File No. N/A

Item No. 10

SUNSHINE ORDINANCE TASK FORCE
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Completed by: V. Young **Date** **06/02/17**

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.

ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

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CHAIRPERSON

PETER KEANE
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

DAINA CHIU
COMMISSIONER

QUENTIN L. KOPP
COMMISSIONER

LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: May 17, 2017

To: Members of the Ethics Commission

From: Jessica Blome, Deputy Director, Enforcement & Legal Affairs

Subject: **AGENDA ITEM 5**
San Francisco Ethics Commission Records Management Policy Memorandum

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Summary: This memorandum provides a policy update to Commissioners regarding Staff's ongoing effort to update the Commission's Records Management Policy.

Action Requested: Possible action to provide comments or feedback regarding the draft Records Management Policy, which is attached as Attachment 1.

The Ethics Commission's internal Records Management Policy establishes the policies to be followed to ensure appropriate transparency about the transaction of public business at the Ethics Commission. The Commission last reviewed Staff's proposed revisions to the Commission's internal policy during its February 2017 regular meeting. Staff provides the attached updated draft, so the Commission may review the final version after comments from the City Attorney's Office, Controller's Office 2017 Guidance, and members of the public were evaluated and adopted where appropriate.

Section 8.3 of the Records Retention and Destruction Ordinance requires approval of each department's management policy by the City Attorney's Office, Controller, and Retirement Board. Once the Commission approves the proposed revisions, Staff will obtain approval from the necessary parties and proceed with implementation of the policy internally.

We look forward to receiving any comments or questions at your upcoming meeting.

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San Francisco Ethics Commission

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RECORDS MANAGEMENT POLICY

The Ethics Commission's Records Management Policy is adopted pursuant to Chapter 8 of the San Francisco Administrative Code, which requires each department head to maintain records and create a public records retention and destruction schedule. This policy supersedes all previous record retention policies issued by the Commission, including the Commission's most recent policy of November 3, 2003.

This policy covers all records, regardless of physical form or characteristics, which have been made or received by the Ethics Commission in connection with the transaction of public business. The purpose of this policy is to provide a system for managing the records of the Ethics Commission, to safety store and retain those records that need to be retained, to comply with all applicable legal requirements regarding document retention and destruction, and to identify and establish guidelines for the destruction of those documents that are obsolete or for which retention is not otherwise required.

PART I: POLICY AND PROCEDURES

A. RETENTION POLICY

The San Francisco Record Retention and Destruction Ordinance defines public "records" as "such paper, book, photograph, film, sound recording, map, drawing or other document, or any copy thereof, as has been made or received by the department in connection with the transaction of public business and may have been retained by the department as evidence of the department's activities, for the information contained therein, or to protect the legal or financial rights of the City and County or of persons directly affected by the activities of the City and County." San Francisco Administrative Code (S. F. Admin. Code) § 8.1.

Documents and other materials that do not constitute "records" under Section 8.1 may be destroyed when no longer needed, unless otherwise specified. The Ethics Commission will retain public records for the period of their immediate or current use, unless longer retention is required for historical reference, contractual or legal requirements, or for other purposes as set forth below. Pursuant to section 8.4 of San Francisco Record Retention and Destruction Ordinance, the Commission's records shall be classified and preserved as follows:

Category 1: Permanent Retention. Records that are permanent or essential shall be retained and preserved indefinitely.

A. **Permanent records.** Permanent records are records required by law to be permanently retained and which are ineligible for destruction unless they are microfilmed or placed on an optical imaging system, and special measures are followed. S.F. Admin. Code Section 8.4. For

the purposes of this Records Management Policy, "optical imaging system" includes any portable digital storage format that fairly and accurately depicts the original record and maintains the integrity of the original record. Once these measures are followed, the original paper records may be destroyed. Duplicate copies of permanent records may be destroyed whenever they are no longer necessary for the efficient operation of the Commission. Examples of permanent records are campaign statements of certain local officeholders, which must be maintained indefinitely. Cal. Gov't Code Section 81009(b).

B. **Essential records.** Essential records are records necessary for the continuity of the Commission and the protection of the rights and interests of individuals. S.F. Admin. Code Section 8.9. Examples of essential records include advice letters and opinions, policy memoranda, and interpretive materials such as manuals produced by the Ethics Commission.

Category 2: Current Records. Current records are records which for convenience, ready reference, or other reasons are retained in the office space and equipment of the Commission. Current records shall be retained as follows:

A. **Definite Retention Period Specified by Law.** Where federal, state, or local law prescribes a definite period of years for retaining certain records, the Commission will retain the records for the period specified by law. Examples of records required to be maintained for a specific period are statements of economic interest, which must be maintained for seven years, Cal. Gov't Code Section 81009(e); and certain campaign statements which must be maintained for four years. Cal. Gov't Code Section 81009(f).

B. **No Definite Retention Period Specified by Law.** Where no specific retention period is specified by law, the retention period for records that the department is required to retain shall be specified in the attached Record Retention and Destruction Schedule. Such records may be placed in storage and retained offsite at any time during the applicable retention period. Examples of current records include discrimination and harassment complaints and personnel files.

Category 3: Definite Retention Period Specified by the Office of the Controller. The Office of the Controller has promulgated record retention guidelines for specific types of documents. Examples of records required to be maintained for a period of five years are invoices and purchase orders.

Category 4: Two-Year Retention Before Destruction. Original records (not duplicate copies) reflecting significant or recurring issues and correspondence, including electronic communication, involving the transaction of public business should be retained for a minimum of two years.

Category 5: No Retention. Original and duplicate documents and other materials that are not essential to the functioning or continuity of the Commission and that have no legal significance may be destroyed. Examples include documents and papers generated purely for the convenience of the person generating them and draft documents which have been superseded by subsequent versions or rendered moot by Commission action. Specific examples include telephone message slips, correspondence, notepads, electronic communication of a purely personal nature that does not contain information required to be retained under this Policy, and chronological files.

With limited exceptions, no specific retention requirements are assigned to documents in this category. Instead, it is up to the originator or recipient to determine when the document's business utility has ended.

B. RECORDS NOT ADDRESSED BY THE ATTACHED SCHEDULE

Records and other documents or materials that are not expressly addressed by the attached schedule may be destroyed at any time provided that they have been retained for the periods prescribed for substantially similar records.

C. ELECTRONIC COMMUNICATION

Regardless of the format in which the communication is made, including electronic mail, facsimile, internet posting, postal mail, or any other written format, if the substance of the communication would otherwise qualify as a public record under this schedule, the record must be retained. Consistent with the California Public Records Act, Cal. Govt. Code Section 6252(3), and Sunshine Ordinance Section 67.20(b), communication of a purely personal nature does not qualify as a public record and need not be retained.

Electronic mail systems should not be used as the repository for public records. The Commission provides an email system to its employees as a convenient and efficient medium of communication. Electronic mail that qualifies as a public record should be removed from an employee's electronic mail system and placed in a paper or electronic file where it is properly labeled and easily accessible for future public records searches. If this Schedule does not require retention of the email, Staff may either delete it as soon as it is no longer necessary for the immediate discharge of official duties or store it elsewhere for as long as Staff deem appropriate. In any case, whether to satisfy records retention obligations or merely to serve administrative needs, Staff may not store email communication on the email system indefinitely.

D. BACKUP TAPES OR SIMILAR ARCHIVAL SYSTEMS

The Commission may use backup tapes or similar archival systems that serve the limited purpose of providing a means of recovery in cases of disaster, departmental system failure, or unauthorized deletion. The department may not access the backup tapes or similar archival systems except in these limited situations. Electronic records such as emails that an employee has properly deleted under this Schedule but that remain on backup takes or a similar archival system are analogous to paper records that the department has lawfully discarded but may be found in a City-owned dumpster. Neither the California Public Records Act nor the Sunshine Ordinance requires the City to search the trash for such records, whether paper or electronic.

E. STORAGE OF RECORDS

Records may be stored in the Commission's office space or equipment if the records are in active use or are maintained in the office for convenience or ready reference. Examples of active files appropriately maintained in the Commission's office space or equipment include active chronological files, research and reference files, legislative drafting files, pending complaint files, administrative files and personnel files. Inactive records, for which use or reference has diminished sufficiently to permit removal from the

Commission's office space or equipment, may be sent to the City's off-site storage facility or maintained in the Commission's storage facility.

F. HISTORICAL RECORDS

Historical records are records which are no longer of use to the Commission but which because of their age or research value may be of historical interest. Historical records may be offered to the San Francisco Public Library or a historical society for preservation. Historical records may not be destroyed except in accordance with the procedures set forth in Administrative Code Section 8.7.

G. PENDING CLAIMS AND LITIGATION

The retention periods set forth in the attached record retention schedule shall not apply to materials that are otherwise eligible for destruction, but which may be relevant to a pending claim or litigation against the City. Once a department becomes aware of the existence of a claim against the department, the department should retain all documents and other materials related to the claim until the claim or subsequent litigation has been resolved. Where a department has reason to believe that one or more other departments also have records relating to the claim or litigation, those departments should also be notified of the need to retain such records.

H. RECORDS RELATING TO FINANCIAL MATTERS

Records pertaining to financial matters shall be destroyed only after approval by the Controller. S.F. Admin. Code § 8.3. The Controller's Office reviews and approves each Department's Record Retention and Destruction Schedule. Departments may destroy documents consistent with the Financial Records Retention and Destruction Schedule. Staff must obtain the Controller's Office approval for documents pertaining to financial matters that do not fall within the Financial Records Retention and Destruction Schedule.

I. RECORDS RELATING TO PAYROLL RECORDS

The Retirement Board must approve the destruction of all records pertaining to payroll checks, time cards and related documents. S.F. Admin. Code § 8.3. The Retirement Board reviews and approves each Department's Record Retention and Destruction Schedule. These records are not to be destroyed without prior approval of the Retirement Board.

J. RECORDS THAT CONTAIN LEGAL SIGNFICIANCE

The City Attorney's Office must approve the destruction of all records that contain legal significance. S.F. Admin. Code § 8.3. The City Attorney's Office reviews and approves each Department's Record Retention and Destruction Schedule. Departments may destroy documents consistent with the Record Retention and Destruction Schedule. Staff must obtain the City Attorney's Office approval for documents that contain legal significance and do not fall within the Record Retention and Destruction Schedule.

K. RECORDS RELATING TO EMERGENCY/DISASTER AND COST RECOVERY

Records relating to Emergencies/Disasters and Cost Recovery for the Federal Emergency Management Agency and California Emergency Management Agency programs and activities are governed by 44 CFR §13.42. 44 CFR §13.42 requires the Controller's Office to retain any and all records relating to cost recovery documentation incurred during an emergency or disaster for three (3) years after the State has closed the claim by the City. California Code of Regulations requires the Controller's Office to retain all financial and program records related to cost or expenditures eligible for state financial assistance for three years (19 CCR § 2980(e)). The Controller's Office shall retain all records relating to emergency/disaster recovery costs for three (3) years from the date of the final Financial Status Report (FSR) (FEMA Form 112-0-1) (unless any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period). The records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later. Final closeout (receipt of FSR) is when all Project Worksheets associated with a disaster/emergency are closed. All records related to any and all Project Worksheets associated with an event must be retained for 3 years after the close of the final associated Project Worksheet. Note: State and Federal regulations change from time-to-time, the Controller's Office will issue specific rules for file retention on any given disaster, should there be a change.

L. DISCRETION

Commission Staff retain discretion to determine the category for retention for each record and may elect to retain records longer than the designated retention period if necessary as determined by Staff.

PART II

RECORD RETENTION AND DESTRUCTION SCHEDULE

TYPE OF RECORD	RETENTION CATEGORY	RETENTION PERIOD	LAW SPECIFYING RETENTION PERIOD
Advice Letters (formal and informal)	1	Permanent	
Annual Reports	1	Permanent	
Audit Reports, including Public Financing Audit Reports	1	Permanent	
Audit Work Papers, including Public Financing Audit Work Papers	2	4 Years	
Budget Files	4	2 Years	
Calendar, Department Head (Prop G)	2	2 Years	
Calendar, Deputy Director and Unit Managers	4	2 Years	
Calendar, Employees	5	None	
Campaign Consultant Statements	2	5 Years	S.F. C&GC Code Sec. 1.520(e)
Campaign Statements (Original) of all other persons for which the Ethics Commission is the filing officer	2	8 Years	Gov't Code Sec. 81009(c); S.F. C&GC Code Sec. 1.110
Campaign Statements (Original) of candidates not elected to the office of mayor or board of supervisors, and committees supporting such candidates	2	8 Years	Gov't Code Sec. 81009(b); S.F. C&GC Code Sec. 1.110
Campaign Statements (Original) of elected mayors, members of the board of supervisors, and committees supporting such officeholders	1	Permanent	Gov't Code Sec. 81009(b)
Campaign Statements, Statements of Economic Interest, or Reports (Copies) filed with the Ethics Commission	2	4 Years	Gov't Code Sec. 81009(f)
Certificates of Ethics Training	4	8 Years	
Commission and Committee Meetings and Minutes	1	Permanent	
Commission Meeting Agendas and Supporting Documents	1	Permanent	
Commission Meeting Recordings if recorded by Staff	1	Permanent	
Complaint Database Entries	5	None	
Complaint Files if Dismissed after Preliminary Review	4	2 Years	
Complaint Files if Retained for Investigation after Preliminary Review	1	Permanent	

Contract Correspondence	2	2 years or Life of Agreement	
Contract Payment Records	3	Term of Agreement + 20 Years	Controller's Financial Records Retention and Destruction Schedule
Contracts	3	Term of Agreement + 20 Years	Controller's Financial Records Retention and Destruction Schedule
Correspondence, including electronic mail	4	2 Years	
Employee Accident-Injury Reports	2	5 years	29 CFR Sec. 1904.4, 1904.33
Employee Discrimination and Harassment Complaints	2	Lesser of 50 Years or Life of Employee	
Employee Medical Information	2	Lesser of 50 Years or Life of Employee	
Employee Payroll Records	4	2 Years	Secure permission from S.F. Employee Retirement System prior to destruction
Employee Personnel Files	2	Lesser of 50 Years or Life of Employee	
Employee Staff Rosters	4	2 Years	Secure permission from S.F. Employee Retirement System prior to destruction
Employee Time Sheets	4	2 Years	Secure permission from S.F. Employee Retirement System prior to destruction
Employee Travel and Reimbursement Records	3	5 Years	Controller's Financial Records Retention and Destruction Schedule
Employee Workers' Compensation Records	2	5 Years from Date of Injury and 1 Year from Date Compensation Last Provided	Title 8, Cal. Code of Regulations Sec. 10102
Employment Applications/Resumes	4	2 Years	
Employment Related Records, Miscellaneous	4	2 Years	
Executive Director Reports	1	Permanent	
Financial Records, Miscellaneous	3	5 Years After Applicable Fiscal Year	Controller's Financial Records Retention and Destruction Schedule
Fine Letters	1	Permanent	

Invoices	3	5 Years After Applicable Fiscal Year	Controller's Financial Records Retention and Destruction Schedule
Lease Files	4	2 Years	
Legislative Drafts sent to the Board of Supervisors	2	5 Years	
Lobbyist Statements	2	5 Years	S.F. C&GC Code Sec. 2.140(d)
Manuals and other Commission Publications	1	Permanent	
Memorandums of Understanding	3	Term of Agreement + 20 Years	Controller's Financial Records Retention and Destruction Schedule
Occupational Health and Safety Administration (OSHA) Reports	4	2 Years	
Payables (Invoices)	3	5 Years	Controller's Financial Records Retention and Destruction Schedule
Policy Memoranda	1	Permanent	
Press Releases	1	Permanent	
Purchase Orders	3	5 Years	Controller's Financial Records Retention and Destruction Schedule
Regulations	1	Permanent	
Revolving Funds Records	3	5 Years	Controller's Financial Records Retention and Destruction Schedule
Staff Reports produced to comply with City Ordinances	1	Permanent	
Staff Research Files	5	None	
Statements of Economic Interest (Original) filed with the Ethics Commission	2	7 Years	Gov't Code Sec. 81009(e)
Stipulations and Settlement Agreements	1	Permanent	
Sunshine Ordinance Declarations	4	8 Years	
Work Orders and Payments	3	5 Years	Controller's Financial Records Retention and Destruction Schedule

APPROVALS:

Approval by the Ethics Commission:

LeeAnn Pelham Executive Director, Ethics Commission	Date Approved

Approval as to Financial Documents:

Ben Rosenfield Controller	Date Approved

Approval as to Legal Documents:

Andrew Shen Deputy City Attorney	Date Approved

Approval as to Payroll Documents:

Jay Huish Director, Retirement System	Date Approved

ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

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VICE-CHAIRPERSON

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COMMISSIONER

QUENTIN L. KOPP
COMMISSIONER

VACANT
COMMISSIONER

LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: May 17, 2017

To: Members of the Ethics Commission

From: LeeAnn Pelham, Executive Director

Re: **AGENDA ITEM 8: Information Requested by Commissioner Kopp Regarding Process to Obtain Independent Legal Counsel for Ethics Commission**

Summary: This memorandum discusses Staff's research in response to Commissioner Kopp's April 24, 2017, request for information about securing possible independent legal counsel for the Ethics Commission.

Action Requested: No action is required by the Commission, as this memorandum is provided at this time for informational purposes only.

Background

At the April 24, 2017, regular meeting of the Ethics Commission, Commissioner Kopp asked Staff to provide the Commission with research about the process for amending existing law to omit the requirement that the Commission be represented by the Office of the San Francisco City Attorney. Commissioner Kopp also asked for recommendations for Charter language that would provide the Commission with its own independent legal counsel separate from the City Attorney's Office. This memorandum provides information in response to that request.

San Francisco Charter Section 15.102 provides that "[t]he City Attorney shall be the legal advisor of the Commission."[1] Under the San Francisco Charter generally, the City Attorney "shall represent" the City and County in legal proceedings "with respect to which it has an interest," except that any elected officer, department head, board or commission may engage counsel other than the City Attorney for legal advice regarding a particular matter where the person has "reason to believe that the City Attorney may have a prohibited financial conflict of interest under California law or a prohibited conflict of interest under the California Rules of Professional Conduct," subject to certain limitations and conditions identified in San Francisco

[1] See Attachment 1 for sections of San Francisco city law referenced in this memorandum.

Charter § 6.102. *See* SF Charter § 6.102(a) (last amended Nov. 2002[2]). To obtain outside counsel, either the City Attorney or an outside judge must consent and agree that the City Attorney has a qualifying conflict of interest. *Id.* Among the City Attorney's duties enumerated in the City Charter, the City Attorney shall "[u]pon request, provide advice or written opinion to any officer, department head or board, commission or other unit of government of the City and County." Charter § 6.102.4.

Charter Amendment Process

The San Francisco Charter gives the Ethics Commission authority to submit to the electors at the next succeeding general election "[a]ny ordinance which the Supervisors are empowered to pass relating to conflicts of interest, campaign finance, lobbying, campaign consultants, or governmental ethics." SF Charter § 15.102. The Charter, however, does not give the Commission authority to submit Charter amendments to the electors. Amending the Charter, therefore, including provisions that would affect the structure and authority of the Ethics Commission, would require action by a majority of the Board of Supervisors or qualification of a proposed amendment through the ballot initiative process. *See* SF Municipal Elections Code § 305(a).

To submit a proposed Charter Amendment to the Board of Supervisors for its consideration, a Supervisor must introduce the amendment at a regular board meeting "held not less than 168 days prior to the election at which it is to be acted upon by the electors." Board Rule 2.22.1

To qualify a proposed Charter Amendment for the ballot through the initiative process, the proponent must gather at least 51,340 valid signatures of registered San Francisco voters. *See* California Secretary of State Report of Registration as of February 10, 2017.[3] This number equals 10 percent of the total number of registered San Francisco voters as reported by the Department of Elections in its most recent official report of registration to the Secretary of State prior to the proponent's submission of the "Notice of Intent to Circulate Petition." California Elections Code § 9255(a), (c)(2). Proposed ballot initiatives must be submitted to the voters "at the next election held no fewer than 102 days after the date said measure is received by the Director of Elections." *Id.*

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[2] In November 2002, fifty-five percent of voters approved Proposition E, which removed the following sentence from Section 15.102, Rules and Regulations related to the Ethics Commission: "If the City Attorney determines in writing that he or she cannot, consistent with the rules of professional conduct, provide advice sought by the Commission, the City Attorney may authorize the Commission to retain outside counsel to advise the Commission." *See* San Francisco Voter Information Pamphlet and Sample Ballot, p. 60 (Nov. 6, 2001) *available at* https://sfpl.org/pdf/main/gic/elections/November6_2001.pdf. Proposition E also added the process for any elected official, department head, or commission to seek permission from the City Attorney to obtain outside counsel through the process now described in Section 6.102 of the Charter and discussed above. *Id.* at p. 61-62. In other words, prior to November 2002, only the Ethics Commission could seek permission from the City Attorney to hire outside counsel to cure a perceived or actual conflict of interest posed by the City Attorney's representation of the Commission in a matter. *Id.* After November 2002, any elected official, department head, or commission could do so. *Id.*

[3] Data available at http://elections.cdn.sos.ca.gov/ror/ror-pages/ror-odd-year-2017/county.pdf.

Legislative History & Precedent for Ethics Agencies' Independent Counsel

Prior Legislative History

On November 8, 2005, voters considered whether to approve "Proposition C for Clean Government," a Board-sponsored Charter Amendment relating to the Ethics Commission budget and outside counsel.[4] According to the Voter Handbook, Proposition C would have authorized the Commission to retain outside counsel in a few narrow instances: to advise the Commission on any audit, fine, penalty, or complaint involving the City Attorney or an employee of the City Attorney's Office. *Id.* Consent of the City Attorney or a determination by an outside judge would no longer be required. *Id.* If the Commission believed that the City Attorney had a conflict of interest in other matters, consent of the City Attorney or a determination by a retired judge would still be required. *Id.* Fifty-nine percent of voters voted against Proposition C, so it did not pass.[5]

Approaches Elsewhere

There are other California ethics agencies that retain independent counsel for all agency business. At the state level, the Political Reform Act authorizes the Fair Political Practices Commission (FPPC) to appoint and discharge "counsel" consistent with applicable civil services laws. PRA § 83107. The general counsel to the FPPC is a full-time, in-house attorney who reports to the FPPC's full-time agency head, the Commission Chair. In addition to her duties as counsel to the Commission, the FPPC's general counsel leads a team of lawyers and support staff to advise members of the Commission and staff on the interpretation and analysis of laws, court decisions, and rules and regulations affecting the Commission. The general counsel also coordinates outside litigation strategy, and coordinates the development of legislative proposals, regulations and Commission opinions. The FPPC general counsel has a counterpart in the Chief of the Enforcement Division, who oversees that agency's enforcement program. That division allows the FPPC to fully separate its day-to-day advice and policy functions from its enforcement obligations.

At the local level, the San Diego Ethics Commission has had independent counsel for over a decade. On November 2, 2004, 77 percent of San Diego voters approved Proposition E, which amended Sections 40 and 41(D) of the San Diego Charter to provide independent counsel for its Ethics Commission in all circumstances. Proposition E asked voters: "Shall the City Charter be amended to enable the Ethics Commission to retain its own legal counsel, rather than be represented by the City Attorney whose clients include City Officials who may be investigated by the Ethics Commission?"[6] The San Diego City Charter now provides: "The City Attorney shall be the chief legal adviser of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties, except in the case of the Ethics Commission, which shall have its own legal counsel independent of the City Attorney."[7] San Diego's independent attorney is on contract with the Ethics Commission. She reports

[4] *See* San Francisco Voter Information Pamphlet, p. 42, Sept. 9, 2005, *available at* https://sfpl.org/pdf/main/gic/elections/ November8 2005.pdf.
[5] San Francisco Department of Elections, Results Summary Nov 2005, *available at* http://sfgov.org/elections/results-summary-nov-2005.
[6] *See* City of San Diego Sample Ballot and Voter Information Pamphlet, November 2004, *available at* https://www.sandiego.gov/sites/default/files/legacy/city-clerk/pdf/pamphlet041102.pdf.
[7] San Diego City Charter Section 40, *available at* http://docs.sandiego.gov/citycharter/Article%20V.pdf.

directly to the Ethics Commission's Executive Director on matters as needed, but she retains full-time employment with a local law firm.

Sample Language

At the April meeting, Commissioner Kopp asked for recommendations for Charter language that could provide the Commission with its own independent legal counsel separate from the City Attorney's Office. The following language provides one approach to a Charter Amendment. It would provide independent legal counsel for the Ethics Commission that is a full-time employee who reports to the agency's Executive Director and is exempt from the City's civil service rules.

1. Related to the Ethics Commission: San Francisco City Charter Section 15.102

~~The City Attorney shall be the legal advisor of the Commission.~~ The Commission shall have its own legal counsel independent of the City Attorney who is exempt from the competitive civil service selection process under Charter Section 10.104(13).

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Based on the Commission's May 22nd discussion and any further questions it may have, Staff can assist with additional research for the Commission's review and consideration.

Agenda Item 8, Attachment 1

SF Charter Sec 15.102. Rules and Regulations

The Commission may adopt, amend and rescind rules and regulations consistent with and related to carrying out the purposes and provisions of this Charter and ordinances related to campaign finances, conflicts of interest, lobbying, campaign consultants and governmental ethics and to govern procedures of the Commission. In addition, the Commission may adopt rules and regulations relating to carrying out the purposes and provisions of ordinances regarding open meetings and public records. The Commission shall transmit to the Board of Supervisors rules and regulations adopted by the Commission within 24 hours of their adoption. A rule or regulation adopted by the Commission shall become effective 60 days after the date of its adoption unless before the expiration of this 60- day period two-thirds of all members of the Board of Supervisors vote to veto the rule or regulation.

The City Attorney shall be the legal advisor of the Commission.

Any ordinance which the Supervisors are empowered to pass relating to conflicts of interest, campaign finance, lobbying, campaign consultants or governmental ethics may be submitted to the electors at the next succeeding general election by the Ethics Commission by a four-fifths vote of all its members.
(Amended November 2001)

SF Charter Section 6.102. City Attorney

The City Attorney shall:

1. Represent the City and County in legal proceedings with respect to which it has an interest; provided that any elected officer, department head, board or commission may engage counsel other than the City Attorney for legal advice regarding a particular matter where the elected officers department head, board or commission has reason to believe that the City Attorney may have a prohibited financial conflict of interest under California law or a prohibited ethical conflict of interest under the California Rules of Professional Conduct with regard to the matter, subject to the following limitations and conditions.

The elected officer, department head, board or commission shall first present a written request to the City Attorney for outside counsel. The written request shall specify the particular matter for which the elected officer, department head, board or commission seeks the services of outside counsel, a description of the requested scope of services, and the potential conflict of interest that is the basis for the request. Within five working days after receiving the written request for outside counsel, the City Attorney shall respond in writing to the elected officer, department head, board or commission either consenting or not consenting to the provision of outside counsel. If the City Attorney does not consent to the provision of outside counsel, the City Attorney shall state in the written response why he or she believes that there is no conflict of interest regarding the particular matter.

If the elected officer, department head, board or commission continues to believe there are adequate grounds for outside counsel despite the City Attorney's response that there is no conflict of interest, the elected officer, department head, board or commission may, within thirty days after receiving the City Attorney's response, refer the issue of whether the City Attorney has a prohibited conflict of interest regarding a particular matter to a retired judge or justice of the state courts of California for resolution. If the elected officer, department head, board or commission and City Attorney cannot agree on a retired judge to hear the matter, the retired judge shall be selected at random by an alternative dispute resolution provider. If the matter is referred to a retired judge, the elected officer, department head, board or commission, subject to the budgetary and fiscal provisions of the Charter,

shall be entitled to retain outside counsel to represent it solely on the issue of whether the City Attorney has a conflict of interest regarding the particular matter.

In deciding whether the City Attorney has a conflict of interest regarding a particular matter, the retired judge shall be bound by and apply the applicable substantive law and Rules of Professional Conduct as if he or she were a court of law. To the extent practicable, the retired judge shall hear the matter within 15 days after its assignment to the retired judge, and within 15 days after the hearing, shall issue a written opinion stating the basis for the decision. The retired judge, but not the City Attorney or elected officer, department head, board or commission, shall have the power to subpoena witnesses and documents in this proceeding.

The retired judge may request that the City Attorney secure written advice from the California Fair Political Practices Commission, the State Bar of California, or the California Attorney General on the question of whether the City Attorney has a conflict of interest regarding the particular matter. Upon such a request by the retired judge, the City Attorney shall secure such written advice. The retired judge may consider, but is not bound by, written advice so secured. The decision of the retired judge shall be final for the limited purpose of determining whether or not the elected officer, department head, board or commission may retain outside counsel for the particular matter.

If the retired judge decides that the City Attorney does not have a conflict of interest regarding the particular matter, the City Attorney shall continue to be the legal adviser to the elected officer, department head, board or commission for such matter. If the retired judge decides that the City Attorney has a conflict of interest regarding a particular matter, the elected officer, department head, board or commission shall be entitled to retain outside counsel for legal advice regarding the particular matter, and the City Attorney shall thereupon cease to advise the elected officer, department head board or commission on such matter. Any such finding of a conflict of interest shall not affect the City Attorney's role as legal advisor to the elected officer, department head, board or commission on all other matters.

If at any time after the retention of outside counsel, the City Attorney believes that there is no longer a conflict of interest, the City Attorney shall state in writing to the elected officer, department head, board or commission why he or she believes that there is no longer a conflict of interest. Within five working days after receiving the written statement from the City Attorney, the elected officer, department head, board or commission shall respond in writing, either agreeing or disagreeing that there is no longer a conflict of interest. If the elected officer, department head, board or commission agrees that there is no longer a conflict of interest regarding a particular matter, the elected officer, department head, board or commission shall cease employing outside counsel for legal advice regarding the matter, and the City Attorney shall serve as legal adviser to the elected officer, department head, board or commission regarding that matter. If the elected officer, department head, board or commission states in its written response that it believes the conflict of interest still exists, the City Attorney may, within ten working days after receiving the response of the elected officer, department head, board or commission, elect to refer the issue of whether the conflict of interest regarding the particular matter continues to exist to the same retired judge who originally heard the matter, if available. The same procedures as established herein shall apply thereafter.

In selecting outside counsel for any purpose described in this Section, the elected officer, department head, board or commission shall give preference to engaging the services of a City attorney's office, a County counsel's office or other public entity law office with an expertise regarding the subject-matter jurisdiction of the elected officer, department head, board or commission. If the elected officer, department head, board or commission concludes that private counsel is necessary, that attorney must be a member in good standing with the Bar of California who has at least five year's experience in the subject-matter jurisdiction of the elected officer, department head, board or

commission Any private counsel retained pursuant to this Section shall be subject to the conflict of interest provisions of Section 13.103.5. The cost of any of the services of outside counsel and of the alternative dispute resolution process authorized by this Section shall be paid for by the elected officer, department head, board or commission, subject to the budgetary and fiscal provisions of this Charter.

2. Represent an officer or official of the City and County when directed to do so by the Board of Supervisors, unless the cause of action exists in favor of the City and County against such officer or official;

3. Whenever a cause of action exists in favor of the City and County, commence legal proceedings when such action is within the knowledge of the City Attorney or when directed to do so by the Board of Supervisors, except for the collection of taxes and delinquent revenues, which shall be performed by the attorney for the Tax Collector;

4. Upon request, provide advice or written opinion to any officer, department head or board, commission or other unit of government of the City and County;

5. Make recommendations for or against the settlement or dismissal of legal proceedings to the Board of Supervisors prior to any such settlement or dismissal. Such proceedings shall be settled or dismissed by ordinance and only upon the recommendation of the City Attorney;

6. Approve as to form all surety bonds, contracts and, prior to enactment, all ordinances; and examine and approve title to all real property to be acquired by the City and County;

7. Prepare, review annually and make available to the public a codification of ordinances of the City and County then in effect;

8. Prepare and make available to the public an annual edition of this Charter complete with all of its amendments and legal annotations; and

9. Establish in the Office of the City Attorney a Bureau of Claims Investigation and Administration which shall have the power to investigate, evaluate and settle for the several boards, commissions and departments all claims for money or damages. The Bureau shall also have the power to investigate incidents where the City faces potential civil liability, and to settle demands before they are presented as claims, within dollar limits provided for by ordinance, from a revolving fund to be established for that purpose. The City Attorney shall appoint a chief of the Bureau who shall serve at his or her pleasure. The chief of the Bureau may appoint, subject to confirmation by the City Attorney, investigators who shall serve at the pleasure of the chief.

10. During his or her tenure, not contribute to, solicit contributions to, publicly endorse or urge the endorsement of or otherwise participate in a campaign for a candidate for City elective office, other than himself or herself or of a City ballot measure or be an officer, director or employee of or hold a policy-making position in an organization that makes political endorsements regarding candidates for elective office or City ballot measures.

(Amended November 2001; amended November 2002)

SF Municipal Elections Code SEC. 305.

Rules for Submission of Ordinances and Charter Amendments by the Board of Supervisors.

(a) When the Board of Supervisors considers whether to submit an ordinance or Charter amendment to the voters, the following rules shall apply:

(1) The Board of Supervisors shall be prohibited from considering or deciding whether to submit an ordinance or Charter amendment to the voters unless, at least 30 days before the date of the first committee hearing concerning the proposed ordinance or Charter amendment, the following materials are delivered to the Clerk of the Board of Supervisors and available for public review:

(A) A draft of the proposed ordinance or Charter amendment that is approved as to form by the City Attorney; and

(B) A legislative digest prepared by the City Attorney.

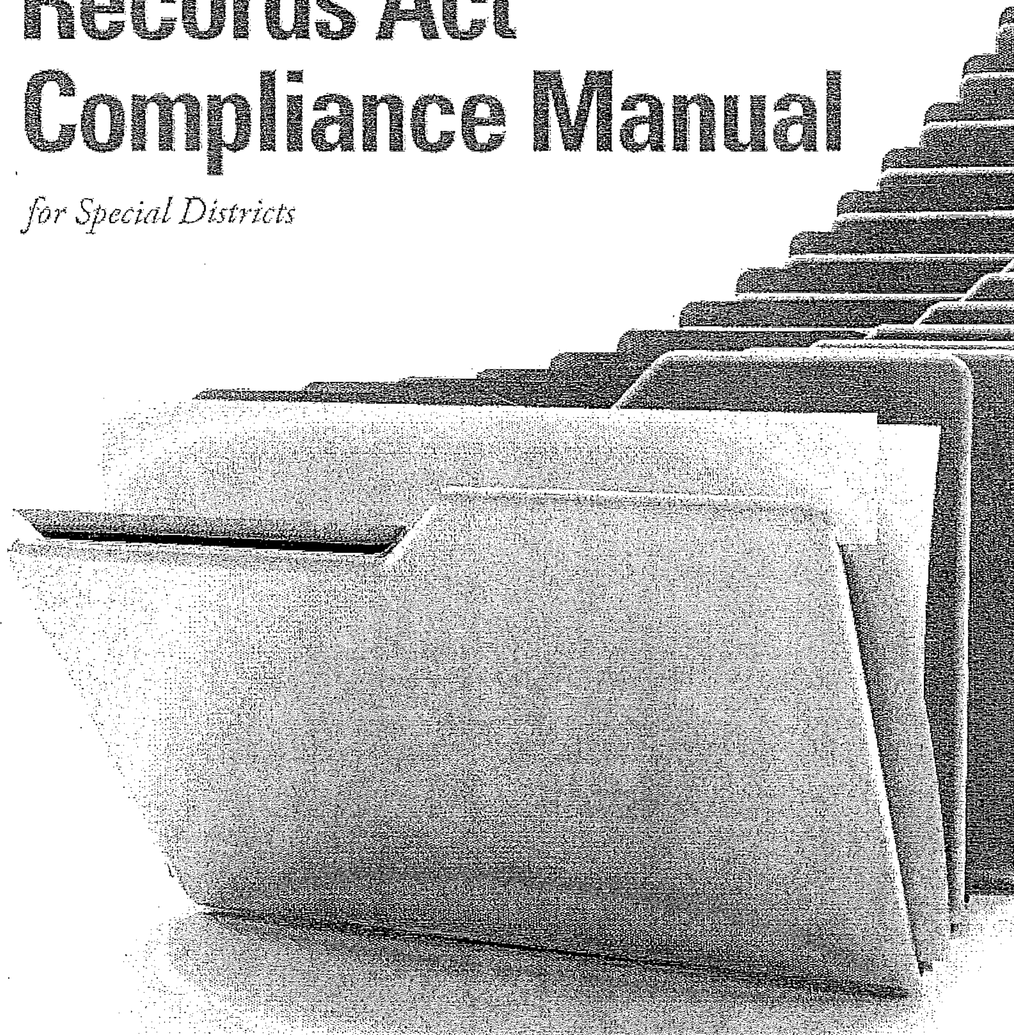
(2) Upon receipt of the materials described in Subsection (a)(1) of this Section, the Clerk of the Board of Supervisors shall transmit a copy of the proposed ordinance or Charter amendment to the Controller. The Controller shall prepare a financial analysis of the proposed measure and deliver the analysis to the Clerk no later than the first committee hearing concerning the proposed ordinance or Charter amendment. The Board of Supervisors shall be prohibited from considering or deciding whether to submit the measure to the voters unless the Controller has provided the Board with the financial analysis required by this subsection.

(3) Any amendments to a proposed ordinance or Charter amendment shall be noticed for an additional public hearing by the Board committee designated to consider the measure. The proposed amendments shall be submitted in writing to the clerk of the designated committee and shall be available for public review no later than the time that notice of the additional hearing is published.

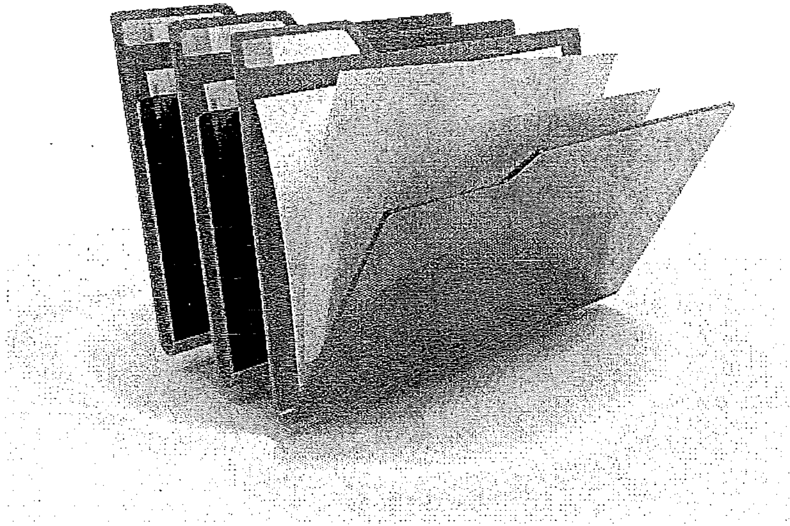
California Special
Districts Association
Districts Stronger Together

California Public Records Act Compliance Manual

for Special Districts



A GUIDE TO UNDERSTANDING THE CALIFORNIA PUBLIC RECORDS ACT



Introduction

The California Public Records Act (CPRA) was originally enacted in 1968, and requires that governmental records be made accessible to the public upon request, unless otherwise exempted by law. This manual provides special districts with guidelines to fulfilling CPRA requests, including compliance tips for easy reference and a special section on disclosure of electronic records.

Access to information concerning the conduct of the people's business by state and local agencies is a fundamental right of every person in California.

This manual is a general summary of the CPRA as it applies to special districts and is not intended to provide legal advice on any specific CPRA request or issue. In addition, the statutory and case law summarized in this manual is subject to change. District staff should always seek the advice of agency legal counsel as to the application of the CPRA in a particular situation and to ascertain whether there have been recent changes to the CPRA by the Legislature or its interpretation by the courts.

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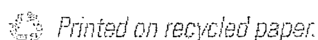
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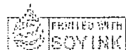

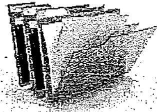

Summary of the California Public Records Act[1]

Access to information concerning the conduct of the people's business by state and local agencies is a fundamental right of every person in California.[2] To ensure this right, the California Public Records Act ("CPRA")[3] gives every person the right to inspect any public record during a state or local agency's office hours.[4] If an agency receives a request to inspect an identifiable, disclosable record, the agency must promptly make the record available.[5] Requests for copies of identifiable, disclosable records must be responded to within prescribed periods and must also be promptly made available for anyone who pays the applicable agency duplication costs or the applicable statutory fee.[6] The agency must provide an exact copy unless it is impracticable to do so, although the agency must also redact any confidential or exempt information from the copy.[7] The CPRA covers requests for electronic and computer data; and public records that are stored in an electronic format must generally be made available in such electronic format if so requested.[8]

Although the fundamental precept of the CPRA is access to records, the CPRA exempts certain records from disclosure and requires agencies to keep certain other records confidential.[9]

If an agency receives a request to inspect an identifiable, disclosable record, the agency must promptly make the record available.

If an agency improperly withholds records, a member of the public may seek a court order to enforce the right to inspect or copy the records sought and may receive payment for court costs and attorney fees if such person prevails in the lawsuit.[10]

An agency may adopt regulations establishing procedures for requesting public records that allow for faster, more efficient, or greater access to records.[11]

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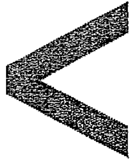


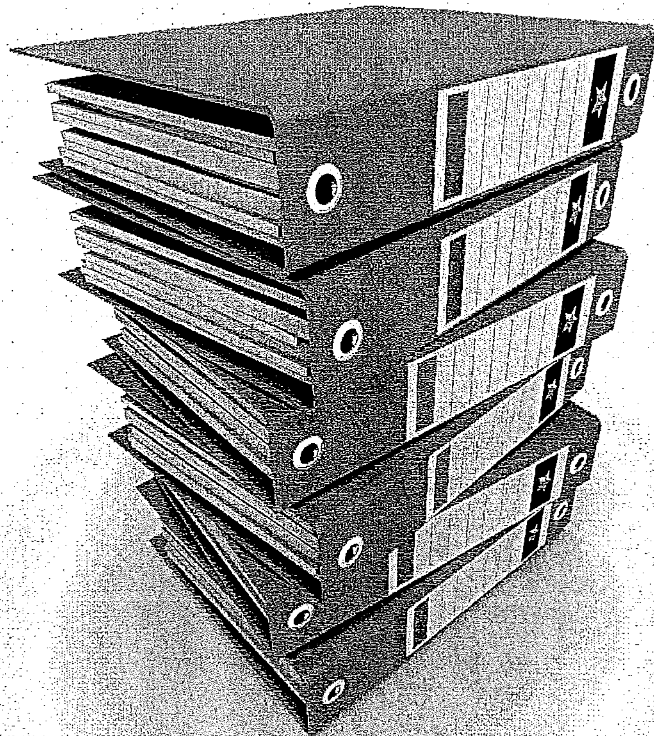
Although the fundamental precept of the CPRA is access to records, the CPRA exempts certain records from disclosure and requires agencies to keep certain other records confidential.

Application of CPRA to Special Districts

All special districts are subject to the CPRA, which refers to them as a "local agency."[12] This includes all boards and commissions of a special district, including advisory boards. Private non-profit entities delegated legal authority by a district to carry out public functions are also subject to the CPRA if they are funded with public money.[13]

Is a district required to adopt its own procedures or guidelines for complying with the CPRA?
No, however, the adoption of local procedures consistent with the CPRA can be helpful in educating the public about the process.

Can a district adopt guidelines or requirements that differ from the CPRA?
Yes. The provisions of the CPRA are **minimum standards**. Districts are free to adopt procedures that allow for faster or greater access to records than those prescribed in the CPRA.[14]



Public Record Defined

The CPRA defines a "public record" as "any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics."[15]

What constitutes a writing?

A writing is defined as "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any form of communication or representation...and any record thereby created, regardless of the manner in which the record has been stored."[16]

This definition is intended to cover every conceivable kind of record that is involved in the governmental process and pertains to any new form of record keeping instrument as it is developed. For example, information stored in an agency computer (e.g., email, spreadsheets, digital maps, etc.) is clearly included within the purview of a public record.[17]

What constitutes retention of a writing?

In order to be a public record, the agency must have the writing in its "possession," which is generally understood to mean in the physical custody of the agency.[18] In many cases responsive records may be the possession of a district contractor. A reasonable search for requested records may require communication to such contractors to determine whether they are in possession of the requested records.[19]

Is every writing in the custody of a public agency a public record under the CPRA?

No. The mere custody or retention of a writing does not automatically make it a public record for the purposes of the CPRA. The key element is whether the writing is kept because it is necessary or convenient to the discharge of official duties.[20] Thus, items such as a shopping list or a letter to a public officer from a friend which is totally devoid of reference to governmental activities are not considered public records.[21]

Compliance Tip

Some agencies have found it useful to adopt electronic records policies governing whether personal devices (computers, smart phones, etc.) may be used for agency business, and what records (for example emails, texts, etc.) and other attributes of the electronic information on such devices are considered "retained in the ordinary course of business" for purposes of the CPRA.

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Persons Who May Obtain Records

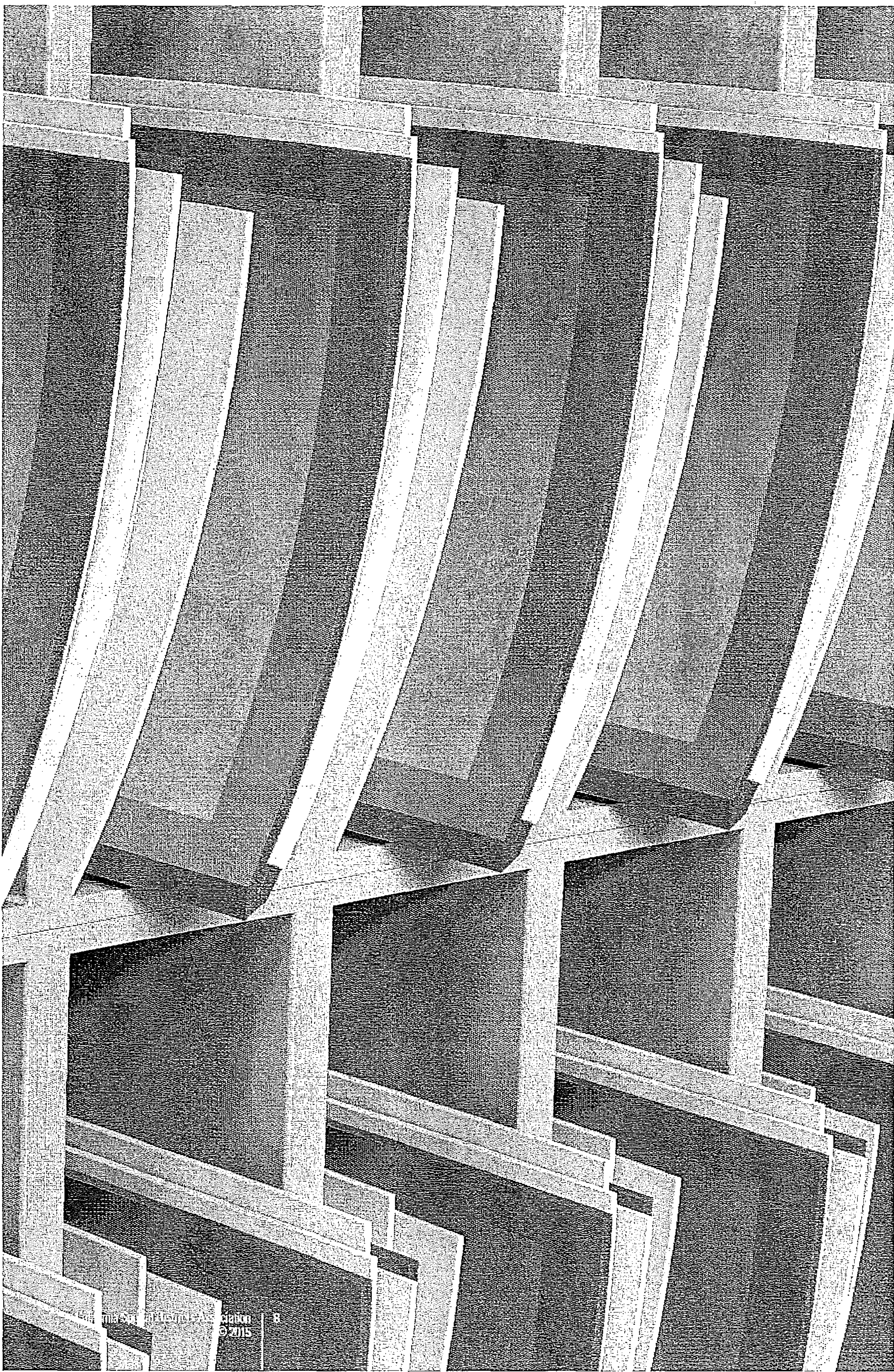
Any person or entity, including the media, for-profit businesses and other public entities, has the right to access public records.[22] The right to access records is not limited to persons who are constituents of a district. A person who lives in a different city, county or state can access district records under the CPRA.[23]

Why does the CPRA make a distinction between "person" and "member of the public" in Section 6252?
Under Section 6252(b) the definition of "member of the public" excludes "a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment." This distinction is necessary because Section 6254.5 provides that an agency's ability to consider a record confidential may be waived if that same record has already been disclosed to a "member of the public." The distinction simply clarifies that a waiver will not occur if the record is shown to a government official acting in his or her official capacity.

Do public officials have any special status in making CPRA requests?
Generally, no. An elected member or officer of an agency is entitled to access to public records on the same basis as any other person. This means that the official must make a request under the CPRA and will only be given access to disclosable public records. One exception to this rule is for the District Attorney, who may not be denied access to certain investigative records that would otherwise be exempt.[24] Also, officials may access public records of their own agency that are otherwise exempt when authorized to do so as a part of their official duties.[25]

Does the media or a person who is the subject of a public record have any special status in making CPRA requests?
No. Neither the media nor a person who is the subject of a public record has any greater right of access to public records than a person with simply an "idle curiosity."[26]

Compliance Tip
A best practice is to inform incoming officials that they will only have special access to records to the extent necessary to carry out direction from the district's board. For example, if they are appointed to the finance committee to review existing agreements, they will have access to those particular files. For all other records, the official must gain access in the same manner any member of the public would under the CPRA. Educating officials upfront helps manage their expectations and avoids issues down the road.



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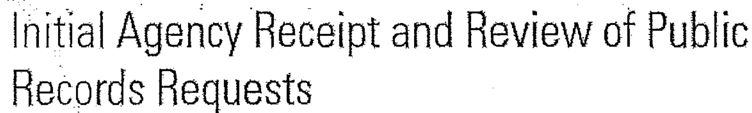

Initial Agency Receipt and Review of Public Records Requests

Types of requests.
Members of the public may gain access to public records by (a) requesting to inspect records or (b) receiving a copy of identifiable records. [27]

Manner of making requests.
Public records requests may be made in writing (paper or electronic), and may be mailed, emailed, faxed, or personally delivered. Records requests may also be made orally, in person or by phone.

Content of requests.
A request need only indicate that a public record is sought and be focused enough to describe an existing, identifiable record. There is no duty under the CPRA to comply with requests that prospectively seek records (i.e., records that do not currently exist). Requests may describe writings by their content and do not require precise identification of the documents themselves.[29]

Compliance Tip
The CPRA pertains to records and not "questions" that members of the public may have. The CPRA does not impose a duty to respond to questions, although if an identifiable record would answer a question or the information can readily be provided, the best transparency practice is to provide the record or answer the question.

Compliance Tip
Although the CPRA does not require that request be in writing,[28] districts should, to the extent possible, insist that requests be in writing or provided on a district-developed form in order to identify the information sought, the date of the request, and to obtain contact information on the requester if necessary to seek clarification or to provide follow-up assistance. If a requester refuses, a member of the district should fill out a form on behalf of the requesting party to maintain consistent recordkeeping practices.

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What happens if a records request is vague?
If there is a question about the clarity of the request, the district must assist the member of the public to make a focused and effective request by doing all of the following, to the extent reasonable under the circumstances:

1. Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request;
2. Describe the information technology and physical location in which the records exist; and
3. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.[30]

When has a district helped enough in clarifying a request?
A district has met its obligation to assist a requester if:

1. It is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester to help identify the records;
2. The records are made available;
3. The district determines an exemption applies; or
4. The district makes available an index of its records.[31]

Does the purpose of the request make a difference?
Generally, no. The purpose of the request is generally irrelevant.[32] Thus, requests by a commercial entity solely for commercial purposes, does not diminish the public interest inherent in the material requested.[33] As such, a district cannot condition disclosure on the requester providing a purpose for the records. However, courts have cautioned the public that the purpose of the CPRA is not primarily for facilitating research.[34] Moreover, understanding the purpose of the request can often facilitate retrieval of the records by narrowing or expanding the list of potential responsive records.

Compliance Tip
It is permissible, and can be helpful where a request is vague, to inquire as to the purpose of the request, which may help narrow the focus of the request.

Compliance Tip
Many members of the public are not adept at making a records request. If there is any uncertainty as what records the requester is seeking, seek clarification immediately by calling or writing the requester. It could save considerable time in identifying the responsive records actually desired.

District Obligations to Search for Public Records

Reasonable effort to search for records. A district must make a reasonable effort to search for requested records.[35] The CPRA does not establish a specific test, but in general, a request should be referred for review and a response to the department, office, or person(s) most likely to be in possession of a record based on the general subject matter of the request.

Does it make a difference if a request involves searching for or the production of a huge volume of data? Generally, no. The cost of complying with a request is generally not a sufficient ground for refusing to respond to a request.[36] On the other hand, a voluminous request or a search that requires looking for the proverbial "needle in the haystack" may constitute an undue burden under the balancing test of Section 6255, if the public interest served by the request is minimal compared to the scarce public resources necessary to comply with the request.[37]

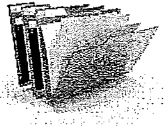
Is a district required to create a document or compile a list in response to a CPRA request? Generally, no. A district's obligation is to make records available that are responsive to a request, not to create documents or to compile lists that otherwise do not exist. One exception to this rule is with respect to the extraction of information from electronic records provided that the requester pays the reasonable cost of the necessary programming and computer services.[38]

Compliance Tip

Where a request may be onerous or voluminous, consider asking the requester to modify the request (e.g., by reducing the time frame or scope of the request). While a requester is under no obligation to do so, many requesters are amenable to suggestions, particularly if they understand that producing a smaller sampling of records may help them refine subsequent requests. Be sure to note in writing when a request has been voluntarily modified.

Compliance Tip

Although the CPRA creates no duty to answer specific questions or compile lists, if the information can readily be compiled, sometimes it may save a district time and money to simply create a document with the responsive information instead of monitoring the inspection or providing copies of responsive records. When a district creates a record or responds to a question rather than producing existing records, consider noting that this was done as a reasonable accommodation under unique circumstances and clarifying that the district was under no obligation to do so. This should help manage a requester's expectations should they make additional requests.



Time Periods to Respond to Requests

10-day initial response to requests for copies of records. A district must determine within 10 calendar days starting after the date of receipt of a request whether the request seeks copies of identifiable public records that may be disclosed and must promptly notify the requester of this determination. If the request is received after business hours or on a weekend or holiday, the next business day may be considered the date of receipt. Similarly, if the tenth day falls on a weekend or holiday, the next business day is considered the deadline for responding to the request. If there are identifiable public records, then the determination must state the estimated time and date when records may be available for inspection or copying.[39]

Extension of initial response time for copy requests. In unusual circumstances, the time limit to initially respond may be extended by written notice from the head of a district or his or her designee to the person making the request setting forth the reasons for the extension and the date on which a determination is expected to be made. No such notice may specify a date that would result in an extension of more than 14 days. "Unusual circumstances" include (a) the need to search for records in field facilities or separate offices, (b) the need to search through a voluminous amount of records, (c) the need to consult with another agency with a substantial interest in the record, and (d) the need to compile data or to create a computer program to extract the data.[40]

A district must determine within 10 calendar days starting after the date of receipt of a request whether the request seeks copies of identifiable public records that may be disclosed and must promptly notify the requester of this determination.

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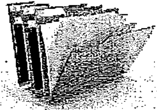
Timing of response to requests to inspect records.
The CPRA does not establish any time frame for responding to requests to simply inspect records. It is generally assumed, however, that a district may either utilize the same time periods for requests for copies to respond to inspection requests or is afforded at least a reasonable period of time to identify, retrieve and review requested records prior to disclosing them for inspection.

Time period for disclosing a record.
The 10-day initial response and 14-day extension are the time periods for notifying a requester as to whether the district has public records in its possession that are responsive to a request. The CPRA does not require that records actually be produced within these time periods. However, the CPRA does require that records be made available "promptly" once a determination has been made that the district retains records that are responsive to a request.[41]

When may records be inspected at the district?
Once a district has had a reasonable period of time to identify, retrieve and review requested records, the responsive records so identified should be made available for inspection "at all times during the office hours" of the district.[42]

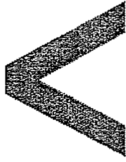
Compliance Tip
If there are legitimate, extenuating circumstances other than the three "unusual circumstances" described in Section 6253(c) that preclude a district from fully responding to a request within these time periods (e.g., a computer shut down, or a key employee is absent during the response time), the district should attempt to obtain an extension from the requester after describing the circumstances and offering to provide the records that have been identified up to that point, if any.



Permissible Responses to Requests

After conducting a reasonable search for requested records, a district has a limited number of potential responses. If the search yields no responsive records, the district must inform the requester. If the district locates a responsive record, it must determine whether to: (a) disclose the record; (b) disclose the record in redacted form; or (c) withhold the record.

If the district does not have the record, or has decided to disclose it in redacted form or withhold the record, the district must respond in writing and identify the name and title of each official responsible for the decision. If access to a record is denied in whole or in part, the denial notification must cite the specific exemption under the CPRA or other state or federal law, and, if applicable, demonstrate that on balance, there is a predominant public interest in non-disclosure under Section 6255.[43]

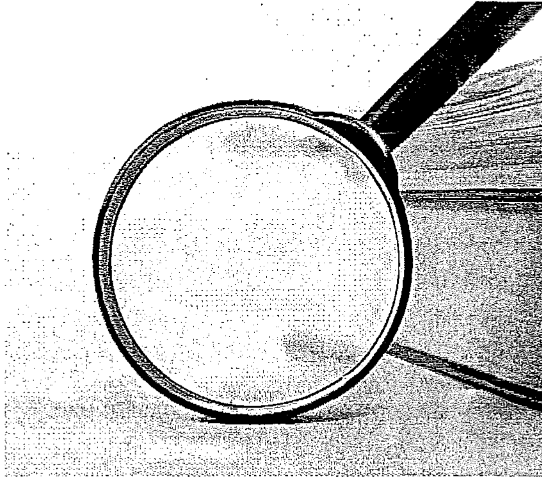


Writings subject to inspection include electronically stored information (e.g., email); however, the CPRA is silent on how the inspection of such information must be accommodated.

Rules Regarding the Inspection of Records

May a district impose reasonable restrictions on the time and manner of inspection?

Yes. The right of inspection is not an inflexible demand on the district irrespective of the consequences. There is an implied rule of reason that enables a district to formulate regulations necessary to protect the safety of the records against theft, mutilation, or accidental damage, to prevent inspection from interfering with the orderly function of the district's office and its employees, and generally to avoid chaos in record archives.[44]



Reasonable inspection regulations may include:

1. A mutually agreeable time for the inspection during district office hours to minimize impacts on and interference with staff and their duties or the use of the records requested.
2. Requiring proof of the identity of the requester.
3. Staff monitoring of the inspection.

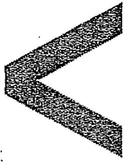
How can the public inspect computer records?

Writings subject to inspection include electronically stored information (e.g., email); however, the CPRA is silent on how the inspection of such information must be accommodated. Transferring such electronic records to a standalone computer at the offices of the district for viewing is one possible response.

Special Rules for the Disclosure of Electronic Records

What special rules apply to electronic records?

1. In general, an electronic record must be provided to a requester in an electronic format when so requested if the requested format is one that has been used by the district to make a copy for its own use.[45]
2. The cost of duplication is limited to the direct cost of producing a copy of a record in an electronic format (e.g., the cost of the disk, thumb drive or other electronic storage device).[46]
3. A requester bears the cost of producing a copy of the record, including cost to construct a record, and the cost of programming and computer services whenever:
   a. The record is produced only at otherwise regularly scheduled intervals.
   b. The request requires data compilation, extraction, or programming to produce the record.[47]
4. If a record does not exist in electronic format, a district is not required to produce an electronic version of the record.[48]
5. If a requester requests a paper copy of an electronic record, a district cannot insist on making records available only in an electronic format.[49]



Metadata generally does not appear in the text but is still embedded in the document. Such metadata may include information that a district may have a right, and, in some cases, a duty to withhold.

In what format must a copy of an electronic record be provided? (The issue of hidden data: Word vs. PDF.)
At first glance, Section 6253.9(a) appears to be straightforward in its requirements:

(1) The agency shall make the information available in any electronic format in which it holds the information.
(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.

As such, if a district has a document in Word format, there appears to be a presumption in the CPRA that the record must be provided to the requester in Word. However, a district should consider what other information might be embedded in such a Word document. Word documents contain "metadata" – data about data. In this context, it is information that is generated by the software program when the document is created, viewed, copied, edited, printed, stored, or transmitted. Metadata generally does not appear in the text but is still embedded in the document. Such metadata may include information that a district may have a right, and, in some cases, a duty to withhold.

Some examples are:

Preliminary drafts or deliberative information. Many records undergo editing by the drafter or other colleagues and supervisors, and thus reflect the author's and district's thought process. Such information could be exempt from disclosure under Section 6254(a) [preliminary drafts, memos] or under Section 6255(a) [deliberative process privilege].

Privacy rights. Earlier versions of a document may include sensitive personal information such as home addresses, Social Security numbers, medical or financial information, etc. Such information could be exempt from disclosure under Article I, Section 1 of the California Constitution, Section 6254(c) [personnel, medical and other files], and under Section 6254(f) [investigatory files].

Attorney-client privilege. A record may contain communications, edits, or changes made based on confidential communication between district staff and its attorneys. Such information could be exempt from disclosure under Section 6254(k).

There is no requirement to release an electronic record if its release would jeopardize or compromise the security or integrity of the original record or of

any proprietary software. Examples of this include records created with proprietary software – the code of which could be revealed through disclosure, or even the possibility that the records could be manipulated or altered from the original text.[50]

In what format must a copy of a public record be posted on a district website or other Internet resource. Under Section 6253.10, if a district maintains an "Internet Resource," (e.g., an Internet website, Internet webpage, or Internet web portal), which the district describes or titles as "open data," and the district voluntarily posts a public record on that Internet resource, the district must post the public record in an open format that meets all of the following requirements: (a) retrievable, downloadable, indexable, and electronically searchable by commonly used Internet search applications; (b) platform independent and machine readable; (c) available to the public free of charge and without any restriction that would impede the reuse or redistribution of the public record; and (d) retains the data definitions and structure present when the data was compiled, if applicable.[53]

Compliance Tip

The format in which an electronic record is maintained should be carefully reviewed and considered before such record is released in an electronic format. In light of concerns and potential inadvertent disclosures arising from metadata, agencies should consider providing electronic records in PDF format. PDF, which stands for "Portable Document Format," is essentially a picture of a document that contains no embedded metadata. Arguments in support of providing electronic records in PDF format include: (1) the ability to segregate exempt portions of records under Section 6253(a); (2) the burden that would be imposed on a district if it also had to review all metadata in an electronic record under Section 6255; and (3) the judicially created implied rule of reason. Nevertheless, whether such a response is appropriate under the CPRA remains an open issue.

Compliance Tip

District developed "computer software" (including computer mapping systems, programs, and graphic systems) are not considered public records and are therefore exempt from disclosure.[51] However, the computer software exemption cannot be used expansively to exempt base maps and GIS-formatted databases created by the computer software.[52]

Charges For Copies of Records

Except with respect to the costs of copying records or compiling and programming electronic records, the public records process is largely cost-free to the requester. No fees may be charged to reimburse district costs incurred to search, review, redact, or respond to a request, including staff time to monitor the inspection of records.[54]

Permissible copying charges.
A district may charge a requester the direct costs of duplication or a statutory fee, if applicable, for copies of public records.

1. Direct costs of duplication means the cost of running the copying machine or scanner and conceivably also the expense of the person operating it. It does not include staff time associated with the ancillary tasks of retrieval (including from off-site storage), inspection, or redacting the record.[55]
2. A statutory fee is one expressly established pursuant to a federal or state statute and not a district ordinance or resolution. For example, the Government Code establishes a retrieval fee of no more than $5.00 and a copy fee of no more than $.10 per page for copies of an official's or employee's FPPC Form 700 Statement of Economic Interests.[56]

Compliance Tips

Under Proposition 26,[57] a district must be able to justify that the cost of its copying fees reflect the actual duplication costs. As a result, a district should consider preparing a cost study to identify the appropriate fee. Alternatively, the district can set the fee to a value that is below the actual duplication cost.

A district may delay copying records until the requester pays the district's approved copying charge or any applicable statutory fee. To that end, a district should provide the requester with an estimate of the cost of copying the records and ask for a deposit of that amount before proceeding with any copying, particularly with respect to voluminous requests. An alternative procedure for large copying jobs is to require the requester to use a mobile copying service.[58]

The CPRA does not address whether a district may charge a requester for mailing or delivering copies of records to a location other than the district's office. Presumably it can because the district's duty only extends to making copies "available" (i.e., at the district's office) to the requester under Section 6253(b).[59]

Exemptions From Disclosure

How should the district respond if there is an applicable exemption?
If a record falls within one of the exemptions listed in the CPRA, or is withheld because the public interest in nondisclosure clearly outweighs the public interest in disclosure, the district must notify the requester of the reasons for withholding the record, but is not required to provide a list or "privilege log" of each record withheld.[60]

What if only part of a record is exempt from disclosure?
If only part of a record is exempt from disclosure, the district must redact (line out) the document to allow disclosure of the non-exempt portions of the record.[61]

What are the general categories of exemptions?
There are three general categories of exemptions:

1. Express exemptions. These exemptions are specifically identified in the CPRA.
2. Information that is confidential or privileged under other law. Pre-existing privileges or protections recognized in other law (e.g., the attorney-client privilege and attorney work product privilege) are incorporated by reference into the CPRA as an express exemption.[62]
3. Balancing test. The CPRA contains a catch-all provision that weighs whether the public interest served by not disclosing a record clearly outweighs the public interest served by disclosure of the record.[63]

May a district disclose a record listed as exempt in the CPRA?
Generally, yes. Most exemptions are discretionary. Unless there is a clear statutory prohibition in the CPRA or under other law, a district is allowed to give more extensive access even though an exemption may be asserted.

Compliance Tip
A district should keep copies of records that are not disclosed because in the event of a legal challenge, the district will need to show the court that the records withheld actually fell within the exemption relied upon.

Compliance Tip
The fact that it is time-consuming to redact a record does not eliminate the need to do so, unless the resulting redacted record would be of little value to the requester.

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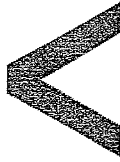

The draft/memo exemption is based on the policy of protecting the decision making process, particularly legal and policy matters that might otherwise be inhibited.

Can there be selective disclosure?

No. If a record is disclosed to a "member of the public" – a person with no particular official role or special legal entitlement to it – that record cannot be withheld from other members of the public.

There are some exemptions from the selective disclosure prohibition, however, such as disclosures made pursuant to the Information Practices Act,[64] and disclosures made to another governmental agency that agrees to treat the records as confidential.[65]

What exemptions are most relevant to special districts?[66]

1. Preliminary and temporary drafts, notes and memoranda.
2. Pending litigation documents.
3. Private personal information.
4. Investigative, security, and intelligence information.
5. Privileged and otherwise confidential information.
6. The public interest balancing test.

Preliminary drafts and memoranda.[68]

The draft/memo exemption is based on the policy of protecting the decision making process, particularly legal and policy matters that might otherwise be inhibited. In general, it applies to documents that are "pre-decisional" or "deliberative" (i.e., the contents contribute to the reaching of some administrative or executive determination). The key question is whether the disclosure of the materials would expose a district's decision-making process in such a way as to discourage candid discussion within the district and thereby undermine the district's ability to perform its functions.[69] Documents that only contain factual information such as preliminary grading plans do not fall under this exemption.[70]

Records that qualify for the "draft" exception must:

1. be a preliminary draft, note, or memorandum;
2. not be customarily retained "in the ordinary course of business;" **and**
3. the public interest in withholding the record must clearly outweigh the public interest in disclosure.[71]

Compliance Tip

CPRA exemptions are narrowly construed, and a district opposing disclosure bears the burden of proving that one or more exemptions apply in a particular case.[67]

Compliance Tip

Not all drafts are exempt. If a district retains drafts of a document even after the final version is completed, then those drafts are being retained by the public agency in the ordinary course of business and therefore are not true preliminary drafts under this exemption. These drafts may be exempt on another basis, however.

Pending litigation records. [72]
In general, this exemption only applies to documents (1) created by the district, (2) after the commencement of the litigation, (3) for the district's use in the litigation. It does not apply to records that were created in the ordinary course of the district's business or for other purposes prior to the litigation. Records that would not be exempt under this definition include:

- A claim form filed under the Government Claims Act.
- A deposition transcript ordered by the agency, unless there are some other applicable confidential or privilege exemption.[73]

This exemption has been extended to litigation documents sought by persons not party to the litigation, which documents the parties to the litigation did not intend to be revealed outside of the litigation (e.g., letters from the litigant's attorney to the agency's attorney).[75]

Once the litigation is concluded, the exemption no longer applies. However, the attorney-client privilege may be ongoing and may provide an alternative basis for nondisclosure.

Personnel, medical or similar records. [76]

1. *What records are exempt?*
   a. The personnel files of a public agency's own employees.
   b. Records of other persons for whom an agency maintains personally significant information.

2. *Are all records in a personnel file exempt?*
   No. The fact that information is in a personnel file does not necessarily make it exempt information. For example, the kind of information that would be included in a resume, curriculum vitae or job application which demonstrate a person's fitness for his or her job in terms of education, training or work experience ordinarily are not exempt from disclosure.[77]

Compliance Tip
In order for this exemption to apply, a district must be able to prove that the primary purpose of the record was for use in the defense of litigation.[74]

Compliance Tip
Settlement agreements must be disclosed if requested, including all monetary and other terms of the settlement.

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The personnel exemption was developed to protect intimate details of personal and family life, not business judgments and relationships.[78] With some exceptions, employees may request and obtain their own personnel file.[79] Employee performance evaluations and personal performance goals are considered exempt.[80]

3. *What kind of information about government job applicants is public?*
   No court has yet directly addressed this question; however, the privacy interests of an applicant against disclosure, especially if the applicant has not been hired and has asked for, or applied upon assurances of, the confidential treatment normally accorded such processes, probably outweigh the public interest in disclosure.

4. *What kind of information about a current employee's job status is public?*
   Letters or memoranda of a public employee's appointment to a position, rescission, reclassification, etc., are not exempt: They contain no personal information, regard business transactions and are manifested in the public employee's employment terms.

   Employment contracts for public officials and employees are public records and are not exempt under the provisions of Sections 6254 and 6255.[81]

   In general, public employees do not have a reasonable expectation of privacy in their names, salary information, and dates of employment.[82] The public has a strong interest in knowing how the government spends its money, and as such, public employees (including retirees) should have reduced expectations of privacy with respect to their public salary and compensation.[83]

5. *What information about a government employee's misconduct is public?*
   Complaints against the conduct of public employees, if they are submitted in confidence are probably protected from disclosure by the official information privilege under Evidence Code section 1040 in order to protect the interests of the complaining party. The public interest dictates disclosure of complaints against non-law enforcement personnel, however, if the complaint deals with serious matters, and (a) is confirmed by the district's investigation, or (b) there is reasonable cause to believe the complaint is well founded.[84]

Compliance Tip
Elected and appointed officials' home addresses and telephone numbers are considered private and may not be posted on the district's website without the official's express written permission.[85]

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Law enforcement investigation and intelligence records.[86]
This exemption generally protects crime reports, investigative files, intelligence files and security procedures, including records of code enforcement cases for which criminal sanctions are sought. Once the investigatory exemption applies, it applies indefinitely, even after the investigation is closed.[87]

Privileged, confidential or otherwise exempt records.[88]
Mini-catchall exemption: Subsection 6254(k) is sort of a mini-catchall exemption in that it exempts from disclosure records that are prohibited or otherwise exempt from disclosure under federal or state law. This includes records that are privileged under the California Evidence Code, the attorney-client privilege, attorney work product privilege, and the extensive list of exempt records set forth in Sections 6275 – 6276.48. It also includes the copying of architectural plans and drawings protected by federal copyright law and state law without permission of the professional who signed the plans or the owner of the documents and the owner of the building.[89]

The attorney-client privilege. The attorney-client privilege preserves the confidential relationship between attorney and client. Unlike other exemptions which are narrowly construed, the attorney-client privilege protects from disclosure the entirety of confidential communications between attorney and client, as well as among the attorneys within a firm representing such client, including factual information and other information not in itself privileged outside of attorney-client communications.[90] Attorney-client privileged information remains protected from disclosure after litigation is concluded, unlike the pending litigation exemption.

The public interest exemption.[91]
Public agencies and officials also have some rights of privacy. Based on the facts of a particular situation, a district may withhold a record if it can demonstrate the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

The deliberative process exemption.
Over the years, a judicially created exemption has been developed that protects certain contacts or communications between public officials and with the public. This privilege is

Compliance Tip
The amounts paid to attorneys by a district are not protected by the attorney-client privilege.

based on the policy of protecting the decision-making process, and the recognition that public officials need to have access to a range of opinions and points of view and to discuss matters in confidence before making a decision or taking action. The key question is whether disclosure of the records would discourage candid discussion and ultimately undermine an agency's ability to perform its functions. Examples include:

1. A request for five years' worth of information from the governor's appointment calendars was barred by Section 6255, because such scrutiny would interfere with the governor's deliberative processes and deter members of the public from conferring with him without bestowing any overriding benefit on the public.[92]
2. The phone numbers dialed by city council members on official business over a year's time was found exempt.[93]
3. The names and qualifications of applicants for appointment to a vacant county supervisor seat were found exempt.[94]

In what other situations has the public interest favored nondisclosure?

1. Public interest in an agency obtaining the most favorable result in contract negotiations outweighs disclosure of proposals before contract negotiations are completed, but before final approval of contract, in order to ensure compliance with contracting procedures.[95]
2. Public interest in preventing chilling effect on complaints and protecting privacy outweighs disclosure of identities of complainants regarding airport noise.[96]
3. Public interest in preventing regulated businesses from circumventing effective compliance investigations by obtaining auditors' procedural manuals outweighs any public interest in disclosure of the manuals.[97]

In what situations has the public interest in disclosure outweighed government or privacy interests?

1. Disclosure of the names of officers involved in shootings outweighs concerns of potential retaliation or harassment of the officers and their families, unless there is a showing of a specific safety concern such as revealing an officer's undercover identity.[98]
2. Disclosure of gross salaries of public agency employees who earned at least $100,000 that would contribute to the public's understanding and oversight of government operations outweighs potential privacy concerns of individuals, including potential commercial exploitation of list.[99]
3. Disclosure of personnel records where grounds for complaint against employee are well-founded. A finding of the truth of the complaint

contained in the personnel records or the imposition of employee discipline is not a prerequisite to disclosure.[100]

4. Disclosure of license agreements (including names and addresses) of persons purchasing luxury suites at sports arena outweighs privacy concerns of persons who purchased the suites.[101]
5. Disclosure of a list of convicted criminals who received an exemption from the Department of Social Services to work in licensed day care facilities outweighs potential privacy concerns of those individuals because the public has a right to review how a government conducts business, and whether such licenses are issued properly.[101]
6. Monitoring effectiveness of water rationing program outweighs water district's interest in protecting reputations of those given citations for exceeding water allocation.[103]
7. Monitoring how public funds are spent outweighs county's interest in keeping settlements confidential to discourage unmeritorious claims.[104]
8. Confirming facts surrounding questioned personnel practices outweighs city's interest in encouraging individuals to apply for municipal employment, where requested information is not a matter of personal privacy.[105]
9. Monitoring city's contracting for services and regulation of contractor's fees charged to residents outweighs city's interest in encouraging contractors to submit proprietary information justifying the need for rate increases.[106]
10. Monitoring regulation of the application of dangerous pesticides outweighs applicators' proprietary interests in spray report data and county concerns that reports would not be candid if disclosed.[107]

Homeland security exemptions.[108] These exemptions apply to agency assessments of vulnerability to a terrorist attack or other criminal acts, as well as critical infrastructure information associated with such assessments.

Compliance Tip

These post 9/11 amendments did not clearly address the extent to which public records pertaining to the planning and implementation of a vulnerability assessment are exempt, but given the strong government interest in implementing such assessments, it is fair to assume that many such details may remain confidential other than the costs of such work.

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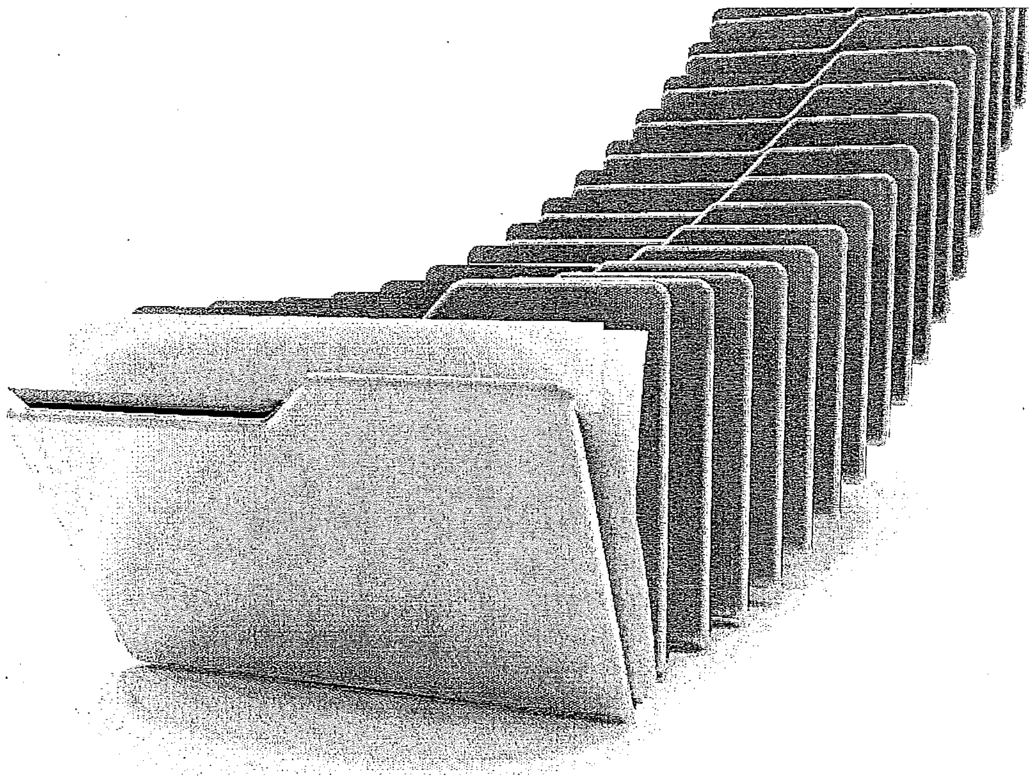


More exemptions.

Other CPRA exemptions relevant to special districts include:

- voter registration information;[109]
- signatures on petitions for initiatives, referenda and recall;[110]
- real estate appraisals prior to conclusion of property acquisition;[111]
- income tax information on most individuals and businesses;[112]
- trade secrets and proprietary information; and[113]
- utility customer information.[114]

Waiver of exemptions.

Under Section 6254.5, if a public agency member, agent, officer or employee acting within the scope of his or her responsibilities discloses a public record, such disclosure waives the exemption of Sections 6254, 6254.7 or similar provisions of law.

However, Section 6254.5 sets forth a number of circumstances where disclosure will not result in a waiver. These include disclosures made: (a) under the Information Practices Act or through discovery; (b) in legal proceedings or as otherwise required by law; (c) within the scope of disclosure under other statutory schemes; (d) contrary to formal action of the legislative body that retains the record and the disclosure is not otherwise required by law; and (e) to any governmental agency that agrees to treat the disclosed material as confidential.

If a disclosure occurs by mistake or through inadvertence, an agency may take the position that the disclosure of an otherwise exempt public record does not constitute a waiver under Section 6254.5.[115]

Enforcing the CPRA

What happens if a district fails to properly respond to a CPRA request?
The ultimate legal leverage for obtaining records under the CPRA is a civil action to obtain a court order for their release. There is no criminal sanction for simply refusing to provide records to a requester, although it is a felony to destroy public records.[116]

Can a district preemptively go to court and have a record declared nondisclosable?
No. The litigation initiative is always with the requester. A public agency may not go to court on its own to obtain a declaratory judgment that a record is not subject to disclosure because such litigation would be a burden on the public seeking the information.[117]

If a district denies access to records, must the requester appeal to some higher authority in the district before taking legal action?
No. Once a requester has been denied access to records it is not necessary to seek administrative review prior to going to court.

What is the legal process for a requester seeking to enforce the CPRA?[118]

1. The requester must file a verified petition in the superior court of the county where the records are situated and are being withheld.
2. The court will establish an expedited trial schedule with the object of securing a decision as the earliest possible time.
3. The court may order the officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so.
4. The withheld record(s) may be disclosed "in camera" (i.e., in the judge's chambers) to preserve confidentiality until a final decision is made.
5. The judge will decide the case after examining the record(s), reviewing all papers filed by the parties, and listening to any oral argument or additional evidence as the judge may allow.
6. If the judge finds the decision to refuse disclosure is not justified under the applicable exemption, the judge will order the public official to make the record public.
7. If the judge determines that the public official was justified in refusing to make the record public, the judge will return the item to the public official without disclosing its contents with an order supporting the decision refusing disclosure.
8. The review of the decision of a superior court judge is by petition to the court of appeal for the issuance of an extraordinary writ against the superior court. (This is why the "Superior Court" is named as the respondent in many CPRA appellate decisions.) Such an appeal must be sought within 20 days of the trial judge's order or such further time not to exceed 20 more days.

9. If a party wishes to prevent the disclosure of public records pending appellate review, that party must ask for a stay of the order or judgment.

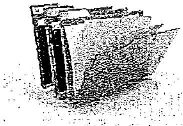
Costs and attorney fees.

The CPRA mandates that a court award costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in the litigation. A plaintiff prevails when he or she files an action which results in the defendant agency releasing a copy of a previously withheld document. Prevailing on access to just one disputed record may be sufficient to justify an award of attorney fees.[119]

A court may award court costs and reasonable attorney fees to the public agency only if the court finds that the plaintiff's case is clearly frivolous.[122] However, obtaining such fees against the plaintiff is difficult unless the court finds that the case is "utterly devoid of merit or [caused] by an improper motive" such as an intent to harass the agency.[123] In other words, a court must determine that "any reasonable attorney" would agree that the request is "totally without merit."[124]

Compliance Tip

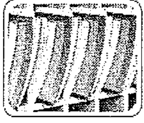
An award of attorney fees may depend on a court's determination of whether the litigation caused the agency to disclose documents. Courts may consider a timely effort to respond to a vague document request as proof that litigation did not cause any disclosure.[120] In contrast, courts may also consider an agency's lack of diligence in determining whether the litigation caused the agency's compliance with the CPRA.[121]



Conclusion

While the general precept of the CPRA –access to public records – appears straightforward, as demonstrated in the prior sections, compliance is not always that simple. The following are some general tips to help district staff negotiate the intricacies of the law:

1. Adopt a local policy and guidelines to ensure consistent procedures.
2. Document the date of receipt of requests.
3. Route the request to the district's designated employee for CPRA compliance, who in turn should notify all affected departments and employees.
4. Early retrieval and review of records allows time for an appropriate response.
5. If the purpose or scope of the request is unclear, contact the requester to find out what information is really needed.
6. The fact that a request is burdensome and requires a lot of staff time and effort is not a valid basis for denial.
7. If the request is for a record in an electronic format, ensure that the disclosure will not compromise the security of any proprietary software or contain metadata that may be exempt or privileged from disclosure.
8. Refer questioned items to the district's legal counsel.
9. Respond timely to requests.
10. If a denial is made, identify in writing the appropriate exemption or privilege.
11. Do not overcharge for copies.
12. Treat difficult and repetitive requests professionally.



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Donald M. Davis, Esq.

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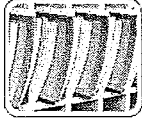

Endnotes

1. This manual is a general summary of the CPRA as it applies to special districts and is not intended to provide legal advice on any specific CPRA request or issue. In addition, the statutory and case law summarized in this manual is subject to change. District staff should always seek the advice of agency legal counsel as to the application of the CPRA in a particular situation and to ascertain whether there have been recent changes to the CPRA by the Legislature or its interpretation by the courts.
2. Cal. Const., art. I, §3(b).
3. Gov. Code §§6250-6276.48.Unless otherwise noted, all subsequent references are to the Government Code.
4. §6253(a).
5. §6253(b).
6. §6253(c).
7. §§6253(a) and (b).
8. §§6252(g), 6254.9(d), 6253.9.
9. See §6254 and following.
10. §§6258 and 6259.
11. §§6253(e), 6253.4.
12. §6252(a).
13. See Op.Cal.Atty.Gen. No. 01-401 (2002).The Attorney General Opinions referred to in this manual may be obtained online at: https://oag.ca.gov/opinions/search.
14. §6253(e).
15. §6252(e).
16. §6252(g).
17. §6254.9(d); see California State University v. Superior Court (2001) 90 Cal.App.4th 810.
18. §6253(c).
19. §6253.3; See *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385.
20. *California State University v. Superior Court* (2001) 90 Cal. App.4th 810.
21. *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762; *California State University v. Superior Court* (2001) 90 Cal. App.4th 810.
22. §6253; *Los Angeles Unified School District v. Superior Court* (2007) 151 Cal.App.4th 759 [public agencies are considered "persons" under the CPRA].

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23. *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762.
24. See §§6262, 6264, and 6265.
25. *Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271; *Los Angeles Police Dept. v. Superior Court* (1977) 65 Cal.App. 661.
26. *Marylander v. Superior Court* (2002) 81 Cal.App.4th 1119.
27. §6253.
28. *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381.
29. *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159.
30. §6253.1.
31. §6253.1.
32. §6257.5; *California State University v. Superior Court* (2001) 90 Cal.App.4th 810.
33. *Connell v. Superior Court* (1999) 56 Cal.App.4th 601.
34. *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008.
35. *State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177.
36. See *CBS Broadcasting, Inc. v. Superior Court* (2001) 91 Cal.App.4th 892 [estimated cost of over $43,000 to respond to request did not justify refusal to provide identifiable records].
37. See *American Civil Liberties Union Foundation of Northern Cal. v. Deukmejian* (1982) 32 Cal.3d 440.) [where redaction of 100 crime-related index cards would be onerous and the value of the redacted records would be minimal, nondisclosure was justified].
38. §6253.9(b).
39. §6253(c).
40. §6253(c).
41. §6253(b).
42. §6253.
43. §6253(d).
44. *Bruce v. Gregory* (1967) 65 Cal.2d 666.
45. §6253.9(a).
46. §6253.9(a)(2).
47. §6253.9(b).
48. §6253.9(c).
49. §6253.9(e).
50. §6253.9(f).
51. §6254.9.
52. *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157.
53. See Assembly Bill (AB) 169 signed by the Governor on October 10, 2015.
54. §6253(b).
55. *County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301; *North County Parents Organization v. Department of Education* (1994) 23 Cal.App.4th 144.
56. §81008.
57. See Cal. Const., arts. XIIIC, XIIID.

58. §6253(b).
59. See § 54954.1 of the Brown Act authorizing payment of a fee for mailing a copy of an agenda or agenda packet not to exceed the cost of the service.
60. *Haynie v. Superior Court* (2001) 26 Cal.4th 1061.
61. §6253(a).
62. §6254(k).
63. §6255.
64. See Civil Code §1798 and following.
65. §6254.5.
66. §6254.
67. *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157.
68. §6254(a).
69. *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.
70. See Op.Cal.Atty.Gen. No. 05-1004 (2006).
71. *Citizens for a Better Environment v. Dept. of Food and Agriculture* (1985) 171 Cal.App.3d 704.
72. §6254(b).
73. *City of Los Angeles v. Superior Court* (1996) 41 Cal.App.4th 1083.
74. *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414.
75. *Board of Trustees of Cal. St. Univ. v. Superior Court* (2005) 132 Cal.App.4th 889.
76. §6254(c).
77. *Eskaton Monterey Hospital v. Myers* (1982) 134 Cal.App.3d 788.
78. *Braun v. City of Taft* (1984) 154 Cal.App.3d 332.
79. §6254(c) and Labor Code §1198.5.
80. *Versaci v. Superior Court* (2005) 127 Cal.App.4th 805.
81. §6254.8.
82. *Int'l Federation of Professional and Technical Engineers, Local 21 v. Superior Court* (2007) 42 Cal.4th 319.
83. See *Sonoma County Employees' Retirement Assn v. Superior Court* (2011) 198 Cal.App.4th 986; *Sacramento County Employees' Retirement System v. Superior Court* (2011) 195 Cal.App.4th 440; *San Diego County Employees Retirement Assn. v. Superior Court* (2011) 196 Cal.App.4th 1228.
84. *Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250; *Bakersfield City School Dist. V. Superior Court* (2004) 118 Cal.App.4th 1041.
85. §6254.21.
86. §6254(f).
87. *Rivero v. Superior Court* (1997) 54 Cal.App.4th 1048.
88. §6254(k).
89. See Health & Safety Code § 19851.
90. *Costco Wholesale Corporation v. Superior Court* (2009) 47 Cal.4th 725; *Clark v. Superior Court* (2011) 196 Cal.App.4th 37.
91. §6255.
92. *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.
93. *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469.
94. *California First Amend. Coalition v. Superior Court* (1998) 67 Cal.App.4th 159.

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95. *Michealis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065.
96. *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008.
97. *Eskaton Monterey Hospital v. Myers* (1982) 134 Cal.App.3d 788.
98. *Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59.
99. *Int'l Federation of Professional and Technical Engineers, Local 21 v. Superior Court* (2007) 42 Cal.4th 319.
100. *Bakersfield City School Dist. v. Superior Court* (2004) 118 Cal.App.4th 1041.
101. *California State University v. Superior Court* (2001) 90 Cal.App.4th 810.
102. *CBS Broadcasting Inc. v. Superior Court* (2001) 91 Cal.App.4th 892.
103. *New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579.
104. *Register Division of Freedom Newspapers v. County of Orange* (1984) 158 Cal.App.3d 893.
105. *Braun v. City of Taft* (1984) 154 Cal.App.3d 332.
106. *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762.
107. *Uribe v. Howie* (1971) 19 Cal.App.3d 194.
108. §6254(aa) and (ab).
109. §6254.4.
110. §6253.5.
111. §§6254(h); 7267.2(b).
112. §6254(i).
113. §§6254(k), 6255; Evid. Code, §§1040 & 1060; and Civ. Code §3426 and following.
114. §6254.16.
115. See *Masonite Corp. v. County of Mendocino Air Quality Management Dist.* (1996) 42 Cal.App.4th 436 [finding that the employee must have acted "within the scope of his or her…employment" for there to be a "waiver," and that the inadvertent release of information was outside the proper scope of the employee's duties].
116. §6258.
117. *Filarsky v. Superior Court (City of Manhattan Beach)* (2002) 28 Cal.4th 419.
118. §§6258 and 6259.
119. *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381.
120. *Motorola Communications and Electronics v. Department of General Services* (1997) 55 Cal.App.4th 1340.
121. *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385.
122. §6259.4.
123. *Crews v. Willows Unified School District* (2013) 217 Cal.App.4th 1368.
124. *Bertoli v. City of Sebastopol* (2015) 233 Cal. App.4th 353.

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