



Commission on Peace Officer Standards and Training

860 Stillwater Road, Suite 100
West Sacramento, CA 95605-1630
www.post.ca.gov

Date: September 24, 2019

Bulletin: No. 2019-29

Subject: **ACTION REQUIRED: Senate Bill 978 Requires Publication of All Non-Exempt Education and Training Materials, Including Presenter Course Content, on POST's Website by January 1, 2020.**

Senate Bill 978 (Bradford) was approved by Governor Brown on September 30, 2018. This legislation requires POST and local law enforcement agencies to conspicuously post on their websites "all current standards, policies, practices, operating procedures, and education and training materials that would otherwise be available to the public" if a request was made pursuant to the California Public Records Act, located in Government Code §§ 6250 *et seq.* **The bill takes effect on January 1, 2020.** (See Penal Code § 13650.)

Under this bill, POST will be required to publish, among other things, all presenter course content, unless the material falls within an applicable exemption under the Public Records Act.

As a result, to avoid publication of education and training materials that qualify for exemption under the Public Records Act, each presenter should carefully review its Expanded Course Outline (ECO) documents. If the presenter believes that any materials should be protected from disclosure under the Public Records Act, it must advise POST of the specific materials it believes are exempt and the grounds for claiming an exemption; further, if only a portion of the materials is exempt and can reasonably be segregated from the remainder, the presenter must provide POST with proposed redactions. (Gov. Code § 6253(a).)

For example, some materials may be copyrighted. If a presenter objects to the disclosure of copyrighted material, it must identify the specific material and/or redact any copyrighted content. Of course, if a presenter holds a copyright to materials, but agrees that POST may disclose the materials, it should advise POST, so that the material may be posted with the appropriate copyright designation.

As another example, some training materials may disclose information exempt from disclosure because it describes law enforcement tactics, materials, security or safety procedures or similar information that is not publicly known and should not be disclosed for safety, security, or investigative reasons. (See, e.g., Gov. Code § 6254, subds. (f) [Department of Justice or state or local law enforcement agency security procedures], (aa) [assessment of vulnerability to terrorist attack or other criminal acts] *Northern California Police Practices Project v. Craig* (1979) 90 Cal.App.3d 116 [exempting certain police security and safety policies from disclosure under Public Records Act].)¹ If a public agency or private presenter believes that its ECO documents contain such information, it should notify POST and identify the content that it believes should be redacted or otherwise protected from disclosure. However, POST will

¹ The Public Records Act contains numerous exemptions from disclosure (see, e.g., Gov. Code § 6254, 6255), of which these are only two examples.

make the ultimate determination as to whether such materials should be withheld entirely or redacted.

To the extent ECO material is withheld from internet posting, the withheld materials and unredacted versions of documents that have been redacted for the website will remain housed in the POST Electronic Data Interchange (EDI) for use in law enforcement training.

Presenters wishing to withhold or redact training material content on the basis of copyright or other proprietary interest of the presenters should contact their legal advisor to determine whether the exemption is legally justified under the Public Records Act and SB 978. If a decision to withhold or redact information is later challenged in legal proceedings, the presenter may be joined as a party. In making a request for exemption of such material, the presenter is affirming that a proper statutory basis for the exemption exists under the Public Records Act, and that the presenter will reasonably cooperate with POST in any actual or threatened litigation arising out of the exemption request. Presenters should notify their respective Regional Consultant if they wish to withhold or redact content.

To allow POST enough time to meet the requirements of SB 978 by the January 1, 2020 implementation date, POST requests that presenters provide POST with a list of any documents that they claim are entirely exempt from disclosure and provide redacted versions of any documents they claim are partially exempt from disclosure no later than **Friday, November 15, 2019**. If presenters do not respond to this request by that date, POST will assume that the presenter does not object to posting on the POST website of its training materials.

Questions regarding POST publication of all education and training materials on the website may be directed to Bureau Chief [Phil Caporale](#), Strategic Communications and Research Bureau, at (916) 227-4832.

Manuel Alvarez Jr.
Executive Director

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