

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

<b>JUDGE</b>	<b>HON. JAMES P. ARGUELLES</b>	<b>DEPT. NO CLERK</b>	<b>32 D. WARD</b>
<b>KQED, INC.,</b>  <b>Petitioner,</b>  <b>v.</b>  <b>CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION,</b>  <b>Respondent.</b>		<b>Case No.: 34-2022-80004025</b>	
<b>Nature of Proceedings:</b>		<b>RULING ON SUBMITTED MATTER: PETITION FOR WRIT OF MANDATE / MOTION FOR PRODUCTION SCHEDULE ORDER</b>	

Petitioner KQED, Inc.’s (“KQED”) petition for writ of mandate (“Petition”) and Motion for Production Schedule Order (“Motion”) came on for hearing on February 9, 2024. The parties appeared and presented oral argument, after which the Court took the matter under submission. The Court ordered the parties to provide supplemental briefing no later than March 1, 2024, concerning their respective positions on when Respondent California Department of Corrections and Rehabilitation (“CDCR”) should be ordered to complete production of the subject records.

Having reviewed the parties’ supplemental briefs, the Court now grants KQED’s petition as follows. Ruling on the separately filed Motion is unnecessary in light of the Court’s ruling on the Petition.

This action arises out of requests KQED made under the California Public Records Act (“CPRA”), seeking documents from CDCR – specifically, certain categories of records related to peace-officer conduct made disclosable under Senate Bill (“SB”) 1421 (effective January 1, 2019) and SB 16 (effective January 1, 2022). These bills amended Penal Code section 832.7 and “changed the law formerly protecting personnel records of peace officers as confidential and generally exempt from public disclosure.” (*First Amendment Coalition v. Super. Ct.* (2023) 98 Cal.App.5th 593, 600 [discussing SB 1421].) Under the amended statute, certain categories of

“peace officer or custodial officer” records are now “available for public inspection pursuant to the [CPRA].” (Penal Code, § 832.7, subd. (b).)

Immediately after SB 1421 went into effect, KQED requested records from CDCR subject to release under Penal Code section 832.7, subdivision (b), for the years 2014-2018. Through two additional CPRA requests, KQED requested similar records for the years 2019-2021. (Pet. ¶ 4; *id.*, Exs. A-C.) Petitioner believed CDCR’s responses to the referenced CPRA requests were insufficient and delayed, and, thus, filed the Petition on October 4, 2022, seeking a writ of mandate “directing the CDCR to promptly provide KQED with all requested records except those records or parts thereof that the Court determines may lawfully be withheld.” (Pet. 17:23-25.) KQED alleges in the Petition:

For the last three and a half years the CDCR has repeatedly failed to produce records in its possession responsive to KQED’s first request; its search for responsive records from 2014-2018 appears woefully insufficient; it still has not completed its production of records from 2019; it has failed to produce any records responsive to KQED’s requests for records from 2020 and 2021; and it has informed KQED that it has not even begun to review records from 2021.

(Pet. 1:8-15.)

The parties do not dispute that the requested records are subject to disclosure under the CPRA/Penal Code section 832.7, subdivision (b). The sole issue to be decided is **when the responsive records must be produced.**

In its supplemental brief, KQED asks for an order compelling production of all responsive records (including audiovisual records) no later than “yearend 2025” and responsive records in at least 50 cases “within 90 days.” (Pet’r Suppl. Br. 9:11-15.) Whereas, CDCR states that “based on the rate at which records have been analyzed, redacted, and reviewed over the previous several months,” it should be able to produce the remaining records on KQED’s priority list (approx. 40) by August 1, 2024, and all remaining records within one-hundred and nineteen (119) months (fifty-four months if audiovisual records are excluded). (Resp. Suppl. Br. 1:25-26, 3:4-15.)

Under the CPRA, the responding agency must “make the [responsive] records promptly available.” (Gov. Code, § 7922.530, subd. (a).) The CPRA does not define “promptly” in terms of a specific time frame, but the “standard appears to be one of reasonable promptness considering the magnitude of the effort required.” (Asimow, et al., Cal. Practice Guide: Admin.

Law (The Rutter Group 2023 update) ¶ 29:976.) When a requester is dissatisfied with the pace of production and initiates litigation, the Court “typically will assess the magnitude of the request and resources the agency has expended on the task, and will evaluate whether the agency’s response is reasonable under the circumstances.” (*Id.* at ¶ 29:977.) “However, the quantum of resources the agency has committed will not be taken as fixed, and courts have been willing to order agencies to increase the staffing if reasonably necessary to quicken the pace of production.” (*Ibid.* [citing *State Board of Equalization v. Super. Ct.* (1992) 10 Cal.App.4th 1177, 1190.]

The Court notes that Penal Code section 832.7(b) provides its own timeline for providing responsive records. Subdivision (b)(11) states: “records subject to disclosure under [subdivision (b)] shall be provided at the earliest possible time and no later than 45 days from the date of a request for their disclosure.” However, KQED does not “request that CDCR be required to produce all of the remaining records within 45 days.” (Pet’r Suppl. Br. 5:10-12.) And the Court agrees with CDCR’s argument that interpreting section 832.7, subdivision (b)(11) to require production of all responsive records within 45 days “would make compliance [therewith] impossible.” (CDCR’s Opp’n to Pet’r Mot. for Production Schedule Order 11:16-21.) The law does not require impossibilities. (Civ. Code, § 3531; see *Nat’l Shooting Sports Found., Inc. v. State of Calif.* (2018) 5 Cal.5th 428, 432-434 [“[T]he case law recognizes that a statute may contain an implied exception for noncompliance based on impossibility where such an exception reflects a proper understanding of the legislative intent behind the statute.”]) However, the Court disagrees with CDCR’s position that it would satisfy its obligations under the CPRA and Penal Code section 832.7(b) by providing responsive records at the rate of one incident per 45 days. Thus the Court must decide what “promptly” under the CPRA requires in this case.

The Court acknowledges the breadth of KQED’s requests, that CDCR is the largest employer of custodial officers in the State,<sup>1</sup> CDCR’s efforts to meet and confer with KQED to produce records according to its prioritization, and CDCR’s staffing increases to respond to KQED’s requests. Nevertheless, the Court finds CDCR’s current rate of production to be inadequate, especially in light of

the legislative findings accompanying section 832.7(b)’s enactment, which emphasize the critical importance of its disclosure mandate: “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

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<sup>1</sup> The parties represent that CDCR employs over 63,000 people.

for tens of thousands of hardworking peace officers to do their jobs, and endangers public safety.’ (Stats. 2018, ch. 988, § 1.)”

(*First Amendment Coalition, supra*, at p. 611 [quoting *Becerra v. Super. Ct.* (2020) 44 Cal.App.5th 897, 921].)

For the stated reasons, the Court grants KQED’s Petition. Judgment shall be issued in favor of KQED and against CDCR, and a peremptory writ shall issue ordering CDCR to:

- a) Produce all of the remaining records from KQED’s priority list (approximately 40 incidents), including audiovisual records, no later than August 1, 2024; and
- b) Produce all other records (including audiovisual) responsive to KQED’s three CPRA requests no later than Friday, April 2, 2027.

The peremptory writ shall further command CDCR to take any further action specially enjoined by law, but nothing in the writ shall limit or control in any way the discretion legally vested in CDCR.

KQED’s counsel is directed to prepare an order granting the Petition (incorporating this ruling as an exhibit to the order), a separate judgment, and a peremptory writ; submit them to counsel for CDCR for approval as to form in accordance with California Rule of Court, rule (“CRC”) 3.1312(a); and thereafter submit them to the Court for signature and entry in accordance with CRC 3.1312(b).

<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF SACRAMENTO</b>	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Gordon D. Schaber Superior Court 720 Ninth Street, Sacramento, CA 95814	<b>FILED</b> Superior Court of California County of Sacramento <b>04/02/2024</b> D. Ward, Deputy
PLAINTIFF/PETITIONER: KQED Inc.	
DEFENDANT/RESPONDENT: California Department Of Corrections And Rehabilitation	
<b>CERTIFICATE OF MAILING</b>	CASE NUMBER: 34-2022-80004025-CU-WM- GDS

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Order Ruling on Submitted Matter: Petition for Writ of Mandate/Motion for Production Schedule Order upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Sacramento, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

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Dated: 04/02/2024

By:

*/s/ D. Ward*  
D. Ward, Deputy Clerk

**CERTIFICATE OF MAILING**



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