2-04/070.80 - Booking Photograph Requests (Mug Shots)

Mug shots are generally considered part of an investigatory file and are exempt from public disclosure under Government Code section 7923.600. See also Haynie v. Sup. Ct. (2001) 26 Cal.4th 1061. The California Attorney General has opined that booking photos are not public records and that release of such photos is discretionary (AG Op. 03-205).

The Department, however, can waive that exemption and disclose booking photographs for violent offenders where: disclosure is in the interest of public safety and would not compromise the successful completion of an ongoing investigation or a related investigation; disclosure does not endanger the safety of a witness or person involved in the investigation; and the investigating unit concurs with the release. If a crime is not on the detailed list of violent felonies in Penal Code Section 667.5(c), then for the purpose of AB 994 restrictions on sharing booking photos, it is considered a non-violent crime.

Pursuant to California Penal Code section 13665, Department members shall not share on social media the booking photos of an individual arrested on suspicion of committing a nonviolent crime unless any one of the following circumstances exist:

(1) The Department makes a determination that the suspect is a fugitive or an imminent threat to an individual or to public safety and releasing or disseminating the suspect’s image will assist in locating or apprehending the suspect or reducing or eliminating the threat.

(2) A judge orders the release or dissemination of the suspect’s image based on a finding that the release or dissemination is in furtherance of a legitimate law enforcement interest.

(3) There is an exigent circumstance that necessitates the dissemination of the suspect’s image in furtherance of an urgent and legitimate law enforcement interest.

When a booking photo is released, the following procedures shall be followed by the Department, pursuant to Assembly Bill 994/Penal Code Section 13665:

(1) Use the name and pronouns given by the individual. The Department may include other legal names or known aliases of an individual if using the names or aliases will assist in locating or apprehending the individual or reducing or eliminating an imminent threat to an individual or to public safety or an exigent circumstance exists that necessitates the use of other legal names or known aliases of an individual due to an urgent and legitimate law enforcement interest.

(2) Remove the booking photo from its social media page within 14 days unless any of the circumstances described above exist (in summary: (1) the Department has determined that the suspect is a fugitive or an imminent threat to an individual or to public safety; (2) a judge order the release of the booking photo; or (3) exigent circumstances exist that necessitate the dissemination of the photo in furtherance of an urgent and legitimate law enforcement interest).