

COUNTY OF SACRAMENTO

DEPARTMENT OF FINANCE - AUDITOR-CONTROLLER DIVISION – INTERNAL AUDIT UNIT

INTERNAL AUDIT REPORT

**COMPLIANCE WITH SENATE BILL (SB) 1421
AND ASSEMBLY BILL (AB) 748
PERFORMANCE AUDIT
FROM NOVEMBER 9, 2020 TO JANUARY 5, 2021**

SHERIFF'S DEPARTMENT



Audit Committee Submittal Date: 06/07/2021

SUMMARY

Background

The Sacramento County Sheriff's Department (Sheriff) has a mission to provide high-quality public safety services to constituents, with a focus on protection of life and property, preservation of the public peace and the enforcement of laws.

The Sacramento Countywide Risk Assessment Study has identified Sheriff's "*Compliance with Senate Bill (SB) 1421 and Assembly Bill (AB) 748 (Laws) requirements*" as one of the high-risk areas for Internal Audit Unit's audit plan for fiscal year 2020-21.

Effective January 1, 2019, SB 1421 amended Penal Code section 832.7 to broadly allow the release of records relating to officer use-of-force incidents, sexual assault and acts of dishonesty. Previously, such records were only available through a Pitchess motion and private review by a judge or arbitrator.

AB 748, which went into effect on July 1, 2019, contains new disclosure provisions, broadly allowing audio and video recordings of "critical incidents" to be released to the public.

Audit Objective

The objective of this audit was to assess Sheriff's compliance with the Laws and evaluate the related internal controls including the Sheriff's Information Technology General Controls (ITGC) for the period from November 9, 2020 to the end of audit fieldwork on January 5, 2021.

Summary

Based on our audit, we noted exceptions related to Sheriff's internal control activities and processes over compliance with the Laws for the period from November 9, 2020 to January 5, 2021. See Attachment I, *Current Findings, Observation and Recommendations*.

Department of Finance

Ben Lamera
Director



Auditor-Controller Division

Joyce Renison
Assistant Auditor-Controller

County of Sacramento

May 5, 2021

Scott Jones, Sheriff
Sheriff's Department
County of Sacramento
4500 Orange Grove Avenue
Sacramento, California 95841

The Sacramento Countywide risk assessment study assessed the Sheriff's Department (Sheriff) compliance to Senate Bill (SB) 1421 and Assembly Bill (AB) 748 (Laws) requirements and related internal controls as high-risk areas. Accordingly, we have performed audit procedures over Sheriff's compliance with the Laws for the period from November 9, 2020 to January 5, 2021. We have also performed procedures over Sheriff's internal controls and Information Technology General Controls (ITGC) as it relates to the Laws.

We conducted this performance audit in accordance with *Generally Accepted Government Auditing Standards*. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Our audit was conducted to examine Sheriff's compliance with the Laws, to assess and identify key processes related to Sheriff's internal controls and ITGC, and to design tests verifying that key controls are in place and functioning as intended.

Sheriff's management is responsible for the design, implementation, and maintenance of effective internal controls to ensure compliance with all applicable laws, regulations and statutory requirements.

The scope of our audit included Sheriff's internal control activities and processes as it relates to the Laws for the period from November 9, 2020 to the end of audit fieldwork on January 5, 2021.

The audit methodology utilized to conduct this performance audit included:

Internal Control Review:

- We conducted a preliminary survey of the Sheriff's internal control environment and identified key processes and controls as it relates to the Laws.

Document Review:

- We reviewed public records made available on the Sheriff's public website.
- We reviewed policies and procedures and evaluated internal controls as it relates to the Laws.
- We reviewed ITGC policies and procedures as it relates to the Laws.

Testing:

- We reviewed the records published on the Sheriff's public website related to the Laws. We randomly selected a sample of 25 out of 172 records published on the Sheriff's public website and tested key internal control processes to ensure controls are in place and functioning as intended.
- We obtained a list of requests for public records as it relates to the Laws. We randomly selected a sample of 25 out of 44 records requests. We designed tests to determine whether the Sheriff addressed such requests in a timely manner and in accordance with the Laws' requirements. We also inspected whether the information requested has already been published on the Sheriff's public website in accordance with the requirements.
- We interviewed selected Information Technology (IT) staff and requested for policies and procedures related to the Sheriff's ITGC and IT procedures for requests in accordance with the California Public Records Act (CPRA).

In connection with this audit, there are certain disclosures that are necessary pursuant to *Generally Accepted Government Auditing Standards*.

As required by various statutes within the California Government Code, County Auditor-Controllers or Directors of Finance are mandated to perform certain accounting, auditing, and financial reporting functions. These activities, in themselves, necessarily impair *Generally Accepted Government Auditing Standards* independence standards. Specifically, "auditors should not audit their own work or provide non-audit services in situations where the amounts or services involved are significant/material to the subject matter of the audit."

Although the Director of Finance is statutorily obligated to maintain the accounts of departments, districts or funds that are held in the County Treasury, we believe that the following safeguard and division of responsibility exist. The staff that has the responsibility to perform audits within the Auditor-Controller Division has no other responsibility of the accounts and records being audited including the approval or posting of financial

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transactions that would therefore enable the reader of this report to rely on the information contained herein.

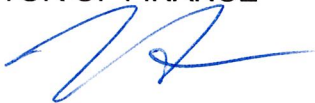
Based on our audit, there were exceptions and recommendations noted related to Sheriff's internal control activities and processes which related to compliance with the Laws and Sheriff's ITGC and IT policies and procedures for the period from November 9, 2020 to January 5, 2021. See Attachment I, *Current Findings, Observation, and Recommendations*.

Sheriff's management responses to the findings identified during our audit are described in Attachment I, *Current Findings, Observation, and Recommendations*. We did not perform procedures to validate Sheriff's management responses to the findings and, accordingly, we do not express opinions on the responses to the findings.

This report is intended solely for the information and use of the Sacramento County Board of Supervisors, those charged with governance, Sacramento County Audit Committee, Sacramento County Executive, and Sheriff's management, and should not be used for any other purpose. It is not intended to be, and should not be, used by anyone other than these specified parties. However, this report is a matter of public record and its distribution is not limited.

Sincerely,

BEN LAMERA
DIRECTOR OF FINANCE



By: Hong Lun (Andy) Yu, CPA
Audit Manager

Attachment I: *Current Findings, Observation, and Recommendations*

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CURRENT FINDINGS, OBSERVATION, AND RECOMMENDATIONS

FROM NOVEMBER 9, 2020 TO JANUARY 5, 2021

FINDINGS

1. Written Policies and Procedures

Condition

We noted that the Sheriff's Department (Sheriff's) written policies and procedures have not been updated to include processes for monitoring and ensuring compliance with specific provisions for the timelines as listed in Senate Bill (SB) 1421 and Assembly Bill (AB) 748 (Laws).

Sheriff should indicate in the written policies and procedures the allowed timeline and exceptions for the availability of requested public records per the Laws. The Laws declare that the public has the right to know about serious police misconduct, as well as about officer-involved shootings and other serious uses of force.

Per SB 1421 Section 7, Sheriff's 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 Sheriff delays disclosure pursuant to this clause, Sheriff shall provide, in writing, the specific basis for Sheriff'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.

Per AB 748 Section 4, Sheriff's disclosure of a recording related to a critical incident may be delayed for no longer than 45 calendar days after the date Sheriff knew or reasonably should have known about the incident, if, based on the facts and circumstances depicted in the recording, disclosure would substantially interfere with the investigation, such as by endangering the safety of a witness or a confidential source. If Sheriff delays disclosure pursuant to this paragraph, Sheriff shall provide in writing to the requester the specific basis for Sheriff's determination that disclosure would substantially interfere with the investigation and the estimated date for disclosure.

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Further to our testing, we noted six out of the 25 records requests selected for testing are currently pending for public records response and under “*active investigation relating to the discharge of a firearm at a person or use-of-force resulting in great bodily injury*” that do not provide estimated dates for the disclosure as required by SB 1421. These pending requests have not been responded for more than a year and are considered overdue.

Effect

Updated written policies and procedures will document how Sheriff currently operates and ensure compliance with new regulations. This will also support cross-training and employee turnover when necessary. Also, ensuring compliance with the timelines listed in the Laws mitigate liabilities and prevent potential legal and compliance issues related to California Public Records Act (CPRA).

Recommendation

We recommend that Sheriff update its written policies and procedures for specific processes as it relates to the timeline requirements of the Laws. Also, we recommend that Sheriff maintain a tracking system to ensure any withholdings of otherwise disclosable files comply with the timelines and requirements of the Laws, including a triggering mechanism when the investigation has been concluded so disclosable files may be produced promptly in accordance with the requirements. This tracking system should also include an estimated date of disclosure to be fully in compliance with the requirements.

Management Response

The Sheriff's Office concurs with the need to update policies and procedures as it relates to timelines. The Sheriff's Office recently initiated a contract with Lexipol LLC to update the organization's policies and procedures. The Sheriff's Office utilizes two separate systems to address when a record is disclosable. The first product is the NextRequest used to track and respond to California Public Records Act requests.

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The next request system allows for the tracking and communication with requestors. The second product is a product called IA Pro. All records subject to release under SB 1421 will move through IA pro and ultimately communicated or released through NextRequest. Although an estimated date of disclosure is identified in the Laws, there are many instances where that potential release date is completely unknown. In these instances, the Sheriff's Office is unable to provide an estimated date of disclosure as one does not exist. However, the Sheriff's Office position is that we shall release all disclosable records to a requestor without delay once the investigative or administrative process is completed.

2. Redaction of information

Condition

During our audit, we noted one out of the 25 records selected for testing that Sheriff has appeared to redact information pertaining to peace officers' performance history/evaluations.

Per SB 1421 subdivision (5) (A), mandates Sheriff "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."

The redacted "performance history/evaluations" are considered work-related information, and not sufficiently personal. Therefore, it should not be subject to redaction.

Further, we also noted one out of the 25 records selected for testing may have inappropriately redacted faces of persons. These persons appear to be peace officers and employees of Sheriff who are interacting with inmates or arrestees. Such persons are not "complainants or witnesses" within the meaning of SB 1421, discussed further

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in the Court Order Decision by the Superior Court of California dated May 1, 2020, which states:

"The Court does not support Sheriff's broad interpretation of allowed redactions for "complainants or witnesses." The requirement's reference to both complainants and witnesses indicates that the Legislature wished to protect the identities of persons with an immediate and temporal connection to the incident. Accordingly, the term "witness" cannot include a deputy who is not a percipient witness, but rather provided information, e.g., about an officer's conduct years ago, during the investigation. Similarly, the term "witness" does not include Sheriff's employees who were involved in the investigation, but were not percipient witnesses."

Effect

Ensuring compliance of proper redaction of information listed in SB 1421 mitigate liabilities and prevent legal and compliance issues related to California Public Records Act (CPRA).

Recommendation

We recommend that Sheriff ensure that the redaction of all information be in compliance with SB 1421.

Management Response

The Sheriff's Office is committed to redacting only that information as allowed by law. To that effect is important to recognize that the Appellate Court held that all CPRA exemptions, including those exemptions for statutorily privileged records (other than the law enforcement investigation exemption) remain applicable to records subject to SB 1421 in *Becerra v. Superior Court* (2020) 44 Cal. App. 5th 897.

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3. Information Technology (IT) Risk Management Process

Condition

Although Sheriff has certain systems and controls in place, Sheriff's management has not implemented an IT risk management process for further understanding of its internal technology control structure and potential control weaknesses. A thorough IT risk management process allows management to understand the many forms of technology risks it faces and to create an effective plan of action for controlling those risks and facilitates the governance of IT by providing the tools and documentation necessary for that control.

Effect

By not having an IT risk management process in place, IT risks are managed independently, with the impact of IT risk on the department being undetected. Significant risks areas may not be given appropriate attention. There will always be possibilities of systems attacks and Sheriff could lose significant data that could have a significant impact on the Sheriff's ability to respond for public records request in compliance with the Laws.

Recommendation

Sheriff should implement an integrated approach to information technology risk management that provides for the identification, measurement, monitoring and controlling of technology-related risks throughout the department, and that will be treated as an essential management function of the department. With an IT risk management process in place, management will have a framework by which to better understand its controls related not just to security, but also to areas such as business continuity, application controls such as data integrity, process-based controls, physical and environmental controls, systems development and change management, staffing, vendor management, project management, data backup and restoration, and strategic planning. The goal of effective risk management is to ensure that each risk is identified, documented, prioritized, and mitigated whenever possible. This allows

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management to recognize when a risk might occur and the impact it may have on Sheriff.

Management Response

The Sheriff's Office concurs with the recommendation of formalizing risk management. Over the course of the next year, as we work with Lexipol LLC on our policy, procedures and practices, many of above recommendations will be addressed. Each system will be identified, prioritized, and evaluated for potential exposures/vulnerabilities and controls will be discussed on how to mitigate potential issues under the guidance of all of the controlling authorities that govern the actions of the department. We will use industry standards in this evaluation process.

4. Information Technology (IT) Policies And Procedures

Condition

During our audit, we noted that Sheriff's IT policy for computers and network system have not been reviewed and updated recently. The last update was dated July 2000.

Effect

Updated written policies and procedures will document how Sheriff currently operates and ensure compliance with new regulations. This will also support cross-training and employee turnover when necessary. Further, performing review of current policies and procedures can also greatly assist Sheriff in fully understanding significant IT areas that may need to be improved and inefficiencies that may need to be addressed.

Recommendation

We recommend that Sheriff update its written policies and procedures regularly.

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Management Response

The Sheriff's Office concurs with the need to update policies and procedures regularly. With hundreds of pieces of law enforcement legislation being proposed each year the Sheriff's Office recognized a need to utilize an outside service to maintain continuity in the organization. The Sheriff's Office recently initiated a contract with Lexipol LLC to update the organization's policies and procedures. The contract is signed, the appropriate personnel assigned to the project, and work is already underway.

5. Business Contingency Plan and Disaster Recovery Plan

Condition

During our audit, we noted that neither a Business Contingency Plan (BCP) nor a Disaster Recovery Plan (DRP) has been formally documented. Although management informally understands their BCP/DRP requirement, it is imperative that documented plans for both exist.

Effect

Lack of business contingency plan may hinder Sheriff's ability to recover recorded information that is required for disclosure under the compliance requirements during a disaster. Delays in its ability to recover its data could have a significant impact on its compliance with the Laws.

Recommendation

To ensure prompt and proper reaction to service disruptions, we recommend that management document BCP and DRP. The plan should be detailed and well organized to reflect the chosen strategies and activities for business resumption. The BCP and DRP should address and/or include the following areas:

- Identification of key department processes internally and externally,
- Identification and evaluation of both interim and long-term recovery strategies,

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- Identification and documentation of recovery teams and personnel,
- Identification and development of resource requirements including supplies and equipment,
- Identification and documentation of business recovery procedures including those related to IT and telecommunications,
- Recovery procedures training,
- Plan testing and maintenance,
- Identification of critical business forms and supplies, and
- Detailed backup restoration procedures for all key systems.

Management Response

The Sheriff's Office concurs that a more formalized and well documented BCP and DRP plans need to be in place. The Sheriff's Office currently conducts regular backups of critical systems in which we are the data owners, according to industry best practices. These backups are separated from the original system and stored at a different location for utilization for a recovery event. The Sheriff's Office interacts with many other critical systems in which we are not the data owner or the custodian of the data, in these cases the Sheriff's Office defers to the agency/company charged with the responsibility of the data. As the department works with Lexipol LLC to update policy and procedures, appropriate staff will be assigned to formalizing the BCP and DRP plans into the standardized format.

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OBSERVATION

During the audit, we observed a condition regarding a possible improvement to Sheriff's business practices presented below.

Body Worn Camera

Condition

During our audit, we noted that Sheriff had only relied on in-car and closed-circuit television (CCTV) cameras for audio and video recordings. Sheriff did not install body worn cameras for its peace officers. However, we noted that the Sheriff had intended to start to install body worn cameras for its peace officers.

Effect

While we are not aware of any laws or regulations requiring installment of body worn cameras for Sheriff's peace officers, the adoption and deployment of body worn cameras may provide Sheriff with several key opportunities and potential benefits may include:

- Increased public confidence
- A reduction in the number of assaults on police officers
- Ability to deploy body worn videos in areas not covered by other forms of CCTV
- Officer skill enhancement through the review of performance at incidents
- Reduction in officer time spent on paperwork

Recommendation

We recommend that Sheriff consider deploying plan and policy for the use of body worn cameras. Body worn cameras are one of the many tools that can be employed with a modern policing framework to improve effectiveness, safety, transparency, and public confidence.

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Management Response

The Sacramento County Board of Supervisors approved the Sheriff's Office acquisition of Body Worn Cameras in September of 2020. In November, the Sheriff's Office signed a contract with AXON and began development of the program. The initial cameras went to select unit in March of 2021 and full implementation for patrol services by Summer 2021.