

Case No.: S243855

**In the Supreme Court
of the State of California**

ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFFS,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE
COUNTY OF LOS ANGELES,

Respondent.

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, *et al.*,

Real Parties in Interest

*On Review from the Court of Appeal for the Second Appellate District,
Division 8*

Civil No.: B280676

*After a Writ Proceeding from the Superior Court of Los Angeles County
Judge James C. Chalfant
Case Number BS166063*

**REAL PARTY IN INTEREST COUNTY OF LOS ANGELES'S
MOTION FOR JUDICIAL NOTICE IN SUPPORT OF
SUPPLEMENTAL BRIEF ON EFFECT OF SB 1421 ON QUESTION
PRESENTED FOR REVIEW; [PROPOSED] ORDER**

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Attorneys for Real Party in Interest COUNTY OF LOS ANGELES

Real Party in Interest County of Los Angeles (“Real Party”) hereby requests this Court take judicial notice, pursuant to Evidence Code section 452 of the following documents in support of Real Party’s Supplemental Brief on the impact of SB 1421 on the question presented for review:

1. Verified Petition for Writ of Mandate [CCP Section 1085];
Complaint for Declaratory and Injunctive Relief, in Los Angeles Superior Court (“LASC”) Case Number 19STCP00166, filed by the Association for Los Angeles Deputy Sheriffs (“ALADS”) on January 16, 2019, a true and correct copy of which is attached hereto as Exhibit “A.”
2. Minute Order in LASC Case Number 19STCP00166, dated January 24, 2019, a true and correct copy of which is attached hereto as Exhibit “B.”
3. Minute Order and decision on ALADS’ request for preliminary injunction in LASC Case Number 19STCP00166, dated February 20, 2019, a true and correct copy of which is attached hereto as Exhibit “C.”

Under Evidence Code section 452, subdivisions (c), (d), and (h), this Court may take judicial notice of the official acts of the judicial departments of any state, the records of any court in this state, and facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy, respectively.

Accordingly, judicial notice of Petitioner ALADS’ writ petition filed in Superior Court (Exhibit “A”), which challenges the retroactive application of SB 1421, is appropriate either as a record of a court in this state or as a proposition not reasonably subject to dispute. Similarly,

judicial notice of the minute orders issued by the Superior Court in ALADS' recently filed petition (Exhibits "B" and "C") is also appropriate either as records of a court in this state or as official acts of a judicial department of this state.

Real Party requests that this Court take judicial notice of ALADS' writ petition and the Superior Court's minute orders because the documents are relevant to this Court's understanding as to the impact of SB 1421 on the question presented for review.

None of the documents were previously presented to the trial court or Court of Appeal for judicial notice because SB 1421 was not enacted until after review was granted in this case, and these documents and actions did not come into existence until January 2019, after the trial court and Court of Appeal proceedings.

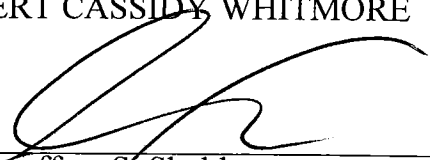
For these reasons, Real Party in Interest respectfully requests that the Court take judicial notice of ALADS' writ petition challenging SB 1421, and the Superior Court's minute orders in the case, attached hereto as Exhibits "A," "B" and "C."

Dated: February 22, 2019

Respectfully submitted,

LIEBERT CASSIDY WHITMORE

By:



Geoffrey S. Sheldon
Alex Y. Wong
Attorneys for Real Party in
Interest COUNTY OF LOS
ANGELES

Case No.: S243855

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ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFFS,

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SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE
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LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, *et al.*,

Real Parties in Interest

On Review from the Court of Appeal for the Second Appellate District,

Division 8

Civil No.: B280676

After a Writ Proceeding from the Superior Court of Los Angeles County

Judge James C. Chalfant

Case Number BS166063

[PROPOSED] ORDER

GOOD CAUSE APPEARING HEREIN, Real Party in Interest
County of Los Angeles's Motion for Judicial Notice in support of
supplemental brief is hereby GRANTED.

Dated:

Chief Justice

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Mitchell Beckloff

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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF LOS ANGELES**

16 ASSOCIATION FOR LOS ANGELES
17 DEPUTY SHERIFFS

18 Petitioner/Plaintiff,

19 vs.

20 COUNTY OF LOS ANGELES; ALEX
21 VILLANUEVA, Sheriff of Los Angeles
22 County Sheriff's Department; and DOES 1
23 through 20, inclusive,

24 Respondents/Defendants.

CASE NO.

**VERIFIED PETITION FOR WRIT OF
MANDATE [CCP Section 1085];
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

[UNLIMITED CIVIL ACTION]

25 **FIRST CAUSE OF ACTION FOR PETITION FOR WRIT OF MANDATE**

26 1. For a First Cause of Action by Petitioner/Plaintiff Association for Los Angeles
27 Deputy Sheriffs ("Petitioner", "Plaintiff" or "ALADS") against Respondents/Defendants,
28 County of Los Angeles ("County"); Alex Villanueva, Sheriff of Los Angeles County Sheriff's
Department ("Sheriff") and Does 1 through 20, inclusive, for a Petition for Peremptory Writ of
Mandate pursuant to Code of Civil Procedure Section 1085, Petitioner alleges as follows:

2. ALADS was and is the employee organization as defined in Government Code
Section 3500 *et seq.*, recognized by the County as the exclusive representative of the Peace

1 Officers Employee Representation Unit including Deputy Sheriff Trainees, Deputy Sheriffs,
2 District Attorney Investigators, and District Attorney Senior Investigators, employed by the
3 County with regard to all matters relating to employment conditions and employer-employee
4 relations. (Gov. Code § 3504). Petitioner's sworn members are peace officers as defined in
5 Penal Code Sections 830.1, 830.35, and 830.5.

6 3. At all times mentioned herein, the County was organized and existing under the
7 laws of the State of California and was a local employing agency within the meaning of Penal
8 Code Section 832.5 et seq. maintaining peace officer personnel information, as well a local
9 agency within the meaning of Government Code Section 6252, a part of the California Public
10 Records Act (Gov. Code § 6250 *et seq.*, "CPRA").

11 4. At all times mentioned herein, the Sheriff was charged with the general
12 supervision, administration and management and operations of the County Sheriff's
13 Department.

14 5. At all times mentioned herein, Respondents Does 1 through 20, inclusive, were the
15 agents, servants and employees of Respondent County, and in doing the things hereinafter
16 alleged were acting within the scope of their authority of such agents, servants and employees
17 with their permission and consent of the County. Petitioner will amend this Petition to allege
18 the true names and capacities of Does 1 through 20, inclusive when ascertained.

19 6. Prior to January 1, 2019, California Penal Code Section 832.7, subdivision (a)
20 provided that "peace officer or custodial officer personnel records and records maintained by
21 any state or local agency pursuant to Section 832.5, or information obtained from those records,
22 are confidential and shall not be disclosed in any criminal or civil proceedings, except by
23 discovery pursuant to Sections 1043 and 1046 of the Evidence Code."

24 7. California Penal Code Section 832.8 provides that, as used in Section 832.7,
25 "personnel records" includes "any file maintained under that individual's name by his or her
26 employing agency and containing records relating to any of the following: ... (d) Employee
27 advancement, appraisal, or discipline; (e) Complaints, or investigations of complaints,

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1 concerning an event or transaction in which he or she participated, or which he or she
2 perceived, and pertaining to the manner in which he or she performed his or her duties.”

3 8. On September 30, 2018, Governor Brown approved Senate Bill 1421 which
4 amended Penal Code Sections 832.7 and 832.8 relating to peace officer personnel records.
5 Senate Bill 1421 provides that peace officer or custodial officer personnel records and
6 information concerning the following categories of incidents shall *not* be confidential, and shall
7 be made available for public inspection pursuant to the CPRA: a) an incident involving the
8 discharge of a firearm at a person by a peace officer or custodial officer; b) an incident in which
9 the use of force by a peace officer or custodial officer against a person resulted in death, or in
10 great bodily injury; c) an incident in which a sustained finding was made by any law
11 enforcement agency or oversight agency that a peace officer or custodial officer engaged in
12 sexual assault involving a member of the public; d) an incident in which a sustained finding
13 was made by any law enforcement agency or oversight agency of dishonesty by a peace officer
14 or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or
15 directly relating to the reporting of, or investigation of misconduct by, another peace officer or
16 custodial officer, including, but not limited to, any sustained finding of perjury, false
17 statements, filing false reports, destruction, falsifying, or concealing of evidence. (Attached
18 hereto as **Exhibit A** and made a part hereof as though fully set forth is a true and correct copy
19 of Chapter 988 of the 2017-2018 Regular Session, Senate Bill 1421.)

20 9. Senate Bill 1421 was enacted during the regular legislative session, and not
21 designated as “urgent.” Accordingly, its amendments are effective January 1, 2019. (Gov. Code
22 § 9600.)

23 10. Senate Bill 1421 contains no legislative direction for a retroactive application of the
24 amendments to Penal Code Sections 832.7 and 832.8, including no such direction as to the
25 amendment’s application to peace officer personnel records reflecting conduct or arising out of
26 incidents occurring prior to January 1, 2019 – information deemed confidential as a matter of
27 law.

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1 11. Based upon communications between ALADS and the County, ALADS is
2 informed and believes that the County intends to apply SB 1421's amendments retroactively,
3 such that beginning January 1, 2019, the Los Angeles County Sheriff's Department intends to
4 release records created before January 1, 2019 absent a court order or stay otherwise
5 prohibiting the release.

6 12. Senate Bill 1421 amends Penal Code Section 832.7, effective January 1, 2019, to
7 eliminate the longstanding statutory confidentiality of specified peace officer personnel
8 records, and the information contained therein, maintained by public agencies in order to make
9 such records and information available for public inspection pursuant to the CPRA effective
10 January 1, 2019.

11 13. Senate Bill 1421 does not contain any express provision or language requiring
12 retroactivity or any clear indication that the Legislature intended the statute to operate
13 retroactively so as to be applied and enforced with respect to peace officer personnel records
14 and information which arose out of incidents involving peace officer conduct occurring prior to
15 January 1, 2019.

16 14. The amendments constitute a substantial and adverse change to the existing privacy
17 rights of the Petitioner's represented peace officers. Pursuant to California Constitution, Article
18 I, Section 3(b)(3), any broad construction of statutes pertaining to the right of access to
19 information of public agencies (such as the CPRA) does *not* supersede the construction of
20 statutes that protect the constitutional right of privacy, including any statutory procedures
21 governing discovery or disclosure of information concerning the official performance or
22 professional qualifications of a peace officer.

23 15. Petitioner's represented peace officers will suffer irreparable injury and damage by
24 the retroactive application of Senate Bill 1421, in that such an application would unlawfully
25 violate the constitutional and statutory protection of peace officers to the confidentiality of their
26 peace officer personnel records regarding incidents or reflecting conduct occurring prior to
27 January 1, 2019.

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1 16. Petitioner has a beneficial interest in Respondents' compliance with their
2 ministerial duties not to violate Petitioner's represented peace officers' confidentiality rights by
3 applying Senate Bill 1421 retroactively.
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5 **SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF,**

6 17. For a Second Cause of Action by Plaintiff ALADS against the County; Sheriff and
7 Does 1 through 20, inclusive, for Declaratory Relief, Plaintiff realleges paragraphs 1- 16 and
8 further alleges as follows:

9 18. An actual and justiciable controversy has arisen and now exists, between Plaintiff
10 on one hand, and Defendants on the other hand, regarding the following: (1) whether
11 Defendants' intention to apply Senate Bill 1421 to peace officer personnel records and
12 information reflecting specified peace officer conduct occurring prior to January 1, 2019 is a
13 retroactive application and enforcement of Senate Bill 1421; (2) whether such application
14 violates the right of confidentiality and privacy of such peace officers to information in their
15 personnel files protected by California Constitution Article 1, Section 3, subdivision (b),
16 paragraph (3) and by the pre-existing statutory provisions of Penal Code Sections 832.7, 832.8
17 and Evidence Code Sections 1043 and 1045; and (3) whether such retroactive application is
18 contrary to the purpose of any applicable judicial protective orders issued prior to January 1,
19 2019 during in-camera proceedings conducted pursuant to *Pitchess v. Superior Court* (1974) 11
20 Cal.3d 531 to protect the right of privacy of peace officers.

21 19. Such a judicial determination is necessary and proper in order that the parties may
22 ascertain their respective legal rights and duties where: a.) Senate Bill 1421 amending Penal
23 Code Section 832.7 eliminates the well-established statutory and constitutional confidentiality
24 of specified peace officer and custodial peace officer personnel records and does not contain an
25 express retroactivity provision nor legislative intent to rescind previously conferred privacy
26 rights to peace officers; and b.) Defendants intend to make such peace officer personnel records
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1 and information arising prior to January 1, 2019 available for public inspection in response to
2 requests under the CPRA.

3 20. There are no effective administrative remedies available to compel the relief sought
4 herein against Defendants.

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6 **THIRD CAUSE OF ACTION FOR INJUNCTIVE RELIEF,**

7 21. For a Third Cause of Action by Plaintiff ALADS against Defendants County;
8 Sheriff; and Does 1 through 20, inclusive, for Injunctive Relief, Plaintiff realleges paragraphs
9 1- 20, and further alleges as follows:

10 22. Unless and until Plaintiff's request for injunctive relief, including a Temporary
11 Restraining Order, Preliminary Injunction and Permanent Injunction are granted by this Court
12 restraining and enjoining Defendants from retroactively enforcing or applying the Senate Bill
13 1421 amendments to California Penal Code Sections 832.7 and 832.8, Plaintiff's represented
14 employees will suffer irreparable harm to their statutory and constitutional privacy rights that
15 far outweighs any alleged detriment to Defendants or the public.

16 23. As a consequence of the exceedingly short ten (10) day time frame for Defendants
17 to respond to public records requests under Government Code Section 6253(c), a regularly
18 noticed hearing on a preliminary injunction would not provide timely relief to Plaintiff's
19 represented peace officers whose statutory and constitutional privacy rights are imminently
20 jeopardized. Therefore, a Temporary Restraining Order is appropriate and necessary to
21 maintain the status quo pending a declaratory adjudication by this Court as to the rights and
22 obligations of the parties.

23 24. There is no adequate legal remedy to compensate Plaintiff's represented peace
24 officers for the unlawful disclosure of their confidential personnel file information.

25 WHEREFORE, Petitioner/Plaintiff ALADS requests the following relief against
26 Respondents/Defendants, and each of them as follows:

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FIRST CAUSE OF ACTION

1. That following the hearing upon the Petition, the Court issue a Peremptory Writ of Mandate directing Respondents and their agents, employees and representatives to refrain from retroactively enforcing or applying the amendments to California Penal Code Sections 832.7 and 832.8 implemented by Senate Bill 1421 in any manner which would result in the disclosure or production of peace officer personnel records regarding incidents or reflecting conduct occurring prior to January 1, 2019;
2. That Petitioner be awarded attorneys' fees pursuant to Code of Civil Procedure Section 1021.5;
3. Petitioner be awarded and costs of suit; and
4. For such other and further relief as the Court may deem just and proper.

SECOND CAUSE OF ACTION

1. This Court render a judicial determination that Senate Bill 1421's amendments to Penal Code Sections 832.7 and 832.8 cannot legally be enforced or applied by Defendants or their agents, employees and representatives in any manner which would result in the disclosure or production of peace officers personnel records regarding incidents or reflecting conduct occurring prior to January 1, 2019 that would not have previously been subject to disclosure or production;
2. That Plaintiff be awarded attorneys' fees pursuant to Code of Civil Procedure Section 1021.5;
3. Plaintiff be awarded and costs of suit; and
4. For such other and further relief as the Court may deem just and proper.

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THIRD CAUSE OF ACTION

1. That this Court issue an Order requiring Defendants, and each of them, to show cause why a Preliminary Injunction should not issue, pending a judicial determination on the Second Cause of Action for Declaratory Relief;

2. That pending the hearing on the Order to Show Cause, and until this Court otherwise directs, the Court issue a Temporary Restraining Order prohibiting any retroactive enforcement or application of Senate Bill 1421 by Defendants or their agents, employees and representatives in any manner which would result in the disclosure or production of peace officer personnel records and information regarding incidents or reflecting conduct described in Senate Bill 1421 occurring prior to January 1, 2019 that would not have previously been subject to disclosure or production;

3. That following the hearing on the Order to Show Cause, the Court issue a Preliminary Injunction restraining and enjoining Defendants and their agents, employees and representatives from retroactively enforcing or applying the amendments to California Penal Code Sections 832.7 and 832.8 implemented by SB 1421 in any manner which would result in the disclosure or production of peace officer personnel records regarding incidents or reflecting conduct occurring prior to January 1, 2019 that would not have previously been subject to disclosure or production;

4. That following a trial on the merits, the Court issue a Permanent Injunction ordering, restraining and enjoining Defendants and their agents, employees and representatives from retroactively enforcing or applying the amendments to California Penal Code Sections 832.7 and 832.8 implemented by Senate Bill 1421 in any manner which would result in the disclosure or production of peace officer personnel records regarding incidents or reflecting conduct occurring prior to

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2 January 1, 2019 that would not have previously been subject to disclosure or
3 production;

- 4 5. That Plaintiff be awarded attorneys' fees pursuant to Section 1021.5 of the
5 California Code of Civil Procedure;
6 6. Plaintiff be awarded and costs of suit; and
7 7. For such other and further relief as the Court may deem just and proper.
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9 **RAINS LUCIA STERN ST. PHALLE & SILVER, PC**

10 Dated: January 8, 2019

11 /s/ Jacob A. Kalinski
12 Jacob A. Kalinski, Esq.
13 Attorneys for Petitioner/Plaintiff
14 Association for Los Angeles Deputy Sheriffs
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Senate Bill No. 1421

CHAPTER 988

An act to amend Sections 832.7 and 832.8 of the Penal Code, relating to peace officer records.

[Approved by Governor September 30, 2018. Filed with Secretary of State September 30, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1421, Skinner. Peace officers: release of records.

The California Public Records Act requires a state or local agency, as defined, to make public records available for inspection, subject to certain exceptions. Existing law requires any peace officer or custodial officer personnel records, as defined, and any records maintained by any state or local agency relating to complaints against peace officers and custodial officers, or any information obtained from these records, to be confidential and prohibits the disclosure of those records in any criminal or civil proceeding, except by discovery. Existing law describes exceptions to this requirement for investigations or proceedings concerning the conduct of peace officers or custodial officers, and for an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office.

This bill would require, notwithstanding any other law, certain peace officer or custodial officer personnel records and records relating to specified incidents, complaints, and investigations involving peace officers and custodial officers to be made available for public inspection pursuant to the California Public Records Act. The bill would define the scope of disclosable records. The bill would require records disclosed pursuant to this provision to be redacted only to remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace officers and custodial officers, to preserve the anonymity of complainants and witnesses, or to protect confidential medical, financial, or other information in which disclosure would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct by peace officers and custodial officers, or where there is a specific, particularized reason to believe that disclosure would pose a significant danger to the physical safety of the peace officer, custodial officer, or others. Additionally the bill would authorize redaction where, on the facts of the particular case, the public interest served by nondisclosure clearly outweighs the public interest served by disclosure. The bill would allow the delay of disclosure, as specified, for records relating to an open investigation or court proceeding, subject to certain limitations.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Peace officers help to provide one of our state's most fundamental government services. To empower peace officers to fulfill their mission, the people of California vest them with extraordinary authority—the powers to detain, search, arrest, and use deadly force. Our society depends on peace officers' faithful exercise of that authority. Misuse of that authority can lead to grave constitutional violations, harms to liberty and the inherent sanctity of human life, as well as significant public unrest.

(b) The public has a right to know all about serious police misconduct, as well as about officer-involved shootings and other serious uses of force. Concealing crucial public safety matters such as officer violations of civilians' rights, or inquiries into deadly use of force incidents, undercuts the public's faith in the legitimacy of law enforcement, makes it harder for tens of thousands of hardworking peace officers to do their jobs, and endangers public safety.

SEC. 2. Section 832.7 of the Penal Code is amended to read:

832.7. (a) Except as provided in subdivision (b), the personnel records of peace officers and custodial officers 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) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5

(commencing with Section 6250) of Division 7 of Title 1 of the Government Code):

(A) A record relating to the report, investigation, or findings of any of the following:

(i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.

(ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury.

(B) (i) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public.

(ii) As used in this subparagraph, "sexual assault" means the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority. For purposes of this definition, the propositioning for or commission of any sexual act while on duty is considered a sexual assault.

(iii) As used in this subparagraph, "member of the public" means any person not employed by the officer's employing agency and includes any participant in a cadet, explorer, or other youth program affiliated with the agency.

(C) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.

(2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

(3) A record from a separate and prior investigation or assessment of a separate incident shall not be released unless it is independently subject to disclosure pursuant to this subdivision.

(4) If an investigation or incident involves multiple officers, information about allegations of misconduct by, or the analysis or disposition of an investigation of, an officer shall not be released pursuant to subparagraph (B) or (C) of paragraph (1), unless it relates to a sustained finding against that officer. However, factual information about that action of an officer during an incident, or the statements of an officer about an incident, shall be released if they are relevant to a sustained finding against another officer that is subject to release pursuant to subparagraph (B) or (C) of paragraph (1).

(5) An agency shall redact a record disclosed pursuant to this section only for any of the following purposes:

(A) To remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace and custodial officers.

(B) To preserve the anonymity of complainants and witnesses.

(C) To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct and serious use of force by peace officers and custodial officers.

(D) Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person.

(6) Notwithstanding paragraph (5), an agency may redact a record disclosed pursuant to this section, including personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.

(7) An agency may withhold a record of an incident described in subparagraph (A) of paragraph (1) that is the subject of an active criminal or administrative investigation, in accordance with any of the following:

(A) (i) During an active criminal investigation, disclosure may be delayed for up to 60 days from the date the use of force occurred or until the district attorney determines whether to file criminal charges related to the use of force, whichever occurs sooner. If an agency delays disclosure pursuant to this clause, the agency shall provide, in writing, the specific basis for the agency's determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. This writing shall include the estimated date for disclosure of the withheld information.

(ii) After 60 days from the use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer who used the force. If an agency delays disclosure pursuant to this clause, the agency shall, at 180-day intervals as necessary, provide, in writing, the specific basis for the agency's determination that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding. The writing shall include the estimated date for the disclosure

of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner.

(iii) After 60 days from the use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against someone other than the officer who used the force. If an agency delays disclosure under this clause, the agency shall, at 180-day intervals, provide, in writing, the specific basis why disclosure could reasonably be expected to interfere with a criminal enforcement proceeding, and shall provide an estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner, unless extraordinary circumstances warrant continued delay due to the ongoing criminal investigation or proceeding. In that case, the agency must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding outweighs the public interest in prompt disclosure of records about use of serious force by peace officers and custodial officers. The agency shall release all information subject to disclosure that does not cause substantial prejudice, including any documents that have otherwise become available.

(iv) In an action to compel disclosure brought pursuant to Section 6258 of the Government Code, an agency may justify delay by filing an application to seal the basis for withholding, in accordance with Rule 2.550 of the California Rules of Court, or any successor rule thereto, if disclosure of the written basis itself would impact a privilege or compromise a pending investigation.

(B) If criminal charges are filed related to the incident in which force was used, the agency may delay the disclosure of records or information until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea pursuant to Section 1018.

(C) During an administrative investigation into an incident described in subparagraph (A) of paragraph (1), the agency may delay the disclosure of records or information until the investigating agency determines whether the use of force violated a law or agency policy, but no longer than 180 days after the date of the employing agency's discovery of the use of force, or allegation of use of force, by a person authorized to initiate an investigation, or 30 days after the close of any criminal investigation related to the peace officer or custodial officer's use of force, whichever is later.

(8) A record of a civilian complaint, or the investigations, findings, or dispositions of that complaint, shall not be released pursuant to this section if the complaint is frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or if the complaint is unfounded.

(c) Notwithstanding subdivisions (a) and (b), 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.

(d) Notwithstanding subdivisions (a) and (b), 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.

(e) Notwithstanding subdivisions (a) and (b), 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.

(f) (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.

(g) This section does not 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.

(h) This section does not supersede or affect the criminal discovery process outlined in Chapter 10 (commencing with Section 1054) of Title 6 of Part 2, or the admissibility of personnel records pursuant to subdivision (a), which codifies the court decision in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

(i) Nothing in this chapter is intended to limit the public's right of access as provided for in *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59.

SEC. 3. Section 832.8 of the Penal Code is amended to read:

832.8. As used in Section 832.7, the following words or phrases have the following meanings:

(a) "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:

(1) Personal data, including marital status, family members, educational and employment history, home addresses, or similar information.

(2) Medical history.

(3) Election of employee benefits.

(4) Employee advancement, appraisal, or discipline.

(5) 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.

(6) Any other information the disclosure of which would constitute an unwarranted invasion of personal privacy.

(b) "Sustained" means a final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal pursuant to Sections 3304 and 3304.5 of the Government Code, that the actions of the peace officer or custodial officer were found to violate law or department policy.

(c) "Unfounded" means that an investigation clearly establishes that the allegation is not true.

SEC. 4. The Legislature finds and declares that Section 2 of this act, which amends Section 832.7 of the Penal Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

The public has a strong, compelling interest in law enforcement transparency because it is essential to having a just and democratic society.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district under this act would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES,

I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE [CCP Section 1085]; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I am an Officer of ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFFS, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matter I believe them to be true.

Executed on January 8, 2019, in MONTEREY PARK, California.
City

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



RONALD HERNANDEZ

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 86

19STCP00166

January 24, 2019

**ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFFS vs
COUNTY OF LOS ANGELES, et al.**

8:30 AM

Judge: Honorable Mitchell L. Beckloff
Judicial Assistant: F. Becerra
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Petitioner(s): Jacob Ariel Kalinski and Richard A. Levine

For Defendant(s): No Appearances

Other Appearance Notes: Lana Choi, Deputy County Counsel for Respondents; Kelly A. Aviles for Proposed Intervenors Los Angeles Times Communications LCC and Southern California Public Radio

NATURE OF PROCEEDINGS: Hearing on Ex Parte Application for Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction; Hearing on Ex Parte Application by media for leave to intervene

Matter is called for hearing.

Court after reading and considering all moving party and opposing party papers, and arguments of counsel, makes the following ruling:

Counsel is ordered to file Notice of Related Case in the appropriate cases in the appropriate departments forthwith.

Ex parte application of ALADS is granted.

ALADS Temporary restraining order is granted.

Moving and supplemental papers to be served on or before 02/01/2019. Temporary restraining order and Order to Show Cause Re Preliminary Injunction to be served on Defendants on January 25, 2019.

Opposition with proof of service is to be served and filed on or before 02/07/2019.

Reply with proof of service is to be served and filed on or before 02/11/2019.

Order is signed and filed electronically this date.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 86

19STCP00166

**ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFFS vs
COUNTY OF LOS ANGELES, et al.**

January 24, 2019

8:30 AM

Judge: Honorable Mitchell L. Beckloff
Judicial Assistant: F. Becerra
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

Ex parte application of proposed interveners LOS ANGELES TIMES COMMUNICATIONS LCC AND SCPR is continued for hearing.

Intervener's supplemental papers to be served on or before 01/28/2019.

Petitioner and/or Respondent Opposition with proof of service is to be served and filed on or before 02/01/2019.

Intervener's reply with proof of service is to be served and filed on or before 02/06/2019.

Electronic service on all documents. Courtesy copies to be lodged directly in Department 86.

Counsel for Petitioner is to give notice.

Hearing - Other on Proposed Intervener's Ex Parte Application for Leave to Intervene is scheduled for 02/08/2019 at 09:30 AM in Department 86 at Stanley Mosk Courthouse.

Order to Show Cause Re: Preliminary Injunction is scheduled for 02/15/2019 at 09:30 AM in Department 86 at Stanley Mosk Courthouse.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 86

19STCP00166

February 20, 2019

**ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFFS vs
COUNTY OF LOS ANGELES, et al.**

1:30 PM

Judge: Honorable Mitchell L. Beckloff
Judicial Assistant: Fernando Becerra
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter: Order to Show Cause Re Preliminary Injunction

The Court, having taken the matter under submission on 02/15/2019, now rules as follows: The Court issues its ruling in accordance with the "ORDER DENYING REQUEST FOR A PRELIMINARY INJUNCTION AND GRANTING LIMITED DURATION STAY" consisting of 9 pages, signed and filed on 02/19/2019 and incorporated herein by reference to the Court file.

Summary of the Court's ruling: Petitioner's request for preliminary injunction is denied. The court's prior temporary restraining order remains in full force and effect until March 1, 2019 at 3 p.m.

Certificate of Mailing is attached.

FILED

Superior Court of California
County of Los Angeles

ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFFS v. COUNTY OF LOS ANGELES

Case Number: 19STCP00166

Hearing Date: February 15, 2019

FEB 19 2019

Sherril R. Carter, Assistant Sheriff/Clerk

By [Signature] Deputy

ORDER DENYING REQUEST FOR A PRELIMINARY INJUNCTION and GRANTING LIMITED DURATION STAY

Stay Expires March 1, 2019 at 3 p.m.

Petitioner Association for Los Angeles Deputy Sheriffs (Petitioner) requests a preliminary injunction enjoining Respondent County of Los Angeles (Respondent) from enforcement of Senate Bill 1421 (SB 1421) permitting disclosure of certain peace office personnel records reflecting incidences or conduct occurring prior to January 1, 2019. Intervenors Los Angeles Times Communications LLC and Southern California Public Radio (Intervenors) oppose the preliminary injunction. Respondent takes no position on whether the preliminary injunction should be granted.

Petitioner's request for a preliminary injunction is denied.

Petitioner's request for judicial notice of Exhibits A-C is denied as irrelevant. Intervenors' request for judicial notice of Exhibits G-H is granted; Intervenors' request for judicial notice of Exhibit I is denied as irrelevant.

LEGAL STANDARD

"[A] court will deny a preliminary injunction unless there is a reasonable probability that the [Petitioner] will be successful on the merits, but the granting of a preliminary injunction does not amount to an adjudication of the merits." (*Beehan v. Lido Isle Community Assn.* (1977) 70 Cal.App.3d 858, 866.) "The function of a preliminary injunction is the preservation of the status quo until a final determination of the merits." (*Ibid.*)

"Trial courts traditionally consider and weigh two factors in determining whether to issue a preliminary injunction. They are (1) how likely it is that the moving party will prevail on the merits, and (2) the relative harm the parties will suffer in the interim due to the issuance or nonissuance of the injunction." (*Dodge, Warren & Peters Ins. Services, Inc. v. Riley* (2003) 105 Cal.App.4th 1414, 1420.) "[T]he greater the ... showing on one, the less must be shown on the other to support an injunction." (*Ibid.* [quoting *Butt v. State of California*, (1992) 4 Cal.4th 668, 678].) The burden of proof is on the plaintiff as the moving party "to show all elements necessary to support issuance of a preliminary injunction." (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1481.)

02/21/2019

Preliminary injunctive relief requires the use of competent evidence to create a sufficient factual showing on the grounds for relief. (See, e.g., *Ancora-Citronelle Corp. v. Green* (1974) 41 Cal.App.3d 146, 150.) A plaintiff seeking injunctive relief must also show the absence of an adequate damages remedy at law. (Code of Civ. Pro. § 526, subd. (a)(4).)

ANALYSIS

Likelihood of Success on the Merits

At issue before the court are recent amendments to Penal Code sections 832.7 and 832.8 through SB 1421 (effective January 1, 2019) deeming certain peace officer personnel records no longer confidential and subject to disclosure under the California Public Records Act (CPRA) (Gov't Code § 6250 *et seq.*). More specifically, Penal Code section 832.7, subdivision (b) now provides:

(b)(1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act . . . :

(A) A record relating to the report, investigation, or findings of any of the following:

(i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.

(ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury.

(B)(i) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public.

...

(C) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.

Petitioner asserts SB 1421 cannot operate to release peace officer personnel records arising out of incidents or conduct occurring prior to January 1, 2019 because doing so (1) would constitute a retroactive application of the statute not intended by the legislature and (2) impair peace officers' privacy rights previously provided to them by statute.¹

The parties disagree whether SB 1421 operates retroactively.

"[D]eciding when a statute operates 'retroactively' is not always a simple or mechanical task." (*Landgraf v. USI Film Products* (1994) 511 U.S. 244, 268.) Quoting centuries old precedent, the United States Supreme Court explained, "every statute, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective" (*Landgraf, supra*, 511 U.S. at 269 [citation omitted].)

Generally, the legislature does not intend for laws to operate retroactively. (Pen. Code § 3; Civ. Code § 3.)

Does the Statute Operative Retroactively?

Resolution of the retroactivity issue requires the court to interpret the statute. The rules of statutory interpretation are well known:

"In the first step of the interpretive process we look to the words of the statute themselves. . . . The Legislature's chosen language is the most reliable indicator of its intent because "it is the language of the statute itself that has successfully braved the legislative gauntlet." We give the words of the statute "a plain and commonsense meaning" unless the statute specifically defines the words to give them a special meaning. If the statutory language is clear and unambiguous, our task is at an end, for there is no need for judicial construction. . . . In such a case, there is nothing for the court to interpret or construe. . . ."

(*Maclsaac v. Waste Management Collection & Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1082-1083 [citations omitted].)

In the context of a retroactivity analysis, Petitioner correctly notes statutes do not operate retroactively "unless expressly so declared" by the legislature. (Pen. Code § 3; Civ. Code § 3.) "[I]n the absence of an express retroactivity provision, a statute will not be applied retroactively unless it is clear from extrinsic sources that the Legislature . . . must have intended a retroactive application." (*Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1209.) "The presumption against statutory retroactivity has consistently been explained by reference to the unfairness of imposing new burdens on persons after the fact." (*McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 475 [quoting *Landgraf v. USI Film Products, supra*, 511 U.S. at 270].)

Here, as argued by Petitioner, SB 1421 has not been “expressly [] declared” to apply retroactively because nothing in the text of SB 1421 expressly dictates whether it should be applied retroactively. (Pen. Code § 3; Civ. Code § 3.) Extrinsic sources attached as exhibits to the Petition also do not speak to an express legislative intent on retroactive application. Therefore, Petitioner urges, SB 1421 does not operate retroactively, and peace officer records *created* prior to the effective date of SB 1421 (January 1, 2019) are not subject to release pursuant to a CPRA request.

The question of retroactive application, however, is of no consequence where, as here, on its face, SB 1421 does not so operate. SB 1421 prescribes a law enforcement agency’s prospective duty as of January 1, 2019 to make certain categories of peace officer personnel records available to a requestor through the CPRA. The statute dictates as of January 1, 2019, a law enforcement agency has a disclosure duty as to certain records requested on or after January 1, 2019. It does not impose an obligation or a burden on a law enforcement agency to revisit responses it may have made to CPRA requests prior to January 1, 2019. Thus, the statute does not “create[] a new obligation, impose[] a new duty, or attach[] a new disability, in respect to transactions or considerations already past” (*Landgraf v. USI Film Products, supra*, 511 U.S. at 269.)

Further, other language in the statute supports this view. The unambiguous language demonstrates SB 1421’s operation has nothing to do with the date on which a personnel record was created – it applies to all records. The statute speaks to a law enforcement agency’s obligation to disclose certain personnel records “maintained” by it when requested under the CPRA after January 1, 2019. (Gov’t Code § 6254 *et seq.*)

The word “maintained” is a past tense verb meaning “kept possession and care of” while “any” means without limit and no matter what kind.” (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798.) Thus, as argued by Intervenors, “any” and “all” records “maintained” by the law enforcement agency would necessarily include records created prior to the statute’s effective date so long as they are “maintained” by the law enforcement agency and requested on or after January 1, 2019.

Given the prospective nature of the duty created by the statute, the court finds SB 1421 does not operate retroactively.²

Petitioner’s Claim the Retroactive Effect of SB 1421 is Impermissible

Petitioner focuses extensively on its claim releasing personnel records created before January 1, 2019 has an impermissible retroactive effect. Petitioner contends “Applying SB 1421’s amendments in a manner which rescinds the confidentiality of peace officer records related to conduct occurring prior to SB 1421 effective date would constitute a retroactive application of its provisions.” (Ex Parte Application 12:6-8.) Petitioner further argues “disclosing records reflecting incidents or conduct occurring prior to January 1, 2019 would constitute a retroactive

application of SB 1421's amendments because it would violate the right of privacy of that information *already acquired* under existing law." (Ex Parte Application 12:26-28.)

With respect to retroactive effect, Petitioner's specific claims as to impermissible retroactivity are twofold. First, Petitioner contends the statute "substantially changes the legal effect of past events." (*Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534, 550.) Second, Petitioner argues the legislation eliminates (i.e. impacts) its members' privacy rights in personnel records predating the effective date of the statute.

Substantial Change in the Legal Effect:

"A statute has retroactive effect if it substantially changes the legal effect of past events. [Citations omitted.] 'A statute does not operate "retrospectively" merely because it is applied in a case arising from conduct antedating the statute's enactment [citation] or upsets expectations based on prior law. Rather, the court must ask whether the new provision attaches new legal consequences to events completed before its enactment.'" (*Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach, supra*, 86 Cal.App.4th at 550 [quoting *Landgraf v. USI Film Products, supra*, 511 U.S. at 269-270] [emphasis omitted].)

Petitioner argues its members relied on the confidential nature of their personnel records to reach dispositions in disciplinary matters brought by Respondents. Petitioner suggests, in many disciplinary cases, those peace officers would have handled disciplinary matters much differently had they known the confidentiality of their personnel records might someday be eliminated. Petitioner urges, "This undisputed evidence [regarding responding to discipline] thus establishes that the application of SB 1421 to pre-existing personnel files would have a substantial retroactive impact, as it would attach a new legal consequence to pre-enactment events." (Reply 6:22-24.)

The court disagrees "a new legal consequence to pre-enactment events" would result under SB 1421. Certainly, SB 1421 "upsets expectations based on prior law." (*Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach, supra*, 86 Cal.App.4th at 550 [quoting *Landgraf v. USI Film Products, supra*, 511 U.S. at 269-270].) That said, SB 1421 does not attach any new legal consequence to any discipline imposed on a peace officer. The statute does not subject the peace officer to further or different discipline; there is no legal consequence to disclosing the personnel record. That the information may be disclosed to the public is not a "new legal consequence to events completed before [SB 1421's] enactment." (*Ibid.*)

As noted by the United States Supreme Court, "Even uncontroversially prospective statutes may unsettle expectations and impose burdens on past conduct: a new property tax or zoning regulation may upset the reasonable expectations that prompted those affected to acquire property; a new law banning gambling harms the person who had begun to construct a casino before the law's enactment or spent his life learning to count cards. [Citation.] ('If every time a man relied on existing law in arranging his affairs, he were made secure against any change in legal rules, the whole body of our law would be ossified forever'). Moreover, a statute 'is not

made retroactive merely because it draws upon antecedent facts for its operation.” (*Landgraf v. USI Film Products, supra*, 511 U.S. at 269 n. 24 [citation omitted].)

Accordingly, the court finds SB 1421 does not substantially change the legal effect of past events such that it has an impermissible retroactive effect — even to the extent it may “unsettle expectations and impose burdens on past conduct” by removing the confidential designation to records where there was some past expectation of privacy.

Elimination of Privacy Rights

Petitioner contends permitting disclosure of personnel records created prior to January 1, 2019 impermissibly eliminates its members’ right to privacy in those records.

Petitioner’s members’ privacy rights in certain personnel records were created by statute. As noted by Petitioner, “Prior to SB 1421’s operative date, the law identified all peace officer personnel records and information obtained from those records as confidential and exempt from disclosure absent compliance with the statutory *Pitchess* process.” (Ex Parte Application 10:6-8.) In addition, the CPRA provided Petitioner’s members with additional statutory privacy protections.³

Nothing prevents the legislature from modifying the statutory rights it previously provided to Petitioner’s members. (See, e.g., *People v. Superior Court (Smith)* (2018) 6 Cal.5th 457, 466; *People v. McClinton* (2018) 29 Cal.App.5th 738, 753.) Nothing prevents the legislature from changing the law. Petitioner has not identified any authority preventing the legislature from modifying the statutory privacy rights it previously created in peace officers’ personnel records. Moreover, Petitioner does not contend the privacy rights were “vested rights.” (Reply 8:10-16.)

Petitioner has not established SB 1421’s elimination of the confidentiality of personnel records created before January 1, 2019 is impermissible.

Standing

Intervenors oppose the preliminary injunction on the ground Petitioner lacks standing to prosecute this lawsuit. Intervenors argue any alleged reasonable expectation of privacy in the records is exclusive to each officer and does not extend to Petitioner as an association.

“‘Standing’ is a party’s right to make a legal claim and is a threshold issue to be resolved before reaching the merits of an action.” (*Said v. Jegan* (2007) 146 Cal.App.4th 1375, 1382.)

“An association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” (*Apartment Association of Los Angeles County v. City of Los Angeles* (2006) 136 Cal.App.4th 119, 129.)

In opposing the preliminary injunction, Intervenor's rely on the holding in *Association for Los Angeles Deputy Sheriffs v. Los Angeles Times Communications LLC* (2015) 239 Cal.App.4th 808.

In *Association for Los Angeles Deputy Sheriffs*, the Court found a labor union lacked standing to assert its members' privacy rights over information contained in their applications for employment. (*Id.* at p. 821.) The Court explained "'it is well settled that the right of privacy is purely a personal one; it cannot be asserted by anyone other than the person whose privacy has been invaded, that is, plaintiff must plead and prove that his privacy has been invaded.'" (*Id.* [quoting *Hendrickson v. California Newspapers, Inc.* (1975) 48 Cal.App.3d 59, 62].)

In opposition, Petitioner argues *Association for Los Angeles Deputy Sheriffs v. Los Angeles Times Communications LLC* (2015) 239 Cal.App.4th 808 is distinguishable. The court agrees.

In *Association for Los Angeles Deputy Sheriffs*, the complaint alleged a single cause of action for injunctive relief; the underlying gravamen of the complaint was a tort claim for invasion of privacy.

While, here, the writ of mandamus action raises issues related a deputy's privacy interests, the action does not seek to enforce a tort claim for a specific, individual privacy interest. Rather, it seeks mandamus relief on the interpretation and application of SB 1421, which only incidentally relates to deputies' privacy rights.

The court, therefore, finds Intervenor's argument on standing unpersuasive with regard to the analysis concerning the likelihood of success on the merits.

Balancing the Harms

In addressing the second part of the preliminary injunction analysis, the court evaluates the harm a petitioner is likely to sustain if the preliminary injunction is denied compared to the harm the respondent is likely to suffer if the injunction is issued. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69-70.)

Petitioner contends, absent an immediate injunction, its peace officer members will suffer irreparable harm from the disclosure of their confidential personnel files. The court agrees Petitioner has demonstrated irreparable harm; once the records are made public, the injury from publication cannot be undone.

Moreover, Intervenor's do not specifically address this issue in their papers. During the hearing, despite having not addressed it in their papers, Intervenor's argued they did not concede the issue.

The court finds the balance of harms weighs in Petitioner's favor.

LIMITED DURATION STAY

During the hearing, Petitioner requested a stay of 30 days to allow review by the Court of Appeal. The Intervenor recognized the court would likely grant a stay and requested any stay be of limited duration.

The court’s temporary restraining order in this matter remains in full force and effect until March 1, 2019 at 3 p.m.

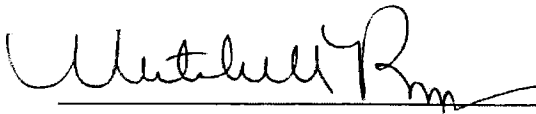
CONCLUSION

As discussed, the court finds Petitioner has not demonstrated a likelihood of success on the merits while the balance of harms weighs in Petitioner’s favor. In considering these two interests, the court finds the likelihood of success is so low that even the potential harm to Petitioner does not justify the imposition of a preliminary injunction.

For the foregoing reasons, Petitioner’s request for preliminary injunction is denied. The court’s prior temporary restraining order remains in full force and effect until March 1, 2019 at 3 p.m.

IT IS SO ORDERED.

February 19, 2019



Hon. Mitchell Beckloff
Judge of the Superior Court

¹ In reply, Petitioner raises the general privacy right found in Article I, Section 1 of the California Constitution. As noted during the hearing, the claims are undeveloped. Indeed, the Petition does not specifically cite Article 1, Section 1 of the California Constitution as the basis for any relief requested. Petitioner’s claim its members’ general privacy rights under the California Constitution are compromised does not address the conditional nature of the statutory privilege (see *Hackett v. Superior Court* (1993) 13 Cal.App.4th 96, 100) or how a general right to privacy would protect the four types of records subject to disclosure under SB 1421.

While *Michael v. Gates* (1995) 38 Cal.App.4th 737 may be limited to its “novel factual situation,” the case does address a peace officer’s claim of a general constitutional right of privacy in his/her employment records: “Similarly, we see no violation of appellant’s constitutional right to privacy. An essential element of a cause of action for violation of that right is the plaintiff’s reasonable expectation of privacy. [Citation omitted.] The privilege created by Evidence Code section 1043 makes it clear that the right to privacy in the records is limited. Penal Code section 832.7 allows disclosure of the records in a variety of investigations (Pen. Code § 832.7, subd. (a)), and Evidence Code section 1043 establishes procedures by which peace officer personnel records may be obtained for purposes of litigation. Appellant could have no reasonable expectation of privacy.” (*Id.* at 745.)

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² This interpretation of the statute is consistent with the high courts of other states interpreting similar statutes. (See, e.g., *State of Hawaii Organization of Police Officers v. Society of Professional Journalists* (1996) 83 Hawaii 378, 389-391; *State ex rel. Beacon Journal Pub. Co. v. University of Akron* (1980) 64 Ohio St.2d 392, 395-396.)

³ Petitioner's reliance on *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 756 merely emphasizes the statutory basis of the privacy claim. It is true *BRV* recognizes a public employee's "legally protected interest in their personnel file." (*Ibid.*) *BRV* explains the "privacy protection" is found in the CPRA which is modeled on federal legislation.

02/21/2019

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: **6033 West Century Boulevard, 5th Floor, Los Angeles, California 90045.**

On **February 22, 2019**, I served the foregoing document(s) described as **REAL PARTY IN INTEREST COUNTY OF LOS ANGELES'S MOTION FOR JUDICIAL NOTICE IN SUPPORT OF SUPPLEMENTAL BRIEF ON EFFECT OF SB 1421 ON QUESTION PRESENTED FOR REVIEW; [PROPOSED] ORDER** in the manner checked below on all interested parties in this action addressed as follows:

Elizabeth Gibbons The Gibbons Firm, P.C. 811 Wilshire Blvd., 17th Floor Los Angeles, CA 90017 Tel: 323.591.6000 Email: gibbons@thegibbonsfirm.com <i>Attorneys for Petitioner Association for Los Angeles Deputy Sheriffs (ALADS)</i>	Douglas G. Benedon Judith E. Posner Benedon & Serlin, LLP 22708 Mariano Street Woodland Hills, CA 91367-6128 Tel: 818.340.1950 Fax: 818.340.1990 Email: douglas@benedonserlin.com judy@benedonserlin.com <i>Attorneys for Petitioner Association for Los Angeles Deputy Sheriffs (ALADS)</i>
Court of Appeal, State of California Second Appellate District Division 8, No. B280676 300 S. Spring St. 2nd Floor N. Tower Los Angeles, CA 90013	Xavier Becerra California Attorney General 300 S. Spring Street, #1700 Los Angeles, CA 90013 Telephone: (213) 897-2000
Hon. James Chalfant Los Angeles Superior Court 111 North Hill Street, Dept. 85 Los Angeles, CA 90012-3117 Telephone: (213) 830-0785	Frederick Bennett P. Nguyen Superior Court of Los Angeles County 111 North Hill Street, Room 546 Los Angeles, CA 90012 Telephone: (213) 633-8598 Facsimile: (213) 625-3964 Email: fbennett@lacourt.org

	<u>Pnguyen1@lacourt.org</u> <i>Respondent Superior Court of Los Angeles County</i>
Los Angeles County District Attorney's Office 211 West Temple Street, Suite 1200 Los Angeles, CA 90012	Alyssa Daniela Bell Federal Public Defender 321 East 2 nd Street Los Angeles, CA 90012 <i>Counsel for Amicus Curiae Office of the Federal Public Defender of Los Angeles</i>
Supreme Court of California Clerk of the Supreme Court 350 McAllister Street San Francisco, CA 94102-4797	

(BY U.S. MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

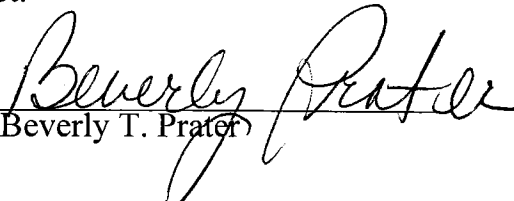
(BY OVERNIGHT MAIL) By overnight courier, I arranged for the above-referenced document(s) to be delivered to an authorized overnight courier service, FedEx, for delivery to the addressee(s) above, in an envelope or package designated by the overnight courier service with delivery fees paid or provided for.

(BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Liebert Cassidy Whitmore's electronic mail system from bprater@lcwlegal.com to the email address(es) set forth above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

(BY PERSONAL DELIVERY) I delivered the above document(s) by hand to the addressee listed above.

Executed on **February 22, 2019**, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Beverly T. Prater