



Date: August 19, 2019
To: Patrick H. West, City Manager *T.H.W.*
From: Robert G. Luna, Chief of Police *R. Luna*
For: Mayor and Members of the City Council
Subject: **POLICE DEPARTMENT – PROGRESS UPDATE ON SB 1421 and AB 748**

The purpose of this memorandum is to provide background on the Police Department's efforts to comply with the legal mandates stipulated in Senate Bill (SB) 1421 and Assembly Bill (AB) 748. Both bills were signed on September 30, 2018, with implementation dates in 2019.

Background

SB 1421 took effect on January 1, 2019, and was intended to bring additional transparency to police records related to officer involved shootings, use of force resulting in great bodily injury or death, sustained allegations of sexual assault by a police officer, and cases where police officers have been found to be untruthful in specific circumstances. Additionally, companion bill AB 748 took effect on July 1, 2019, requiring all video related to "critical incidents" to be released within 45 days.

What is unique about SB 1421 is the short timeline of three months for implementation. By comparison, agencies had three years to develop a plan to implement the AB 953 mandates, which require officers to report specific information, including the officer's perception of the persons race whenever they make a stop. Similarly, SB 978, gave law enforcement 16 months to begin posting policies and training materials online.

There has been a considerable amount of labor and administrative costs associated with identifying and reviewing records eligible for release under SB 1421, per the California Public Records Act (CPRA) process. Funding has been requested in the Department's FY 20 Proposed Budget to focus on SB 1421 and AB 748 compliance, as neither bill allocated funding to local law enforcement agencies to fund the additional mandates.

Current Efforts

Since January 1, 2019, the Department has received CPRA requests for "ALL" records eligible for release under SB 1421. The Department has maintained records related to officer involved shootings, in-custody deaths, and Internal Affairs cases dating back to the early 1960s. The requests for "ALL" records means every case eligible in our inventory has to be processed, digitized, and released regardless of how old the case may be. To process these requests, I have temporarily re-assigned a Commander from Internal Affairs, an Administrative Sergeant from the Chief's Office, light duty police officers, and diverted civilian staff from other jobs.

The Homicide Division has begun the process of identifying eligible records and, so far, 563 officer-involved shootings and up to 60 in-custody deaths have been identified as eligible for release dating back to 1960. Each case under the jurisdiction of the Homicide Division is unique, and the time required to process each case will vary. A recent example of the time involved in preparing a single case for release is a 2017 officer-involved shooting that contained more than 800 pages of investigative reports, 15 minutes of audio recordings, and 47 minutes of body worn camera/surveillance video. Prior to release, all of this information had to be digitized and processed by hand to ensure information we are legally required to protect was extracted. This case took one officer more than 80 hours to process for release.

The review of 3,400 Internal Affairs records is almost complete. As of August 5, 2019, the Department has expended 647 hours of staff time at a cost of \$62,000 on the review process alone. Internal Affairs is working to release records starting with 2018 cases. Thus far, Internal Affairs has identified over 200 cases eligible for release. The cases still must be digitized and the protected information extracted.

AB 748 imposes strict timelines on the release of all video related to critical incidents. We have not had a new qualifying incident since the bill took effect on July 1, 2019. The long-term impact of this legislation is still unknown. With the adoption of the Body Worn Camera Program in all Patrol Divisions, the amount of video eligible for release will increase exponentially. An incident where multiple officers are involved could easily lead to hours of video being eligible for release. Our current experience is six minutes of video requires one hour of processing.

Conclusion

To comply with these State mandates the Department is requesting to add 9.0 civilian FTEs. The additional personnel are required to support response to requests, searching, reviewing, extracting and redacting body worn camera footage, police audio files, and document files. Peer law enforcement agencies in the region have been sued due to systematic failure to comply with CPRA. The addition of 9.0 civilian FTEs will address the backlog of CPRA requests and is a priority in the effort to avoid lawsuits experienced by peer agencies and reduce significant financial liability. State law allows jurisdictions to charge a fee to recover the costs associated with producing electronic data. Staff are proposing a cost-recovery fee as part of the Proposed FY 20 Budget, Master Fee and Charges Schedule.

SB 1421 has proven to be the most labor-intensive and fiscally-challenging mandate we have faced to date. Compliance with AB 748 is expected to intensify the impact of these mandates. As awareness of the current legislation becomes more widespread, the Department anticipates continued growth in the number of requests received. The adoption of the FY 20 Proposed Budget will provide the Department with permanent staffing to assist in complying with these State mandates.

If you have any questions, please contact me or my Chief of Staff, Commander Erik Herzog, at (562) 570-7301.

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