

KEY PROVISIONS OF THE PUBLIC RECORDS ACT

- All State and local agencies are covered by the California Public Records Act (“Act”). It is not applicable to the Legislature or the judicial branch. Federal government agencies are covered by the Federal Freedom of Information Act 5 U.S.C. 522.
- In enacting the statutes, the Legislature stated that access to information concerning the conduct of the public’s business is a fundamental and necessary right for every person of the State.
- The Legislature also recognized the constitutional right and fundamental interest in the right to privacy in crafting a number of exemptions to the Act.
- Disclosure exemptions are also provided to ensure the government’s interest in performing its assigned functions in a reasonably efficient manner (i.e. exemption for records relating to pending litigation or investigations).

What is a Public Record?

- Any writing containing information relating to the public’s business that is not otherwise exempt from disclosure
- Includes electronic mail, electronic records and data
- Does not include purely personal information
- Applies to records in existence at the time of the request; it does not require the agency to make a report, compile data, or answer questions
- To the extent reasonable, agencies are required to assist members of the public in identifying the records sought

“Public Records” include 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 the physical form or characteristics. 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 tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.”

The record must relate to the conduct of the public’s business. Personal documents that may be in the possession of a local agency are not necessarily “Public Records.” Government

Code section 6252(e); *Braun v. City of Taft* (1984) 154 Cal.App.3d 332; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762. A public agency cannot be required to seek records it does not prepare, own, use, or retain in the conduct of its business. Not included, for example, are documents prepared by a public entity's contractor that have never been transmitted to the county, have not been "prepared" by the public entity, and are not "retained" by the public entity, even though they may have been used by the public entity for public business. *Regents of University of California v. Superior Court* (2013) 222 Cal.App.4th 383.

To the extent reasonable, agencies are generally required to assist members of the public in making a focused and effective request for identifiable records. Government Code section 6253.1. Methods of assistance include describing the information technology and physical location where the record exists, providing suggestions for overcoming practical basis for denying access, helping to identify the records or information that are responsive (e.g. such as providing an index of records if one exists). *Ibid*.

Right to Inspect and Copy Public Records

- Records may be inspected at an agency during regular business hours without charge.
- Copies of records may be obtained for the direct cost of duplication.
- If an agency must extract information from an electronic record or undertake programming, requestor must bear full cost including data compilation, extraction, and programming.
- Agency generally has 10 days to make determination of whether disclosable (i.e. non-exempt) public records are sought and in the possession of the agency and to notify the requestor.
- 10-day period is for determination and response, not for production. Can be extended up to 14 days by written notice.
- Production of documents must occur within a reasonable time.

Government Code section 6253(c) provides that each agency shall, within 10 days from receipt of a request for a copy of records, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency, and shall promptly notify the person making the request of the determination and the reasons therefor. 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. If the 10th day falls on a weekend or holiday, the next business day is considered the deadline for responding to the request.

As defined in Section 6253(c)(1)-(4), the time limit may be extended by written notice by the head of the agency or designee to the requestor setting forth the reasons for the extension and the date on which a determination is expected to be sent.

The statute does not set forth the deadline for actual production of the requested documents. It simply states that copies of records must be provided “promptly.” Courts have allowed for the imposition of reasonable delays or restrictions on requests for voluminous or onerous requests. See *Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754.

The local agency may charge a statutory fee, if applicable, for duplication. Government Code sections 6253(b) and 81008. No payment may be required merely to inspect records where no copies are requested. An agency may require payment in advance before providing the requested copies. The local agency may charge a fee for the direct costs of duplicating a record when the requester is seeking a copy. Direct costs of duplication include costs of reproduction, and conceivably the cost of staff time expended in making a copy of the record. No fees may be charged to reimburse the local agency’s costs incurred to search for, review, or redact a record, assist a requestor, or respond to a request.

Contents of Agency Response

- If the records are not available with the response, the agency shall provide an estimated date that the records will be available as part of the response.
- When the agency withholds exempt records, the agency must notify the requester of the reasons for withholding.
- Agency need not list each withheld record and the reasons therefore.

Upon a request for public records, the public agency is only obligated to state whether the requested records are exempt from public disclosure and to briefly summarize any factual circumstances surrounding the exempted records. A local agency must make a reasonable effort to search for and locate the requested records, but is not required to perform a “needle in a haystack” search or a search that will produce a “huge volume” of material in response to a

request. *Cal. First Amend. Coalition v. Superior Court* (1998) 67 Cal.App.4th 159.

The Act does not require the public agency to create new records or answer interrogatory-style questions.

When an agency withholds a record because it is exempt from disclosure, the agency must notify the requester of the reasons for withholding the record. However, the agency is not required to provide a list identifying each record withheld and the specific justification for withholding the record. *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1074-1075.

Exemptions

- The Act contains exemptions from disclosure
- Other State and Federal statutes may prohibit disclosure

Under specified circumstances, the Act allows agencies a variety of discretionary exemptions which they may need to assert as a basis for withholding records from disclosure. These exemptions are enumerated within the Act and also include documents made confidential by other State and Federal statutes. There are literally hundreds of potential exemptions. The exemptions from disclosure may be permissive under the Act or mandatory pursuant to other statutes. Some may allow for non-disclosure but not prohibit disclosure.

Some of the more common exemptions under Section 6245 include:

Architectural and official building plans; attorney client communications and attorney work product; drafts; election information including voter registration information and initiative, recall and referendum petitions; certain law enforcement records, including complaints to or investigations conducted by local or state law enforcement agencies; mental health information, juvenile records, elder records and medical records covered under medical privacy laws, records covered under HIPAA; pending litigation; real estate appraisals and engineering evaluations; trade secrets and other proprietary information.

The Act also provides that where the public interest in nondisclosure outweighs interest in disclosure, the document may be withheld. Government Code section 6255.