIA PUBLIC RECORDS ACT
INSPECTION FINAL DRAFT REPORT

On February 4, 2021, Legal Affairs Division (LAD) received the final draft of the California Public Records Act Inspection report completed by Audit Division personnel for review. We have completed the review process and agree with both the findings and recommendations contained in the report.

Should you have any questions, please contact Lieutenant II Marla Ciuffetelli, Officer-in-Charge of Discovery Section, LAD, at (213) 847-3584, or my adjutant, Management Analyst Ken Tran, at (213) 978-4629.



BRYAN D. LIIM, Captain
Commanding Officer
Legal Affairs Division