



September 25, 2017

The Honorable Jerry Brown
Governor, State of California
State Capitol
Sacramento, CA 95814

Re: S.B. 345 – SUPPORT

Dear Governor Brown:

I am writing today on behalf of the Electronic Frontier Foundation, a non-profit organization based in San Francisco that protects civil liberties in the digital world. Founded in 1990, EFF has over 38,000 members, including thousands in California.

EFF lends our strong support to S.B. 345, legislation that would require law enforcement agencies across the state to proactively publish their policies, procedures, and training materials on their sites.

In recent years, we have encountered increased public interest in police policies, particularly around the issues of use of force, less-lethal weapons, body-worn cameras, profiling, biometric identification and collection, public-records review protocols, and surveillance. We believe this legislation will lead to greater accountability and better relations between law enforcement and the communities served.

Open as the Default

In 2013, President Barack Obama signed a landmark executive order declaring that openness must be “the new default” for government.¹ The

¹ “To promote continued job growth, Government efficiency, and the social good that can be gained from opening Government data to the public, the default state of new and modernized Government information resources shall be open and machine readable. Government information shall be managed as an asset throughout its life cycle to promote interoperability and openness, and, wherever possible and legally permissible, to ensure that data are released to the public in ways that make the data easy to find, accessible, and usable. In making this the new default state, executive departments and agencies (agencies) shall ensure that they safeguard individual privacy, confidentiality, and national security.” Executive Order 13636. Available online: <https://obamawhitehouse.archives.gov/the-press-office/2013/05/09/executive-order-making-open-and-machine-readable-new-default-government->

order recognized that society benefits the most when information is easy to find.

Open-by-default includes making records available on the Internet whenever possible. By uploading data online, information becomes instantly and easily accessible to the greater public. Without such a policy, public information is often only available to those with the time, energy, and knowledge to file effective public records requests.

S.B. 345 simply applies Obama’s “open as the default” principle to police practices.

In modern law enforcement, most agencies maintain their policies and standards as digital files (e.g. PDFs). Training and educational materials are often stored in the same format, although it is common for these materials to exist as presentations or videos (e.g. Powerpoint, mpegs). These files can be uploaded online with little or no processing.

S.B. 345 does not require agencies to create new records. Unlike other forms of transparency reform, agencies are not required to collect new data, create new disclosures, or file reports with the state.

S.B. 345 does not require the disclosure of any piece of information that is not already public under the California Public Records Act. Just as agencies can cite exemptions to protect sensitive information when responding to a public records request, they may cite exemptions to withhold documents from being posted online under S.B. 345.

Benefits to Both Public and Government

The policies governing police activities should be readily available for review and scrutiny by policymakers, advocacy groups, journalists, and the public. Not only will these transparency measures result in well-informed policy decisions, but they will also provide the public with a clearer understanding of what to expect and how to behave during police encounters.

Benefit to the Public

- Allows members of the public to quickly and immediately access and research police policies. Currently they often must wait 10-24 days (or much longer) after they file a request before they can review the documents
- Helps the public understand why police take certain actions during an encounter
- Sets the stage for better public interactions with police, since the rules of contact are clearer
- Leads to more informed public debate over police practices
- Allows journalists and researchers to compile research across California, without requiring agencies to process hundreds of records requests

Benefits to Law Enforcement

- Instant access makes it easier to clear up urban legends about police practices
- Builds community trust with a general public that is increasingly skeptical about police secrecy
- Allows law enforcement research organizations to easily compare and compile practices across agencies
- Encourages the development of best practices for publishing records online
- Encourages agencies to share information technology solutions for publishing policies
- Reduces the number of public records requests or the burden of responding to public records requests, because information is already online (per Section 6253(f) of the California Public Records Act, an agency may satisfy such requests by linking to the website)

Bill with Broad Support

Law enforcement, the defense bar, and civil liberties advocates are often at odds when it comes to policing reform. A.B. 811 is one of the rare occasions where all sides agree: police practices should be as transparent as possible. No less than eight law enforcement associations publicly supported the bill, along with EFF and the California Public Defenders Association.

Californians' Right to Access Information

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For too long, many government agencies have interpreted our right to access information as just a right to file public records requests.

In recent years, California leaders have moved in another direction, embracing open government. The idea is that the public shouldn't have to ask for information—it should already be available online.

This principle is in keeping with the California Constitution's guarantee of government transparency:

The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

Law enforcement can easily make their policies and training materials accessible online, thus promoting Californians' constitutional rights.

We urge you to help bring law enforcement transparency up to speed with modern information technology by signing S.B. 345.

Please do not hesitate to contact me if you have further questions about S.B. 345. I may be reached by email at dm@eff.org or by phone at 415-436-9333 ext. 151.

Sincerely,

A handwritten signature in black ink, appearing to read 'DMAS', enclosed in a thin black rectangular border.

Dave Maass
Investigative Researcher
Electronic Frontier Foundation