

# THE CALIFORNIA PUBLIC RECORDS ACT (CPRA): A BRIEF OUTLINE AND GUIDE TO RESPONDING TO PUBLIC RECORD REQUESTS

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## OVERVIEW

- The law is found at California Government Code sections 6250-6276.48.
- The law is California's version of the federal Freedom of Information Act.
- The purpose of the statute is to permit "Sunshine in Government," that is, to permit the public access to records to see how government works.

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## CONSTITUTIONAL PROTECTION

- Although the statute has been around for some time, the electorate continues to support the policy of public disclosure.
- In November 2004, the State Constitution was amended by an overwhelming vote in favor of an initiative (Proposition 59), which amended Article I, Section 3(a) of the California Constitution. This declared state policy as follows:

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

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## BASIC MANDATE

- State and local government agencies must permit members of the public to inspect or receive copies of documents the agencies use, create or keep to conduct governmental business.
- A member of the public may inspect or obtain a copy of a public record.
- The statute sets out strict time lines and procedures for a government agencies' response.
- Access to the record must be given UNLESS the record is "exempt from public disclosure."

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## EXEMPTIONS

- Exemptions are set forth in the statute, and in other statutory schemes as well as the California Constitution. In some instances, courts have created exemptions based upon existing California law.
- The underlying theory of an exemption is that there has been a public policy determination that in some cases, the public's interest will be better served by keeping certain public records or material contained therein confidential from the public.

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## BASICS OF RESPONSE TO A PRA REQUEST

- Comply with statutory timelines and procedures for response.
- Determine what records are requested and then **identify all responsive records.**
- Take appropriate steps **NOT** to disclose two types of material that are exempt from disclosure:
  1. Information the County or agency is forbidden to disclose.
  2. Information the County or agency has the option of disclosing or not disclosing, but which the County, as a matter of its own policy, elects not to disclose.

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## PROCEDURE

- **Identify the form of the request:** Unless the request is made pursuant to a specific statute or other legal right, treat a request as a CPRA request.
  - Request may be oral or in writing. Always ask a person who is making a complicated request to put it in writing!
- **If request unclear, County employee must assist the requester.** This permits the requester to "make a focused and effective request that reasonably describes an identifiable record or records." Gov't Code § 6253.1

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## PROCEDURE (cont.)

- **Once the request is clarified, then the response to the request should specify the scope given the request.**  
(This avoids any misunderstanding as to what was undertaken to comply with the request.)
- **Identify ALL responsive records, even those that may be exempt from disclosure.**
- **Copy all records.** It is recommended that you make two sets.



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## PROCEDURE (cont.)

- **Do you want to keep documents confidential? Do you care about disclosure?**  
If the answer is no, and there is no prohibition otherwise, then disclose.
- **If you are required to keep certain information confidential, then delete this material or redact.** (See below.)



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## PROCEDURE (cont.)

- **If you choose to keep certain information confidential, then delete or redact the material.**
  - Consult legal counsel as needed.
  - Be sure someone with the required expertise reviews the responsive records to determine if all or parts of them are exempt from disclosure.



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## PROCEDURE

### EXEMPTIONS FIT INTO TWO CLASSES:

1. **Categorical exemptions:** Require or permit the County or agency to deny public access to entire records or categories of records. (Sheriff criminal investigative file.)



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## PROCEDURE

2. **Non-categorical exemptions:** These require County or agency officials to only delete specified exempt material from public records and require disclosure of the balance of the records. Gov't Code § 6253(a). The basic principle here is that the County or agency may delete only as much material as necessary to keep the exempt material confidential.

**Usually, the client knows the statute (if any) that governs the records involved.**

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## TIME FOR RESPONSE

1. You must respond "promptly" and no later than 10 calendar days after receipt. Gov't Code § 6253 (c)

**Exception:** The time for response may be extended (by the County or responding agency) up to 14 additional days, if:

- The responsive records are voluminous;
- It is necessary to search for responsive records in other locations, or
- A determination of the response requires consultation with other interested parties, or
- Responding to the request requires programming a computer to extract requested material. Gov't Code § 6253(c).

2. The head of the agency, or designee must sign notice.

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## CONTENTS AND FORM OF RESPONSE

- Advise requester whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the public agency.
- Whether the agency will comply with the request.
- If not, the reasons the request will be denied in whole or in part.
  - **Claims of exemption are usually made in the response.**

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## CONTENTS AND FORM OF RESPONSE (cont.)

- If records will be produced, the estimated time and date the records will be available. Gov't Code § 6253(c).
- If denial based upon the §6255 "catch-all" exemption, the names and titles of personnel making this determination must be set forth.
- Should be in writing (good record for litigation)

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## CONTENTS AND FORM OF RESPONSE (cont.)

- If request in writing, response must be in writing. §6255(b).
- Remember, response does **NOT** have to contain copies of responsive documents, or an offer to make them available within 10 days if not practicable to do so. The agency has a reasonable time after the response to produce the records. *Motorola Communications & Electronics. v. Dept. of General Svcs.*, 55 Cal. App. 4th 1340, 1349 (1997).
- The response should advise the requester how to arrange to inspect or receive copies of the records, and the fee charged for the copies.

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## ELECTRONIC RECORDS – SPECIAL CONSIDERATIONS



- If the County keeps responsive records electronically, then the County must provide the records in electronic format, **IF:**
  - The requester asks that they be produced that way, and
  - It is feasible to do so, and
  - The requested electronic format is one the County uses to produce copies of or store records.

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## ELECTRONIC RECORDS – SPECIAL CONSIDERATIONS (cont.)



- If electronic records requested in paper format, they must be produced in paper format.
- Also note that if production of the records requires data compilation, extraction or programming, the County is required to produce the records **ONLY** if the requester pays the cost of programming and other necessary computer services.

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## WHAT ARE PUBLIC RECORDS COVERED BY THE ACT?

- The definition of records is broad, under Gov't Code § 6252(e). They 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 physical form or characteristics."



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## WHAT ARE PUBLIC RECORDS COVERED BY THE ACT? (cont.)

- The definition is made broader by the statutory definition of the term "writing" at § 6252(e). "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 combination thereof, and any record thereby created, regardless of the manner in which the record has been stored." § 6252(g).

**This specifically includes e-mail and data stored electronically.**

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## RECORDS THAT ARE NOT PUBLIC RECORDS

- Court records - §§ 6252(a) and 6260.
- Computer **software** (as opposed to data) including computer mapping systems, computer programs, and computer graphic systems, developed by a public agency. §§ 6254.9 (a) and (b).



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## RECORDS THAT ARE NOT PUBLIC RECORDS (cont.)

- Purely personal information unrelated to the conduct of the public's business.
  - *San Gabriel Tribune v. Superior Court*, 143 Cal. App. 3d 762 (1983) (Record may be unrelated to public business.)
  - *Cal State Univ. v. Superior Court*, 90 Cal. App. 4th 810, 825 (2001) (Mere custody of a record does not make it a public record.)

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## BACK TO EXEMPTIONS

- Section 6254(k) brings into the California Public Records Act all other bases for exemption found outside the CPRA.
- Use 6254(k) to claim exemptions based upon the state constitutional right of privacy (Article 1, § 1) of the California Constitution. (Identities of witnesses to crimes, home addresses of police officers.)

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## BACK TO EXEMPTIONS (cont.)

- Use 6254(k) to claim exemptions under Evidence Code section 1040 – when the County acquired information in confidence and has not disclosed it, and the necessity for preserving the confidentiality of the information outweighs the necessity for disclosure.
  - This is applicable when disclosure would inhibit others from candidly providing similar information to County in the future.
    - Noise complaints from neighbors.
    - Complaints about treatment of animals in the neighborhood.
    - Criminal informants.

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## CATCH ALL EXEMPTION

- Gov't Code § 6255 applies whenever the public interest in non-disclosure clearly outweighs the public interest in disclosure.
- "(a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.
- (b) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing."

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## CATCH ALL EXEMPTION (cont.)

- An agency may withhold records that would not be exempt under any other provisions in the CPRA.
- The catch all enables the County to argue an unlimited array of public policy reasons for non-disclosure. If County personnel can foresee harm from disclosure, even if the harm is not addressed in the statute, the requested records or other material may be exempt from disclosure under § 6255.
- Note:** Fear of embarrassment or public shame is not sufficient.

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## WAIVER

- Be careful when disclosing, since usually, disclosure of exempt material to a member of the public will require disclosure to any other member who asks for it. § 6254.5. In the case of a permissive exemption, (County may, but is not required to disclose), be sure to make the determination based upon whether **any** member of the public should obtain the material.
- An exception is a contract between two governmental entities with an exchange of confidential information.

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## REVIEW: QUICK ANALYSIS

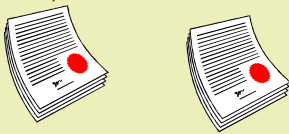
- Is the request for public records clear? If not, you may have to assist.
- If so, is the request for a public record? If yes,
- Identify all responsive records, even those which may be exempt from disclosure.



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## REVIEW: QUICK ANALYSIS (cont.)

- Copy all records. One set becomes the "original" and may be viewed by the court in the event of litigation. One set may be redacted. This redacted set should be copied. One set is retained; one set is given to or viewed by, the requester. (A copy of the redacted copy, so none of the print which is blacked out can be seen.)



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## REVIEW: QUICK ANALYSIS (cont.)

- Is there a statutory mandate or prohibition on disclosure? You cannot disclose. This is a mandatory exemption, which prohibits the County from disclosing the exempt material to the public, and requires deletion of any exempt material from any copies of records that are disclosed.

### Examples:

- Police officer personnel files
- Medical files
- HIV/AIDS information
- Welfare Records

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## REVIEW: QUICK ANALYSIS (cont.)

- Is there a permissive exemption available, which “permits” but does not require, the County to delete exempt material before disclosing copies of records?
- Do you wish to disclose? If so, you can.
- Do you wish not to disclose? You can invoke exemption and not disclose.
- If there is no exemption but you wish not to disclose, use § 6255.

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## QUESTIONS?



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