



# PUBLIC RECORDS AND LAW ENFORCEMENT: LEGISLATIVE CHANGES IMPACTING THE PROFESSION

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In the last few years, a nationwide effort has expanded to improve transparency and accountability, particularly within law enforcement. The widespread unrest that swept through numerous cities eroded public trust in law enforcement. Consequently, legislative bodies enacted substantial reforms, reshaping public safety in many areas.

Legislative agendas across the nation focused on laws that address law enforcement accountability, use of force, and qualified immunity. To increase transparency, legislators are also concentrating on statutes that pertain to the disclosure of records and the dissemination of documents from police agencies. A prevailing sentiment among many legislators is that these revisions to public records laws underscore their dedication to ensuring accessibility, transparency, and public oversight. Commonly known as freedom of information laws or sunshine laws, these legal provisions facilitate public access to government records and pertinent data.

The changes made to these laws highlight society's demand for information and its inherent importance to the public. The scale of these changes has not been seen in the field of public records since the establishment of the Freedom of Information Act (FOIA) in the 1960s at the federal level. These revisions have fundamentally reshaped the practices governing the storage, retrieval, and release of records, compelling law enforcement agencies to pay particular attention to an area historically neglected—the records section.

These regulations mirror the changing demands of society, the advancement of technology, and the evolution of public perceptions regarding open and transparent government.

For example:

- Colorado Senate Bill SB 20-217 incorporated clauses to facilitate the public dissemination of records connected to incidents involving officers' use of force, including officer-involved shootings. These areas were traditionally protected as confidential information, typically not accessible to the public.
- Tennessee Senate Bill 2019-2020 SB2313 introduced revisions forbidding the destruction of records under the purview of pending public records requests, mandating that government bodies retain documents pertaining to such requests for a minimum of 12 months. Additionally, the amended law enforces a potential penalty of up to \$500 per violation.
- Pennsylvania's HB2463 modified the state's Right-To-Know Law which ensures prompt access to public records in times of declared disasters. The bill also gave Pennsylvania's Office of Open Records the responsibility of formulating guidelines within five days following the declaration of a disaster.



- Pennsylvania's Clean Slate law resulted in the removal of over 34 million criminal cases from the public record, obligating law enforcement agencies to expunge records associated with minor offenses.
- New York Senate Bill NY SB8496 revoked a law that had been in place for over four decades, rendering police disciplinary records accessible to requests from the public.
- Maryland's 2021 police reform bill broadened public access to law enforcement personnel disciplinary records, which had before been inaccessible under the state's public information law. Senator Jill Carter from Baltimore, who sponsored the legislation, emphasized in a recent article that "policing is a public function, and it is only right that disciplinary records are accessible to victims of misconduct and the public." She went on to summarize the feelings of a majority of the Maryland legislature and much of the public when she further stated, "this is a necessary step to creating transparency and accountability as police have done a deplorable job policing themselves in secret<sup>[1]</sup>."

Demonstrated by these examples, multiple states have embarked on initiatives to enhance accessibility to public records, emphasizing the significance of transparency and accountability. These examples plainly depict the shifting terrain within the realm of public records, with a notable focus on the opinion that law enforcement agencies have, at times, sought to impede and obstruct the release of information. The broadening of these regulations accentuates the growing assertion that transparency is regarded as an inherent right of the public.

These legislative modifications have also directly addressed challenges associated with electronic records and digital communication. Statutes across the nation have been revised to explicitly state that emails, text messages, and other digital communications fall under the scope of public records requests. Such efforts include the removal of barriers to access, streamlining request processes, and providing digital platforms for the retrieval of public records. These changes, incorporating an expansion of covered entities and the resolution of technological challenges, have intensified the complexity felt by agencies to effectively manage, retrieve, and disclose information to the public.

Additionally, modifications have been implemented to establish specific timeframes for responding to public records requests. These are designed to prevent agencies from prolonging or impeding the disclosure of information, thus promoting a more streamlined and efficient procedure.

Certain states have also restructured their records fees, incorporating provisions to stop unreasonable charges that discourage citizens from requesting documents.

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[1]

<https://www.wbaltv.com/article/new-laws-maryland-october-1-2021/37807230>



Some states have even created dedicated agencies tasked with supervising compliance and facilitating the resolution of conflicts between individuals making requests and governmental bodies. As a result, citizens now have enhanced access to documents concerning law enforcement agency actions and the reporting and disciplinary records of their personnel.

Nonetheless, obstacles continue to endure. The responsibility of meeting public records requests places strain on government resources, resulting in certain agencies needing help with processes designed to address the changing laws. Striking a balance between privacy considerations and commitment to transparency remains an ongoing dilemma. Similarly, the prevention of the system's exploitation for personal or political advantage remains a pressing concern.

Ann Rivers, Republican member of the Washington State Senate, summed up the concerns in a recent article. She stated the danger of laws such as these has given rise to a “burgeoning cottage industry of people who generate public records requests for the sole purpose of winning a legal settlement.” As she stated, public records release laws should be about “shining a light on government, not lining the pockets of people who have figured out how to weaponize it.[2]” Unfortunately, this “cottage industry” she mentioned has developed, and agencies must be prepared to address the deluge of requests likely to come into their offices.

### **What does this mean for the average law enforcement agency?**

Regardless of whether the agency or its staff agree with these far-reaching changes, it remains undeniable that they have become the prevailing standard within the profession. Agencies can no longer persist with the practices they employed merely a decade ago. The tactic of categorizing a document as part of an investigative file or an employee personnel record and withholding its release is no longer effective. Agencies must brace themselves for a wave of record release requests and, in several states, a substantial drive to expunge case files.

So, how does an agency prepare to meet the new legislative changes and keep up with ever-changing laws?

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[2]

<https://pluribusnews.com/news-and-events/public-records-access-changes-on-agenda-in-several-states/>



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Agencies must develop a comprehensive retention schedule. A common tendency in law enforcement agencies is to retain all agency documents, particularly police reports, as a precautionary measure. This inclination stems from a risk-averse mindset and the belief that holding onto every record guarantees access to pertinent information in potential legal disputes, audits, or regulatory investigations.

However, it is crucial for organizations to follow an established and approved retention schedule to facilitate efficient records management. Such a schedule provides guidelines on how long different types of records should be retained based on their value, legal requirements, and business needs. This systematic approach ensures that relevant records are retained only for the necessary duration while obsolete or unnecessary records are disposed of promptly. Consequently, the organization's record management and accessibility are enhanced, simplifying the process of locating and retrieving information when needed.

Agencies should also transition, as much as possible, from paper to electronic record keeping. Utilizing technology for effective record management ensures that valuable information is readily available, well-organized, and protected within the unit. Continually printing paper copies and retaining records beyond their required retention period, as well as maintaining duplicate copies in both physical and electronic formats, results in unnecessary retention of unneeded files, increases storage costs, consumes valuable space, and can amplify the very risks agencies aim to mitigate. Transitioning from paper copies to electronic records offers improved efficiency, accessibility, and data security while reducing costs and space requirements.

Establish a standardized process and workflow for tracking case dispositions. Accurate and timely reporting of final dispositions is crucial for case sealing, expungement, and purge. This is vital to improving the efficiency and effectiveness of the public records request process and is known as Case Management. Case management is the process of ensuring cases are properly given final status, i.e., closed/suspended, cleared by arrest, cleared by exception, or unfounded. It also includes properly pulling new cases only when appropriate so as not to increase crime data artificially.

All reports, including supplements, should be submitted to a supervisor for review and approval, and then to the Records Division for a second review and approval to ensure compliance with National Incident Based Reporting System (NIBRS) requirements and proper status and disposition selections.



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It creates difficulty in determining coding and causes statistical issues when supplements are not written detailing crucial facts of the case that could impact the definition of the crime, or the status of the case. A supplement is the proper way to document all subsequent case activity. This allows the agency to determine the status of the case properly and report the final disposition. The supplemental report, no matter how trivial the information it contains, serves as investigative and case information, and has a profound effect on the information reported to NIBRS.

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## How PRI Can Help

PRI offers valuable assistance in various areas to support law enforcement agencies in optimizing their operations. With our expertise, we can help identify areas of risk, develop policies, develop a retention schedule, and re-engineer processes to enhance efficiency within your agency. Since our establishment in 2008, PRI has been dedicated to assisting law enforcement agencies in procuring, managing, and implementing systems, records, digital evidence, and data in a cost-effective and efficient manner, all while ensuring compliance with the complex landscape of public records, NIBRS, and technology standards.

Our web-based, low-cost public records request management system, [GovQuest](#), allows you to receive, track, assign, and process requests online, including payments.

By leveraging PRI's expertise and resources, you can enhance your agency's capabilities, streamline processes, and keep pace with industry standards.

Our commitment to cost-effectiveness, efficiency, and compliance allows you to navigate the complexities of the law enforcement landscape with confidence. Let PRI be your partner in achieving operational excellence and staying ahead in an ever-evolving environment.

Contact us for assistance at [info@policerecordsmanagement.com](mailto:info@policerecordsmanagement.com) or 305-460-0096.