



**COUNTY OF LOS ANGELES
OFFICE OF INSPECTOR GENERAL**

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MAX HUNTSMAN
INSPECTOR GENERAL.

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March 13, 2017

TO: Commissioner Heather Miller
Commissioner Hernan Vera
Commissioner JP Harris
Commissioner Lael Rubin
Commissioner Patti Giggins
Commissioner Priscilla Ocen
Commissioner Robert C. Bonner
Commissioner Sean Kennedy
Commissioner Xavier Thompson

FROM: Max Huntsman
Inspector General



1. *What is the primary purpose of the study?*

Los Angeles County Sheriff's Department Complaints and Legal Framework

The Office of Inspector General fields complaints from the community regarding members of the Los Angeles County Sheriff's Department through personal contacts with members of the community, through our web-site, by e-mail, by letter, by telephone and by referrals from the Board of Supervisors and other agencies. In all cases, the nature of the complaint and our monitoring activities regarding that complaint are recorded so that we can review and analyze trends in the nature of complaints received and in the Department's responses.

In each individual case the complainant is asked for permission to forward the complaint to the Department for investigation. The Office of Inspector General is prohibited by state law¹ and by the Los Angeles County Code² from conducting our own investigations of misconduct. However, with the complainants' consent we forward complaints to the Department. In these cases we monitor the Department's investigation and the disposition for compliance with state law, which requires that the Department notify the complainant of the disposition.³

Records of complaints about Los Angeles County Sheriff's Department personnel are "personnel records" as defined by California Penal Code section 832.8. Access by the Office of Inspector General to this personnel information is necessary so that we can fulfill our oversight functions. The Sheriff recognizes this and his support of the Office of Inspector General's access to this information is embodied in The Memorandum of Agreement to Share and Protect Confidential LASD Information, which specifically addresses access by the Office of Inspector General to identifiable peace officer personnel records as defined by Penal Code § 832.8.

¹ Gov. Code § 25303.

² Los Angeles County Code § 6.44.190.

³ Pen. Code § 832.7(e)(1).

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Because these complaints are privileged personnel records, the Inspector General is prohibited by California law from disclosing them to anyone outside of the Department.⁴ This prohibition applies even when the complained of conduct occurred off-duty⁵ and even though the Office of Inspector General does not work for the Sheriff.⁶ The Inspector General is prohibited by law from disclosing the complaint even when the complainant agrees to the disclosure. This is because the privilege is not held by the complainant but is held by both the law enforcement or custodial officer and the employing agency.⁷ The Attorney General has opined that disclosure in derogation of this privilege can constitute the crime of breach of official duty.⁸

The Office of Inspector General also relies upon confidential communications from department members and members of the public to fulfill its monitoring duties. Disclosure of information provided confidentially in a public setting would likely constitute a waiver of the Official Information Privilege which allows us to protect these confidences. The result could have negative impacts on those who share their concerns with us as well as on our ability to collect information in the future.

I will cooperate with the Commission in whatever manner is necessary, and to the full extent permitted by law, to facilitate the success of the Commission's mission. I am confident the Commission understands the critical role of the Office of Inspector General and the importance of access by the Inspector General to these personnel records in accomplishing meaningful civilian oversight of the Department.

At our next meeting knowledgeable members of my staff will provide additional information regarding the complaint process. To supplement that presentation, attached please find:

Outline of Presentation

Los Angeles County Code section 6.44.190

Memorandum of Agreement to Share and Protect Confidential LASD Information
Government Code section 25303

Penal Code sections 832.5, 832.7, 832.8

Office of Inspector General Organizational Chart

Two Complaint Process flow charts

OIG Recommendation for Public Data Disclosure

MH:db:bo

Attachments

c: Board of Supervisors
 Jim McDonnell, Sheriff
 Sachi A. Hamai, Chief Executive Officer
 Sheila Williams, Senior Manager, Chief Executive Office
 Lori Glasgow, Executive Officer
 Mary C. Wickham, County Counsel

⁴ Pen. Code §§ 832.5, 832.7, 832.8; Evid. Code §§ 1040, 1043, 1047.

⁵ *People v. Superior Court (McKunes)* (1976) 62 Cal.App.3d 853.

⁶ *Hackett v. Superior Court* (1993) 13 Cal.App.4th 96.

⁷ *Abatti v. Superior Court* (2003) 112 Cal.App.4th 39.

⁸ 82 Ops.Cal. Atty.Gen. 246 (1999).

Complaints



CONFIDENCE AND CONFIDENTIALITY

Presenters

- Marisol Zarate, Community Liaison
- Valencia Boyd, Community Liaison
- LaDonna Jackson, Monitor

PC 832.5



- Police Departments must have a written procedure for investigating complaints and share the procedure with the public
- Complaints, reports, and findings must be retained for five years.

PC 832.7



- Complaints and Personnel Records are confidential
- Complainant entitled to a copy of their own statements at time of filing of complaint.
- Agency may release data which does not identify officer.
- Complainant shall receive written disposition of complaint within 30 days. (most significant complaints are not resolved in 30 days).

PC 832.8



- “Personnel Records” include complaints or investigations of complaints kept under peace officer’s name.

Inspector General



- GC 25303
- Ordinance
- MOA
- OIG Org Chart

Privacy v. Transparency



- Must protect deputies from unfair treatment.
 - That means they receive a fair investigation
 - That means they receive fair discipline if warranted
 - Failure means nobody wants the job
- Must protect complainants from unfair treatment
 - That means they must receive some information
 - That also means they must receive some confidentiality
 - Failure means distrust
- Must have a system that everyone is willing to use.
 - Incarcerated
 - Mentally Ill
 - Criminal defendants and families

Legislation Supported by PORAC

tory of writing criminal justice bills, said in a statement that as the Senate's lead negotiator on the state budget, she had requests to write many pieces of legislation "and had to make some tough decisions on what bills to carry."

Buchen said the ACLU was now focusing on trying to find a lawmaker to introduce a similar bill in 2018.

In the absence of legislation from civil rights groups, others are pushing changes

to the discipline process with the backing of law enforcement. Assemblyman Evan Low (D-Campbell) is planning to introduce a bill based on a proposal drafted last year by the Peace Officers Research Assn. of California, which represents 69,000 rank-and-file officers in the state.

Low is still working out the bill's details, but two key points will involve formally notifying those who make complaints against officers

of the case's status, and developing a mediation system to resolve disputes between residents and police officers. Low, whose brother is a Bay Area officer, said it's important for public safety groups to recognize community groups' concerns about trust.

"You have to get your head out of the sand, and you must participate in the process and try to understand fundamentally how we can increase the level of

What can the Commission do?



- Call for Immediate Implementation of Data Sharing (see OIG 2014 Report),
 - Department posting of information which does not identify individuals
 - Force
 - Complaints
 - Discipline
- Engage Sacramento and PORAC on the issue of intelligent reforms to the complaint process
 - Call for proper staffing of internal investigation

6.44.190 - Office of Inspector General.

- A. As part of the Board of Supervisors' duty to supervise the official conduct of the Sheriff under Government Code section 25303, the Office of Inspector General ("OIG") is created in the department of the Board of Supervisors. The OIG is created to promote constitutional policing, to promote the common interest of the Board of Supervisors and the Sheriff in effective and lawful policing, and to facilitate the Board of Supervisors' responsibility without interfering with the Sheriff's investigative functions. The OIG shall focus on matters relevant to department-wide policies and procedures and shall not interfere with criminal, personnel, and other investigations by the Sheriff's Department.
- B. The OIG shall provide independent and comprehensive oversight, monitoring of, and reporting about the Sheriff's Department and its jail facilities and the contractors and employees involved with the jails, as set forth in this section under the leadership of an Inspector General appointed by the Board of Supervisors.
- C. As used in this section, the terms "audit," "inquiry," "investigation," and "monitoring" shall have the following definitions:
 - (1) Audit: A formal process following professional guidelines to answer specific questions regarding specific operations.
 - (2) Inquiry: Gathering of information as in monitoring, but with the goal of obtaining additional information regarding a potential problem area.
 - (3) Investigation: A formal gathering of information targeted at producing actionable information regarding an employee, employees, or other matter to be done in compliance with the confidentiality protections contained in subsection K, below.
 - (4) Monitoring: Gathering of information regarding facilities and operations, including by direct observation, discussions with staff and the public, and review of records, in order to identify problem areas or to ensure compliance with existing laws, policies, and other imposed obligations.
- D. The County of Los Angeles Sheriff Civilian Oversight Commission ("Commission") shall supervise and evaluate all work performed by the Inspector General that is done at the request of the Commission. The Executive Officer of the Board of Supervisors shall supervise and evaluate both the Commission and the Inspector General. When there is a vacancy in the Office of the Inspector General, the Commission may nominate a successor, subject to final appointment by the Board of Supervisors. A decision to terminate the Inspector General shall be either initiated by the Board of Supervisors with the input of the Commission or may be recommended by the Commission, subject to the final decision of the Board of Supervisors.
- E. The OIG shall provide its public reports and investigations to the Board of Supervisors and the Sheriff at the same time it provides such public reports and investigations to the Commission.
- F. The OIG shall have four primary functions: (1) monitoring the Sheriff's Department's operations, the conditions of confinement in the jails and other custody-related facilities, including monitoring the provision of services to inmates and the conduct of contractors and employees who provide such services, including, but not limited to, medical, pharmaceutical, and mental health services, and the Sheriff's Department's response to inmate and public complaints related to the Sheriff's Department operations or conditions of confinement, including provisions of services to inmates and the conduct of contractors and employees who provide such services; (2) periodically reviewing the Sheriff's Department's use of force patterns, trends, and statistics, the Sheriff's Department's investigations of force incidents and allegations of misconduct, and the Sheriff's Department's disciplinary decisions; (3) reviewing the quality of audits and inspections conducted by the Sheriff's Department and conducting its own periodic audits and inspections; and (4) regularly communicating with the public, the Board of Supervisors, the Commission, and the Sheriff's Department regarding the Sheriff's Department's operations. Complaints relating to specific conduct shall be referred, with the

permission of the complainant, to the Sheriff's Department for action pursuant to Penal Code section 832.5.

- G. The OIG is specifically authorized to monitor compliance with civil rights laws and to review inmate health information to determine compliance with such laws.
- H. Without interfering with the Sheriff's investigative functions, the OIG shall have the authority to undertake an inquiry and audit or perform monitoring at the request of the Board of Supervisors, the Commission, or the Sheriff, or on its own initiative. The OIG shall have the authority to investigate specific incidents involving Sheriff's Department personnel only in the following circumstances:
 - (1) when requested by, or with authorization of, the Sheriff;
 - (2) when the Inspector General makes a factually based determination that the Sheriff's Department has not adequately investigated an incident; provided, however, that the Inspector General shall first meet and confer with the Sheriff or his staff and afford the Sheriff's Department the opportunity to investigate the incident further before the OIG conducts an investigation pursuant to this subpart; or
 - (3) when the Board of Supervisors makes a formal request to the Inspector General for privileged legal advice pertaining to a claim or lawsuit arising out of the actions of the Sheriff's Department or its personnel.
- I. The Inspector General shall serve as an agent of the Commission and the Board of Supervisors and shall make regular reports to the Commission and the Board of Supervisors on the Sheriff's Department's operations. Such reports to the Board of Supervisors shall be public reports, except to the extent they relate to confidential personnel or otherwise privileged matters or contain confidential inmate medical or mental health records or protected health information of inmates. The OIG shall work under the direction of the Inspector General, who shall be an attorney licensed by the State of California. The Inspector General shall serve as special counsel to the Board of Supervisors and have an attorney-client relationship with the Board of Supervisors when requested by the Board to provide privileged legal advice pertaining to a claim or lawsuit arising out of the actions of the Sheriff's Department or its personnel. The Inspector General shall also serve as special counsel to the Commission and have an attorney-client relationship with the Commission.
- J. The Sheriff's Department and all other County departments shall cooperate with the OIG and promptly supply any information or records requested by the OIG, including confidential peace officer personnel records, inmate medical and mental health records, and protected health information of inmates necessary for the OIG to carry out its duties; provided, however, that the OIG shall not have the authority to compel Sheriff's Department personnel involved in a specific incident to respond to questions concerning that incident without the authorization of the Sheriff. The OIG shall not make any use of a compelled statement or any evidence therefrom that would jeopardize a criminal investigation.
- K. The confidentiality of peace officer personnel records, inmate medical and mental health records, protected health information of inmates, and all other privileged or confidential information received by the OIG in connection with the discharge of the OIG's duties shall be safeguarded and maintained by the OIG as required by law or as necessary to maintain any applicable privileges or the confidentiality of the information. The OIG shall not disclose, without the Sheriff's authorization, any of the Sheriff's Department's confidential personnel, investigative, or disciplinary information unless such information is already a matter of public record. The sharing of information with the Board of Supervisors in response to a formal request by the Board of Supervisors for privileged legal advice pertaining to a claim or lawsuit arising out of the actions of the Sheriff's Department or its personnel is not a disclosure. The OIG shall not disclose any confidential inmate medical or mental health records or protected health information of inmates, unless the disclosure is permitted by law.

(Ord. 2016-0049 § 1, 2016: Ord. 2014-0034 § 2, 2014.)

MEMORANDUM OF AGREEMENT TO SHARE AND PROTECT CONFIDENTIAL LASD INFORMATION

This Memorandum of Agreement (MOA) is entered into by and between the Sheriff of Los Angeles County and the Inspector General of Los Angeles County in the spirit of cooperation in order to effectuate the goals of County Code Section 6.44.190 and provide the Inspector General with extensive access to information, documents and materials without the need for any formal legal process.

PURPOSE

The purpose of the MOA is to establish a working protocol for the Sheriff's Department (LASD) to convey information to the Inspector General (the Inspector General and his staff are herein referred to collectively as "OIG"), the Los Angeles County Board of Supervisors, and the anticipated, although yet to be formally created, Civilian Oversight Commission.

SCOPE

The parties understand and agree that the OIG, the Board of Supervisors, and the Civilian Oversight Commission shall be provided upon request non-confidential and/or non-privileged information and documentation. The remainder of this MOA shall address access to privileged and/or confidential information, including, but not necessarily limited to: personnel files, discipline information, complaints about LASD personnel, LASD investigations (criminal and administrative), information contained in the Department's Personnel Performance Index, force investigations, complaint inquiries, and non-public data and information. The term "information" as used herein means documents (whether in printed or electronic form), Sheriff's videos, databases, the contents of such documents or databases, and any conversations, discussions or meeting including or involving such materials.

TIMELINE AND PROCESS

All requests by the Civilian Oversight Commission, including its members and staff, for information and material shall be handled through, and made by, the OIG. The OIG will obtain access to documents or information by making a request to LASD. LASD shall respond to requests from the Inspector General in a timely manner and without unreasonable delay. Within ten (10) working days of a request, LASD will either (1) provide the requested information to OIG, (2) notify OIG that it will require more time to gather and produce the information, and provide an estimated time frame within which it will provide the information, or (3) notify OIG that it will not provide the requested information.

PERSONNEL RECORDS

The parties agree that the Inspector General will have reasonable access to Sheriff's personnel records upon request, including individually identifiable peace officer personnel records as defined by Penal Code § 832.8. In order to respect the right of privacy of LASD employees, OIG agrees to limit such requests to only those records and that portion of the record deemed necessary to the OIG's purpose.

ACCESS TO PERSONNEL PERFORMANCE INDEX DATABASE

The Inspector General may obtain access to the Personnel Performance Index (PPI) system (or equivalent access on any successor system), including individually identifiable information, by making a request to the Captain of Risk Management Bureau or his/her designee. Direct access to the system will be provided only to OIG personnel specifically designated by the Inspector General and will be on a secured computer terminal maintained at the Sheriff's Department. To respect the right of privacy of LASD employees, OIG agrees to limit such requests to information that the Inspector General has determined is necessary for the OIG to accomplish its purpose, but shall include executive level access when deemed necessary by the Inspector General. Printed copies of PPI material may be obtained, consistent with the terms of this MOA, by making a request to the Captain of Risk Management Bureau or his/her designee.

COMPLAINTS RECEIVED BY OFFICE OF INSPECTOR GENERAL

In the event the OIG receives a complaint from the public regarding the conduct of Sheriff's personnel, and assuming the complainant agrees to the sharing of the complaint with LASD, the complaint will be turned over for investigation to the Sheriff's Department, and the OIG may monitor the investigation consistent with the terms of this MOA. OIG shall not provide any personnel or confidential information to the complainant. In those instances where the complainant does not give OIG permission to share the complaint with LASD, OIG will take reasonable steps to ensure the complaint is addressed to the extent legally possible.

IN-PROGRESS INVESTIGATIONS

The parties agree that the Inspector General can monitor in-progress investigations involving potential bias, deputy force, or misconduct by LASD personnel, including, but not limited to complaint inquiries, deputy-involved shootings, claims review and administrative investigations. The Inspector General can also monitor processes and investigations which implicate constitutional policing, best policing practices, risk avoidance and management and community confidence in Department policies, practices and tactics. The Inspector General will not monitor processes or investigations when not necessary to accomplish the OIG's purpose. The Inspector General will not interfere with the Sheriff's investigative authority or obstruct any investigation, and the Sheriff may limit the manner of such monitoring to protect an investigation, although, except in unusual circumstances, investigators, records, reports, video, or other evidence shall be made accessible in some form, unless the prosecutorial agency responsible for making a filing decision and prosecuting the case objects. Without specific authorization from the Sheriff, OIG personnel will not interview any of the involved parties or independently collect evidence while there is an active LASD criminal or administrative investigation. The incidental gathering of information for an unrelated purpose, such as taking a complaint from a complainant or general information gathered in the course of an audit or inquiry, shall be permitted if it is done in a manner that does not interfere with or obstruct the pending investigation. If, through the monitoring of an investigation, OIG personnel come into possession of any materials or information relevant to that investigation which the OIG has reason to believe is not already known to or in the possession of the LASD, such information/materials will be promptly provided to the appropriate LASD personnel. In the case of investigations that have already been submitted to a prosecuting agency, OIG will ensure that

the information/materials are provided to that prosecuting agency as well as to the LASD.

PRESENCE AT MEETINGS, REVIEWS, DISCUSSIONS

The parties agree that OIG personnel's presence at certain meetings, reviews, and other proceedings where discussions are had with the Sheriff's legal counsel regarding incidents, investigations, and/or disciplinary matters, is necessary in furtherance of the common purpose of improving LASD operations by identifying deficiencies in tactics, training and policies, working on solutions to those deficiencies, monitoring the implementation and effectiveness of corrective actions, and promoting public confidence in law enforcement by reporting on this process (although not the specific content) and the quality of such internal procedures. The parties specifically intend that the presence of OIG personnel will not waive the Department's attorney/client privilege in those instances. The Inspector General agrees to maintain and safeguard the confidentiality of all such discussions. The parties agree that OIG personnel, as part of their oversight function, will be permitted to be present at certain meetings, reviews and proceedings regarding LASD incidents, operations, investigations, disciplinary matters and corrective actions, but not at meetings, reviews and proceedings at which the subjects of the investigation are counseled or compelled to provide statements, nor at meetings in which the Sheriff determines such presence would interfere with or obstruct an ongoing investigation. The Sheriff at all times maintains the ability to obtain legal advice without monitoring by the OIG.

Subject to the above restriction, in order to monitor the integrity of investigations, OIG personnel shall be given the greatest and earliest access to crime scenes that does not interfere with or obstruct an investigation or compromise evidence collection. This access shall be at the sole discretion of the handling detective and the assigned Sheriff's Department command staff.

Subject to the above-described restrictions, the Inspector General, or his designees, shall be provided timely notice of and access to meetings and proceedings that occur on a regular basis, including but not limited to:

- Periodic meetings regarding critical incidents, such as the Critical Incident Review Panel;
- Periodic meetings and internal evaluations regarding uses of force, such as Executive Force Review and Custody Force Review;
- Periodic internal evaluations of significant disciplinary matters, such as Case Review;
- Periodic evaluations of unit operations, such as divisional Risk Management Forum or SCIF; and
- Reviews of inmate deaths, such as Inmate Death Review.

OIG personnel will be notified of, and are welcome to attend, the Sheriff's quarterly Management Conferences.

INMATE MEDICAL RECORDS

The parties agree that the OIG's access to individually identifiable inmate medical and/or mental health records will be in compliance with existing state and federal law.

REVIEW OF CONFIDENTIAL MATERIALS

The Office of Inspector General shall be permitted to make or receive copies of confidential documents from the Sheriff's Department, with the exception of files maintained by the Personnel Administration Bureau or records of pending investigations. Files and records maintained by the Personnel Administration Bureau and records of pending investigations will be viewed by OIG personnel at Sheriff's Department premises except in unusual circumstances. No files, records or copies thereof shall be made or removed from Sheriff's Department premises without the express permission of the Sheriff's Department. Note-taking by OIG personnel shall not violate this provision.

The Sheriff's Department will provide copies of investigations of deputy-involved shootings completed by the Homicide Bureau and investigations completed by the Internal Criminal Investigations Bureau at the same time that it refers those investigations to the Office of the District Attorney or other prosecuting agency unless the prosecutorial agency objects to providing copies of the investigation in a particular case.

Notwithstanding the foregoing, the Sheriff retains the discretion, in unusual circumstances, to require that records be reviewed by OIG personnel on LASD premises.

MAINTENANCE OF CONFIDENTIALITY

The Office of Inspector General will safeguard and maintain the confidentiality of peace officer personnel records and all other privileged or confidential information, materials and records obtained by OIG personnel through the monitoring process or provided by the Sheriff to the OIG and will communicate such information outside of that office only in a manner as provided in this MOA and as currently set forth in subdivision G of County Code § 6.44.190.

The Office of Inspector General will not disclose publicly, including in any open session of the Board of Supervisors or the Civilian Oversight Commission, the contents of peace officer personnel records, as defined by Penal Code § 832.8, or other privileged or confidential information maintained by the Sheriff's Department.

The Inspector General agrees that should the Inspector General receive a formal request from the Board of Supervisors for personnel, investigative, or disciplinary information pursuant to subdivision G of § 6.44.190, the Inspector General will not turn over the requested information until the Sheriff has been advised of the request and the Sheriff has been given an opportunity to make a formal objection to the Board of Supervisors regarding the disclosure. The Inspector General shall at all times comply with the provisions currently set forth in County Code § 6.44.190.

The Inspector General agrees that all requests for privileged or confidential information from the Board of Supervisors, the Civilian Oversight Commission, or any member thereof, shall be handled by the Inspector General, or in his or her absence, the Chief Deputy Inspector General, personally, and not by OIG staff members. With respect to privileged and/or confidential information that does not fall within the parameters of subdivision G of § 6.44.190, unless the Sheriff articulates a specific reason not to do so, the Inspector General may provide the Board of Supervisors, the Civilian Oversight Commission, or any individual member thereof, with (1) a brief description of the allegations of the incident (without including the names of any individual employees, and provided the disclosure will not interfere with or obstruct the investigation), (2) a

statement as to whether there is an investigation pending and the unit/entity responsible for conducting the investigation, (3) identification of what material the OIG reviewed, and (4) an update as to the status of the investigation. The specific contents of the material reviewed by the Inspector General will not be disclosed. The parties recognize that the Sheriff desires to be as transparent as possible, and may, within the parameters of all applicable laws, choose to allow additional information to be conveyed when the parties deem it appropriate. The Inspector General will at all times exercise discretion to ensure that information is provided in a manner which minimizes any risk to the privacy of any LASD employee, avoids interference with the independent operation of the Sheriff's Department, and maintains public safety. Such information shall be provided in a manner which will not result in public disclosure and the OIG will take steps to ensure that re-disclosure by the Civilian Oversight Commission and others does not occur. Such steps shall include the requirement that all OIG personnel and Civilian Oversight Commission members and personnel be provided a written advisement of their duty to maintain the confidentiality of all privileged and/or confidential information they access, and that those individuals also sign a nondisclosure agreement.

PENALTIES FOR IMPROPER DISCLOSURE

The parties intend that all disclosures contemplated by this MOA comply with all applicable laws. Any County officer, agent or employee who improperly discloses confidential and/or privileged information is subject to discipline, up to and including termination, and may further be subject to criminal and/or civil penalties where applicable. The parties agree to cooperate fully with any investigation of an alleged improper disclosure of confidential and/or privileged information.

SHERIFF'S REVIEW OF OIG REPORTS

The parties agree that the Inspector General shall make available for review by the Sheriff's Department any reports intended for public dissemination prior to their release, at such a time as affords the Sheriff's Department a reasonable opportunity to verify that no confidential or erroneous information is included within.

WITHDRAWAL

Either party can withdraw from this agreement upon written notice to the other party. Any information provided prior to such notice, and within 24 hours following such notice, remains subject to the terms of the agreement.

TERMINATION

This MOA will be terminated upon the withdrawal of either party as set forth above.

NO WAIVER

This MOA is not intended and shall not be construed to waive, or in any manner preclude by estoppel or prior agreement, the right of any party hereto to subsequently challenge: (1) any and

all of the terms of this MOA, and/or (2) the right of any person or entity to obtain or review deputy personnel file information that is deemed confidential by the California Government Code or Penal Code.

NOTICES

Formal notices under this agreement shall be made as follows:

For the Sheriff: By email to: jmcdonne@lasd.org

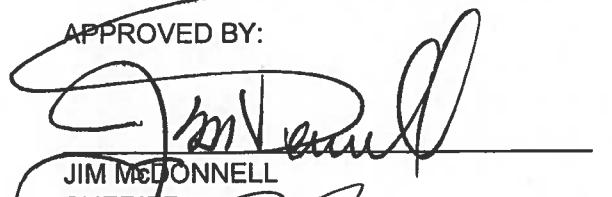
For the Inspector General: By email to: mhuntsman@oig.lacounty.gov

The email shall specifically state that it is intended as formal notification pursuant to this MOA.

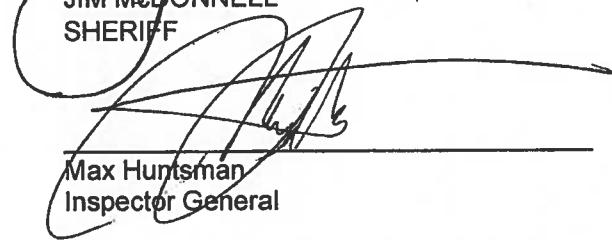
MODIFICATION

This agreement may be modified upon the mutual written consent of the parties.

APPROVED BY:



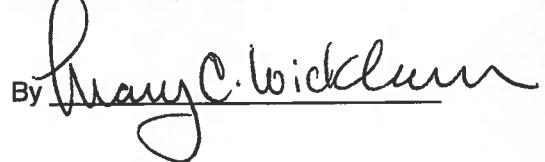
JIM McDONNELL
SHERIFF



Max Huntsman
Inspector General

APPROVED AS TO FORM:

MARY C. WICKHAM
Interim County Counsel

By 

Cal Gov Code § 25303

Current through all 2016 legislation and propositions (2016 Regular and 2015-2016 2nd Ex. Sessions)

Deering's California Code Annotated > GOVERNMENT CODE > Title 3. Government of Counties > Division 2. Officers > Part 2. Board of Supervisors > Chapter 4. Officers and Employees

§ 25303. Supervision of conduct of officers

The board of supervisors shall supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county, and particularly insofar as the functions and duties of such county officers and officers of all districts and subdivisions of the county relate to the assessing, collecting, safekeeping, management, or disbursement of public funds. It shall see that they faithfully perform their duties, direct prosecutions for delinquencies, and when necessary, require them to renew their official bond, make reports and present their books and accounts for inspection.

This section shall not be construed to affect the independent and constitutionally and statutorily designated investigative and prosecutorial functions of the sheriff and district attorney of a county. The board of supervisors shall not obstruct the investigative function of the sheriff of the county nor shall it obstruct the investigative and prosecutorial function of the district attorney of a county.

Nothing contained herein shall be construed to limit the budgetary authority of the board of supervisors over the district attorney or sheriff.

History

Added Stats 1947 ch 424 § 1. Amended Stats 1977 ch 599 § 1.

Historical Derivation:

- (a) Former Pol C § 4041.2, as added Stats 1929 ch 755 § 3.
- (b) Pol C § 4041, as added Stats 1907 ch 282 § 1, amended Stats 1909 ch 80 § 1, ch 435 § 1, Stats 1911 ch 746 § 1, Stats 1913 ch 329 § 1, Stats 1919 ch 377 § 1, Stats 1921 ch 165 § 1, Stats 1927 ch 389 § 1.
- (c) Stats 1897 ch 277 § 25.
- (d) Stats 1893 ch 234 § 25.
- (e) Stats 1891 ch 216 § 25.
- (f) Stats 1883 ch 75 § 25, as amended Stats 1887 ch 169 § 1, Stats 1889 ch 206 § 1.

Deering's California Codes Annotated

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Cal Pen Code § 832.5

Current through all 2016 legislation and propositions (2016 Regular and 2015-2016 2nd Ex. Sessions)

Deering's California Code Annotated > PENAL CODE > Part 2. Of Criminal Procedure > Title 3. Additional Provisions Regarding Criminal Procedure > Chapter 4.5. Peace Officers

§ 832.5. Procedure for investigation of citizens' complaints against personnel

(a)

(1) Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.

(2) Each department or agency that employs custodial officers, as defined in Section 831.5, may establish a procedure to investigate complaints by members of the public against those custodial officers employed by these departments or agencies, provided however, that any procedure so established shall comply with the provisions of this section and with the provisions of Section 832.7.

(b) Complaints and any reports or findings relating to these complaints shall be retained for a period of at least five years. All complaints retained pursuant to this subdivision may be maintained either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy, in accordance with all applicable requirements of law. However, prior to any official determination regarding promotion, transfer, or disciplinary action by an officer's employing department or agency, the complaints described by subdivision (c) shall be removed from the officer's general personnel file and placed in separate file designated by the department or agency, in accordance with all applicable requirements of law.

(c) Complaints by members of the public that are determined by the peace or custodial officer's employing agency to be frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, shall not be maintained in that officer's general personnel file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and Section 1043 of the Evidence Code.

(1) Management of the peace or custodial officer's employing agency shall have access to the files described in this subdivision.

(2) Management of the peace or custodial officer's employing agency shall not use the complaints contained in these separate files for punitive or promotional purposes except as permitted by subdivision (f) of Section 3304 of the Government Code.

(3) Management of the peace or custodial officer's employing agency may identify any officer who is subject to the complaints maintained in these files which require counseling or additional training. However, if a complaint is removed from the officer's personnel file, any reference in the personnel file to the complaint or to a separate file shall be deleted.

(d) As used in this section, the following definitions apply:

(1) "General personnel file" means the file maintained by the agency containing the primary records specific to each peace or custodial officer's employment, including evaluations, assignments, status changes, and imposed discipline.

- (2) "Unfounded" means that the investigation clearly established that the allegation is not true.
- (3) "Exonerated" means that the investigation clearly established that the actions of the peace or custodial officer that formed the basis for the complaint are not violations of law or department policy.

History

Added Stats 1974 ch 29 § 1. Amended Stats 1978 ch 630 § 4; Stats 1996 ch 1108 § 1 (AB 3434); Stats 1998 ch 25 § 1 (AB 1016); Stats 2002 ch 391 § 5 (AB 2040).

Deering's California Codes Annotated

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Cal Pen Code § 832.7

Current through all 2016 legislation and propositions (2016 Regular and 2015-2016 2nd Ex. Sessions)

Deering's California Code Annotated > PENAL CODE > Part 2. Of Criminal Procedure > Title 3. Additional Provisions Regarding Criminal Procedure > Chapter 4.5. Peace Officers

§ 832.7. Confidentiality of peace officer records: Exceptions

- (a) Peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office.
- (b) Notwithstanding subdivision (a), a department or agency shall release to the complaining party a copy of his or her own statements at the time the complaint is filed.
- (c) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.
- (d) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement he or she knows to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace or custodial officer's employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer's personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or his or her agent or representative.
- (e)
 - (1) The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.
 - (2) The notification described in this subdivision shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of this state or the United States.
- (f) Nothing in this section shall affect the discovery or disclosure of information contained in a peace or custodial officer's personnel file pursuant to Section 1043 of the Evidence Code.

History

Added Stats 1978 ch 630 § 5. Amended Stats 1985 ch 539 § 3; Stats 1988 ch 685 § 2; Stats 1989 ch 615 § 1; Stats 1994 ch 741 § 1 (SB 2058); Stats 1996 ch 220 § 1 (AB 2176); Stats 2000 ch 971 § 1 (AB 2559); Stats 2002 ch 63 § 1 (AB 1873), ch 391 § 6 (AB 2040); Stats 2003 ch 102 § 1 (AB 1106).

Cal Pen Code § 832.7

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Cal Pen Code § 832.8

Current through all 2016 legislation and propositions (2016 Regular and 2015-2016 2nd Ex. Sessions)

Deering's California Code Annotated > PENAL CODE > Part 2. Of Criminal Procedure > Title 3. Additional Provisions Regarding Criminal Procedure > Chapter 4.5. Peace Officers

§ 832.8. "Personnel records"

As used in Section 832.7, "personnel records" means any file maintained under that individual's name by his or her employing agency and containing records relating to any of the following:

- (a) Personal data, including marital status, family members, educational and employment history, home addresses, or similar information.
- (b) Medical history.
- (c) Election of employee benefits.
- (d) Employee advancement, appraisal, or discipline.
- (e) Complaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties.
- (f) Any other information the disclosure of which would constitute an unwarranted invasion of personal privacy.

History

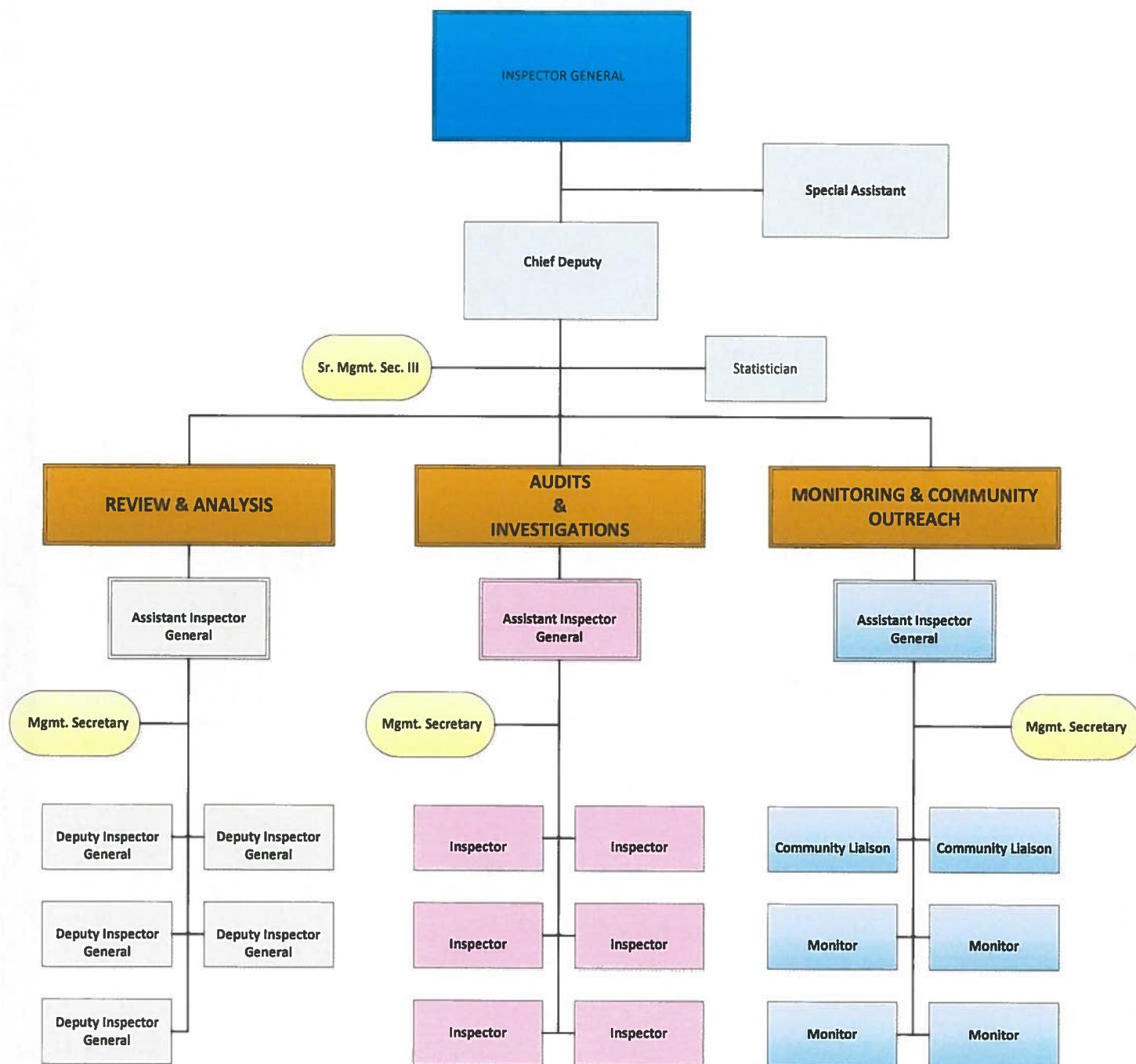
Added Stats 1978 ch 630 § 6. Amended Stats 1990 ch 264 § 1 (SB 1985).

Deering's California Codes Annotated
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Los Angeles County OFFICE OF INSPECTOR GENERAL

Organizational Chart





Office of Inspector General Complaint Process

COMMUNITY MEMBERS, COMMUNITY ORGANIZATIONS, FAMILY MEMBERS, FRIENDS, ADVOCATES, CURRENT OR FORMER LA COUNTY PRISONERS, CHAPLAINS, ANYONE THAT HAS INTERACTED WITH THE DEPARTMENT

COMPLAINT
VIA WEBSITE, PHONE, MAIL, COC, BOS, SYBIL BRAND COMMISSION AND
MONITORING FACILITIES

Non LASD Complaint

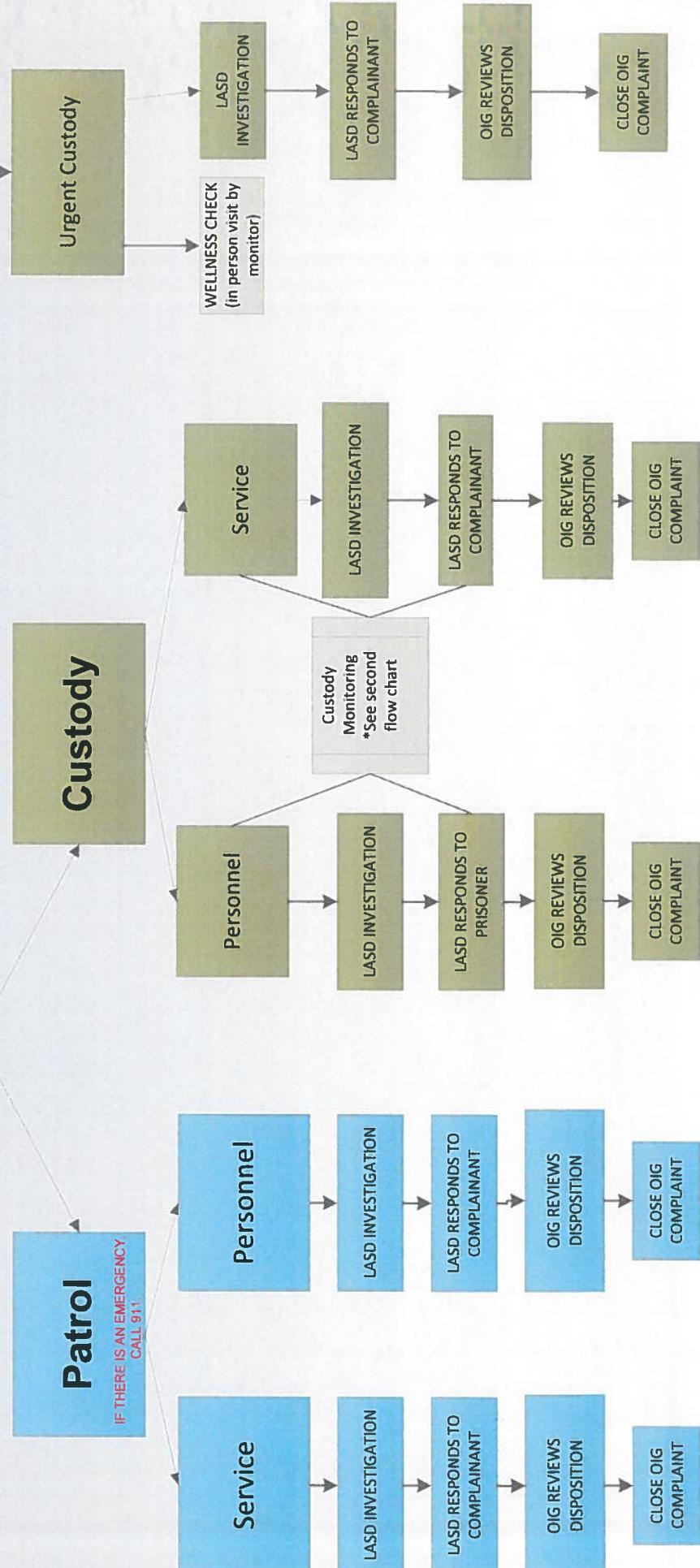
Complaints are referred to appropriate County Departments or non-county Agency

Confidential/Anonymous Complaint
We will not forward your identifying information or complaint to the LASD but we will be utilizing the information for reports to the Board of Supervisors.

1

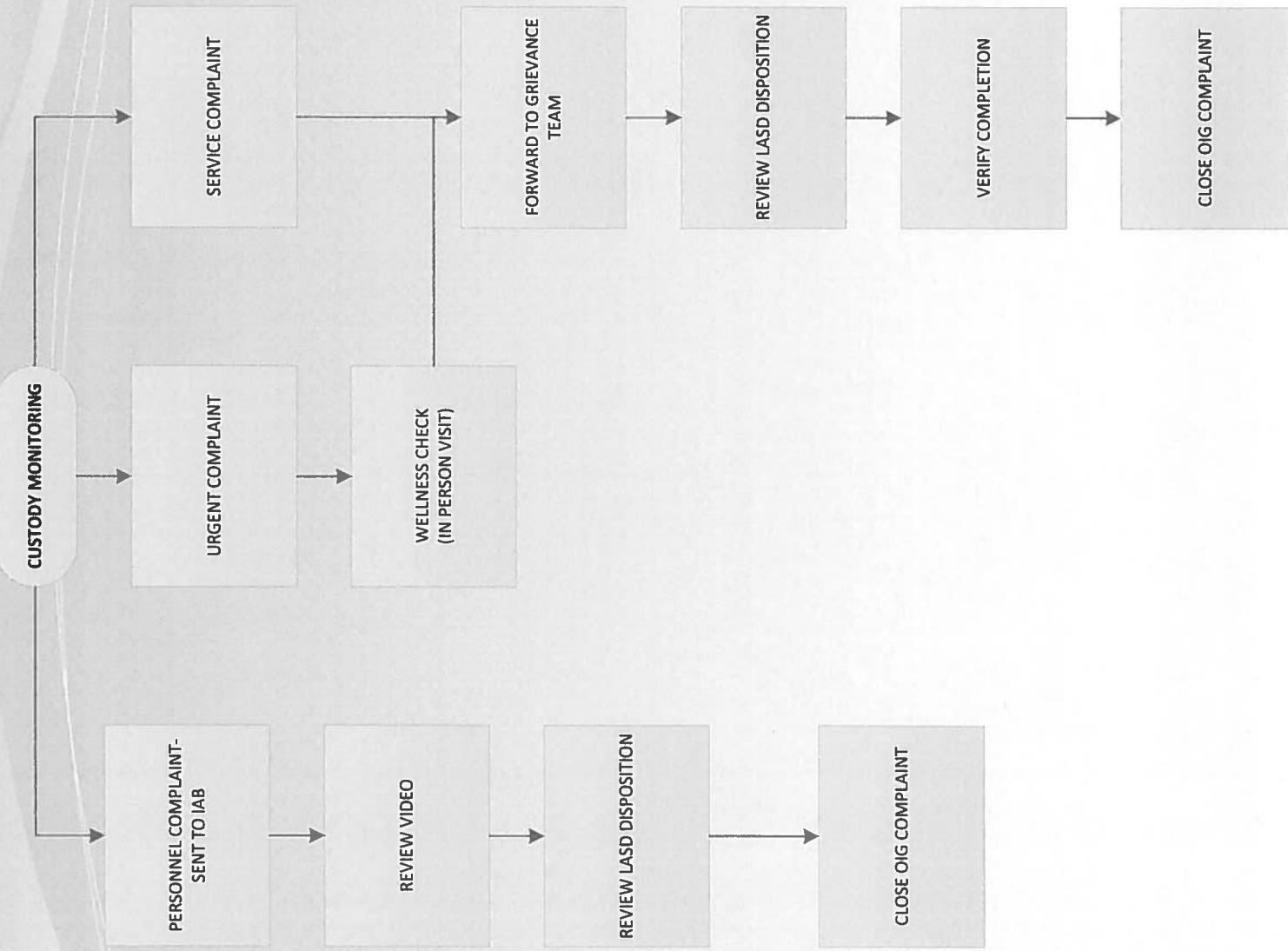
Complaint
Reviewed

Forward to the Los Angeles County Sheriff's Department



Custody Monitoring

Complaint Follow-up



**COUNTY OF LOS ANGELES
OFFICE OF INSPECTOR GENERAL**

**RECOMMENDATION TO THE LOS ANGELES
COUNTY SHERIFF'S DEPARTMENT
FOR PUBLIC DATA DISCLOSURE**

**MAX HUNTSMAN
INSPECTOR GENERAL**

December 31, 2014

Recommendation to Los Angeles County Sheriff's Department for Public Data Disclosure

I. Recommendation

Peace officers serve as the face of government in any country. Americans in particular rely on our peace officers to give our democratic rights meaning by fairly executing the laws we pass. The public has a right and a need to know that this reliance is well placed and, in recent years, has demanded increased transparency in police operations. Public disclosure of data is an important component of a transparent and open police force.

The law in California, and elsewhere, places limits on what police agencies may disclose to the public, particularly with respect to the disciplining of officers. However, police departments across the country have found their relationship to the communities they serve can be greatly strengthened by sharing as much information as possible and California law authorizes the sharing of such data when it does not disclose personnel information linked to particular officers. The number of police agencies that publicly disclose data and statistics about complaints, force and shootings is on the rise. The Office of Inspector General (OIG) recommends that the Los Angeles County Sheriff's Department (hereafter, LASD or "the Department") regularly disclose data on civilian complaints, use of force, discipline imposed and deputy involved shootings.

The LASD currently provides local and county-wide crime statistics but does not provide detailed information on a regular basis to the public about deputy-involved shootings, discipline of employees and complaints by members of the public, including

those who are incarcerated. In this regard, the Department is not keeping pace with law enforcement best practices employed by many of the other major law enforcement agencies in California and across the country. Current circumstances, however, create a timely opportunity for the LASD to take significant steps toward transparency. The Department recently created the Internal Monitoring, Performance Audits and Accountability Command (IMPAAC) unit which can facilitate collating and disclosing data with greater openness. This unit is budgeted with the resources needed to conduct audits, gather statistical data and publish the aforementioned information to the public.

We recommend that the Sheriff's Department take this opportunity to formulate a comprehensive transparency plan with a reasonable timeline of objectives. The plan should comply with the Peace Officers Bill of Rights. The type of information provided should cover the following areas at a minimum:

- Deputy-involved shootings, including details such as the number of deputies involved, and their length of service.
- Other “category 2” and “3” uses of force, including head strikes with weapons, knees or shod feet, canine bites, and any force resulting in broken bones, hospital admittance or death, as well as the injuries sustained, the number of deputies involved, and the method of force.¹
- Complaints against officers and other employees, including numbers, category of employee, types of complaints, types of investigation conducted, findings of investigations, corrective action taken.

¹ Category 1 uses of force are not included in this recommendation: these are defined in the Department's Use of Force Manual as the following uses of force when they do not result in injury: searching and handcuffing techniques, hobbling, control holds and come-alongs, when resisted; take downs; and use of aerosols or OC spray or powder when the suspect is not hit by a projectile and where the use causes no lasting pain.

- Where appropriate, the data should include any information which the Department has available, may lawfully provide, and which the public might consider relevant, such as geographic distribution, ethnicity of involved parties, or other surrounding circumstances.

The OIG further recommends that the transparency plan include a clear, user-friendly design for public disclosure of this information either through the Sheriff's lasd.org website or through a linked, related stand-alone website created for this purpose. Information should be provided for past years to enable the public to place the data in context and form its own opinions about year to year changes and trends.

II. Importance of Data Sharing

The effectiveness of law enforcement in its mission is tempered by the trust and confidence of the community it serves. This trust tends to increase where communities view their local law enforcement agency as a partner and protector of their constitutional, individual and collective rights rather than as a group of strangers limiting or violating those rights. Today it is not uncommon to hear skepticism about a law enforcement agency investigating its own personnel following a critical incident. California law requires that police agencies investigate the conduct of their officers, so it is imperative that those investigations be thorough and fair and that the public know as much about the process as possible. The more transparent an agency can be with the public it serves, the more trust it will garner with its constituents.

With national attention recently focused on officer involved shootings and use of force, there is a perceived lack of transparency regarding how often deadly force is used by law enforcement.²

The leading national association of law enforcement chief executives has observed that disclosure of information to the public is a critical law enforcement responsibility:

While the sophistication and level of detail of these summary reports vary considerably by department, providing such reports is sound public policy. The very availability of this summary information sends an important message of transparency and accountability to the public. With the summary information in hand, the public can better understand the workings of the complaint process. If the summary report contains monthly, quarterly, or yearly comparisons, then the public is able to assess whether complaints are generally on the rise or dropping. If the summary report breaks down particular types of complaints, such as rudeness or excessive force, by time period, then the public is able to make similar assessments at a more detailed level.³

Transparency is consistent with the LASD's core values, which include "holding ourselves and each other accountable for our actions at all times." There is a burgeoning effort to bring greater transparency to local government. According to a 2010 study by the Pew Research Center, "61 percent of Americans either looked for information or completed a transaction on a public agency website in the 12 months before the study." More than a third of Americans (35%) "researched official documents and/or agency statistics." Thus an effective website "is an opportunity to provide raw information and also to provide the public with background information on what the numbers mean for

² Lowery, "How many police shootings a year? No one knows," *Washington Post*, September 8, 2014; Fischer-Baum, "Nobody Knows How Many Americans the Police Kill Each Year," *FiveThirtyEight Politics*, August 19, 2014; Tedford and Favot, "Graphic: The numbers on Los Angeles' officer-involved shootings," *Los Angeles Daily News*, August 16, 2014.

³ International Association of Chiefs of Police, *Protecting Civil Rights: A Leadership Guide for State, Local, and Tribal Law Enforcement*, September 2006, p. 104.

the services they receive and how to participate in the decision-making process if they choose.”⁴ For the LASD to provide meaningful information to the public, the information should be easily located and regularly updated.

A fair, robust and transparent complaint process is also a critical component for building community trust and enhancing accountability:

It is imperative to not only have procedures in place for fairly and impartially accepting, processing, and investigating complaints concerning allegations of employee misconduct but also to inform all police employees and the public of that process (*Citation Omitted*). “An accessible, fair, and transparent complaint process is the hallmark of police responsiveness to the community” (*Citation Omitted*). It is incumbent on the police department to make its citizens aware that a complaint process exists, how to file a complaint, and how the agency processes and investigates complaints.⁵

Taking complaints and investigating them thoroughly are just the first steps in agency accountability. “[O]pen data … can bridge the often too-large gap between the public and government.”⁶ National law enforcement organizations also urge that departments then make information about complaints readily available to the public:

Additionally, by tracking the complaint process and analyzing the data from it, agencies can produce comprehensive, clear, and informative summary reports to disseminate to the public. [T]hese summary reports should be widely disseminated, “sending a message of transparency and accountability to the public” (citation omitted).⁷

⁴ *Local Agency Website Transparency Opportunities*, Institute for Local Government, June 2012.

⁵ International Association of Chiefs of Police, *Building Trust Between the Police and the Citizens They Serve*, p. 20.

⁶ Shaw, Emily, *How do we improve open data for police accountability?* Sunlight Foundation (Dec. 5, 2014) <<http://sunlightfoundation.com/blog/2014/12/05/how-do-we-improve-open-data-for-police-accountability/>>

⁷ International Association of Chiefs of Police, *Building Trust Between the Police and the Citizens They Serve*, p. 32. CALEA refers to The Commission on Accreditation for Law Enforcement Agencies, Inc., a private accreditation organization.

True transparency requires more than a police department reporting data it has collected itself. The national best practice for transparency includes external monitoring with complete access and some form of civilian oversight such as the civilian commission currently being planned. However, comprehensive and readily available data is an important element as well.

III. Legal Framework

California law protects the confidentiality of some law enforcement information and restricts disclosure to the general public of “personnel records” relating to a particular officer which have been broadly defined to include “[c]omplaints or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, pertaining to the manner in which he or she performed his or her duties” (Cal. Pen. Code § 832.8(e)). California Penal Code section 832.7(c) specifically allows for a department to “disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.” Outside of this section, there is no legal mandate for law enforcement agencies to retain or disclose use of force statistics, including deputy/officer involved shootings. However many law enforcement agencies disclose to the public (either by request or on their websites) detailed data regarding complaints (number and type), discipline of officers, use of force statistics, and deputy/officer involved shootings. Courts have commented upon the obligations of a law enforcement agency to strive to provide public information as well as the California Constitution’s admonition to provide access to information concerning the conduct of “the people’s

business" within the bounds of statutory protections for privacy. See e.g., *Copley Press, Inc. v. Superior Court* (2004) 39 Cal. 4th 1272, 1300.

The OIG concludes that the LASD is neither constrained from nor required by law to disclose the information we discuss in this report but there are ample public policy reasons to do so.

IV. Review Process

Our review of this matter included interviews with officials from the LASD, review of documents provided by the LASD and review of websites of other law enforcement agencies both inside and outside California. Through these activities we:

- Identified the two broad areas of data which should be accessible: use of force and public complaints.⁸
- Identified the largest police departments and sheriff's offices in the United States and in California per the *Census of State and Local Law Enforcement Agencies, 2008*, and selected the largest for review, since they would have resources similar to the LASD. We also selected two smaller agencies which have notable transparency regarding use of force or complaints data.
- Identified LASD documents used to track or report complaints, discipline and deputy involved shootings and their accessibility to the public, including through its website.
- Evaluated websites of other law enforcement agencies for the availability and accessibility of data regarding civilian complaints, discipline, officer involved shootings and other use of force.

⁸ "Protecting Civil Rights: A Leadership Guide for State, Local, and Tribal Law Enforcement," Int'l. Assoc. of Chiefs of Police, September 2006.

V. LASD Practices and Comparison with Other Agencies

Current LASD Practices

The Los Angeles County Sheriff's Department employs over 9,100 sworn law enforcement officers and operates on an annual budget of approximately \$2.8 billion. The LASD compiles a great deal of data concerning use of force and public complaints on a station-by-station basis as well as regionally. While this data is not always tracked department-wide, the ability is present to do so accurately. The Department compiles this type of data for divisional analysis, such as Sheriff's Critical Incident Forum (SCIF) meetings, but does not routinely publish the results either inside or outside the Department. Discipline data must be compiled from the Department's personnel tracking database, but this is only done on a case-by-case or issue-by-issue basis. The database is not accessible to anyone outside the Department and only to managers and other authorized personnel within the Department. The LASD does compile a Quarterly Discipline Report describing each founded internal affairs case and the resulting discipline from that calendar quarter. This document, although it does not contain the names of disciplined deputies, is only distributed to a small group of managers within the Department.⁹

Currently, in accordance with California Penal Code section 832.5, the LASD annually reports to the State of California Department of Justice the number of citizen complaints, the number of administrative investigations opened as a result of those complaints, the number sustained, resolved or unfounded and the number of cases

⁹ LASD does publish an annual report titled "Year in Review," however, while it contains crime statistics, it does not provide the public with statistics regarding complaints, use of force or deputy-involved shootings.

pending. The type of complaints made by citizens is distinguished only by whether the complaint was non-criminal or criminal (further distinguished by felony or misdemeanor).

These internal collations of data rarely result in disclosure to the general public even in a redacted form. There is no proactive public disclosure by the LASD of aggregate information about use of force or deputy involved shootings. The Department does respond to media requests for such data on a case-by-case basis. Discipline outcomes resulting from force incidents or misconduct investigations are not published, even where no names are provided. The Office of Independent Review previously issued frequent “Oversight of Administrative Discipline” reports describing discipline cases and their outcomes, but the Sheriff’s Department never did so directly and has not adopted this practice since the dissolution of that office.

A soon to be published study conducted by researchers with the San Diego State University School of Public Affairs analyzed the transparency – in terms of data and information – provided through the websites of 350 police departments across the country.¹⁰ The researchers scored each department’s website on the presence of 26 elements, including areas such as department policies, historical annual reports, current crime statistics, use of force data, traffic stop data and civil litigation information. “The average department scored just 7.20 out of a possible 26.” The LASD was part of the sample and, according to the study’s author, had 11 out of the 26 possible elements. This compares to the LAPD, discussed below, which scored 21 out of 26.

¹⁰ Chanin, J., and J. Courts. 2014. Examining the determinants of police department online transparency. Manuscript submitted for publication.

Other California Law Enforcement Agencies

Los Angeles Police Department

The Los Angeles Police Department (LAPD) is comprised of 9,921 sworn personnel with an annual budget of \$1.189 billion.

Use of Force and Shootings: In 2009 and 2010, the LAPD published on its website “Annual Use of Force Reports.” Although it appears this practice was short-lived, these reports were detailed as to statistics on officer-involved shootings, animal shootings, unintentional discharge incidents, and other uses of lethal force or force resulting in significant injury. For example, in their 2010 report, the LAPD reported there were 26 hit shootings, 14 non hit shootings, 18 shootings at animals and 7 unintentional discharges. These numbers were further broken down to show the bureau and division where the shootings occurred, an analysis of the day and hour in which they took place, the rank of the officer involved in the shooting and the years of employment at the LAPD.

Complaints and Discipline: The LAPD’s website contains Quarterly Discipline reports for years 2007 through 2012. These reports include the following: the number of complaints generated by citizens and department employees; the types of allegations; the penalties imposed by the LAPD and discipline imposed for violations of use of force and shooting policies.

Accessibility: The Use of Force Annual Report and the Quarterly Discipline Reports were not easily accessible on the LAPD’s website. These reports were found under the subheadings of “Police Commission” and “Special Assistant for Constitutional

Policing.” A citizen unfamiliar with these terms and their meaning might find it difficult to find these reports.

San Diego County Sheriff’s Department

The San Diego County Sheriff’s Department (SDSD) has 1,322 sworn personnel with an annual budget of \$730 million.

Use of Force and Shootings: The SDSD publishes a yearly “Use of Force/Internal Affairs Statistical Report.” These annual reports include the following information to the public: the Use of Force statistics including the type of force used, i.e., Taser, canine, and impact weapons. The Department also releases to the public the number of deputy-involved shootings including both hit and non-hit shootings. These statistics are further broken down to specify which of the Department’s three Bureaus (Law Enforcement Services Bureau, Detention Services Bureau or Court Services Bureau) used force.

Complaints and Discipline: The SDSD also releases statistics compiled by their Internal Affairs Unit which is responsible for investigating complaints initiated by a citizen or internally by a Department member. Statistics include the number of complaints by citizens and by SDSD members broken down by the Bureau being complained about. They further break it down by distinguishing between procedural and use of force complaints.

Accessibility: The SDSD’s reports on force can be found in the “complaints and commendations” section of their website. Placement of reports in this section does not lend itself to easy public access.

California Highway Patrol

Use of Force and Shootings: The California Highway Patrol (CHP) does not publish any information on use of force or officer involved shootings.

Complaints and Discipline: The CHP publishes an annual report per the Commission on Accreditation for Law Enforcement Agencies, (“CALEA”) and their own internal Department policy. Their statistics are divided by Division and Region. The CHP publishes the results of their internal affairs investigations of citizen complaints stating whether they resulted in adverse action. They further publish the number of citizen complaints by division and by type of allegation, e.g. courtesy, discrimination, validity of citation, arrest, and reason for stop.

Accessibility: The CHP’s annual reports can be found on its website under “CHP programs.” We found searching for the reports on the CHP’s website difficult as the placement of them was under “programs” instead of something more logical like “reports.”

Out Of State Departments

We reviewed the availability and accessibility of relevant data by the New York City Police Department (NYPD), the Chicago Police Department, and the Philadelphia Police Department. They, along with the LAPD, and the Los Angeles County Sheriff’s Department, are the five largest local law enforcement agencies in the United States. In examining disclosure of shootings, force, complaints, and discipline we also reviewed two other smaller agencies which present a particularly proactive model of transparency with their information: the Las Vegas Metropolitan Police Department and the Austin Police Department.

New York City Police Department

The NYPD had 36,023 sworn officers as of 2008.

Use of Force and Shootings: The City of New York provides a number of resources to the public including a very thorough *Annual Firearms Discharge Report*. The sixty-three page 2012 report provides a wide range of data in a user-friendly format. A reader can readily learn, for instance, that in 2012 sixty officers fired their weapons during forty-five adversarial incidents in which sixteen subjects were killed and fourteen others were injured. The department also discloses data in the report covering in which boroughs shootings took place, the ethnicity of subjects who were shot by officers, information about unintentional discharges, and even shots fired to defend against “animal attacks.”

Complaints and Discipline: The NYPD does not publish data about civilian complaints or employee discipline but another city entity does. The Civilian Complaint Review Board (CCRB) is independent of the NYPD and its task is to receive, investigate, mediate, hear and make findings and action recommendations on complaints against the NYPD officers. The CCRB states that it “issues a minimum of 14 reports per year to fulfill its mandate to inform the public” and city leaders about the NYPD complaints, case dispositions and discipline. The reports are twelve monthly statistical reports and two bi-annual reports. In its most recent biannual report, the CCRB stated that it received an average of 456 complaints per month during the first half of 2014. The CCRB also produces data on the method the complainants used to contact the CCRB to file complaints, as well as location of incidents leading to complaints and demographic data. Thus, a reader can quickly learn that in the first half of 2014, African-Americans

made up 54% of alleged victims of misconduct but comprise 23% of the city's population. A reader is also able to learn that of 901 cases that were fully investigated in the first half of 2014, 137 were substantiated.

The CCRB's Administrative Prosecution Unit (APU) also publishes a quarterly report pursuant to a memorandum of understanding with the NYPD. The report describes dispositions of administrative cases the APU files, discipline outcomes and the current status of cases awaiting trial.

Accessibility: The NYPD's Annual Firearms Discharge Report is found in the "Reports and Information" section which is accessible from the website front page. The CCRB's reports and statistics are easy to find on a well-marked "News, Reports and Statistics" link on the home page.

Chicago Police Department

The Chicago Police Department had 13,354 sworn officers as of 2008.

Use of Force and Shootings: The Independent Police Review Authority (IPRA), which is part of the city but independent of the police department, publishes complaint outcome as well as officer involved shooting data. This includes the district in which a shooting took place as well as the ethnicity and gender of the involved individual. The IPRA releases similar information regarding Taser discharges.

Complaints and Discipline: The Internal Affairs Division of the Chicago Police Department published annual reports covering the years 2009 through 2012 of cases that included "criminal misconduct, operational violations, substance abuse, and off-duty incidents that warrant department oversight." The 2-page 2012 report categorized

the types of complaints received, for example verbal abuse, and how many officers were discharged or suspended.

Following recent litigation where a state appeals court ruled that the release of records of complaints against individual officers would not violate officer privacy, the City of Chicago agreed to release such misconduct complaint records so that the public would have more information available.

The IPRA has responsibility for the intake of all allegations of misconduct from members of the public and investigates allegations of excessive force, domestic violence, coercion through violence, or verbal abuse. All other allegations are referred to the Internal Affairs Division for resolution. (This model is unlike the LASD where all complaints - known as Service Comment Reports - are handled by the involved deputy's assigned unit. When such a complaint is serious enough to merit an administrative investigation, it is conducted either by the deputy's assigned unit or by the Internal Affairs Bureau.)

Accessibility: The Internal Affairs Division annual reports are not easy to find. A user has to know that one can find IAD reports page through the "Inside the CPD" tab on the homepage. The IPRA's reports are logically placed in the "Resources" section and are easy to find.

Philadelphia Police Department

The Philadelphia Police Department had 6,624 officers as of 2008.

Use of Force and Shootings/Accessibility: The Philadelphia Police Department's website has a prominent section covering officer involved shootings which is highly visible on the homepage. The dedicated officer involved shooting page explains the

investigation process that occurs after deadly force is used. The page includes a chart that compares the number of officer-involved shooting incidents to other crimes in general, and firearms offenses and assaults on a police officer specifically. A remarkable feature provides maps which lay officer involved shooting locations over other gun crimes and civilian-on-civilian shootings so that the public can gain an understanding of where incidents take place in Philadelphia.

The page also has a link to a summary of each officer involved shooting that takes place. A reader is able to learn where and when the incident occurred, whether the subject was wounded, killed or arrested, whether the officer was wounded or killed and finally the outcome of the district attorney's criminal evaluation as well as the administrative determination by the police department's use of force review board.

The department explains why it provides such a high degree of information on the same page:

We post this information to make transparent the police department's process when an officer involved shooting occurs. We believe that your trust and confidence in the Philadelphia Police Department will increase as you understand what our officers encounter, how we prepare them for these encounters, and how we hold them accountable for their actions.

Complaints and Discipline: The department does not appear to publish any discipline or other use of force data. The Philadelphia Police Advisory Commission did release complaint data for the 2009-2012 timeframe. The Commission only released data of complaints it has received which number from 50 to 300 per year while the police department receives from 700 to 800 complaints annually.¹¹ Initiating a complaint requires two clicks on the department website.

¹¹ <http://technical.ly/philly/2013/01/28/city-of-philadelphia-police-complaint-data-api/>

Accessibility: The information provided by the Philadelphia Police is highly accessible. The “Officer Involved Shooting” page is very prominently placed near the center of the home page.

Las Vegas Metropolitan Police Department

The Las Vegas Metropolitan Police Department (LVMPD) has 2,942 officers.

Use of Force and Shootings: In 2012 the LVMPD created an Office of Internal Oversight (OIO) which is assigned to “provide a continual review process for all issues surrounding the use of deadly force by police officers.” The Office publishes a number of reports and statistics intended to enhance transparency surrounding shootings. A visitor to the LVPMD website will find a page explaining the Department’s seventeen-step use of deadly force review process.

The page for officer-involved shootings lists each completed investigation along with links to the District Attorney’s decision regarding criminal liability, the Force Investigation Team report and the Office of Internal Oversight review report. The degree of disclosure is notable in that the involved officers are named in all the documents which contain evaluations of their respective conduct. Similarly, the non-fatal shooting page contains both these reports. In California, the Penal Code would most likely preclude disclosure of some of this information if attached to specific officers’ names.

Similar to the NYPD’s firearms discharge report, the LVMPD’s OIO publishes an annual *Deadly Force Statistical Analysis* which covers the previous five years of officer involved shootings. The LVMPD explains in the introduction that the published analysis “reflects the Department’s continued willingness and responsibility to be

transparent and accountable. In an effort to build community trust and enhance its police service, the LVMPD has taken steps to place police use of force incidents at the forefront..."¹² The report identifies demographics and describes the circumstances surrounding the incidents.

One recent report goes beyond the numbers into some significant analysis, for instance the remarkable disclosure that "mistake-of-fact" shootings by the police are the most significant contributing factor to the proportional over-representation of African-American OIS subjects. In mistake-of-fact shootings, officers incorrectly perceive subjects present immediate, life-endangering threats. In actuality, the actions of these unarmed subjects, while in some cases unintentionally provocative, are not assaultive."¹³

Complaints and Discipline: The Internal Affairs Bureau posts a summary of citizen contacts and provides some statistical information on the most common complaint categories: interaction with the public, neglect of duty, use of force, and standards of conduct. The most recent published data is for 2012.

Accessibility: Both the Office of Internal Oversight and Internal Affairs pages were directly accessible from the page through the drop-down menu on the "About LVMPD" page.

Austin Police Department

The Austin Police Department (APD) had 1,515 officers as of 2008. The APD publishes a number of reports which are intended to enhance transparency. The Texas Code of Criminal Procedure requires that most agencies submit an annual racial

¹² Sheriff Douglas Gillespie, *Deadly Force Statistical Analysis 2009-2013*, July 1, 2014, at p. 4.

¹³ *Id.* at p. 6.

profiling report to the Texas Commission on Law Enforcement. The report discloses the number of motor vehicle stops, the ethnicity of the driver, the number of vehicle searches, and how often searches result in the discovery of contraband.

Use of Force and Shootings: The APD publishes an annual report called the *Response to Resistance Dataset* which focuses on “any physical contact with a subject by an officer using the body or any object, device, or weapon, not including unresisted escorting or handcuffing of a subject...” Unlike the other agencies discussed above, this report encompasses both uses of firearms and less lethal means of force. It provides data on the type and level of force used, ethnicity of the subject, the reason for the contact and the extent of injuries received.

Complaints and Discipline: The Austin Office of Police Monitor (OPM) is independent of the police department. The OPM receives and assesses complaints and monitors internal affairs investigations conducted by the police department. The OPM has historically published bi-annual updates which include data and statistics “relating to the number and types of complaints, geographic area of the incidents, as well as a breakdown by the race/ethnicity of complainants.” The OPM also publishes individual disciplinary memos under the Texas open records codes which allow far more disclosure of misconduct records than allowed in California, including the name of the involved officer. The published memos include a summary of the allegations, the policy violation deemed “founded,” and the imposed discipline.

Accessibility: While not entirely obvious, there is a direct link to the Austin Police home page to both the racial profiling report and the response to resistance dataset by clicking though “APD Reports.”

Other Notable Jurisdictions

The OIG also took note of two other jurisdictions which are undertaking significant transparency measures. The Portland Police Bureau publishes details on-line about officer involved shooting incidents including the entire death investigation report authored by detectives. In addition, the department also publishes a Stops Data Collection report for traffic stops as well as a report for pedestrian and bicycle stops.¹⁴ Thus the department was able to disclose that an African-American motorist was four times (8.3% of all stops) as likely to be asked to give consent to search his vehicle as a white motorist (1.9%) of all stops even though contraband was found more often in a the searched vehicle of a white motorist (44.2% discovery rate) than an African-American driver (30.5% discovery rate).

As a result of a high profile officer involved shooting, the Dallas Police Department put a number of reforms in place in 2012. It has a prominent Officer Involved Shooting web page which is visibly accessible from the Department's homepage. The OIS page includes an explanation of the Dallas Police's use of deadly force policy, charts plotting the number of shootings going back ten years and a map detailing where in the city shootings have taken place. Moreover, the Dallas Police Department also publishes a table detailing each shooting incident with data provided for location of the shooting, whether the suspect was killed, the race and gender of the subject and what, if any, weapon the suspect possessed. That last category is very helpful for stakeholders to track how many shootings of unarmed civilians take place.

¹⁴ Portland Police Bureau, *Stops Collection Data* (Feb. 13, 2014) <<http://www.portlandoregon.gov/police/article/481668>>

The table also names the involved officers and provides their gender and race. A user can click on each incident to access a summary of the shooting event.

VI. Conclusion

Our of law enforcement agencies illustrates that police agencies comparable to the LASD in size and resources in several jurisdictions are much farther along than the LASD in providing detailed, accessible information to the public describing the uses of force employed by the departments as well as their internal discipline and complaint response processes. The large California law enforcement agencies that have made similar transparency strides toward greater communication with the public they serve have been able to adapt this technique to California laws protecting police personnel information. We therefore conclude that detailed information sharing has been adopted as a best practice in law enforcement and that the LASD can and should disclose more information to the public. It is evident that currently the LASD discloses to the general public only that information which is required by the Penal Code. The Department has taken no other steps to regularly provide information to the public regarding use of force, deputy involved shootings, discipline and complaints against the Department generated by citizens or internally. There is currently an unprecedented demand and momentum toward greater transparency in government and specifically law enforcement agencies and the LASD can and should adopt practices consistent with the trend.

The OIG submitted a draft of this report to LASD leadership for review. We are eager to join with the Department in fashioning procedures which will constitute a model of best practices in data disclosure and serve as a basis for improving transparency generally.

**Data Disclosure Comparison Table – Types of Data Regularly
Disclosed to Public**

Agency	Shootings	Use of Force	Discipline	Complaints	Accessibility & Website
LASD	No	No	No	No	Poor
LAPD	Yes *	Yes *	Yes	Yes	Fair
San Diego Sheriff's Dept.	Yes	Yes	No	Yes	Fair
CHP	No	No	Yes	Yes	Fair
NYPD	Yes	No	Yes**	Yes**	Good
Chicago PD	Yes**	Yes (Taser use only)**	Yes**	Yes**	Fair**
Philadelphia PD	Yes	No	No	Yes**	Good
Las Vegas PD	Yes	No	No	Yes	Good
Austin PD	Yes	Yes	Yes**	Yes**	Good

*Disclosed through 2010 only.

**Public disclosure provided by another municipal entity.