Hearing Date: May 26, 2011

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ITEM 5

TEST CLAIM

DRAFT STAFF ANALYSIS

Government Code Sections 6252, 6253, 6253.1, 6253.5, 6253.9, 6254.3, 6255, and 6259

Statutes of 1975, Chapters 678 and 1246; Statutes of 1977, Chapter 556;
Statutes of 1980, Chapter 535; Statutes of 1982, Chapter 163;
Statutes of 1984, Chapters 802 and 1657; Statutes of 1985, Chapter 1053;
Statutes of 1990, Chapter 908; Statutes of 1992, Chapters 463 and 970;
Statutes of 1993, Chapter 926; Statutes of 1994, Chapter 923; Statutes of 1998, Chapter 620;
Statutes of 1999, Chapter 83; Statutes 2000, Chapter 982; Statutes 2001, Chapter 355; and
Statutes 2002, Chapters 945 and 1073

California Public Records Act

02-TC-10 and 02-TC-51

County of Los Angeles and
Riverside Unified School District, Co-Claimant

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- *Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208
- *In re Dapper* (1969) 71 Cal.2d 184
- *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381
- *Nor Cal. Police Practices* (1979) 90 Cal.App.3d 116
- *North County Parents Organization v. Dept. of Education* (4th. Dist. 1994) 23 Cal.App.4th 144
- *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762

State Statutes:

- Former Government Code section 6252 (Stats. 1970, ch. 575)
- Former Government Code sections 6250-6260 (Stats. 1968, ch.1473)

Other:

- Assembly Committee on Governmental Organization, third reading analysis of AB 2799 (1999-2000 Regular Session) as amended July 6, 2000
- Ballot Pamphlet, General Election (November 2, 2004) Proposition 59 at <http://library.uchastings.edu/cgi-bin/starfinder/26556/calprop.txt> [as of March 21, 2011]
- Black's Law Dictionary (Seventh Ed. 1999) p. 337
- Senate Rules Committee, Office of Senate Floor Analyses, third reading analysis of Assembly Bill number 2799 (1999-2000 Regular Session) as amended July 6, 2000

Exhibit A

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY
AUDITOR-CONTROLLER

October 10, 2002

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Higashi:

County of Los Angeles Test Claim
Chapter 355, Statutes of 2001, Adding Section 6253.1 & Amending Section 6253 of the Government Code; Chapter 982, Statutes of 2000, Adding Section 6253.9 & Amending Sections 6253 and 6255 of the Government Code; Chapter 945, Statutes of 2002 & Chapter 1073, Statutes of 2002 [Both] Amending Section 6252 of the Government Code
California Public Records Act: Disclosure Procedures

We submit and enclose herein the subject test claim.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

for J. Tyler McCauley
Auditor-Controller

JTM:JN:LK
Enclosures

County of Los Angeles Test Claim

Chapter 355, Statutes of 2001, Adding Section 6253.1 & Amending Section 6253 of the Government Code; Chapter 982, Statutes of 2000, Adding Section 6253.9 & Amending Sections 6253 and 6255 of the Government Code; Chapter 945, Statutes of 2002 & Chapter 1073, Statutes of 2002 [Both] Amending Section 6252 of the Government Code

California Public Records Act: Disclosure Procedures

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916)323-3562
CSM 1 (12/89)

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OCT 1[illegible] 2002
COMMISSION ON STATE MANDATES

TEST CLAIM FORM

Claim No. 02-TC-10

Local Agency or School District Submitting Claim

Los Angeles County

Contact Person	**Telephone No.**
Leonard Kaye	(213) 974-8564

Address
500 West Temple Street, Room 603
Los Angeles, CA 90012

Representative Organization to be Notified

California State Association of Counties

This test claim alleges the existence of " costs mandated by the state" within the meaning of section 17514 of the Government Code and section 6, article, XIIIB of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

See page a

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative	**Telephone No.**
J. Tyler McCauley Auditor-Controller	(213) 974-8301
Signature of Authorized Representative	**Date**
Marcia Quan for J. Tyler McCauley	October 10, 2002

Page b

County of Los Angeles Test Claim
Chapter 355, Statutes of 2001, Adding Section 6253.1 & Amending Section 6253 of the Government Code; Chapter 982, Statutes of 2000, Adding Section 6253.9 & Amending Sections 6253 and 6255 of the Government Code; Chapter 945, Statutes of 2002 & Chapter 1073, Statutes of 2002 [Both] Amending Section 6252 of the Government Code
California Public Records Act: Disclosure Procedures

Notice of Filing

The County of Los Angeles filed the referenced test claim on October 11, 2002 with the Commission on State Mandates of the State of California at the Commission's Office, 980 Ninth Street, Suite 300, Sacramento, California 95814.

Los Angeles County does herein claim full and prompt payment from the State in implementing the State-mandated local program found in the subject law.

County of Los Angeles Test Claim
Chapter 355, Statutes of 2001, Adding Section 6253.1 & Amending Section 6253 of the Government Code; Chapter 982, Statutes of 2000, Adding Section 6253.9 & Amending Sections 6253 and 6255 of the Government Code; Chapter 945, Statutes of 2002 & Chapter 1073, Statutes of 2002 [Both] Amending Section 6252 of the Government Code
California Public Records Act: Disclosure Procedures

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California Public Records Act: Disclosure Procedures

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5.	Chapter 355, Statutes of 2001	Tab E, pages 1-4
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County of Los Angeles Test Claim Brief
Chapter 355, Statutes of 2001, Adding Section 6253.1 & Amending Section 6253 of the Government Code; Chapter 982, Statutes of 2000, Adding Section 6253.9 & Amending Sections 6253 and 6255 of the Government Code; Chapter 945, Statutes of 2002 & Chapter 1073, Statutes of 2002 [Both] Amending Section 6252 of the Government Code
California Public Records Act: Disclosure Procedures

Los Angeles County [County] herein claims that it has incurred reimbursable 'costs mandated by the State', as defined in Government Code Section 17514, in implementing new public record disclosure services pursuant to Chapter 355, Statutes of 2001, adding Section 6253.1 and amending Section 6253 of the Government Code; Chapter 982, Statutes of 2000, adding Section 6253.9 and amending Sections 6253 and 6255 of the Government Code; Chapter 945, Statutes of 2002 and Chapter 1073, Statutes of 2002 [both] amending Section 6252 of the Government Code [the test claim legislation[1]].

Chapter 945, Statutes of 2002 and Chapter 1073, Statutes of 2002 [both] amending Section 6252 of the Government Code are included in the test claim legislation. Section 6252 provides definitions of key California Public Record Act terms, useful in ascertaining the scope of work imposed by the requirements of the test claim legislation as detailed herein.

Section 6253.1 Services

Government Code Section 6253.1, as added by Chapter 355, Statutes of 2001, requires the County to provide new public record disclosure services, not required under prior law, as follows:

> " (a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do all of the following, to the extent reasonable under the circumstances:

[1] The statutes referenced in the test claim legislation are attached in Tab E.

(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, if stated.

(2) Describe the information technology and physical location in which the records exist.

(3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

(b) The requirements of paragraph (1) of subdivision (a) shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records.

(c) The requirements of subdivision (a) are in addition to any action required of a public agency by Section 6253. " [Emphasis added.]

Government Code Section 6253.1(d), as added by Chapter 355, Statutes of 2001, limits the scope of the new Section 6253.1 public record disclosure services as follows:

"(d) This section shall not apply to a request for public records if any of the following applies:

(1) The public agency makes available the requested records pursuant to Section 6253.

(2) The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Section 6254.

(3) The public agency makes available an index of its records."

It should be noted that the new public record services claimed herein are not services excluded in Section 6253.1(d).

Therefore, new Section 6253.1 services mandate that the County assist members of the public to make a focused and effective request that reasonably describes an identifiable record or records.

Section 6253 Services

Section 6253 of the Government Code, as amended by Chapter 355, Statutes of 2001, mandates that:

> "(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.
>
> (b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.
>
> (c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, 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. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency 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 dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter." [Emphasis added.]

Government Code Section 6253(c) as amended by Chapter 355, Statutes of 2001, [above] requires that "[w]then the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available" and that this duty was not required under prior law [Section 6253(c) as amended by Chapter 982, Statutes of 2000].

Government Code Section 6253(b) as amended by Chapter 982, Statutes of 2000, [and not changed in Chapter 355, Statutes of 2001], requires that "... each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available..." and deleted the less costly qualification under prior law [Government Code Section 6253(b) as added by Chapter 620, Statutes of 1998]

that "... computer data shall be provided in a form determined by the agency...".

It should be noted that Section 6253(b) of the Government Code [cited above] prohibits the County from charging public record requesters for any costs, except for the direct cost of duplication, or a statutory fee if applicable. Accordingly, the County's fee authority is insufficient to recover the costs claimed herein.

Section 6255 Services

Chapter 982, Statutes of 2000, added Section 6255(b) of the Government Code, to require that:

> " 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".

Under prior law, Section 6255 as added by Chapter 1473, Statutes of 1968, required only that:

> "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 making the record public clearly outweighs the public interest served by disclosure of the record."

Prior law, Section 6255 as added by Chapter 1473, Statutes of 1968 [above] required none of the "determination", "response", or response "in writing" duties found in Section 6255(b), added by Chapter 982, Statutes of 2000. Such Section 6255(b) duties are new.

In this regard, the Legislative Counsel, in its Digest to Chapter 982, Statutes of 2000[2], notes, on page 2, that:

> "This bill would require a response to a written request for public records that includes a denial of the request in whole or in part to be in writing. By imposing this new duty on local public officials, the bill would create a state-mandated local program."

[2] See page 6 in Tab E.

Accordingly, Section 6255(b) duties are new and comprise a "state-mandated local program".

Section 6253.9 Services

Regarding disclosing pubic records in electronic format, Chapter 982, Statutes of 2000, added Section 6253.9 of the Government Code, to require that:

> "(a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:
>
> (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. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.
>
> (b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:
>
> (1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.
>
> (2) The request would require data compilation, extraction, or programming to produce the record.

(c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

(d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.

(e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute." [Emphasis added.]

Section 6253.9(a) and Section 6253.9(b) of the Government Code [cited above] prohibit the County from charging public electronic record requesters for any costs, except for the direct cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record. Therefore, the County's fee authority is insufficient to recover costs necessary to provide new Section 6253.9 public record services.

In addition, regarding new Section 6253.9 duties, the Legislature, in the Concurrence in Senate Amendments Report on AB 2799, as amended on July 6, 2000, on page 2[3], found "... [p]otential costs to various agencies that currently make and sell copies of public records documents for workload in redacting nondisclosable electronic records from disclosable electronic records".

Accordingly, the County incurs various types of costs in performing new duties as claimed herein and has insufficient fee authority to recover those costs.

[3] See page 18 in Tab E.

Section 6252 Definitions

Section 6252 of the Government Code, as amended by both Chapter 945, Statutes of 2002 and Chapter 1073, Statutes of 2002, provide definitions pertinent to implementing the test claim legislation as follows:

> "(a) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.
>
> (b) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.
>
> (c) "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.
>
> (d) "Public agency" means any state or local agency.
>
> (e) "Public records" includes 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. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.
>
> (f) "Writing" means <u>any</u> handwriting, typewriting, printing, photostating, photographing, <u>photocopying, transmitting by electronic mail or facsimile</u>, 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 thereof, and <u>any record thereby created, regardless of the manner in which the record has been stored</u>.
>
> (g) "Member of the public" means any person, except 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." [Emphasis added.]

Section 6252(f) [above] clarifies prior legislation [Section 62529(f) as amended by Chapter 620, Statutes of 1998] and explicitly states that 'writings' subject to the California Public Records Act also include "... photocopying, transmitting by electronic mail or facsimile ..." and also applies to "... any record thereby created, regardless of the manner in which the record has been stored".

Accordingly, new public record disclosure services claimed herein also include "... photocopying, transmitting by electronic mail or facsimile ..." activities and also apply to "... any record thereby created, regardless of the manner in which the record has been stored".

Legislative Intent

The Legislative Counsel, in its Digest to Chapter 355, Statutes of 2001[4], illustrates the Legislature's intent to provide the public with additional public record disclosure services:

> "This bill would require, when a member of the public requests to inspect or to obtain a copy of a public record, that, in order to assist the individual to make a focused and effective request that reasonably describes an identifiable record, the agency shall assist the member of the public to identify records and information that may be responsive to a request, describe the information technology and physical location in which the records exist, and provide suggestions for overcoming any practical basis for denying access to the records or information sought. The bill would specify that these requirements to assist a member of the public do not apply if the agency makes available the requested records, determines that the request should be denied based solely on an express exemption listed in the act, or makes available an index of its records.
>
> The act provides that, upon a request for a copy of records, an agency has 10 days to determine whether the request seeks disclosable public records and to notify the requester of this

[4] See pages 1-2 in Tab E.

determination and the reasons therefor. The act further provides that, in unusual circumstances, as defined, the agency may extend this time limit by written notice, which shall specify the reasons for the extension and the date on which a determination is expected to be dispatched.

This bill would require that, when the agency dispatches the determination of whether the request seeks disclosable public records, it state the estimated date and time when the records will be made available."

The Legislative Counsel then concludes that " ... [b]y imposing [the above] additional duties and responsibilities upon local agencies in connection with requests for inspection of records, this bill constitutes a state-mandated local program".

Further, the Legislature itself, in Section 4 of Chapter 355, Statutes of 2001[5], provides for reimbursement as follows:

"Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund."

Also, the Assembly Committee on Appropriations Report on Assembly Bill [AB] 1014 [Chapter 355, Statutes of 2001] for the May 23, 2001 hearing, indicates, on page one[6], "yes" to the measure as creating "State Mandated Local Program" and "yes" to the measure as creating a "Reimbursable" "State Mandated Local Program". The Assembly report summarizes duties imposed upon local government by AB 1014 and states, on page 1, that this measure:

[5] See page 4 in Tab E.

[6] See page 15 in Tab E.

"1) Requires public agencies, when requested to provide public records, to assist the public in making an effective request by:

a) Identifying records and information that may be responsive to the request.

b) Describing the information technology, environment, or physical location in which the records exist.

c) Providing suggestions for overcoming any practical basis for denying access to the records or information sought.

2) Requires agencies to state the estimated date and time when requested public records will be made available. "

Further, the Assembly Committee on Appropriations Report on Assembly Bill [AB] 1014 [Chapter 355, Statutes of 2001] for the May 23, 2001 hearing, indicates, on page 1[7], under "FISCAL EFFECT" that the measure imposes "Minor absorbable costs for public entities to comply with the above requirements."

However, these public record disclosure costs as claimed herein, are not "minor" nor "absorbable". Regardless of how important a new State-mandated public service is, the State can not require the County to absorb such costs or redirect its efforts.

Redirected Effort is Prohibited

The test claim legislation imposed new duties on the County, as discussed above, and the County's funds were redirected to pay for the State's program.

The State has not been allowed to circumvent restrictions on shifting its burden to localities by directing them to shift their efforts to comply with State mandates however noble they may be.

This prohibition of substituting the work agenda of the state for that of local government, without compensation, has been found by many in the California

[7] See page 15 in Tab E.

Constitution. On December 13, 1988, Elizabeth G. Hill, Legislative Analyst, Joint Legislative (California) Budget Committee wrote to Jesse Huff, Commission on State Mandates and indicated, on page 6[8], that the State may not redirect local governments' effort to avoid reimbursement of local costs mandated by the State:

> "Article XIII B, Section 6 of the State Constitution requires the state to reimburse local entities for new programs and higher levels of service. It does not require counties to reduce services in one area to pay for a higher level of service in another."

Therefore, reimbursement for the subject program is required as claimed herein.

State Funding Disclaimers Are Not Applicable

There are seven disclaimers specified in Government Code Section 17556 which could serve to bar recovery of "costs mandated by the State", as defined in Government Code Section 17514. These seven disclaimers do not apply to the instant claim, as shown, in seriatim, for pertinent sections of Government Code Section 17556.

(a) "The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the Program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency to implement a given program shall constitute a request within the meaning of this paragraph."

(a) is not applicable as the subject law was not requested by the County claimant or any local agency or school district.

[8] See page 6 in Tab F.

(b) "The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts."

(b) is not applicable because the subject law did not affirm what had been declared existing law or regulation by action of the courts.

(c) "The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation."

(c) is not applicable as no federal law or regulation is implemented in the subject law.

(d) "The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service."

(d) is not applicable because the subject law did not provide or include sufficient authority to levy service charges, fees, or assessments as previously discussed herein.

(e) "The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate."

(e) is not applicable as no offsetting savings are provided in the subject law and no revenue to fund the subject law was provided by the legislature.

(f) "The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election."

(f) is not applicable as the duties imposed in the subject law were not included in a ballot measure.

(g) "The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

(g) is not applicable as the subject law did not create or eliminate a crime or infraction and did not change that portion of the statute not relating directly to the penalty enforcement of the crime or infraction.

Therefore, the above seven disclaimers will not bar local governments' reimbursement of its costs in implementing the requirements set forth in the captioned test claim legislation as these disclaimers are all not applicable to the subject claim.

Costs Mandated by the State

The County has incurred costs in complying with the test claim legislation[9]. The County's costs in performing new duties under the test claim legislation, as illustrated in the attached declarations hereto, are reimbursable "costs mandated by the State" under Section 6 of Article XIII B of the California Constitution and Section 17500 et seq of the Government Code.

The County was required to provide a new State-mandated program and thus incur reimbursable "costs mandated by the State", as defined in Government Code section 17514:

" ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or

[9] See declarations in Tabs A, B, C, D.

after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

Accordingly, for the County's costs to be reimbursable "costs mandated by the State", three requirements must be met:

1. There are "increased costs which a local agency is required to incur after July 1, 1980"; and

2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975"; and

3. The costs are the result of "a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution".

All three of above requirements for finding cost mandated by the State are met:

First, local government is incurring costs in implementing the test claim legislation presently, in October 2002, well after July 1, 1980.

Second, the oldest statute that is included in the test claim legislation is Chapter 982, Statutes of 2000, enacted well after January 1, 1975.

Third, the test claim legislation, as detailed in the attached declarations, has imposed new duties on local government, not found in prior law.

Accordingly, "a new program or higher level of service" has been enacted in the test claim legislation.

Therefore, reimbursement of the County's "costs mandated by the State", incurred in implementing the test claim legislation, as claimed herein, is required.

"Public Records Act Manual"

A "Public Records Act Manual" prepared by the County's Office of the County Counsel, Sheriff's Department Legal Advisory Unit, is included herein, in Tab G, to illustrate the new types of services required under the test claim legislation.

Section 3 of the "Public Records Act Manual" includes "Sample Forms". For example, Form 6, found on page 27 of the manual, indicates that certain requested records are exempt or redacted. As previously discussed, Chapter 982, Statutes of 2000, added Section 6255(b) of the Government Code, to require that:

> "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".

Form 7, on pages 28-30 of the "Public Records Act Manual", illustrates the vast knowledge of exemptions and objections which is required to determine whether specific records are provided to the public. Certainly, training is reasonably necessary to perform this duty as is the need to "... promptly consult with County Counsel for advice...", as stated on the face of Form 7 .

In addition, the "Public Records Act Manual" provides detail on the scope of reimbursable costs. For example, on pages 5-6 of the Manual, the prohibition against charging public record requestors for "... ancillary tasks necessarily associated with the retrieval, inspection and handling of the file from which the copy is extracted" is explained.

Also of importance here, is the instruction to County staff, on page 13 of the "Public Records Act Manual", to "... remember to log in your time accurately for assisting the requestor..." as the County "... may be entitled to seek reimbursement from the state for providing this additional assistance to the public, per SB90". And so, this claim is submitted.

In conclusion, prompt payment for the new California Public Records Act disclosure services provided by the County, as claimed herein, is required.

County of Los Angeles Test Claim

Chapter 355, Statutes of 2001, Adding Section 6253.1

And Amending Section 6253 of the Government Code

California Public Records Act: Disclosure Procedures

Declaration of Richard L. Castro

Richard L. Castro makes the following declaration and statement under oath:

I, Richard L. Castro, Commander, Training Division Headquarters of the Los Angeles County Sheriff's Department, am responsible for implementing the subject law.

I declare that the Los Angeles County Sheriff's Department provides new services to assist members of the public regarding requests to inspect, or obtain a copy of, a public record pursuant to Chapter 355, Statutes of 2001, adding Section 6253.1 and amending Section 6253 of the Government Code [the test claim legislation], not required under prior law.

I declare that the public record disclosure requirements imposed on the County include new mandatory public services described in Section 6253.1 as follows:

(a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do 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, if stated.

(2) Describe the information technology and physical location in which the records exist.

(3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

b) The requirements of paragraph (1) of subdivision (a), shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requestor that will help identify the record or records.

c) The requirements of subdivision (a) are in addition to any action required of a public agency by Section 6253.

I declare that the public record disclosure requirements imposed on the County include new mandatory public services described in Section 6253(c) as follows: "... When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available."

I declare that Section 6253.1(d) provides that:

d) This section shall not apply to a request for public records if any of the following applies:

(1) The public agency makes available the requested records pursuant to Section 6253.

(2) The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Section 6254.

(3) The public agency makes available an index of its records."

I declare that it is my information or belief that the new public record services claimed herein are not services identified in Section 6253.1(d).

I declare that it is my information or belief the new public record duties imposed on the County, as detailed on the attached list, are reasonably necessary in complying with the test claim legislation.

I declare that it is my information or belief that the County's public record service

costs claimed herein are well in excess of $1,000 per annum, as detailed in an accompanying declaration by Captain Michael R. McDermott, Financial Services Bureau, Los Angeles County Sheriff's Department.

I declare that is my information or belief that the County's new State mandated duties and resulting costs in implementing the test claim legislation are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " Costs mandated by the State" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to matters which are stated as information and belief, and as to those matters I believe them to be true.

Richard Taslo
Signature

9/23/02 Monterey Park, CA
Date and Place

Attachment: Declaration of Richard L. Castro

Public Record Disclosure Duties

Chapter 355, Statutes of 2001, Adding Section 6253.1

And Amending Section 6253 of the Government Code

One-time Activities

1. Develop policies, protocols.
2. Conduct training on implementing test claim legislation.
3. Purchase computers to monitor and document public record service actions.
4. Purchase or develop data base software for tracking and processing Public Record Act requests.
5. Develop a Web Site for public record disclosure requests.

Continuing Activities

I. Staff time for:

A. Station or branch personnel.

1. Assistance in defining telephone, walk-in or written requests.
2. Writing and logging request.
3. Station-level research.
4. If availability known, notify requestor.
5. Indicate date/time available.
6. If availability not known, forward request to central unit.

B. Central Unit personnel.

1. Assistance in defining telephone, walk-in or written requests.
2. Writing and logging request.
3. Central Unit research.
4. If availability known, notify requestor.
5. Indicate date/time available.
6. If availability not known,

a. consult with specialized personnel

b. document findings

c. notify requestor of results.

C. County Counsel - legal services to implement and comply with the test claim legislation, including Govt Code 6253.1

II. Supplies and Materials

III. Contract Services – eg PC maintenance

IV. Travel

County of Los Angeles Test Claim
Chapter 355, Statutes of 2001, Adding Section 6253.1
And Amending Section 6253 of the Government Code
California Public Records Act: Disclosure Procedures

Declaration of Michael R. McDermott

Michael R. McDermott makes the following declaration and statement under oath:

I, Captain Michael R. McDermott, Financial Programs Bureau, Los Angeles County Sheriff's Department, am responsible for recovering County costs incurred in implementing new State-mandated service programs.

I declare that the County provides new services to assist members of the public regarding requests to inspect, or obtain a copy of a public record pursuant to Chapter 355, Statutes of 2001, adding Section 6253.1 and amending Section 6253 of the Government Code [the test claim legislation], not required under prior law.

I declare that the public record disclosure requirements imposed on the County include new mandatory public services described in Section 6253.1 as follows:

> (a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public makes a focused and effective request that reasonably describes an identifiable record or records, shall do 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, if stated.
>
> (2) Describe the information technology and physical location in which the records exist.
>
> (3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

> (b) The requirements of paragraph (1) of subdivision (a) shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records.
>
> (c) The requirements of subdivision (a) are in addition to any action required of a public agency by Section 6253.

I declare that the public record disclosure requirements imposed on the County include new mandatory public services described in Section 6253(c) as follows:

> ... When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available.

I declare that Section 6253.1(d) provides that:

> (d) This section shall not apply to a request for public records if any of the following applies:
>
> (1) The public agency makes available the requested records pursuant to Section 6253.
>
> (2) The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Section 6254.
>
> (3) The public agency makes available an index of its records.

I declare that it is my information or belief that the new public record services claimed herein are not services identified in Section 6253.1(d).

I declare that it is my information or belief that the new public record duties imposed on the County, as detailed in an accompanying declaration by Richard L. Castro, Commander, Training Division Headquarters of the County of Los Angeles Sheriff's Department, are reasonably necessary in complying with the test claim legislation.

I declare that it is my information or belief that the County's public record service costs, for performing activities detailed in the attached schedule and claimed herein, are well in excess of $1,000 per annum.

I declare that is my information or belief that the County's new State mandated duties and resulting costs in implementing the test claim legislation are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

I am personally conversant with the foregoing facts and if required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to matters which are stated as information and belief, and as to those matters I believe them to be true.

10/2/02
Date and Place
Monterey Park, California

Signature

-4-

Attachment: Declaration of Michael R. McDermott

One-time Activities

1. Develop policies, protocols.
2. Conduct training on implementing test claim legislation.
3. Purchase computers to monitor and document public record service actions.
4. Purchase or develop data base software for tracking and processing Public Record Act requests.
5. Develop a Web Site for public record disclosure requests.

Continuing Activities

I. Staff time for:

A. Station or branch personnel.
   1. Assistance in defining telephone, walk-in or written requests.
   2. Writing and logging request.
   3. Station-level research.
   4. If availability known, notify requestor.
   5. Indicate date/time available.
   6. If availability not known, forward request to central unit.

B. Central Unit personnel
   1. Assistance in defining telephone, walk-in or written requests.
   2. Writing and logging request.
   3. Central Unit research.
   4. If availability known, notify requestor.
   5. Indicate date/time available.
   6. If availability not known:
      a. consult with specialized personnel.
      b. document findings.
      c. notify requestor of results.

C. County Counsel – legal services to implement and comply with the test claim legislation, including Govt Code 6253.1

II. Supplies and Materials

III. Contract Services – eg PC maintenance

IV. Travel

(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. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.

(c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

(d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.

(e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute." [Emphasis added.]

I declare that it is my information or belief that Section 6253.9(a) and Section 6253.9(b) of the Government Code [cited above] prohibit the County from charging public electronic record requesters for any costs, except for the direct cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record.

I declare that Section 6253 of the Government Code, as amended by Chapter 355, Statutes of 2001, requires that:

"(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, 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. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency 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 dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks

disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter." [Emphasis added.]

I declare that it is my information or belief that Government Code Section 6253(c) as amended by Chapter 355, Statutes of 2001, requires that "[w]then the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available" and that this duty was not required under prior law [Section 6253(c) as amended by Chapter 982, Statutes of 2000].

I declare that it is my information or belief that Government Code Section 6253(b) as amended by Chapter 355, Statutes of 2001, requires that "... each state or local agency, upon a request for a copy of records that reasonably describes an

identifiable record or records, shall make the records promptly available..." and deleted the less costly qualification under prior law [Government Code Section 6253(b) as added by Chapter 620, Statutes of 1998] that "... computer data shall be provided in a form determined by the agency...".

I declare that it is my information or belief that Section 6253(b) of the Government Code [cited above] prohibits the County from charging public record requesters for any costs, except for the direct cost of duplication, or a statutory fee if applicable.

I declare that Government Code Section 6253.1, as added by Chapter 355, Statutes of 2001, requires the County to provide new public record disclosure services, not required under prior law, as follows:

> " (a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do 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, if stated.
>
> (2) Describe the information technology and physical location in which the records exist.
>
> (3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.
>
> (b) The requirements of paragraph (1) of subdivision (a) shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records.
>
> (c) The requirements of subdivision (a) are in addition to any action required of a public agency by Section 6253. " [Emphasis added.]

I declare that Government Code Section 6253.1(d), as added by Chapter 355, Statutes of 2001, provides that:

"(d) This section shall not apply to a request for public records if any of the following applies:

(1) The public agency makes available the requested records pursuant to Section 6253.

(2) The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Section 6254.

(3) The public agency makes available an index of its records."

I declare that it is my information or belief that the new public record services claimed herein are not services identified in Section 6253.1(d).

I declare that it is my information or belief that Government Code Section 6252, as amended by both Chapter 945, Statutes of 2002 and Chapter 1073, Statutes of 2002, provide definitions pertinent to implementing the test claim legislation as follows:

"(a) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

(c) "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.

(d) "Public agency" means any state or local agency.

(e) "Public records" includes 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. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(f) "Writing" means 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 thereof, and any record thereby created, regardless of the manner in which the record has been stored.

(g) "Member of the public" means any person, except 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." [Emphasis added.]

I declare that it is my information or belief that new mandated duties are imposed on the County under the test claim legislation, as described above.

I declare that it is my information or belief that County costs, incurred in implementing the test claim legislation, are well in excess of $1,000 per annum.

I declare that it is my information or belief that the fee authority provided the County, in Sections 6253(b), 6253.9(a) and 6253.9(b) of the Government Code, cited above, is insufficient to recover County costs incurred in order to implement the test claim legislation.

I declare that is my information or belief that the County's new State mandated duties and resulting costs in implementing the test claim legislation are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

"Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to matters which are stated as information and belief, and as to those matters I believe them to be true.

10/9/02 Los Angeles, CA

Date and Place

Signature

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY
AUDITOR-CONTROLLER

January 23, 2001

To: All Department and District Heads

From: J. Tyler McCauley
Auditor-Controller

Subject: **Public Records Act Requests - Electronic Format**

The purpose of this memo is to notify you of revisions to the Public Records Act, particularly related to data held in an electronic format.

Effective January 1, 2001, AB 2799 amending California Government Code Sections 6253 and 6255 and adding Section 6253.9 (Public Records Act), became law. The amendments and addition primarily deal with responding to requests under the Public Records Act where the information is held in an electronic format. The new law is detailed in Chapter 982 of the Statutes of 2000.

Requirements of New Law

Following are the principal requirements of the new law:

- States that nothing in the Public Records Act shall be construed to permit an agency to delay or obstruct the inspection or copying of public records.
- Deletes the requirement that computer data be provided only in a form determined by the agency.
- Requires an agency make information available in an electronic format, if requested, when that agency has that information in an electronic format that constitutes an identifiable public record, not otherwise exempt from disclosure.
- Requires the agency to make the information available in any electronic format in which it holds the information, but does not require release of a record in the electronic form in which it is held, if its release would jeopardize or compromise the security or integrity of the original record or any proprietary software in which it is maintained.

- Does not require agencies to reconstruct or construct a record in an electronic format if it never had or no longer has the information available in an electronic format.

- Does not permit an agency to make information available only in an electronic format. However, the requestor shall bear the cost of constructing a record in an electronic format and converting it to a printed format if that is how it is requested.

- Adds the need to compile data, write programming language or a computer program, or construct a computer report to extract the requested data to the list of "unusual circumstances" which may extend the prescribed time limit to respond to the person making the request.

Cost Recovery - Information in Electronic Format

The new law requires the requestor pay the cost of programming and computer services necessary to produce a record not otherwise readily produced as requested. For example, if a report is generated on a quarterly basis and the request is made between quarters, the requestor could either be given the last generated report or charged for a special run. If the record is prepared by a contractor or another County department, the Act allows for the requestor to be billed the total cost incurred by the providing department. **If the providing department prepares the record, the Act does not permit the inclusion of indirect expenses in calculating the fee.**

Cost Recovery - Non-Electronic Records

A charge for the actual cost of copying public records is required under Government Code Section 6257. Sales tax is not applicable unless the document being copied is in the nature of a manual or other publication or document of a type that might well be produced by non-governmental enterprises for sale. In such cases, the appropriate sales tax should be collected and reported to the Auditor-Controller. If you are unsure if the sales tax is applicable, you should contact the local office of the State Board of Equalization.

Based on a recent Countywide survey, the following rates are to be used to recover the County's cost of providing copies of public records when no other fee is established by statute:

$.03 per copy (legal or letter size)
$.75 per order handing fee (excludes retrieval and preparation time)

These rates include the cost of machine operator salary and employee benefits, paper and other supplies, and machine rental. **The Act does not permit inclusion of indirect expenses in calculating this fee.**

If your department's actual costs are significantly different from those shown above, you may develop your own rates. You should check with your assigned County Counsel if you receive a Public Records Act request that is too overly broad or complicated to determine if additional fees are applicable. If you wish to calculate your own rates, please call the Auditor-Controller Accounting Division Cost Unit for assistance and review your rate calculations.

Although not legally required, we recommend you keep a record of who requested information and what was provided, regardless of format. This will not only be of assistance in the case of litigation, but will document the number of requests received and resources devoted to responding to them.

Please call me if you have any questions.

JTM:PTM:JMS

c: David Janssen, Chief Administrative Officer
Lloyd W. Pellman, County Counsel
Halvor S. Melom, Principal Deputy County Counsel
Judy Hammond, Public Information Office

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY
AUDITOR-CONTROLLER

County of Los Angeles Test Claim
Chapter 355, Statutes of 2001, Adding Section 6253.1 & Amending Section 6253 of the Government Code; Chapter 982, Statutes of 2000, Adding Section 6253.9 & Amending Sections 6253 and 6255 of the Government Code; Chapter 945, Statutes of 2002 & Chapter 1073, Statutes of 2002 [Both] Amending Section 6252 of the Government Code
California Public Records Act: Disclosure Procedures

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, SB90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims, reviews of State agency comments, Commission staff analyses, and for proposing parameters and guidelines (Ps&Gs) and amendments thereto, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the subject test claim, attached hereto.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs as set forth in the subject test claim, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

10/9/02; Los Angeles, CA
Date and Place

Leonard Kaye
Signature

CALIFORNIA 2001 LEGISLATIVE SERVICE
2001 Portion of 2001-2002 Regular Session

Additions are indicated by <<+ Text +>>; deletions by <<- * * * ->>. Changes in tables are made but not highlighted.

CHAPTER 355
A.B. No. 1014
STATE AGENCIES--PUBLIC RECORDS--DISCLOSURE

AN ACT to amend Section 6253 of, and to add Section 6253.1 to, the Government Code, relating to public records.

[Filed with Secretary of State September 27, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1014, Papan. **California Public Records Act:** disclosure procedures.

(1) Existing law, the **California Public Records Act**, requires state and local agencies to make public records available upon receipt of a request that reasonably describes an identifiable record not otherwise exempt from disclosure, and upon payment of fees to cover costs.

This bill would require, when a member of the public requests to inspect or to obtain a copy of a public record, that, in order to assist the individual to make a focused and effective request that reasonably describes an identifiable record, the agency shall assist the member of the public to identify records and information that may be responsive to a request, describe the information technology and physical location in which the records exist, and provide suggestions for overcoming any practical basis for denying access to the records or information sought. The bill would specify that these requirements to assist a member of the public do not apply if the agency makes available the requested records, determines that the request should be denied based solely on an express exemption listed in the act, or makes available an index of its records.

The act provides that, upon a request for a copy of records, an agency has 10 days to determine whether the request seeks disclosable public records and to notify the requester of this determination and the reasons therefor. The act further provides that, in unusual circumstances, as defined, the agency may extend this time limit by written notice, which shall specify the reasons for the extension and the date on which a determination is expected to be dispatched.

This bill would require that, when the agency dispatches the determination of

whether the request seeks disclosable public records, it state the estimated date and time when the records will be made available.

By imposing additional duties and responsibilities upon local agencies in connection with requests for inspection of records, this bill constitutes a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that this act, which requires state and local agencies to assist in a specified manner members of the public in making requests for public records, will further the purposes of the California Public Records Act and will result in more efficient use of public resources.

SEC. 2. Section 6253 of the Government Code is amended to read:

<< CA GOVT § 6253 >>

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, 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. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency 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 dispatched. No notice shall specify a date that would result in an extension for more than 14 days. <<+When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available.+>> As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

SEC. 3. Section 6253.1 is added to the Government Code, to read:

<< CA GOVT § 6253.1 >>

6253.1. (a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do 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, if stated.

(2) Describe the information technology and physical location in which the records exist.

(3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

b) The requirements of paragraph (1) of subdivision (a) shall be deemed to have

been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records.

(c) The requirements of subdivision (a) are in addition to any action required of a public agency by Section 6253.

(d) This section shall not apply to a request for public records if any of the following applies:

(1) The public agency makes available the requested records pursuant to Section 6253.

(2) The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Section 6254.

(3) The public agency makes available an index of its records.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CA LEGIS 355 (2001)

END OF DOCUMENT

CALIFORNIA 2000 LEGISLATIVE SERVICE
2000 Portion of 1999-2000 Regular Session

Additions are indicated by <<+ Text +>>; deletions by <<- * * * ->>. Changes in tables are made but not highlighted.

CHAPTER 982
A.B. No. 2799
PUBLIC RECORDS--INSPECTION OR COPYING--DELAYS

AN ACT to amend Sections 6253 and 6255 of, and to add Section 6253.9 to, the Government Code, relating to public records.

[Filed with Secretary of State September 30, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2799, Shelley. Public records: disclosure.

(1) The California Public Records Act provides that any person may receive a copy of any identifiable public record from any state or local agency upon payment of fees covering direct costs of duplication or a statutory fee if applicable. The act provides that it shall not be construed to permit an agency to obstruct the inspection or copying of public records and requires any notification of denial of any request for records pursuant to the act to set forth the names and titles or positions of each person responsible for the denial. The act also requires computer data to be provided in a form determined by the agency.

This bill would provide that nothing in the act shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. This bill would delete the requirement that computer data be provided in a form determined by the agency and would require any agency that has information that constitutes an identifiable public record not otherwise exempt from disclosure that is in an electronic format to make that information available in an electronic format when requested by any person. The bill would require the agency to make the information available in any electronic format in which it holds the information, but would not require release of a record in the electronic form in which it is held if its release would jeopardize or compromise the security or integrity of the original record or any proprietary software in which it is maintained. Because these requirements would apply to local agencies as well as state agencies, this bill would impose a state-mandated local program.

Regarding payment of fees for records released in an electronic format, the bill would require that the requester bear the cost of programming and computer services necessary to produce a record not otherwise readily produced, as specified.

(2) The act requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the act or that, on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

This bill would require a response to a written request for public records that includes a denial of the request in whole or in part to be in writing. By imposing this new duty on local public officials, the bill would create a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commissionon State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 6253 of the Government Code is amended to read:

<< CA GOVT § 6253 >>

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.<<-* * *->>

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, 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. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency 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 dispatched. No notice shall specify a date that would result in an extension for more than 14 days. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

<<+(4) The need to compile data, to write **programming** language or a computer program, or to construct a computer report to extract data.+>>

(d) Nothing in this chapter shall be construed to permit an agency to <<+ delay or+>> obstruct the inspection or copying of **public records**. <<+ The+>> notification of denial of any request for records <<+required by Section 6255+>> shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

SEC. 2. Section 6253.9 is added to the Government Code, to read:

<< CA GOVT § 6253.9 >>

6253.9. (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(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. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of **programming** and computer services necessary to produce a copy of

the record when either of the following applies:

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require **data compilation,** extraction, or **programming** to produce the record.

(c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

(d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.

(e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

SEC. 3. Section 6255 of the Government Code is amended to read:

<< CA GOVT § 6255 >>

6255. <<+(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.+>>

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CALIFORNIA 2002 LEGISLATIVE SERVICE
2002 Portion of 2001-2002 Regular Session

Additions are indicated by text; deletions by ***. Changes in tables are made but not highlighted.

CHAPTER 1073
A.B. No. 2937
LOCAL AGENCIES--LIMITED LIABILITY COMPANIES--PUBLIC RECORDS

AN ACT to amend Sections 6252 and 54952 of the Government Code, relating to local agencies.

[Filed with Secretary of State September 29, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2937, Shelley. **Public records**: entities.

(1) The California **Public Records** Act establishes the right of every person to inspect and obtain copies of **public records** not exempt from disclosure from specified state and local agencies. The act defines local agency to include, among other things, specified nonprofit entities that are legislative bodies of a local agency for purposes of open meeting requirements.

This bill would delete nonprofit from this definition.

(2) The Ralph M. Brown Act generally requires that the meetings of legislative bodies of local agencies be conducted openly. The act defines legislative body as including, among other things, a board, commission, committee, or other multimember body that governs a private corporation or entity that either is created by the elected legislative body in order to exercise authority that may lawfully be delegated to it or receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency, as specified.

This bill would specifically include within the definition of legislative body a board, commission, committee, or other multimember body that governs a limited liability company, as specified.

This bill would incorporate additional changes in Section 6252 of the Government Code proposed by AB 1962 that would become operative if both bills are enacted and this bill is enacted last.

The people of the State of California do enact as follows:

SECTION 1. Section 6252 of the Government Code is amended to read:

<< CA GOVT § 6252 >>

6252. As used in this chapter:

(a) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

(c) "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.

(d) "Public agency" means any state or local agency.

(e) **"Public records"** includes 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. **"Public records"** in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(f) "Writing" means any **handwriting,** typewriting, printing, * * * photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, photostatic copies, magnetic or punched cards, discs, drums, and other documents.

(g) "Member of the public" means any person, except 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.

SEC. 1.5. Section 6252 of the Government Code is amended to read:

<< CA GOVT § 6252 >>

6252. As used in this chapter:

(a) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

(c) "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.

(d) "Public agency" means any state or local agency.

(e) **"Public records"** includes 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. **"Public records"** in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(f) "Writing" means any **handwriting,** typewriting, printing, photostating, photographing, photocopying,

transmitting by electronic mail or facsimile and every other means of recording upon any tangible future 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.

(g) "Member of the public" means any person, except 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.

SEC. 2. Section 54952 of the Government Code is amended to read:

<< CA GOVT § 54952 >>

54952. As used in this chapter, "legislative body" means:

(a) The governing body of a local agency or any other local body created by state or federal statute.

(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

(c)(1) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:

(A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity.

(B) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

(2) Notwithstanding subparagraph (B) of paragraph (1), no board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that receives funds from a local agency and, as of February 9, 1996, has a member of the legislative body of the local agency as a full voting member of the governing body of that private corporation, limited liability company, or other entity shall be relieved from the public meeting requirements of this chapter by virtue of a change in status of the full voting member to a nonvoting member.

(d) The lessee of any hospital the whole or part of which is first leased pursuant to subdivision (p) of Section 32121 of the Health and Safety Code after January 1, 1994, where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 6252 of the Government Code proposed by both this bill and AB 1962. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 6252 of the Government Code, and (3) this bill is enacted after AB 1962, in which case Section 1 of this bill shall not become operative.

CA LEGIS 1073 (2002)

END OF DOCUMENT

CALIFORNIA 2002 LEGISLATIVE SERVICE
2002 Portion of 2001-2002 Regular Session

Additions are indicated by [redacted]; deletions by
* * *. Changes in tables are made but not highlighted.

CHAPTER 945
A.B. No. 1962
PUBLIC RECORDS AND RECORDATION--INCLUSION OF ELECTRONIC COMMUNICATION--DEFINITION

AN ACT to amend Section 250 of the Evidence Code, and to amend Section 6252 of the Government Code, relating to electronic communication.

[Filed with Secretary of State September 27, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1962, Hollingsworth. Electronic communication.

Existing law relating to evidence in court actions and specified administrative proceedings defines evidence as including a writing, which is defined as handwriting, typewriting, printing, photostating, photographing, 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.

The California Public Records Act, which requires each state and local agency to make its records open to public inspection at all times during office hours, with specified exemptions, defines public records as including 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. The act defines a writing as handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

This bill would define writing under these provisions to mean 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. By expanding the scope of public records that local agencies are required to make available for public inspection, this bill would constitute a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the **Commission on State Mandates** determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

This bill would state that it is declaratory of existing law.

This bill would incorporate additional changes in Section 6252 of the Government Code proposed by AB 2937 that would become operative if both bills are enacted and this bill is enacted last.

The people of the State of California do enact as follows:

SECTION 1. Section 250 of the Evidence Code is amended to read:

<< CA EVID § 250 >>

250. "Writing" means 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.

SEC. 2. Section 6252 of the Government Code is amended to read:

<< CA GOVT § 6252 >>

6252. As used in this chapter:

(a) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or nonprofit entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

(c) "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.

(d) "Public agency" means any state or local agency.

(e) "Public records" includes 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. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(f) "Writing" means 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.

(g) "Member of the public" means any person, except 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.

SEC. 2.5. Section 6252 of the Government Code is amended to read:

<< CA GOVT § 6252 >>

6252. As used in this chapter:

(a) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

(c) "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.

(d) "Public agency" means any state or local agency.

(e) "Public records" includes 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. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(f) "Writing" means 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.

(g) "Member of the public" means any person, except 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.

SEC. 3. The Legislature finds and declares that the amendments to Section 250 of the Evidence Code and Section 6252 of the Government Code made by this act do not constitute a change in, but are declaratory of, existing law.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the **Commission** on **State Mandates** determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 5. Section 2.5 of this bill incorporates amendments to Section 6252 of the Government Code proposed by both this bill and AB 2937. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 6252 of the Government Code, and (3) this bill is enacted after AB 2937, in which case Section 2 of this bill shall not become operative.

CA LEGIS 945 (2002)

END OF DOCUMENT

Date of Hearing: May 23, 2001

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Carole Migden, Chairwoman

AB 1014 (Papan) - As Amended: May 1, 2001

Policy Committee: Governmental
Organization Vote: 15-0

Urgency: No
Yes Reimbursable: State Mandated Local Program: Yes

SUMMARY

This bill:

1) Requires public agencies, when requested to provide public records, to assist the public in making an effective request by:

   a) Identifying records and information that may be responsive to the request.

   b) Describing the information technology, environment, or physical location in which the records exist.

   c) Providing suggestions for overcoming any practical basis for denying access to the records or information sought.

2) Requires agencies to state the estimated date and time when requested public records will be made available.

FISCAL EFFECT

Minor absorbable costs for public entities to comply with the above requirements.

COMMENTS

Purpose . This bill is sponsored by the California Newspaper Publishers Association, which states that it is common for public agencies to deny requests for pubic records that should be disclosed. The sponsor claims this bill is necessary to fundamentally alter the relationship between public agencies and

the citizens that are served by them. The sponsor points to a Public Records' Act compliance report conducted by the Stockton Record which demonstrated that the public agencies it surveyed rejected, partially answered or left unanswered nearly half of all requests made under the act. The sponsor argues that this bill is intended to remove the barricades set up by public agencies to deny access to public records.

Analysis Prepared by : Chuck Nicol / APPR. / (916)319-2081

CONCURRENCE IN SENATE AMENDMENTS
AB 2799 (Shelley)
As Amended July 6, 2000
Majority vote

ASSEMBLY:	70-4	(May 25, 2000)	SENATE:	34-0	(August 25, 2000)		

Original Committee Reference: G.O.

SUMMARY : Revises various provisions in the Public Records Act (PRA) in order to make available public records, not otherwise exempt from disclosure, in an electronic format, if the information or record is kept in electronic format by a public agency. Requires that a response to a request for public records that includes a denial, in whole or in part, shall be in writing, and provides that PRA may not be construed to permit an agency to delay or obstruct inspection or copying of public records.

The Senate amendments provide that the cost of duplicating an electronic public record must be limited to the direct cost of producing a copy of a record in electronic format, except that the requestor must bear the cost of production if the public agency would have to produce the record at time when the record is not regularly scheduled to be available, or if the request would require data compilation or programming to produce the record.

EXISTING LAW :

1) Defines "public record" to 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.

2) Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to inspect any public record, except as specifically provided.

3) Requires state and local agencies to make an exact copy of a public record available to any person upon payment of fees

covering direct costs of duplication.

4) Requires that computer data be provided in a form determined by the agency.

AS PASSED THE ASSEMBLY , this bill deleted the requirement that public records kept on computer be disclosed in a form determined by the public agency. This bill required a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to specified guidelines. This bill additionally required an agency that denies a request for inspection or copies of public records to justify its withholding in writing when the request for public records was in writing.

FISCAL EFFECT :

1) Assuming that agencies generally respond in writing when denying a public records request, there should be negligible fiscal impact.

2) Potential costs to various agencies that currently make and sell copies of public records documents for workload in redacting nondisclosable electronic records from disclosable electronic records.

COMMENTS : PRA permits a state or local agency to provide computer records in any format determined by the agency. This bill would require public agencies to provide computer records in any format that the agency currently uses. This bill would also prohibit an agency from delaying access to the inspection or copying of public records. This bill is an attempt to provide reasonable guidelines for public access to electronically held records and the author believes that this bill will substantially increase the availability of public records and reduce the cost and inconvenience associated with large volumes of paper records.

Analysis Prepared by : George Wiley / G. O. / (916) 319-2531

Joint Legislative Budget Committee

GOVERNMENT CODE SECTIONS 9140-9143

California Legislature

LEGISLATIVE ANALYST
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December 13, 1988

Mr. Jesse Huff, Chairman
Commission on State Mandates
1130 K Street, Suite LL50
Sacramento, CA 95814

Dear Mr. Jesse Huff:

This letter responds to your request for a recommendation on Claim No. CSM-4313, related to the reporting of cases involving the abuse of elderly persons. In this claim, Fresno County requests reimbursement for the increased costs it has allegedly incurred in providing protective services in reported cases of elder abuse. The county claims that Chapter 769, Statutes of 1987, requires the county Department of Social Services to investigate a reported incident of elder abuse, assess the needs of the victim, provide various social or medical services, and follow-up to ensure a satisfactory outcome.

Our examination of the current law reveals, however, that most of the existing requirements with regard to county response to reported elder abuse preceded the enactment of Chapter 769. The statute which initially allowed reporting of dependent adult abuse was enacted in 1982. This reporting requirement was extended by legislation enacted in 1983 and 1985. Our analysis indicates, however, that Chapter 769 does impose increased workload on counties in the following manner:

- Chapter 769 repealed the 1990 sunset date on the existing law regarding reporting of dependent adult abuse. This imposes a mandate in 1990 and subsequent years by increasing county costs associated with reporting known or suspected dependent adult abuse cases. In addition, to the extent that the dependent adult abuse reporting program results in increased reports of abuse, it will increase county workload associated with investigation and resolution of these cases.

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- Chapter 769 requires county Adult Protective Services (APS) or law enforcement agencies receiving a report of abuse occurring within a long-term care facility to report the incident to the appropriate facility licensing agency.

Our analysis further indicates that the increased costs associated with Chapter 769 appear to be state-reimbursable to the extent that counties have augmented their County Services Block Grant (CSBG) with county funding to pay for these costs. A detailed analysis of the claim follows below.

Background

Adult Protective Services. Welfare and Institutions (W&I) Code Chapter 5.1 generally requires county governments to provide an APS program. The purpose of this program is to ensure the safety and well-being of adults unable to care for themselves. The program attempts to accomplish these objectives by providing social services and/or referrals to adults in need.

The state provides funding for APS through the County Services Block Grant (CSBG), which counties also use to fund a variety of other social service programs, including administration of In-Home Supportive Services. Under current law, each county generally has discretion as to the types of adult protective services to provide, the number of adults who receive such services, and the amount of CSBG funding allocated to these services. However, the state does require the county APS program to record and investigate reports of suspected elder or dependent adult abuse.

Reporting. Welfare and Institutions Code Chapter 11 (Section 15600 et seq.) requires dependent care custodians, health care providers, and specified public employees to report known or suspected physical abuse of an elderly or dependent adult. An elderly adult is defined as anyone aged 65 years or older. A dependent adult is any person between the ages of 18 and 64 years who is unable to care for himself or herself due to physical or mental limitations, or who is admitted as an inpatient to a specified 24-hour health facility. Care providers are permitted but not required to make such reports if the suspected abuse is not physical in nature.

Upon receiving a report, counties are required to file appropriate reports with the local law enforcement agency, the state long-term care ombudsman, and long-term care facility licensing agencies. In addition, the county is required to report monthly to the state Department of Social Services (DSS) regarding the number of abuse reports it has received.

Analysis

Fresno County claims that Chapter 769 requires the county Department of Social Services to investigate a reported incident of elder abuse, assess the needs of the victim, provide various social or medical services, and follow-up to ensure a satisfactory outcome. In our view, the central question before the commission is what Chapter 769 actually requires a county to do upon receiving a report of elder abuse. We examine

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requirements with regard to three areas of county response: reporting, investigation, and case resolution.

Reporting. Our review of the APS program's statutory history reveals that most of the current reporting requirements were in existence prior to the enactment of Chapter 769. Chapter 1184, Statutes of 1982, established W&I Code Chapter 11, which allowed any person witnessing or suspecting that a dependent adult was subject to abuse to report the suspected case to the county adult protective services agency. At that time, "dependent adult" included individuals over age 65 years. Chapter 11 initially was scheduled to sunset on January 1, 1986. Subsequent legislation expanded the reporting requirements. Specifically:

- Ch 1273/83 enacted W&I Code Chapter 4.5, which established a separate reporting system for suspected abuse of individuals aged 65 or older. This statute required elder care custodians, medical and nonmedical practitioners and employees of elder protective agencies to report suspected or known cases of physical abuse to the local APS agency. It also required county APS agencies to report the number of reports received to the state DSS.

- Ch 1164/85 amended W&I Code Chapter 11 to require similar mandatory reporting of physical abuse of a dependent adult. This statute also required law enforcement agencies and APS agencies to report to each other any known or suspected incident of dependent adult abuse. In addition, Chapter 1164 extended the program's sunset date to January 1, 1990.

Chapter 769, Statutes of 1987, consolidated the reporting requirements for elderly and dependent adult abuse within the same statute, and repealed the January 1, 1990 sunset date for dependent adult abuse reporting. The statute also made minor changes in the reporting requirements, including the following:

- The statute required abuse occurring within a long-term care facility to be reported to a law enforcement agency or the state long-term care ombudsman.

- The statute required county APS or law enforcement agencies receiving a report of abuse occurring within a long-term care facility to report the incident to the appropriate facility licensing agency.

In sum, various provisions of existing law impose increased reporting workload on local governments by requiring them to receive reports of suspected abuse made by other care providers, and to report specific information to other state and local agencies. However, our analysis indicates that the bulk of these requirements were imposed prior to Chapter 769. Therefore, only the marginal increase in workload imposed by Chapter 769 would appear to be subject to the current claim. These requirements include the following:

- Reporting workload associated with reports of dependent adult abuse occurring after January 1, 1990. By repealing the January 1, 1990 sunset date for the dependent adult abuse reporting program, Chapter 769 imposes increased reporting workload on counties in 1990 and subsequent years.

- The workload required to report abuse incidents to the appropriate long-term care facility licensing agency.

We note that Chapter 769 also could reduce county workload to the extent that reports of abuse in a 24-hour health facility are made to the state long-term care ombudsman rather than to the local APS agency. We are unable to determine the potential magnitude of this reduction in costs. However, it appears unlikely that the reduction in costs in this area will fully offset the cost increases identified above, and particularly the costs associated with dependent adult abuse reporting in 1990 and beyond.

In addition to increasing reporting costs, Chapter 769 will increase county costs associated with investigating and resolving dependent adult abuse cases, to the extent that the mandatory reporting requirement results in identification of increased cases of abuse.

Investigation. Chapter 30-810.2 of the state Department of Social Services' (DSS) regulations, requires counties to investigate promptly most reports or referrals of adult abuse or neglect. Welfare and Institutions Code Section 15610 (m) defines "investigation" as the activities required to determine the validity of a report of elder or dependent adult abuse, neglect or abandonment. Thus, it appears that state law requires county APS agencies to act promptly to determine the validity of a reported incident of abuse.

Resolution. Welfare and Institutions Code Section 15635 (b) requires the county to maintain an inventory of public and private service agencies available to assist victims of abuse, and to use this inventory to refer victims in the event that the county cannot resolve the immediate or long-term needs of the victim. This referral requires assessment of the needs of the client, and identification of the appropriate agency to serve these needs. Depending on the needs of the client and the resources available, a county may refer the client to a county, state or federally funded program, or to a private organization. When serving an indigent client, the county is required to be the service provider of last resort if the client does not qualify for state or federal programs (W&I Section 17000).

To the extent that mandatory reporting of dependent adult abuse increases the number of cases reported to the county, it increases the county's APS workload. Presumably, the sunset of the reporting requirements would have led to a reduction in this workload. Thus, by repealing the January 1, 1990 sunset date on the dependent adult abuse reporting program, Chapter 769 probably results in increased county APS workload, in terms of both investigation and resolution in 1990 and subsequent years. Again, the

requirements with regard to elder abuse cases, and with regard to dependent adult cases reported prior to January 1, 1990, are imposed by earlier statutes. Consequently, any increased workload associated with these cases does not appear to be subject to the current claim.

Are costs reimbursable? The second question before the commission is whether the increased county costs associated with this mandate are state-reimbursable. Specifically, you must determine whether the costs associated with dependent adult and elder abuse reporting are reimbursable, given that the Legislature currently provides funding for the APS program in the form of the CSBG.

In order to determine whether the CSBG fully funds the increased workload imposed by Chapter 769, it is useful to understand the history of funding for APS. Prior to 1981, the state DSS' social services regulations contained detailed requirements identifying the minimum level of APS service that counties had to provide to clients. In 1981, however, the federal government reduced its support for social service programs (Title XX of the Social Security Act) by approximately 20 percent. To help the counties accommodate this reduction, DSS eliminated the specific requirements from its APS regulations and from the regulations governing various other social services programs, thereby giving the counties substantial discretion in the level of service they provide and in the amount of federal Title XX funds they allocate to APS.

In recognition of this increased county discretion, the Legislature, in the Budget Act of 1985, created the CSBG, which provides funds for the various social services programs, including APS, over which counties have substantial discretion. (In contrast, the counties have limited discretion over two major social services programs -- Child Welfare Services and In-Home Supportive Services. These programs are budgeted and their funds are allocated based on county caseloads and costs.) The level of funding provided through the CSBG was not tied to any measurement of the workload in any of the CSBG programs. Rather, it was based on county expenditures for all of the programs in 1982-83, with the expectation that counties would allocate CSBG funds to the various programs based on local priorities.

In sum, counties have considerable flexibility as to the types and level of services provided under APS, and as to the level of CSBG funding each county devotes to the APS program. Moreover, the amount of CSBG funds provided to each county does not necessarily reflect workload in that county. Thus, in response to the increased workload requirements imposed by Chapter 769, counties with insufficient CSBG funding to pay for the workload increase generally face two choices:

- The county can fund the increased APS workload by reducing expenditures in other areas of the APS program, or in other programs funded through CSBG. This, in effect, requires the county to realign its existing program priorities in order to redirect CSBG money to pay for the recording, investigation, and referral of reported abuse cases.

- The county can use its own funds to augment CSBG funding in order to provide an increased level of service within the existing program, while maintaining existing program priorities.

Article XIII B, Section 6 of the State Constitution requires the state to reimburse local entities for new programs and higher levels of service. It does not require counties to reduce service in one area to pay for a higher level of service in another. Moreover, in enacting Chapter 11, the Legislature did not require that counties realign their social service priorities in order to accommodate the increased workload. Therefore, we conclude that the costs associated with Chapter 769, are state-reimbursable to the extent that a county uses its own funding to pay for these costs. If, however, a county exercises its discretion to redirect CSBG funds to pay for the costs of elder and dependent adult abuse reporting, investigation, and resolution, these costs are not state-reimbursable.

Sincerely,

Elizabeth G. Hill

Elizabeth G. Hill
Legislative Analyst

PUBLIC RECORDS ACT MANUAL

Prepared Exclusively for the
Los Angeles County Sheriff's Department

PREPARED BY
THE OFFICE OF THE COUNTY COUNSEL
SHERIFF'S DEPARTMENT LEGAL ADVISORY UNIT

August 2002

INTRODUCTION

This Public Records Act ("PRA") Manual is intended to serve as a quick reference guide for the Sheriff's Department's Centralized Custodian of Records Unit in responding to PRA requests. This manual does not address all legal issues regarding the PRA.

CONSULT WITH COUNTY COUNSEL FOR ADVICE.

This manual refers to statutes, cases, Department Policy and Board of Supervisors' Policy. This authority may be amended after this manual is printed. Please ensure that this authority is current at the time you use this manual.

This manual is organized in four (4) sections:

1. Common Questions/Answers.
2. Examples of PRA requests and responses.
3. Sample forms of letters/memos.
4. Legal Authority-Statutes, Board of Supervisors and Department Policies.

Office of the County Counsel
Legal Advisory Unit
Sheriff's Department Headquarters Bureau
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Section 1 - Common Questions/Answers

1. What is the Public Records Act?

The Public Records Act, Government Code §§ 6250-6276, provides that any member of the public may inspect or copy any public record that is required by law to be kept, or which is kept as necessary to the discharge of official duty. **Attachment A** is the Public Records Act.

2. Why was the Public Records Act enacted?

The Public Records Act was enacted to facilitate open government without sacrificing individual privacy. Disclosure of public records involves two (2) fundamental yet competing interests: 1) prevention of secrecy in government, and 2) protection of individual privacy. *City of San Jose v. Superior Court of Santa Clara County; San Jose Mercury News, Inc., Real Party in Interest* (1999) 74 Cal. App. 4th 1008. The premise of the PRA is that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."

3. What is considered a public record?

A public record is any writing containing information relating to the conduct of the public's business prepared by any state or local agency. All public records are subject to disclosure unless specifically exempt by law.

4. What is considered a "writing"?

A "writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.

A "writing" includes e-mails, 911 tapes, electronic records, and audio/videotapes. See Government Code § 6253.9.

5. How much time does the Department have to respond to a request for records?

The Department has ten (10) calendar days to respond from the date any unit in the Department receives the request. The 10-day deadline is for a responsive determination of accessibility of the records, and not necessarily the production of records. *Motorola Communication & Electronics, Inc. v. Dep't. of Gen. Services* (1997) 55 Cal. App. 4th 1340, 1349. However, the records must be made "promptly available" without delay or obstruction. Gov. Code § 6253 (b) and (d).

An extension of time of no more than an additional fourteen (14) calendar days is permitted in "unusual circumstances" such as when the request involves: 1) records held in field offices; 2) voluminous records; 3) the need to consult another agency which has a substantial interest in the request; or 4) the need to compile data, to write programming language or a computer program or to construct a computer report to extract data. Gov. Code § 6253(c).

The 14-day extension letter should be signed by the appropriate person in Sheriff's Department, not the County Counsel, since department personnel have personal knowledge of the factual basis asserted for the extension. See Form No. 4.

According to the Los Angeles County protocol on the PRA, adopted April 2, 2002, the department head or his/her designee is responsible for meeting this time limit:

> "Within the time frame for responding to a public records request, it is the responsibility of the department or agency head, commission or committee secretary, or his or her designee, to contact the Office of the County Counsel if any question exists whether any record, or portion of any record, is exempt from disclosure. The County Counsel shall be responsible for providing advice to the department, agency, commission or committee, and for assisting the department, agency, commission or committee in drafting a written response if an exemption is claimed."

6. What is the Department's obligation in responding to the request for records?

Within the ten (10) days, the Department is obligated to determine whether the requested records exist, whether any exemptions apply to those records, and to provide a response to the requestor.

If non-exempt records were found, they should be provided.

If exempt-records were found, the response letter should specify the exemption/objection applicable to the records. (Consult with County Counsel.) The PRA does NOT require that you list and describe all the records you are not producing based on exemptions/objections.

If a record contains both exempt and non-exempt information, delete the exempt information and release a modified/redacted record. Explain this in your response letter. See Form No. 6.. See Gov. Code § 6253(a).

7. What is the Los Angeles County Public Records Act protocol?

On April 2, 2002, the Los Angeles County Board of Supervisors adopted a countywide protocol to be followed by all County agencies. This protocol is published on the County's Internet web page. The protocol describes the PRA and procedures

that each County agency, including the Sheriff's Department, must follow in order to assist a member of the public in making a request. **See Attachment B.**

8. When can the public inspect records?

The PRA requires that records be open to inspection at all times during office hours, but if the record is needed by the Department for official use, that use comes first; the requestor cannot monopolize the record so that others cannot have access, and reasonable supervision by the Department is allowed to guard the safety of records.

In *Bruce v. Gregory* (1967) 65 Cal. 2d 666 at 676, the California Supreme Court held that the "rule of reason" governs access to public records:

> "We therefore hold that the rights created by . . . the Government Code are, by their very nature, not absolute, but are subject to an implied rule of reason. Furthermore, this inherent reasonableness limitation should enable the custodian of public records 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 his office and its employees, and generally to avoid chaos in the record archives. . . . 'Without doubt, reasonable restrictions and conditions maybe imposed with respect to the right to use public records. Even in the absence of any specific restrictions, the right implies that those exercising it shall not take possession of the registry or monopolize the record books so as unduly to interfere with the work of the office or with the exercise of the right of others, and that they shall submit to such reasonable supervision on the part of the custodian as will guard the safety of the records and secure equal opportunity for all.' "

Bruce v. Gregory, supra, as cited in the California Attorney General Opinion of Oct. 13, 1993, #93-702.

9. Does a request for records have to be in writing?

No. It can be verbal. *Los Angeles Times v. The Alameda Corridor Transportation Authority* (2001) 88 Cal. App. 4th 1381. Ask the requestor to send a written request to make it clear what the requestor is seeking. The Department is required to provide a written response only to a written request. Gov. Code § 6255(b).

10. Can a fee be charged for the cost of duplicating the records?

Yes. The requestor must pay for the *direct cost of duplication* [Gov. Code § 6253(b)] which includes the cost of running the copy machine and the expense of the person operating it. Direct cost does not include the ancillary tasks necessarily

associated with the retrieval, inspection and handling of the file from which the copy is extracted. *North County Parents Organization for Children With Special Needs v. Department of Education* (1994) 23 Cal. App. 4th 144.

The cost has been determined by the Los Angeles County Auditor-Controller to be $0.75 per record ordered and $0.03 per page. Checks should be made payable to the Los Angeles County Sheriff's Department. Note: After you receive the payment, send the non-exempt records with the appropriate letter. Send Form No. 8 asking for the payment.

11. Can a fee be charged for the time spent searching for the records?

Rarely. There is a provision in the Los Angeles County Code that provides that if the request "*does not reasonably describe an identifiable record*" the requestor shall be charged a fee of $22.50 for each hour of time expended by county employees to locate, retrieve and refile such records; provided, however, the first full hour of such time expended on all requests of any one requestor each month shall be provided free of charge. LACC § 2.170.010; **see Attachment C.** This Code section **should** be used sparingly, because case law holds that writings may be described by their content, and an agency is obliged to search for records based on the criteria set forth in the search request. *California First Amendment Coalition v. Superior Court of Sacramento County* (1998), 67 Cal. Ap. 4th 159.

12. Should the media be charged for records?

It is the policy of the Los Angeles County Board of Supervisors to waive charges for duplicating routine records when requested by the media. See the Board of Supervisors Policy Manual, "Media Policy Guidelines for Departments," Policy #3.140 adopted 3/29/94; see also the Los Angeles County PRA protocol adopted April 2, 2002 (attached).

13. Is the Department required to create a record to respond to a PRA request?

No. The PRA enables access only to **existing** records. Gov. Code § 6252(e). Therefore, the PRA does not require that a public entity create a record in order to respond to a request for information.

The PRA does not prevent the destruction of records pursuant to law. Unless a record is required by statute to be maintained for a certain number of years, or indefinitely, records may be destroyed after two (2) years or five (5) years, depending on the type of record. Government Code § 26202; Penal Code § 832.5

The Board of Supervisors policy allows County departments to destroy any record, paper or document that: 1) is more than two (2) years old; 2) is of no further use to the department; and 3) is not expressly prepared or received pursuant to State

statute or County charter. Policy number 3.040, "Destruction and Disposition of Old Records"; **see Attachment D.**

Therefore, if a record is not required by either statute or Department policy to be maintained, it may be destroyed after two (2) or five (5) years if it is a personnel record. See Penal Code § 832.5.

After searching for requested records and discovering that the records no longer exist, you may send a letter to the requestor indicating that you do not have records responsive to their request.

Note: Destruction of records is a very high risk activity. Consult with County Counsel before destroying records. The Department reached an agreement with Special Counsel Merrick Bobb to not destroy Internal Affairs Records despite the law allowing such destruction.

14. How far back must we search for a record?

In the case of *County of Los Angeles v. Superior Court (Kusar)* (1993) 18 Cal. App.4th 588, the court ruled that the PRA, Government Code § 6254 (f)(1) and (2), authorizes disclosure only of "contemporaneous" information relating to persons currently within the criminal justice system and cannot be used to discover criminal history information going back 10 years.

The *Kusar* case applies to records of police investigations and activities. Its holding that only current and contemporaneous records need be disclosed could arguably be applied to other records sought.

Coupling the *Kusar* case with the Government Code and Board of Supervisors' Policy allowing for the destruction of records after two (2) years, the Department has taken the general position to object to producing records which are more than two (2) years old.

However, certain records must be maintained for a longer period by statute. For example, Penal Code § 832.5 requires that records regarding all complaints against peace officers and internal investigations of such complaints be maintained for at least five (5) years.

In many instances, the requestor will narrow the request to two (2) years once you have raised the issue. Raises the objection in your response letter.

15. How does the Public Records Act relate to other laws applicable to the release of records?

The PRA itself refers to numerous other sections of law, including federal law

generally and state law including, but not limited to, the Penal Code, Evidence Code, Health and Safety Code, and the Welfare and Institutions Code. A listing of these statutes, alphabetically by subject matter, is found at Government Code §§ 6276.02 to 6276.48. For example, the PRA refers to Penal Code § 841.5, which provides (in part) that no law enforcement officer or employee of a law enforcement agency shall disclose to any arrested person, or to any person who may be a defendant in a criminal action, the address or telephone number of any person who is a victim or witness in the alleged offense.

Government Code § 6254(k) of the PRA exempts records that are protected from disclosure by other statutes. For example, Evidence Code § 1040 is the official information privilege, interpreted by the court in *County of Orange v. Superior Court* (2000) 79 Cal. App. 4th 759 to exempt active law enforcement investigative files from disclosure.

The PRA has been interpreted by case law, which will be discussed below as they apply to various issues. If you have questions about how to interpret the PRA as it relates to other statutes, rules or regulations, contact County Counsel for legal assistance.

16. Are all records subject to disclosure?

No. The Act includes two (2) exceptions to the general policy of disclosure: 1) materials expressly exempt from disclosure pursuant to Gov. Code § 6254, subsections (a) through (z); and 2) records that the government agency demonstrates that, on the facts of a particular case, the public interest served by withholding the records clearly outweighs the public interest served by disclosure. Gov. Code § 6255; *City of San Jose v. Superior Court of Santa Clara County, San Jose Mercury News, Inc. Real Party in Interest* (1999) 74 Cal. App. 4th 1008.

Other laws or cases also prohibit disclosure of certain records. For example, records which fall under the "attorney-client privilege" are protected from disclosure.

17. What records don't have to be disclosed?

Unless there is a legal objection to disclosing a record, it must be disclosed. This manual briefly lists the most common objections/exemptions. However, you should consult County Counsel to assist you on determining if the requested records are exempt from disclosure.

The most often used exceptions will be subsections (a), (b), (c), (f), (k), and (u) of Government Code § 6254, which are described as follows:

(a) Preliminary notes or drafts, but only if the notes or drafts are not ordinarily kept in the course of business and withholding clearly outweighs the

public's interest in disclosure;

(b) Records pertaining to pending litigation;

(c) Personnel, medical and similar files if the disclosure would constitute an unwarranted invasion of personal privacy;

(f) Crime reports, investigatory files, intelligence files and security procedures. Such reports shall be released to the victim/representative; and the following should be redacted from crime report: name, address, phone number of confidential informant, information that would endanger a witness or other, information that would endanger the investigation or related investigation, and investigator's analysis or conclusion.

In *Haynie v. Superior Court (County of Los Angeles)* (2001) 26 Cal.4th 1061, the California Supreme Court ruled that under the PRA law enforcement records of investigations are exempt from disclosure, whether or not the prospect of enforcement proceedings becomes "concrete and definite". The investigations exempted encompass only those investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred.

(f)(1) Arrest information (not records) shall be made public, unless it will endanger the person involved in the investigation, or endangers the successful completion of the investigation or related investigation.[1] The arrestee information that must be released includes the following, as set forth in Field Operations Directive 97-03:

- Full name
- Occupation
- Date of birth
- Physical description including sex, hair and eye color, height and weight
- Date, time and location of arrest
- Date and time of booking and where the arrestee is currently being held
- All charges the arrestee is being held on including warrants, parole, or probation holds
- Bail amount
- Time and manner of release
- The factual circumstances surrounding the arrest

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[1]The California Supreme Court has condemned limitless requests [ACLU v. Deukmejian (1982) 32 Cal.3d 440, 453] for arrestee records.

(f)(2) Specific crime and requests for assistance shall be made public except as provided in Government Code § 6254(f)(1), or Penal Code § 841.5, which prohibits the release of victim or witness addresses and phone numbers.

In lieu of disclosing these records, the PRA requires that the agency disclose certain information derived therefrom.

65 Opinions of the Attorney General 563 states that a law enforcement agency may lawfully refuse to furnish a copy of an arrest or complaint report requested by one who has provided information contained in the report; however, the agency must make public certain information contained in the reports.

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including the Evidence Code. A listing of California statutory exemptions, alphabetical by subject matter, is made in Article II of the PRA, found at Government Code §§ 6276.02 to 6276.48.

(u) Applications for licenses to carry firearms are public; but medical and psychological history information and information indicating where and when applicant may be vulnerable to attack must be redacted, as well as the home address and telephone number of peace officers and judges.

Please note that the above-referenced exemptions do not mirror the exact language of the PRA. Rather, this language reflects an attempt to summarize the intent of the Act. **See Exemption Checklist, Form No. 7.** For the exact language, please refer to **Attachment A.**

Even if a record is not on the exempt list, the agency can still justify withholding the record by demonstrating 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. Gov. Code § 6255; *City of San Jose v. Superior Court of Santa Clara County, San Jose Mercury News, Inc., Real Party in Interest* (1999) 74 Cal. App. 4th 1008. This is a catch-all provision, under which an agency can claim 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.

18. Are there other common exemptions which are not found in the PRA?

A **non-exhaustive** list of other exemptions is as follows and attached as Form No. 7:

- California Constitution, Art I, § 1, which protects the identity and information about a person based upon that person's right to privacy

under the California Constitution;

- Penal Code §§ 11167, 11167.5, and 11174.3 which protect child abuse reports;
- Penal Code § 11165.1, which protects sexual abuse reports;
- Penal Code §§ 11105, 11105.1, 11105.3, and 11105.4, which protect state summary criminal history information;
- Penal Code §§ 13300 and 13305, which protect local summary criminal history information;
- Penal Code §§ 832.5, 832.7 and 832.8, which protects peace officer personnel records and citizen complaint investigations in criminal and civil court proceedings. Requires Evidence Code §§ 1043 and 1046 motion to obtain, commonly known as a "Pitchess motion;"
- Penal Code § 293, which provides that a sex crime victim may keep his or her name and address from public disclosure;
- Penal Code § 841.5 and Government Code § 6254(f)(2) which prohibit the release of victim or witness addresses and phone numbers. *LAPD v. United Reporting Publishing Corporation* (1999) 120 S. Ct. 483, 68 USLW 4005;
- Penal Code § 1054.5 which in criminal cases requires that the defendant propound informal discovery from the District Attorney;
- Vehicle Code §§ 16005 and 20012, which protect traffic accident reports, which may be disclosed only to driver or representative, parent or guardian of juvenile driver, person injured, owner of vehicle or property damaged, person who may incur liability, or representative attorney;
- Welfare and Institutions Code § 827 protects juvenile case files;
- Welfare and Institutions Code § 15633 protects elder and/or dependent abuse reports;
- Deliberative process privilege; information compiled by managers to assist them in making agency decisions. Government Code § 6255; *County of Los Angeles v. Axelrad* (2000) 82 Cal. App. 4th 819; *Wilson v. Superior Court* (1996) 51 Cal. App. 4th 1136.
- Evidence Code § 1040. Privilege for official information, when disclosure

is against the public interest because the necessity for confidentiality outweighs the necessity for disclosure in the interest of justice.

- Evidence Code § 1041. Privilege for identity of informer.

- Code of Civil Procedure §§ 1985.3 and 1985.4 regarding *subpoenas duces tecum* for records containing personal information.

See also Government Code §§ 6276.02 through 6276.48 for a listing of statutes, alphabetical by subject matter, that describe records or information not required to be disclosed pursuant to Government Code § 6254(k).

19. What if the request is too vague, ambiguous, or overbroad?

The PRA requires that a request "reasonably describe an identifiable record." Gov. Code § 6253(b). "Unquestionably, public records must be described clearly enough to permit the agency to determine whether writings of the type described in the request are under its control. Section 6257 compels an agency to provide a copy of nonexempt records upon a request which reasonably describes an identifiable record or information produced therefrom...However the requirement of clarity must be tempered by the reality that a requestor, having no access to agency files, may be unable to precisely identify the documents ought. Thus, writings may be described by their content. The agency must then determine whether it has such writings under its control and th applicability of an exemption. An agency is thus obligated to search for records based on criteria set forth in the search request." *Cal. First Amendment Coalition. v. Superior Court (Wilson)*, 67 Cal. App 4th 159 (1998).

If you can not figure out what record the requestor is asking for, make this objection in your response letter. However, you may contact the requester to see what he/she is really looking for and offer to help by identifying which records would suit that purpose. Often, requests can be significantly narrowed or clarified by the requestor.

A new law was passed this year (2002) which requires that a public agency assist the public in identifying records and information which fits the request. We can use this provision to our advantage as a means to focus a records request. AB 1041 adds Government Code § 6253.1, which provides:

(a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do 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,

if stated.

(2) Describe the information technology and physical location in which the records exist.

(3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

(b) the requirements of paragraph (1) of subdivision (a) shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requestor that will help identify the record or records.

Remember to log in your time accurately for assisting the requestor, as the Department may be entitled to seek reimbursement from the state for providing this additional assistance to the public, per SB 90. The Administrative Services Division, Fiscal Unit may submit a "SB 90" claim for these costs.

On April 2, 2002, the Board of Supervisors adopted a new PRA protocol which provides:

"Records may be described by their content. It is the responsibility of the department, agency, commission or committee to search for records based on the criteria set forth in the records request, and to determine whether it has such records under its control."

20. What if the request asks for specific "information" in the form of interrogatories?

The PRA does not require the public entity to answer interrogatories. In other words, the Department is not compelled to answer oral or written questions. The Department is required to disclose records in existence, but are typically not required to provide general information, except in rare instances (see Question 31).

21. What about requests for addresses and phone numbers of employees or arrestees?

Generally, the Sheriff's Department should not release any addresses and/or phone numbers of employees, arrestees, victims or witnesses. Even retired peace officers' addresses/phone numbers are confidential. The California Constitution, Article I, § 1 protects the identity and information about a person based upon that person's right to privacy. If this private information is contained on a record that is otherwise non-exempt, then the address and phone number should be redacted prior to release.

In addition, the address or telephone number of any person who is a victim or witness in an alleged offense may not be disclosed by a law enforcement agency,

including the Sheriff's Department, to any arrested person or to any person who may be a defendant in a criminal action. However, the attorney for the defendant in a criminal action may obtain the address or telephone number of any person who is a victim of, or a witness to, the alleged offense. Penal Code § 841.5. The District Attorney's office has requested that the appropriate Deputy District Attorney be contacted whenever the Sheriff's Department receives a request for records regarding a criminal case.

The address of an arrestee may be disclosed only if a declaration is signed by the requestor saying that the request is being made for one (1) of five (5) prescribed purposes and that the address will not be used to sell a product or service. Gov. Code § 6254(f)(3). This section was recently upheld as not violating the First Amendment right to free speech by the United States Supreme Court in the case of *LAPD v. United Reporting Publishing Corporation* (1999) 120 S. Ct. 483, 528 U.S. 32.

22. What if the person is a minor?

The name of a victim of certain crimes may be withheld at the victim's request or at the request of the victim's parent or guardian if the victim is a minor. Gov. Code § 6254(f)(2).

Other laws protect the release of minors' confidential information such as Penal Code §§ 11167.5 and 11165.1 which protect child abuse and sexual abuse reports; Welfare and Institutions Code § 827 which protects juvenile case files. If the records requested are juvenile court records, the requestor must petition the presiding judge of the juvenile courts in order to obtain those records.

23. Can I release a crime report to the victim?

Yes. Government Code § 6254(f) allows the Department to withhold a crime report. However, this section mandates that the report be released to the victim of the crime or the victim's representative, such as his/her attorney.

Although the crime report may be released to the victim, you should redact the name, address and phone number of any confidential informant, the investigator's analysis or conclusions, as well as any information that would endanger a witness or information that would compromise the investigation or a related investigation.

24. What if the request asks for the personnel files of peace officers?

These records are confidential, protected by Penal Code §§ 832.5, 832.7, and 832.8, and may be disclosed only by the procedure outlined in Evidence Code §§ 1043 and 1046, commonly described as a Pitchess motion. Requests for these types of records should be objected to on these grounds and a copy of the response sent to the attorney at County Counsel who handles Pitchess motions.

25. What about requests for arrest information?

Generally, you may release arrestee information unless the release of such information would endanger a person involved in an investigation or endanger the successful completion of an investigation or related investigation.

However, the Sheriff's Department does not release a roster of arrestee information from a centralized location because it is impossible to tell whether the particular arrest falls into one of the exemptions under Government Code § 6254(f). The information is not provided in diskette or computer printouts. The requestor may record the data himself/herself at the appropriate Sheriff's Station(s) or copies will be made available at the cost of $.75 per order and $.03 per page. The Department does not release this information except in response to specific requests regarding arrests that have already taken place. See F.O.D. 97.03 re releasing arrest info.

26. What if the request for records relates to pending litigation?

Government Code § 6254(b) provides an exemption for records pertaining to pending litigation to which the public agency is a party or to claims made against the agency and/or its employees. Keep in mind that PRA requests can be made prior to or in anticipation of litigation, and unlike discovery in a pending case, the request for public records is not limited to the goal of obtaining relevant evidence. *Wilder v. Superior Court* (1998) 66 Cal. App. 4th 77. This typically allows the requestor an advantage because the law does not permit an agency to insist that the requestor state a purpose for his/her request.

However, once litigation is pending, a PRA request may not be used to obtain documents that are not available through the discovery process. *City of Hemet v. Superior Court* (1995) 37 Cal. App. 4th 1411, 1420. If you receive a request and question which relates to pending litigation or a claim involving the Department, contact the Civil Litigation Unit and ask them to search their records to determine whether there is an ongoing case. It is important to determine whether the request relates to pending litigation, so that the attorney representing the Department on the case can be notified and respond accordingly. Consult with the Department's Civil Litigation Unit or the attorney representing the Department in the civil action.

27. Is the Department **required** to withhold records that are exempt?

No. The Department can release the records if it so desires, unless they are separately protected elsewhere in the law by privilege. And some privileges, such as Evidence Code § 1040 (the "official information" privilege), require a balancing of interests: that section gives a public entity a privilege to refuse to disclose official information if the disclosure is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice.

28. Who should sign the letter responding to the request?

In general, a Captain or Unit Commander from the unit in which the records are maintained should sign letters sent to the requestor, as such unit has the factual basis for asserting which records the Department has, or does not have, in its possession. If the response letter contains only legal objections, then County Counsel may be the appropriate person to sign the letter on County Counsel letterhead.

29. What if the records are kept in an electronic format?

Effective January 1, 2002, the PRA was amended to require that electronic records must be made available in the electronic format in which the agency maintains the records. Costs are limited to the direct cost of producing a copy in the electronic format. But the requestor can be charged the cost of necessary programming and computer services, if necessary, to extract the requested records. The Los Angeles County Auditor-Controller issued a memo on January 23, 2001, summarizing the procedures to follow when responding to a PRA request when the data is held in an electronic format. The agency must make the information available in an electronic format, if requested, but does not require release of a record in the electronic form in which it is held if its release would jeopardize the security or integrity of the original record or any proprietary software in which it is maintained. A copy of the memo is included as **Attachment E.**

30. What happens if the Department does not respond in a timely manner?

If the Department does not comply within the time periods specified under the law, the requestor may seek a writ of mandate in Superior Court. The Court may deem the Department to have "waived" any applicable objections to producing the requested documents based on its failure to respond in a timely manner.

In addition, a prevailing plaintiff is entitled to court costs and reasonable attorneys fees. It has been interpreted that the plaintiff "prevailed" when, prior to trial, the agency released the records in a clear reaction to the requestor's filing of a disclosure action. *Belth v. Garamendi* (1991) 232 Cal. App. 3d 896, 901-902.

31. Can the Department release a summary of the event instead of the actual investigation documents?

Yes. Instead of producing the investigation records, which would be protected from disclosure, you may provide certain information derived from the records. See Gov. Code § 6254(f)1-3. See *Haynie v. Superior Court (County of Los Angeles)* (2001) 26 Cal.4th 1061. Therefore, if the investigation is open, do not release the investigation records, but instead, release a summary of the incident and provide the allowed information. Homicide Bureau, who has custody of the investigations, usually prepares this summary and sends it to the requestor.

32. What is the requestor's remedy if we refuse to produce a record which he/she believes is not exempt from disclosure?

Similar to the situation in which the Department does not respond in a timely manner, a requestor has certain remedies if the Department denies a request for records. The requestor has the right to file a motion for injunction or writ of mandate in Superior Court in order to obtain an expedited decision. Gov. Code § 6258.

If the requestor is successful, the Department would be ordered to disclose the records, and to pay court costs as well as reasonable attorney's fees. There are no punitive fines or other sanctions for refusing a member of the public access to records.

SECTION 2 - EXAMPLES OF PRA REQUESTS AND ANSWERS

1. Documents relating to law enforcement plans for the 2000 Democratic National Convention were sought. Documents pertaining to areas where public access would be limited and documents pertaining to transportation of delegates to and from the convention site were not disclosed based on Government Code §§6254(a), (f) and (k); 6255; and Evidence Code §1040, the official information privilege, although certain letters between Chief Parks and Sheriff Baca were disclosed. Also a redacted letter, from Sheriff Baca to the Board of Supervisors, was disclosed in response to a request for documents pertaining to the amount of money budgeted or expended by any public entity relating to the DNC.

2. Copies of complaints or requests for assistance regarding Hollywood Park were requested for the period 1995 to 2000. The request was denied because records created before 1998 were not contemporaneous and because the request did not ask for identifiable public records but for specific information in the form of interrogatories. The PRA does not require that a public entity create a record in order to respond to a request for information. The Act only requires that certain records already in existence be made available.

3. A request for all arrest information including name, address, date of arrest, date of birth, employment, bail amount and offense charged was denied as being too vague and overbroad. The Sheriff's Department does not release a roster of arrestee information from a centralized location because it is impossible to tell whether the particular arrest falls into one of the exemptions under §6254(f) such as endangering the successful completion of an investigation. However, the requestor was told that the arrest records sought, including all of the information except the address, could be obtained from each station by making a written request each day. To obtain the address of the arrested person, the requestor must sign a declaration under penalty of perjury that the request is made for a "scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator." Gov. Code §6254(f)(3); *LAPD v. United Reporting Publishing Corporation* (1999) 528 U.S. 32, 120 S. Ct. 483 resulted in a consent decree that releases addresses and telephone numbers of arrestees if the requestor signs a declaration confirming that the information would not be directly or indirectly sold.

   A similar request for "information on all persons booked into the Los Angeles County Jail system during the period from 7/14/00 to 7/20/00" was denied because to compile all of the records in a centralized form would be extremely tedious based on Government Code §6253(c) which allows an agency to withhold records where compliance with a request is impracticable. The Sheriff's

Department has 22 stations and an Inmate Reception Center, all with jail facilities, and each facility maintains its own arrestee information for the time period requested. However, under the newly amended Government Code §6253.1, the agency is required to assist the requestor in making a focused and effective request and to describe the physical location in which the records exist. Therefore, the response to such a request today might be to provide the names and addresses of the facilities where such records exist.

4. A request for copies of "any and all of your ...county's policies, practices, agreements, procedures, requirements, regulations, guidelines, and any other information pertaining to the handling and processing of applications for denial or issuance of CCW (carry a concealed weapon) permits to current and/or retired city, county, state or federal officials, including law enforcement, politicians, prosecutors, judges, members of their staff or other federal personnel" was denied because the request did not ask for identifiable public records, but specific information in the form of interrogatories. The PRA does not require that a public entity create a record in order to respond to a request for information. The Act only requires that certain records already in existence be made available.

   The request for copies of past CCW applications, denied or issued, was granted on the condition that all privileged information, per Government Code §6254(u), would be redacted. The requestor was told that the applications would be released in batches of 200 at a cost of $150 per batch, and that upon receipt of payment the first batch would be released. (Each application was approximately 25 pages long.) Payment has not been received to date.

5. A request for "all correspondence between the LASD and the California and U.S. Departments of Justice from 1997 to the present regarding the LASD procedures, policies or practices for communicating with hearing-impaired suspects, witnesses, or other members of the public" was denied based on the "deliberative process" privilege and also because the records sought were not current and contemporaneous. However, policies and procedures for communicating with deaf persons were released.

6. A request for a 911 tape was denied where there was an open investigatory file on the subject of the 911 tape based on Evidence Code §1040(b)(2) and Government Code §6254(f), since releasing the records would jeopardize completion of the investigation. However, in general, a 911 tape can be released (upon payment of the $5.00 copying charge) after confidential information is redacted.

7. A request for the "CDC number, date of birth and last known residence address of the persons listed in Exhibit A" [which was a list of potential witnesses in a criminal case] was denied on the basis of Penal Code §841.5 which prohibits the

release of victims or witness' address and phone numbers. See also *LAPD v. United Reporting Publishing Corp.* (1999) 528 U.S. 32, 120 S. Ct. 483.

8. A request for "any and all records regarding an investigation at the Los Angeles Municipal Courthouse . . . in which the purported victim [name] was terrorized by suspect [name]" was denied based on §6254(f), the exemption for investigatory files. The exemption applied even though the agency's investigation may have been completed. *Rivero v. Superior Court* (1997) 54 Cal. App. 4th 1048.

9. Although not technically a PRA request, a *subpoena duces tecum* (SDT), is frequently served on the Sheriff's Department by a criminal defense attorney seeking records or items of evidence for independent testing by defense experts. Occasionally, attorneys obtain a "secret" discovery order from a judge directing the agency to turn over evidence to the defense without telling the prosecutor. Neither of these procedures is proper. To comply with a SDT, the subpoenaed official need only bring the items to court on the scheduled appearance date. The judge will then decide whether the attorney gets access to them. Penal Code §1054 et seq. In spite of these principles, an Orange County Superior Court judge recently issued an ex parte order to a criminal defense lawyer, purporting to require the Santa Ana Police Department to give the murder weapon to the defense for testing, and forbidding notification to the District Attorney. On appeal the court reversed the judge's order.

10. An attorney who was representing former inmates of the County jail who allegedly were over-detained, and then sued the County alleging false imprisonment, made a PRA request for a number of documents relating to the Inmate Reception Center: the IRC Manual, logs of over detentions and erroneous releases, and the IRC Task Force Report. The trial court ordered the disclosure of all information except a portion of the IRC manual. The County protested saying the records ordered disclosed were privileged under the pending litigation exception of Government Code §6254(b), the attorney work-product privilege in Code of Civil Procedure §2018, the official information privilege of Evidence Code §1040, and the deliberative process privilege in Government Code §6255. On appeal the court remanded, saying further review by the trial judge--in camera--(out of the presence of the jury) was necessary to determine if release of the records might cause a breach in public safety, or whether the deliberative process privilege was applicable (which protects information compiled by Sheriff's managers to assist them in making agency decisions.)

SECTION 3

SAMPLE FORMS FOR CENTRALIZED CUSTODIAN OF RECORDS UNIT

Form 1	First Letter Asking Unit to Perform Search for Records
Form 2	E-mail or letter to Civil Litigation Unit
Form 3	Letter assisting requestor to make focused and effective request
Form 4	Request for additional fourteen days
Form 5	Letter to Unit confirming these are all the records they have
Form 6	Sample Letter- Records are exempt or redacted
Form 7	Public Records Act Request Exemptions/Objections Checklist
Form 8	Letter asking requestor to pay for duplicating costs
Form 9	Letter mailing records after fee received
Form 10	Letter mailing records to Civil Litigation Unit after fees received
Form 11	Letter to Pitchess Attorney at County Counsel
Form 12	Tracking sheet

FORM NO. 1
FIRST LETTER ASKING UNIT TO PERFORM SEARCH FOR RECORDS

[Department Letterhead]

DATE:

OFFICE CORRESPONDENCE

FROM: [NAME AND TITLE]
CENTRALIZED CUSTODIAN OF RECORDS UNIT

TO: [NAME], CAPTAIN
NAME OF UNIT

SUBJECT: PUBLIC RECORDS ACT REQUEST
Requestor:_____
Date on request: _____
Date for your unit to respond to CCRU:_____

Enclosed is a Public Records Act request received by the Centralized Custodian of Records Unit on _____. It appears that some or all the records requested are maintained by your unit. Please search for these records and let us know if you have any of the requested records by _____. If necessary we will request County Counsel's assistance in determining if the records are exempt from disclosure and in preparing a response to this request. The Department is required by law to respond to this request within 10 days of any Department unit receiving the request.

Please let us know immediately if your unit does not maintain the requested records so that we can forward this to the appropriate unit.

Upon receipt of this, please let us know who is the contact person in your unit who will be responsible for responding to this request.

Please be aware that this request is time-sensitive and that you are required by the California Government Code to respond in a timely manner. Your failure to respond in a timely manner may have serious negative legal implications for the Department.

We appreciate your cooperation and look forward to assisting you with this request. Contact _____ at (___)___-____ if you have any questions.

DA/PC/ms

FORM NO. 2
EMAIL OR LETTER TO CIVIL LITIGATION UNIT ASKING IF THERE IS PENDING LITIGATION OR CLAIM

[Department Letterhead]

[date]

Susan Porreca
Operations Assistant III
Risk Management Bureau
Civil Litigation Unit
Commerce, CA 90040

Re: Public Records Act Request dated_____
Request made by_____
Response due on_____

Dear Susan,

We have received a Public Records Act request that is seeking documents which may be the subject of pending litigation or a claim.

Attorney James Muller wrote, on behalf of himself and Maria Quiroz-Vallejo, concerning an incident in which LASD responded to a call on June 4, 2002 at:

8802 E. Artesia Blvd.
Bellflower, CA 90706

The records he is seeking are as follows:

1. All 911 tapes, printouts of or records of 911 tapes, printouts and records of any calls or other communications regarding the above address on or about June 4, 2002;

2. All deputy logs or M.D.T. transmissions regarding any calls at the above address on June 4, 2002.

At your convenience, please advise if there is any record of pending litigation or a claim by Maria Quiroz-Vallejo, or involving the subject matter of this request. If there is such pending claim or lawsuit, please forward this request to the attorney representing the Department. This request is time sensitive. Thank you for your assistance.

Very truly yours,

[NAME]
CENTRAL CUSTODIAN OF RECORDS UNIT

FORM NO. 3
LETTER ASSISTING REQUESTOR MAKE FOCUSED AND EFFECTIVE REQUEST

[Department Letterhead]

July 16, 2002

Name
Attorney at Law
[address]

Re: Public Records Act Request dated_____

Dear Mr. or Ms. Attorney:

This is in response to your [DATE] request for:

"Any and all documents, files, and other records concerning the background or activities of members of the National Rifle Association (NRA) organized as the Westside NRA Members' Council, aka NRA Members' Council of Westside Los Angeles or under other akas for the same group."

Under Government Code § 6253.1, the Sheriff's Department is required to assist you in making a focused and effective public records request. We do not understand what you mean by "background or activities." In addition, records concerning the members of the NRA would most likely be maintained by that organization. Your request is vague, ambiguous and overbroad. Please contact us as soon as possible so that we can assist you in formulating a more effective request.

Very truly yours,

LEROY D. BACA, SHERIFF

[NAME], CAPTAIN

FORM NO. 4
REQUEST FOR ADDITIONAL FOURTEEN DAYS

[Sheriff's Department Letterhead]

[DATE]

[NAME OF REQUESTER]
[ADDRESS OF REQUESTER]

Re: Public Records Act Request dated _____

Dear _____:

Your [DATE] request for records pursuant to Government Code § 6250, *et seq.*, was received by the Los Angeles County Sheriff's Department on [DATE].

Although the Sheriff's Department is obligated to respond within 10 days from receipt of the request, this time limit is subject to an extension for up to fourteen (14) days under the following circumstances as defined in Government Code § 6253(c)(1)-(4):

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data to write programming language or a computer program, or to construct a computer report to extract data.

The documents you seek are subject to some or all the above provisions. Consequently, an additional fourteen days will be required to respond to your request. We will dispatch a response on or before [DATE].

Very truly yours,

LEROY D. BACA
SHERIFF

[NAME]
CAPTAIN

FORM NO. 5
LETTER TO UNIT CONFIRMING THESE ARE ALL RECORDS THEY HAVE

[Sheriff's Department Letterhead]

DATE:

OFFICE CORRESPONDENCE

FROM: OWEN MARSHALL
CENTRALIZED CUSTODIAN RECORDS UNIT
LEGAL ADVISORY UNIT

TO: FRANK CANNON
LIEUTENANT
RAINING BUREAU

SUBJECT: PUBLIC RECORDS ACT REQUEST DATED AUGUST 1, 1001

On August 22, 1001, we sent you a memorandum notifying you that Professor David Dolittle had requested training records involving "search incident to arrest". Your staff sent us the attached pages, which are used in academy training. Are these the only materials that deal with the issue of "search incident to arrest"? If we do not hear from you, we will assume that these are the only records responsive to Mr. Dolittle's request.

Should you have any questions, please contact me or William Clinton at (323) 526-5045.

OM/GM/ms

Attachment

FORM NO. 6
SAMPLE RESPONSE LETTER--RECORDS ARE EXEMPT OR REDACTED

[Sheriff's Department Letterhead]

June 3, 2002

F. Lee Belly
Attorney at Law
[address]

Re: Public Records Act Request dated_____
May 1, 1998 incident with Deputy _____

Dear Mr. Belly:

This is in response to your [DATE] request for:

"all any and all records regarding a May 1, 1998 complaint against Deputy _____. Furthermore all records include logs, finding records, electronics storage records, writings, memorandums and faxes. "

We have conducted a search of the records you requested based on the criteria set forth in your request as we reasonably understand it. Enclosed are the non-exempt records we located:

a. Watch Commander's Service Comment Report #_____ dated [DATE]; and
b. Letter dated_____to you from Acting Captain [NAME]
c. One page Unit Commander's Response form;(redacted)
d. Three page memorandum to Captain [NAME]; and
e. Service Comment Report Log.

We also located other records (generally describe records here; no need to list documents) which are part of the investigatory file of your personnel complaint against Deputy_____. Therefore, these documents are not being disclosed since they are privileged, confidential and are exempt from disclosure under the California Public Records Act, Gov. Code § 6250(f) and (k) and Evidence Code § 1043 *et seq*. See also, Penal Code §§ 832.7, 832.8.

Document "c" (log) above is being disclosed to you in a redacted form because it contains information which is privileged, confidential and is exempt from disclosure. This information has been deleted as allowed by the Public Records Act. Our search revealed that the e-mails, electronic storage records and faxes you are requesting do not exist.

Very truly yours,

LEROY D. BACA, SHERIFF

[NAME], CAPTAIN

FORM NO. 7

Public Records Act Request
Exemptions/Objections Checklist

Note: This is a non-exhaustive list. Objections/exemptions not listed here my apply. See the listed statues for the complete text.

PROMPTLY CONSULT WITH COUNTY COUNSEL FOR ADVICE

- ☐ **Government Code § 6254(a)-** Protects preliminary notes or drafts, or interagency or intra-agency memoranda that are not retained in the ordinary course of business, provided that the public interest in withholding clearly outweighs the public interest in disclosure.
- ☐ **Government Code § 6254(b)** - Protects records pertaining to pending litigation. *Fairley v. Superior Court* (City of Long Beach) (1998) 66 Cal App. 4th 1414.
- ☐ **Government Code § 6254(c)** - Protects personnel, medical and similar files if disclosure would constitute an unwarranted invasion of privacy.
- ☐ **Government Code § 6254(f)** - Protects crime reports, investigatory files, intelligence files and security procedures. Shall release report to victim/representative; should redact from crime report: name, address, phone number of confidential informant, information that would endanger a witness or other, information that would endanger the investigation or related investigation, investigator's analysis or conclusion.
- ☐ **Government Code § 6254(f)(1)** - Shall make certain arrest *information* public unless: endanger person involved in investigation, or endangers the successful completion of the investigation or related investigation. See Field Op. Directive 97-03.
- ☐ **Government Code § 6254(f)(2)** - Shall make specific crime and requests for assistance public except as provided in **§ 6254(f)(1)**, or **Penal Code § 841.5** which prohibits the release of victims or witness' address and phone numbers.
- ☐ **Government Code § 6254(f)(3) -** Subject to Penal Code §841.5 and if appropriate declaration under penalty of perjury is provided, may provide the address of arrestee. Read complete text of this subsection.
- ☐ **Government Code § 6254(k)** - Protects records the disclosure of which is exempted or prohibited pursuant to federal or state law. See Gov. Code §§6276.02 - 6276.48.
- ☐ **Government Code § 6254(u)** - Applications for CCW licenses are public, but may withhold medical and psychological history information and information indicating where and when applicant may be vulnerable to attack. (Redact application).
- ☐ **California Constitution, Art. I, § 1** - Protects the identity and information about a person based upon that person's right to privacy under the California Constitution
- ☐ **Penal Code § 11167.5** - Protects child abuse reports.

- ❑ **Penal Code § 11165.1** - Protects sexual abuse reports.

- ❑ **Penal Code § 11105** - Protects state summary criminal history information. *Central Valley Chapter of The Seven Step Foundation* (1989) 214 Cal. App. 3d 145.

- ❑ **Penal Code § 13300** - Protects local summary criminal history information.

- ❑ **Penal Code § 832.7** - ("Pitchess Motion objection") Protects peace officer personnel records and citizen complaint investigation in criminal and civil court proceedings. Requestor must file motion to obtain these records. **Evidence Code §§ 1040, 1043** and **1046**. See **Government Code §§ 6254(c) and 6254(k), and Penal Code §§ 832.7, 832.8.** *City of Richmond v. Superior Court* (1995) 32 Cal. App. 4th 1430; *City of Hemet v. Superior Court* (1995) 37 Cal. App. 4th 1411.

- ❑ **Penal Code § 293** - Sex crime victim may keep name and address from public disclosure.

- ❑ **Penal Code § 841.5** - Prohibits the release of victims or witness' address and phone numbers. See *LAPD v. United Reporting Publishing Corp* (1999) 528 US 32, 120 S. Ct. 483.

- ❑ **Penal Code § 1054.5** - In criminal cases, requires that defendant propound informal discovery from DA.

- ❑ **Vehicle Code § 20012** - Protects traffic accident reports: disclosure to driver or representative, parent or guardian of juvenile driver, person injured, owner of vehicle or property damaged, person who may incur liability, or representative attorney.

- ❑ **Welfare & Institutions Code § 827** - Protects juvenile arrest, investigative and contact reports. Only presiding Juvenile court judge can release this information.

- ❑ **Welfare & Institutions Code § 15633** - Protects elder and/or dependent abuse reports.

- ❑ **Deliberative process privilege-** Information compiled by managers to assist them in making agency decisions. *County of L.A. v. Axelrad* (2000) 82 Cal. App. 4th 819; *Wilson v. Superior Court,* 51 Cal. App. 4th 1136.

- ❑ The Sheriff's Department does not release a roster of arrestee information from a centralized location because it is impossible to tell whether the particular arrest falls into one of the exemptions under **Government Code § 6254(f)**. The information is not provided in diskette or computer printouts. You may record the data yourself at the various Sheriff's Stations or copies will be made available at the cost of $.75 per order and $.03 per page. The Sheriff's Department does not release this information except in response to specific requests regarding arrests that have already taken place.

- ❑ The request does not ask for "identifiable" public records, but specific "information" in the form of interrogatories. The Public Records Act does not require that a public entity create a record in order to respond to a request for information. The Act only requires that certain records already in existence be made available, it does not require the public entity to answer interrogatories.

- ❑ The Public Records Act does not require release of records which are not

contemporaneous or current. We consider that events occurring before one year from the date of your request are no longer contemporaneous. Your request for records or information before this date, if it exists, is denied. See *County of Los Angeles v. Superior Court (Kusar)* (1993) 18 Cal. App. 4th 588; Gov. Code §§ 6254 (f),(k); California Constitution, Art. I, § 1.

❑ The record may be exempt from disclosure because on the facts of the case at issue the public interest served by not making the record public clearly outweighs the pubic interest served by disclosure of the record. Gov. Code § 6255.

❑ **Attorney-Client Privilege** - Attorney-client communications are privileged and are exempt from disclosure.

❑ **Official information privilege.** *Hampton v. City of San Diego*, 147 FRD 227 (S.D. Cal 1993); *Miller v. Panucci*, 141 F.R.D. 292 (C.D. Cal 1992)

FORM NO. 8
LETTER ASKING REQUESTOR TO PAY FOR DUPLICATING COSTS

[Sheriff's Department Letterhead]

[DATE]

Gregory Almas, Esq.
Gregory Almas and Peter L. Cook
Attorneys at Law
1234 Wilshire Boulevard, Suite 5678
Los Angeles, California 90010

Re: Public Records Act request dated_____

Dear [NAME]:

We have searched for the records you requested in your letter dated [DATE]. The non-exempt records are ready for reproduction. In accordance with Government Code, §54985, we are requesting that you reimburse the Department for the cost of duplicating the records.

The cost for copying records is $0.75 per order and $0.03 per page, for a total of $____. Please make your check payable to the Los Angeles County Sheriff's Department and mail it to the above address. Upon receipt of your payment, we will forward the documents to you.

Very truly yours,

LEROY D. BACA
SHERIFF

[NAME]
CAPTAIN

FORM NO. 9
LETTER MAILING RECORDS AFTER FEE RECEIVED

[Sheriff's Department Letterhead]

May 16, 2002

Robert Mann, Esq.
Robert Mann and Donald W. Cook
Attorneys at Law
3435 Wilshire Boulevard, Suite 2900
Los Angeles, California 90010

Re: Public Records Act request dated April 11, 2002 for incident dated from 12/21/01 to 1/11/02 regarding inmate Joseph Jay Buller

Dear Mr. Mann:

We have received your check in the sum of $6.30 and hereby release the following records to you:

1. Affidavit and Order for Removal of Prisoner dated 12/28/01;
2. Booking and Property Record for arrest date of 1/3/02.
3. Notice of Detainer dated 1/3/02;
4. Temporary Order for Detention showing "Rel Date 6/5/02";
5. AIMS tracking printout for 1/3/02 to 1/11/02;
6. Inmate Historical Data Center printout for arrest of 1/3/2002;
7. Court Case Status dated 1/3/02;
8. Microfilm Index Booking Number Inquiry re booking date 1/3/02.

In addition to the documents being produced, you requested "any writings reflecting a determination by a prosecuting attorney that charges against Joseph Jay Buller will not be filed or will be dismissed". These records may be obtained from the Los Angeles County District Attorney's office.

Very truly yours,

LEROY D. BACA
SHERIFF

(NAME) CAPTAIN

FORM NO. 10

LETTER MAILING RECORDS TO CIVIL LITIGATION AFTER FEE RECEIVED

[Sheriff's Department Letterhead]

DATE: September 2, 2000

OFFICE CORRESPONDENCE

FROM: OLIVER CARDOZO
CENTRALIZED CUSTODIAN RECORDS UNIT

TO: RALPH WEBB, LIEUTENANT
CIVIL LITIGATION UNIT

SUBJECT: **PUBLIC RECORDS ACT REQUEST**
DATE OF REQUEST: _____
REQUESTOR: _____
PLAINTIFF TO BE: _____
DATE OF INCIDENT: _____

Attached please find a copy of the request for public records and the Department's response sent to Attorney John E. Cockyman. We anticipate that the records will be used to file a claim/lawsuit against the Department. If Mr. Belli does file a suit on behalf of O. J. Albert, please provide the attorney representing the County with these documents.

Should you have further questions, please contact Anna Nicole Smith or Dennis Rodman at (323) 526-5045.

OC:OK:aa
Attachment

FORM NO. 11

LETTER TO PITCHESS ATTORNEY AT COUNTY COUNSEL

[Sheriff's Department Letterhead]

DATE

Anthony Nicklin, Principal Deputy County Counsel
Office Of The County Counsel
648 Kenneth Hahn Hall of Administration
Los Angeles, California 90010

PRA Request Denied under Evidence Code §§1043 and 1045

Dear Mr. Nicklin:

Enclosed is a Public Records Act request from Attorney Perry Mason and the Department's response. As you can see, the request was denied on the basis that the requested records which are confidential and protected by Penal Code § 832.7 and Evidence Code §§ 1043 and 1045.

Sincerely,

LEROY D. BACA
SHERIFF

NAME

FORM 12
PUBLIC RECORDS ACT REQUEST TRACKING SHEET
PRA Log Number:_____
Name of Person or Company Making Request:_____
Name of Person Who Signed Request:_____
Records Requested:_____
(describe or attach copy of request to this form)

DATE	FORM #	ACTION
		Date PRA request received by LASD
		Date response is due (10 days from receipt by LASD)
		Date on the PRA request
		Date PRA request received by CCRU Unit
	Form #1	Fax letter to _____ (name of contact person) at _____ (name of LASD unit) asking him or her to begin searching for the records.
	Form #2	E-mail letter to Civil Litigation asking if pending litigation or claim. Yes___ No___
		Fax PRA to Department's attorney if pending civil claim or lawsuit.
	Form #3	Send 6253.1 letter to assist requestor make a focused and effective request Log time spent assisting requestor.
	Form #4	Send 14 day extension letter if (1) separate offices must search (2) voluminous records or (3) another agency involved too
		Date 14 day response due (14 *calendar* days from 10 day due date)
		Date we should receive records from LASD unit (should be calendared 4 days before date PRA response is due)
	Form #5	Send memo to LASD unit confirming that they sent all records they have
	Form #6 Form #7	Send draft of letter #6 listing all objections using checklist at Form #7 to LASD unit if some records are exempt from release or redacted. OR if all records exempt, consult with County Counsel for letter which will be prepared on a case-by-case basis.
	Form #8 Form #9	E-mail draft of Form letter #8 to LASD unit asking for payment from requestor, and e-mail draft of Form #9 final letter mailing records after fees are paid. Ask LASD unit for copy of final letter.
	Form #10	Send copy of PRA with records released to the Civil Litigation Unit if records are released to a requestor who is an attorney, or send copy of PRA to attorney who is handling the case.
	Form #11	If Pitchess motion objection made in County Counsel response letter, send copy of letter to Pitchess Attorney at County Counsel
		After receiving copy of final letter sent by LASD unit, enter date of mailing in PRA log and close file.

SECTION 4

LEGAL AUTHORITY
STATUTES, BOARD AND DEPARTMENT POLICIES

Attachment A	-The California Public Records Act, Government Code §6254, et al.
Attachment B	- Los Angeles County Public Records Act Protocol
Attachment C	- Los Angeles County Code regarding fees
Attachment D	- Board of Supervisor's Policy "Destruction and Disposition of Old Records"
Attachment E	- County Auditor-Controller Memo regarding electronic format
Attachment F	- Department PRA Policies
Attachment G	- County Public Records Requests information on the County web page.

CALIFORNIA PUBLIC RECORDS ACT (2001)

CALIFORNIA GOVERNMENT CODE, SECTIONS 6250-6277

Article I.

6250. In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

6251. This chapter shall be known and may be cited as the California Public Records Act.

6252. As used in this chapter:

(a) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or nonprofit entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

(c) "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.

(d) "Public agency" means any state or local agency.

(e) "Public records" includes 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. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(f) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

(g) "Member of the public" means any person, except 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.

6252.5. Notwithstanding the definition of "member of the public" in Section 6252, an elected member or officer of any state or local agency is entitled to access to public records of that agency on the same basis as any other person. Nothing in this section shall limit the ability of elected members or officers to access public records permitted by law in the administration of their duties.

This section does not constitute a change in, but is declaratory of, existing law.

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, 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. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency 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 dispatched. No notice shall specify a date that would result in an extension for more than 14 days. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a

computer program, or to construct a computer report to extract data.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

6253.2. (a) Notwithstanding any other provision of this chapter to the contrary, information regarding persons paid by the state to provide in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code or personal care services pursuant to Section 14132.95 of the Welfare and Institutions Code, shall not be subject to public disclosure pursuant to this chapter, except as provided in subdivision (b).

(b) Copies of names, addresses, and telephone numbers of persons described in subdivision (a) shall be made available, upon request, to an exclusive bargaining agent and to any labor organization seeking representation rights pursuant to subdivision (c) of Section 12301.6 or Section 12302 of the Welfare and Institutions Code or Chapter 10 (commencing with Section 3500) of Division 4 of Title 1. This information shall not be used by the receiving entity for any purpose other than the employee organizing, representation, and assistance activities of the labor organization.

(c) This section shall apply solely to individuals who provide services under the In-Home Supportive Services Program (Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code) or the Personal Care Services Program pursuant to Section 14132.95 of the Welfare and Institutions Code.

(d) Nothing in this section is intended to alter or shall be interpreted to alter the rights of parties under the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4) or any other labor relations law.

6253.4. (a) Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section.

The following state and local bodies shall establish written guidelines for accessibility of records. A copy of these guidelines shall be posted in a conspicuous public place at the offices of these bodies, and a copy of the guidelines shall be available upon request free of charge to any person requesting that body's records:

Department of Motor Vehicles
Department of Consumer Affairs
Department of Transportation
Department of Real Estate
Department of Corrections
Department of the Youth Authority
Department of Justice
Department of Insurance
Department of Corporations
Department of Managed Health Care
Secretary of State
State Air Resources Board
Department of Water Resources
Department of Parks and Recreation
San Francisco Bay Conservation and Development Commission
State Board of Equalization
State Department of Health Services
Employment Development Department
State Department of Social Services
State Department of Mental Health
State Department of Developmental Services
State Department of Alcohol and Drug Abuse
Office of Statewide Health Planning and Development
Public Employees' Retirement System
Teachers' Retirement Board
Department of Industrial Relations
Department of General Services
Department of Veterans Affairs
Public Utilities Commission
California Coastal Commission
State Water Resources Control Board
San Francisco Bay Area Rapid Transit District
All regional water quality control boards
Los Angeles County Air Pollution Control District
Bay Area Air Pollution Control District
Golden Gate Bridge, Highway and Transportation District
Department of Toxic Substances Control
Office of Environmental Health Hazard Assessment

(b) Guidelines and regulations adopted pursuant to this section shall be consistent with all other sections of this chapter and shall reflect the intention of the Legislature to make the records accessible to the public. The guidelines and regulations adopted pursuant to this section shall not operate to limit the hours public records are open for inspection as prescribed in Section 6253.

6253.5. Notwithstanding Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions,

petitions circulated pursuant to Section 5091 of the Education Code, petitions for the reorganization of school districts submitted pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, petitions for the reorganization of community college districts submitted pursuant to Part 46 (commencing with Section 74000) of the Education Code and all memoranda prepared by the county elections officials in the examination of the petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving the petitions or who are responsible for the preparation of that memoranda and, if the petition is found to be insufficient, by the proponents of the petition and the representatives of the proponents as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor. However, the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a school district or a community college district attorney, and a city attorney shall be permitted to examine the material upon approval of the appropriate superior court.

If the proponents of a petition are permitted to examine the petition and memoranda, the examination shall commence not later than 21 days after certification of insufficiency.

(a) As used in this section, "petition" shall mean any petition to which a registered voter has affixed his or her signature.

(b) As used in this section "proponents of the petition" means the following:

(1) For statewide initiative and referendum measures, the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he or she prepare a title and summary of the chief purpose and points of the proposed measure.

(2) For other initiative and referenda on measures, the person or persons who publish a notice of intention to circulate petitions, or, where publication is not required, who file petitions with the elections official.

(3) For recall measures, the person or persons defined in Section 343 of the Elections Code.

(4) For petitions circulated pursuant to Section 5091 of the Education Code, the person or persons having charge of the petition who submit the petition to the county superintendent of schools.

(5) For petitions circulated pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, the person or persons designated as chief petitioners under Section 35701 of the Education Code.

(6) For petitions circulated pursuant to Part 46 (commencing with Section 74000) of the Education Code, the person or persons

designated as chief petitioners under Sections 74102, 74133, and 74152 of the Education Code.

6253.6. (a) Notwithstanding the provisions of Sections 6252 and 6253, information compiled by public officers or public employees revealing the identity of persons who have requested bilingual ballots or ballot pamphlets, made in accordance with any federal or state law, or other data that would reveal the identity of the requester, shall not be deemed to be public records and shall not be provided to any person other than public officers or public employees who are responsible for receiving those requests and processing the same.

(b) Nothing contained in subdivision (a) shall be construed as prohibiting any person who is otherwise authorized by law from examining election materials, including, but not limited to, affidavits of registration, provided that requests for bilingual ballots or ballot pamphlets shall be subject to the restrictions contained in subdivision (a).

6253.8. (a) Every final enforcement order issued by an agency listed in subdivision (b) under any provision of law that is administered by an entity listed in subdivision (b), shall be displayed on the entity's Internet website, if the final enforcement order is a public record that is not exempt from disclosure pursuant to this chapter.

(b) This section applies to the California Environmental Protection Agency and to all of the following entities within the agency:

(1) The State Air Resources Board.

(2) The California Integrated Waste Management Board.

(3) The State Water Resources Control Board, and each California regional water quality control board.

(4) The Department of Pesticide Regulation.

(5) The Department of Toxic Substances Control.

(c) (1) Except as provided in paragraph (2), for purposes of this section, an enforcement order is final when the time for judicial review has expired on or after January 1, 2001, or when all means of judicial review have been exhausted on or after January 1, 2001.

(2) In addition to the requirements of paragraph (1), with regard to a final enforcement order issued by the State Water Resources Control Board or a California regional water quality control board, this section shall apply only to a final enforcement order adopted by that board or a regional board at a public meeting.

(d) An order posted pursuant to this section shall be posted for not less than one year.

(e) The California Environmental Protection Agency shall oversee the implementation of this section.

(f) This section shall become operative April 1, 2001.

6253.9. (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(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. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.

(c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

(d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.

(e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the

disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the

request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code, except that the address of the victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph shall not be used directly or indirectly to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(l) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel, except those records in the public data base maintained by the Legislative Counsel that are described in Section 10248.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application which are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under these chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment

containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) (1) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(2) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(3) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(v) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the tes of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service ntractor's net worth, or, financial data regarding the funded accounts held in escrow for service contracts held in force in this

state by a service contractor.

(y) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code, on or after January 1, 1998, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract entered into pursuant to Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).

(z) Records obtained pursuant to paragraph (2) of subdivision (c) of Section 2891.1 of the Public Utilities Code.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

6254.1. (a) Except as provided in Section 6254.7, nothing in this chapter requires disclosure of records that are the residence address of any person contained in the records of the Department of Housing and Community Development, if the person has requested confidentiality of that information, in accordance with Section 18081 of the Health and Safety Code.

(b) Nothing in this chapter requires the disclosure of the residence or mailing address of any person in any record of the Department of Motor Vehicles except in accordance with Section

1808.21 of the Vehicle Code.

(c) Nothing in this chapter requires the disclosure of the results of a test undertaken pursuant to Section 12804.8 of the Vehicle Code.

6254.2. (a) Nothing in this chapter exempts from public disclosure the same categories of pesticide safety and efficacy information that are disclosable under paragraph (1) of subsection (d) of Section 10 of the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136h(d)(1)), if the individual requesting the information is not an officer, employee, or agent specified in subdivision (h) and signs the affirmation specified in subdivision (h).

(b) The Director of Pesticide Regulation, upon his or her initiative, or upon receipt of a request pursuant to this chapter for the release of data submitted and designated as a trade secret by a registrant or applicant, shall determine whether any or all of the data so submitted is a properly designated trade secret. In order to assure that the interested public has an opportunity to obtain and review pesticide safety and efficacy data and to comment prior to the expiration of the public comment period on a proposed pesticide registration, the director shall provide notice to interested persons when an application for registration enters the registration evaluation process.

(c) If the director determines that the data is not a trade secret, the director shall notify the registrant or applicant by certified mail.

(d) The registrant or applicant shall have 30 days after receipt of this notification to provide the director with a complete justification and statement of the grounds on which the trade secret privilege is claimed. This justification and statement shall be submitted by certified mail.

(e) The director shall determine whether the data is protected as a trade secret within 15 days after receipt of the justification and statement or, if no justification and statement is filed, within 45 days of the original notice. The director shall notify the registrant or applicant and any party who has requested the data pursuant to this chapter of that determination by certified mail. If the director determines that the data is not protected as a trade secret, the final notice shall also specify a date, not sooner than 15 days after the date of mailing of the final notice, when the data shall be available to any person requesting information pursuant to subdivision (a).

(f) "Trade secret" means data that is nondisclosable under paragraph (1) of subsection (d) of Section 10 of the federal Insecticide, Fungicide, and Rodenticide Act.

(g) This section shall be operative only so long as, and to the extent that, enforcement of paragraph (1) of subsection (d) of

Section 10 of the federal Insecticide, Fungicide, and Rodenticide Act has not been enjoined by federal court order, and shall become inoperative if an unappealable federal court judgment or decision becomes final that holds that paragraph invalid, to the extent of the invalidity.

(h) The director shall not knowingly disclose information submitted to the state by an applicant or registrant pursuant to Article 4 (commencing with Section 12811) of Chapter 2 of Division 7 of the Food and Agricultural Code to any officer, employee, or agent of any business or other entity engaged in the production, sale, or distribution of pesticides in countries other than the United States or in countries in addition to the United States, or to any other person who intends to deliver this information to any foreign or multi-national business or entity, unless the applicant or registrant consents to the disclosure. To implement this subdivision, the director shall require the following affirmation to be signed by the person who requests such information :

AFFIRMATION OF STATUS

This affirmation is required by Section 6254.2 of the Government Code.

I have requested access to information submitted to the Department of Pesticide Regulation (or previously submitted to the Department of Food and Agriculture) by a pesticide applicant or registrant pursuant to the California Food and Agricultural Code. I hereby affirm all of the following statements:

(1) I do not seek access to the information for purposes of delivering it or offering it for sale to any business or other entity, including the business or entity of which I am an officer, employee, or agent engaged in the production, sale, or distribution of pesticides in countries other than the United States or in countries in addition to the United States, or to the officers, employees, or agents of such a business or entity.

(2) I will not purposefully deliver or negligently cause the data to be delivered to a business or entity specified in paragraph (1) or its officers, employees, or agents.

I am aware that I may be subject to criminal penalties under Section 118 of the Penal Code if I make any statement of material facts knowing that the statement is false or if I willfully conceal any material fact.

_____

_____

Name of Requester Name of Requester's Organization

_____

Signature of Requester Address of Requester

Date Request No. Telephone Number of Requester

Name, Address, and Telephone Number of Requester's Client, if the requester has requested access to the information on behalf of someone other than the requester or the requester's organization listed above.

(i) Notwithstanding any other provision of this section, the director may disclose information submitted by an applicant or registrant to any person in connection with a public proceeding conducted under law or regulation, if the director determines that the information is needed to determine whether a pesticide, or any ingredient of any pesticide, causes unreasonable adverse effects on health or the environment.

(j) The director shall maintain records of the names of persons to whom data is disclosed pursuant to this section and the persons or organizations they represent and shall inform the applicant or registrant of the names and the affiliation of these persons.

(k) Section 118 of the Penal Code applies to any affirmation made pursuant to this section.

(l) Any officer or employee of the state or former officer or employee of the state who, because of this employment or official position, obtains possession of, or has access to, material which is prohibited from disclosure by this section, and who, knowing that disclosure of this material is prohibited by this section, willfully discloses the material in any manner to any person not entitled to receive it, shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000), or by imprisonment in the county jail for not more than one year, or by both fine and imprisonment.

For purposes of this subdivision, any contractor with the state who is furnished information pursuant to this section, or any employee of any contractor, shall be considered an employee of the state.

(m) This section does not prohibit any person from maintaining a civil action for wrongful disclosure of trade secrets.

(n) The director may limit an individual to one request per month pursuant to this section if the director determines that a person has made a frivolous request within the past 12-month period.

6254.20. Nothing in this chapter shall be construed to require the disclosure of records that relate to electronically collected personal information, as defined by Section 11015.5, received, collected, or compiled by a state agency.

6254.21. (a) No state or local agency shall post the home address or telephone number of any elected or appointed official on the Internet without first obtaining the written permission of that individual.

(b) For purposes of this section "elected or appointed official" includes, but is not limited to, all of the following:

(1) State constitutional officers.
(2) Members of the Legislature.
(3) Judges and court commissioners.
(4) District attorneys.
(5) Public defenders.
(6) Members of a city council.
(7) Members of a board of supervisors.
(8) Appointees of the Governor.
(9) Appointees of the Legislature.
(10) Mayors.
(11) City attorneys.
(12) Police chiefs and sheriffs.

6254.22. Nothing in this chapter or any other provision of law shall require the disclosure of records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors, whether paper records, records maintained in the management information system, or records in any other form, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulae or calculations for these payments, and contract negotiations with providers of health care for alternative rates for a period of three years after the contract is fully executed. The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the board of supervisors shall be subject to this same exemption. The provisions of this section shall not prevent access to any records by the Joint Legislative Audit Committee in the exercise of its powers pursuant to Article 1 (commencing with Section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The provisions of this section also shall not prevent access to any records by the Department of Corporations in the exercise of its powers pursuant to Article 1 (commencing with Section 1340) of

Chapter 2.2 of Division 2 of the Health and Safety Code.

6254.25. Nothing in this chapter or any other provision of law shall require the disclosure of a memorandum submitted to a state body or to the legislative body of a local agency by its legal counsel pursuant to subdivision (q) of Section 11126 or Section 54956.9 until the pending litigation has been finally adjudicated or otherwise settled. The memorandum shall be protected by the attorney work-product privilege until the pending litigation has been finally adjudicated or otherwise settled.

6254.3. (a) The home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

(1) To an agent, or a family member of the individual to whom the information pertains.

(2) To an officer or employee of another state agency, school district, or county office of education when necessary for the performance of its official duties.

(3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the me addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed.

(4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to state, school districts, and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

(b) Upon written request of any employee, a state agency, school district, or county office of education shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and an agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee.

6254.4. (a) The home address, telephone number, e-mail address, precinct number, or other number specified by the Secretary of State for voter registration purposes, and prior registration information shown on the voter registration card for all registered voters is confidential, and shall not be disclosed to any person, except ursuant to Section 2194 of the Elections Code.

b) For purposes of this section, "home address" means street address only, and does not include an individual's city or post

office address.

(c) The California driver's license number or California identification card number shown on a voter registration card of a registered voter is confidential and shall not be disclosed to any person.

6254.5. Notwithstanding any other provisions of the law, whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law. For purposes of this section, "agency" includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment.

This section, however, shall not apply to disclosures:

(a) Made pursuant to the Information Practices Act (commencing with Section 1798 of the Civil Code) or discovery proceedings.

(b) Made through other legal proceedings or as otherwise required by law.

(c) Within the scope of disclosure of a statute which limits disclosure of specified writings to certain purposes.

(d) Not required by law, and prohibited by formal action of an elected legislative body of the local agency which retains the writings.

(e) Made to any governmental agency which agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes which are consistent with existing law.

(f) Of records relating to a financial institution or an affiliate thereof, if the disclosures are made to the financial institution or affiliate by a state agency responsible for the regulation or supervision of the financial institution or affiliate.

(g) Of records relating to any person that is subject to the jurisdiction of the Department of Corporations, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Corporations.

(h) Made by the Commissioner of Financial Institutions under Section 1909, 8009, or 18396 of the Financial Code.

(i) Of records relating to any person that is subject to the jurisdiction of the Department of Managed Health Care, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or if a

corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Managed Health Care.

6254.6. Whenever a city and county or a joint powers agency, pursuant to a mandatory statute or charter provision to collect private industry wage data for salary setting purposes, or a contract entered to implement that mandate, is provided this data by the federal Bureau of Labor Statistics on the basis that the identity of private industry employers shall remain confidential, the identity of the employers shall not be open to the public or be admitted as evidence in any action or special proceeding.

6254.7. (a) All information, analyses, plans, or specifications that disclose the nature, extent, quantity, or degree of air contaminants or other pollution which any article, machine, equipment, or other contrivance will produce, which any air pollution control district or air quality management district, or any other state or local agency or district, requires any applicant to provide before the applicant builds, erects, alters, replaces, operates, sells, rents, or uses the article, machine, equipment, or other contrivance, are public records.

(b) All air or other pollution monitoring data, including data compiled from stationary sources, are public records.

(c) All records of notices and orders directed to the owner of any building of violations of housing or building codes, ordinances, statutes, or regulations which constitute violations of standards provided in Section 1941.1 of the Civil Code, and records of subsequent action with respect to those notices and orders, are public records.

(d) Except as otherwise provided in subdivision (e) and Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code, trade secrets are not public records under this section. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

(e) Notwithstanding any other provision of law, all air pollution emission data, including those emission data which constitute trade crets as defined in subdivision (d), are public records. Data used o calculate emission data are not emission data for the purposes of

this subdivision and data which constitute trade secrets and which are used to calculate emission data are not public records.

(f) Data used to calculate the costs of obtaining emissions offsets are not public records. At the time that an air pollution control district or air quality management district issues a permit to construct to an applicant who is required to obtain offsets pursuant to district rules and regulations, data obtained from the applicant consisting of the year the offset transaction occurred, the amount of offsets purchased, by pollutant, and the total cost, by pollutant, of the offsets purchased is a public record. If an application is denied, the data shall not be a public record.

6254.8. Every employment contract between a state or local agency and any public official or public employee is a public record which is not subject to the provisions of Sections 6254 and 6255.

6254.9. (a) Computer software developed by a state or local agency is not itself a public record under this chapter. The agency may sell, lease, or license the software for commercial or noncommercial use.

(b) As used in this section, "computer software" includes computer mapping systems, computer programs, and computer graphics systems.

(c) This section shall not be construed to create an implied warranty on the part of the State of California or any local agency for errors, omissions, or other defects in any computer software as provided pursuant to this section.

(d) Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer. Public records stored in a computer shall be disclosed as required by this chapter.

(e) Nothing in this section is intended to limit any copyright protections.

6254.10. Nothing in this chapter requires disclosure of records that relate to archeological site information maintained by the Department of Parks and Recreation, the State Historical Resources Commission, or the State Lands Commission.

6254.11. Nothing in this chapter requires the disclosure of records that relate to volatile organic compounds or chemical substances information received or compiled by an air pollution control officer pursuant to Section 42303.2 of the Health and Safety Code.

6254.12. Any information reported to the North American Securities Administrators Association/National Association of Securities Dealers' Central Registration Depository and compiled as disciplinary records which are made available to the Department of Corporations through a

computer system, shall constitute a public record. Notwithstanding ny other provision of law, the Department of Corporations may isclose that information and the current license status and the year of issuance of the license of a broker-dealer upon written or oral request pursuant to Section 25247 of the Corporations Code.

6254.13. Notwithstanding Section 6254, upon the request of any Member of the Legislature or upon request of the Governor or his or her designee, test questions or materials that would be used to administer an examination and are provided by the State Department of Education and administered as part of a statewide testing program of pupils enrolled in the public schools shall be disclosed to the requester. These questions or materials may not include an individual examination that has been administered to a pupil and scored. The requester may not take physical possession of the questions or materials, but may view the questions or materials at a location selected by the department. Upon viewing this information, the requester shall keep the materials that he or she has seen confidential.

6254.14. (a) Except as provided in Sections 6254 and 6254.7, nothing in this chapter shall be construed to require disclosure of records of the Department of Corrections that relate to health care rvices contract negotiations, and that reveal the deliberative ocesses, discussions, communications, or any other portion of the negotiations, including, but not limited to, records related to those negotiations such as meeting minutes, research, work product, theories, or strategy of the department, or its staff, or members of the California Medical Assistance Commission, or its staff, who act in consultation with, or on behalf of, the department.

Except for the portion of a contract that contains the rates of payment, contracts for health services entered into by the Department of Corrections or the California Medical Assistance Commission on or after July 1, 1993, shall be open to inspection one year after they are fully executed. In the event that a contract for health services that is entered into prior to July 1, 1993, is amended on or after July 1, 1993, the amendment, except for any portion containing rates of payment, shall be open to inspection one year after it is fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee and the Bureau of State Audits. The Joint Legislative dit Committee and the Bureau of State Audits shall maintain the confidentiality of the contracts and amendments until the contract or

amendment is fully open to inspection by the public.

It is the intent of the Legislature that confidentiality of health care provider contracts, and of the contracting process as provided in this subdivision, is intended to protect the competitive nature of the negotiation process, and shall not affect public access to other information relating to the delivery of health care services.

(b) The inspection authority and confidentiality requirements established in subdivisions (q), (v), and (w) of Section 6254 for the Legislative Audit Committee shall also apply to the Bureau of State Audits.

6254.15. Nothing in this chapter shall be construed to require the disclosure of records that are any of the following: corporate financial records, corporate proprietary information including trade secrets, and information relating to siting within the state furnished to a government agency by a private company for the purpose of permitting the agency to work with the company in retaining, locating, or expanding a facility within California. Except as provided below, incentives offered by state or local government agencies, if any, shall be disclosed upon communication to the agency or the public of a decision to stay, locate, relocate, or expand, by a company, or upon application by that company to a governmental agency for a general plan amendment, rezone, use permit, building permit, or any other permit, whichever occurs first.

The agency shall delete, prior to disclosure to the public, information that is exempt pursuant to this section from any record describing state or local incentives offered by an agency to a private business to retain, locate, relocate, or expand the business within California.

6254.16. Nothing in this chapter shall be construed to require the disclosure of the name, credit history, utility usage data, home address, or telephone number of utility customers of local agencies, except that disclosure of name, utility usage data, and the home address of utility customers of local agencies shall be made available upon request as follows:

(a) To an agent or authorized family member of the person to whom the information pertains.

(b) To an officer or employee of another governmental agency when necessary for the performance of its official duties.

(c) Upon court order or the request of a law enforcement agency relative to an ongoing investigation.

(d) Upon determination by the local agency that the utility customer who is the subject of the request has used utility services in a manner inconsistent with applicable local utility usage policies.

(e) Upon determination by the local agency that the utility

customer who is the subject of the request is an elected or appointed official with authority to determine the utility usage policies of the local agency, provided that the home address of an appointed official shall not be disclosed without his or her consent.

(f) Upon determination by the local agency that the public interest in disclosure of the information clearly outweighs the public interest in nondisclosure.

6254.17. (a) Nothing in this chapter shall be construed to require disclosure of records of the State Board of Control that relate to a request for assistance under Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2.

(b) This section shall not apply to a disclosure of the following information, if no information is disclosed that connects the information to a specific victim, derivative victim, or applicant under Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2:

(1) The amount of money paid to a specific provider of services.

(2) Summary data concerning the types of crimes for which assistance is provided.

6255. (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.

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(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.

6257.5. This chapter does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure.

6258. Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter. The times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.

6259. (a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall 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. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

(c) In an action filed on or after January 1, 1991, an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

6260. The provisions of this chapter shall not be deemed in any manner to affect the status of judicial records as it existed immediately prior to the effective date of this section, nor to affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state, nor to limit or impair any rights of discovery in a criminal case.

6261. Notwithstanding Section 6252, an itemized statement of the total expenditures and disbursement of any agency provided for in Article VI of the California Constitution shall be open for inspection.

6262. The exemption of records of complaints to, or investigations conducted by, any state or local agency for licensing purposes under subdivision (f) of Section 6254 shall not apply when a request for inspection of such records is made by a district attorney.

6263. A state or local agency shall allow an inspection or copying of any public record or class of public records not exempted by this chapter when requested by a district attorney.

6264. The district attorney may petition a court of competent jurisdiction to require a state or local agency to allow him to inspect or receive a copy of any public record or class of public records not exempted by this chapter when the agency fails or refuses to allow inspection or copying within 10 working days of a request. The court may require a public agency to permit inspection or copying by the district attorney unless the public interest or good cause in withholding such records clearly outweighs the public interest in disclosure.

6265. Disclosure of records to a district attorney under the provisions of this chapter shall effect no change in the status of the records under any other provision of law.

6267. All registration and circulation records of any library which is in whole or in part supported by public funds shall remain confidential and shall not be disclosed to any person, local agency, or state agency except as follows:

(a) By a person acting within the scope of his or her duties within the administration of the library.

(b) By a person authorized, in writing, by the individual to whom the records pertain, to inspect the records.

(c) By order of the appropriate superior court.

As used in this section, the term "registration records" includes any information which a library requires a patron to provide in order to become eligible to borrow books and other materials, and the term "circulation records" includes any information which identifies the patrons borrowing particular books and other material.

This section shall not apply to statistical reports of registration and circulation nor to records of fines collected by the library.

6268. Public records, as defined in Section 6252, in the custody or control of the Governor when he or she leaves office, either voluntarily or involuntarily, shall, as soon as is practical, be transferred to the State Archives. Notwithstanding any other provision of law, the Governor, by written instrument, the terms of which shall be made public, may restrict public access to any of the transferred public records, or any other writings he or she may transfer, which have not already been made accessible to the public. With respect to public records, public access, as otherwise provided for by this chapter, shall not be restricted for a period greater than 50 years or the death of the Governor, whichever is later, nor shall there be any restriction whatsoever with respect to enrolled bill files, press releases, speech files, or writings relating to applications for clemency or extradition in cases which have been closed for a period of at least 25 years. Subject to any restrictions permitted by this section, the Secretary of State, as custodian of the State Archives, shall make all such public records and other writings available to the public as otherwise provided for in this chapter.

Except as to enrolled bill files, press releases, speech files, or writings relating to applications for clemency or extradition, this section shall not apply to public records or other writings in the direct custody or control of any Governor who held office between 1974 and 1988 at the time of leaving office, except to the extent that Governor may voluntarily transfer those records or other writings to the State Archives.

Notwithstanding any other provision of law, the public records and other writings of any Governor who held office between 1974 and 1988 may be transferred to any educational or research institution in California provided that with respect to public records, public access, as otherwise provided for by this chapter, shall not be restricted for a period greater than 50 years or the death of the Governor, whichever is later. No records or writings may be transferred pursuant to this paragraph unless the institution receiving them agrees to maintain, and does maintain, the materials according to commonly accepted archival standards. No public records transferred shall be destroyed by that institution without first receiving the written approval of the Secretary of State, as custodian of the State Archives, who may require that the records be placed in the State Archives rather than being destroyed. An institution receiving those records or writings shall allow the Secretary of State, as custodian of the State Archives, to copy, at state expense, and to make available to the public, any and all public records, and inventories, indices, or finding aids relating to those records, which the institution makes available to the public generally. Copies of those records in the custody of the State Archives shall be given the same legal effect as is given to the originals.

6270. (a) Notwithstanding any other provision of law, no state or local agency shall sell, exchange, furnish, or otherwise provide a public record subject to disclosure pursuant to this chapter to a private entity in a manner that prevents a state or local agency from providing the record directly pursuant to this chapter. Nothing in this section requires a state or local agency to use the State Printer to print public records. Nothing in this section prevents the destruction of records pursuant to law.

(b) This section shall not apply to contracts entered into prior to January 1, 1996, between the County of Santa Clara and a private entity for the provision of public records subject to disclosure under this chapter.

Article II.

[6275 -6277]

COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL
648 KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012-2713

TDD
(213) 633-0901
TELEPHONE
(213) 974-1904
TELECOPIER
(213) 687-7300

LLOYD W. PELLMAN
County Counsel

March 28, 2002

Syn. No. 86
3/19/02

TO: SUPERVISOR ZEV YAROSLAVSKY, Chairman
SUPERVISOR GLORIA MOLINA
SUPERVISOR YVONNE BRATHWAITE BURKE
SUPERVISOR DON KNABE
SUPERVISOR MICHAEL D. ANTONOVICH

FROM: LLOYD W. PELLMAN
County Counsel

RE: **County's Internet Web Page**
Public Records Act Protocol

By motion of Supervisor Burke adopted on March 19, 2002, your Board requested development of a countywide Public Records Act protocol for publication on the County's internet web page. A copy of Supervisor Burke's motion is enclosed.

Enclosed for your consideration is a draft of such protocol which has been prepared by this Office and reviewed by the Chief Administrative Officer and Auditor-Controller. The proposed protocol references existing County Code provisions and Board policy. (See, Los Angeles County Code § 2.170, *et seq.*, and Board Policy #3.140.)

If you have any questions regarding this proposed protocol, please contact Senior Deputy County Counsel Halvor Melom at (213) 974-1821.

LWP:HSM:jb

Enclosures
c: David E. Janssen
Chief Administrative Officer

J. Tyler McCauley
Auditor-Controller

Violet Varona-Lukens, Executive Officer
Board of Supervisors

HOA.115080.1

ATTACHMENT B

PUBLIC RECORDS REQUESTS

Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. Records of the County of Los Angeles which are not exempt from disclosure are available for inspection and copying in accordance with the California Public Records Act upon a request that reasonably describes an identifiable record or records. (Los Angeles County Code § 2.170.010(a).)

The California Public Records Act is found in the California Government Code, beginning at Section 6250. Records subject to inspection and copying include any writings, meaning any handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including information available in an electronic format. (See, Government Code §§ 6252(f) and 6253.9.)

The County of Los Angeles does not maintain a centralized record keeping system. County departments, agencies, commissions and committees process innumerable requests for records on a daily basis at various public facilities dispersed throughout the County.

The list of all County departments, agencies, commissions and committees is available on the County's website at www.co.la.ca.us under the headings "County Departments" and "Commissions & Committees."

Requests to inspect and copy public records which are not otherwise immediately available to the public should be made directly to the responsible department or agency head, commission or committee secretary, or to his or her designee, as identified on the website of the department, agency, commission or committee.

The Public Affairs Office of the Chief Administrative Office, located at Room 358, Kenneth Hahn Hall of Administration, 500 W. Temple Street, Los Angeles, 90012, shall be responsible for directing the public to the appropriate department, agency, commission or committee.

Records may be described by their content. It is the responsibility of the department, agency, commission or committee to search for records based on the criteria set forth in the records request, and to determine whether it has such records under its control.

Records shall be made promptly available for inspection, and for copying within ten (10) calendar days. In unusual circumstances, the ten (10) days may be extended by written notice from the department or agency head, commission or committee secretary, or from his or her designee, for no more than an additional fourteen (14) days as provided by law.

Within the time frame for responding to a public records request, it is the responsibility of the department or agency head, commission or committee secretary, or his or her designee, to contact the Office of the County Counsel if any question exists whether any record, or portion of any record, is exempt from disclosure. The County Counsel shall be responsible for providing advice to the department, agency, commission or committee, and for assisting the department, agency, commission or committee in drafting a written response if an exemption is claimed.

A fee for copies of public records may be charged which covers the direct costs of duplication as determined by the County's Auditor-Controller. (Los Angeles County Code § 2.170.010(a).) It is the policy of the Los Angeles County Board of Supervisors to waive charges for duplicating routine records when requested by the media. (Board of Supervisors Policy Manual, "Media Policy Guidelines For Departments," Policy #3.140 adopted 03/29/94.)

Amendment by Supervisor Burke to Proposed Motion – Item 88-A
Supplemental Agenda

We all agree that the County must respond to Public Records Act Requests appropriately. We want to reaffirm our commitment to open government and the public's right to timely information.

I Therefore, Move That:

1. The Office of the County Counsel, along with the Auditor-Controller and the CAO, develop a Countywide protocol for appropriately responding to Public Records Act Requests. That protocol must have the Office of the County Counsel as the department ultimately responsible to advise on issues of the presence or absence of confidentiality or privilege relating to the documents in question; and

2. The Office of the County Counsel, along with the Auditor-Controller and the CAO, report back to this Board in fourteen (14) days with a proposed protocol.

3. Finally, upon adoption by this Board of such a protocol, that the definitions, guidelines and steps outlining the request process shall be placed on the County's Internet Web Page.

LOS ANGELES COUNTY CODE

Section 2.170.010

2.170.010 Fees for providing county records.

A. Whenever a request for copies of county records reasonably describes an identifiable record subject to disclosure, that record shall be provided to the requestor in accordance with the California Public Records Act for a fee which covers the direct costs of duplication as determined by the auditor-controller.

B. Whenever a request for copies of county records subject to disclosure describes the records sought by listing categories of records related to a particular matter, issue or subject, ***or otherwise does not reasonably describe an identifiable record***, the requestor shall reimburse the county for the costs incurred by the county in responding to the request as set forth in subsection C of this section.

C. For requests for county records as described in subsection B of this section, the requestor shall be charged a fee for the actual duplication of the records which is the same as that set forth for the records described in subsection A of this section. In addition, the requestor shall be charged a fee of $22.50 for each hour of time expended by county employees to locate, retrieve and refile such records; provided, however, the first full hour of such time expended on all requests of any one requestor each month, shall be provided free of charge.

D. If it is anticipated that the fee to be charged for the provision of any county records described in this section will exceed $50.00, a good faith estimate of the total fee to be charged shall be provided to the requestor, and the requestor shall make payment of such amount to the county before work is commenced on the request. Any overpayment or underpayment shall be reconciled at the time the records are provided to the requestor. (Ord. 93-0057 §§1, 1993.)

Policy #:	Title:	Effective Date:	Page:
3.040	DESTRUCTION AND DISPOSITION OF OLD RECORDS	2/18/47 05/13/58	1 of 1

PURPOSE

Saves County departments costs and storage space for storing old records that have no lasting value.

REFERENCE

May 13, 1958 Board Order, Synopsis 46
Government Code Section 26202

POLICY

It is the policy of the Board of Supervisors to allow County departments to destroy any record, paper or document that:

(1) Is more than two years old;
(2) Is of no further use to the department; and
(3) Is not expressly prepared or received pursuant to State statute or County charter.

RESPONSIBLE DEPARTMENT

Chief Administrative Office

DATE ISSUED/SUNSET DATE

Issue Date: May 13, 1958

Sunset Date: May 13, 2004

ATTACHMENT D

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY
AUDITOR-CONTROLLER

January 23, 2001

To: All Department and District Heads

From: J. Tyler McCauley
Auditor-Controller

Subject: **Public Records Act Requests - Electronic Format**

The purpose of this memo is to notify you of revisions to the Public Records Act, particularly related to data held in an electronic format.

Effective January 1, 2001, AB 2799 amending California Government Code Sections 6253 and 6255 and adding Section 6253.9 (Public Records Act), became law. The amendments and addition primarily deal with responding to requests under the Public Records Act where the information is held in an electronic format. The new law is detailed in Chapter 982 of the Statutes of 2000.

Requirements of New Law

Following are the principal requirements of the new law:

- States that nothing in the Public Records Act shall be construed to permit an agency to delay or obstruct the inspection or copying of public records.
- Deletes the requirement that computer data be provided only in a form determined by the agency.
- Requires an agency make information available in an electronic format, if requested, when that agency has that information in an electronic format that constitutes an identifiable public record, not otherwise exempt from disclosure.
- Requires the agency to make the information available in any electronic format in which it holds the information, but does not require release of a record in the electronic form in which it is held, if its release would jeopardize or compromise the security or integrity of the original record or any proprietary software in which it is maintained.

- Does not require agencies to reconstruct or construct a record in an electronic format if it never had or no longer has the information available in an electronic format.

- Does not permit an agency to make information available only in an electronic format. However, the requestor shall bear the cost of constructing a record in an electronic format and converting it to a printed format if that is how it is requested.

- Adds the need to compile data, write programming language or a computer program, or construct a computer report to extract the requested data to the list of "unusual circumstances" which may extend the prescribed time limit to respond to the person making the request.

Cost Recovery - Information in Electronic Format

The new law requires the requestor pay the cost of programming and computer services necessary to produce a record not otherwise readily produced as requested. For example, if a report is generated on a quarterly basis and the request is made between quarters, the requestor could either be given the last generated report or charged for a special run. If the record is prepared by a contractor or another County department, the Act allows for the requestor to be billed the total cost incurred by the providing department. **If the providing department prepares the record, the Act does not permit the inclusion of indirect expenses in calculating the fee.**

Cost Recovery - Non-Electronic Records

A charge for the actual cost of copying public records is required under Government Code Section 6257. Sales tax is not applicable unless the document being copied is in the nature of a manual or other publication or document of a type that might well be produced by non-governmental enterprises for sale. In such cases, the appropriate sales tax should be collected and reported to the Auditor-Controller. If you are unsure if the sales tax is applicable, you should contact the local office of the State Board of Equalization.

Based on a recent Countywide survey, the following rates are to be used to recover the County's cost of providing copies of public records when no other fee is established by statute:

$.03 per copy (legal or letter size)
$.75 per order handing fee (excludes retrieval and preparation time)

These rates include the cost of machine operator salary and employee benefits, paper and other supplies, and machine rental. **The Act does not permit inclusion of indirect expenses in calculating this fee.**

If your department's actual costs are significantly different from those shown above, you may develop your own rates. You should check with your assigned County Counsel if you receive a Public Records Act request that is too overly broad or complicated to determine if additional fees are applicable. If you wish to calculate your own rates, please call the Auditor-Controller Accounting Division Cost Unit for assistance and review your rate calculations.

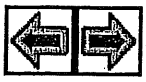
Although not legally required, we recommend you keep a record of who requested information and what was provided, regardless of format. This will not only be of assistance in the case of litigation, but will document the number of requests received and resources devoted to responding to them.

Please call me if you have any questions.

JTM:PTM:JMS

c: David Janssen, Chief Administrative Officer
Lloyd W. Pellman, County Counsel
Halvor S. Melom, Principal Deputy County Counsel
Judy Hammond, Public Information Office

MANUAL OF POLICY AND PROCEDURES



09/090.00 RELEASE OF OFFICIAL INFORMATION

Except under specific circumstances, complaint reports, arrest reports and investigator files, defined as public records under Section 6250 of the Government Code, are exempt from disclosure. Those specific exceptions are defined in the 1982 amendment to Section 6254(f) of the Government Code.

The purpose of the amendment is to clarify the rights of the public to access nonsensitive law enforcement records. The revised section addresses this issue by classifying those persons requesting record information as victims and/or the general public (including the media).

Although legislation governing the release of crime and arrest information does not differentiate between adult and juvenile subjects, refer to the Juvenile chapter of this manual for Department policy on the release of information concerning juveniles.

Public records are defined under Section 6250 of the Government Code as any recordation containing information relating to the conduct of the public's business prepared, owned, used or retained by any local agency, regardless of physical form or characteristics. For the purpose of this manual section, the term "information" shall include any material that is maintained in the normal course of business in written, photographic or electronically recorded form.

This section does not apply to the dissemination of criminal record information. For dissemination of such information, refer to section 3-09/110.00 of this chapter.

ATTACHMENT F

4-01/020.65 ASSERTION OF GOVERNMENT PRIVILEGE

The County, and any other public entity, has a privilege to refuse to disclose certain official information/records when the privilege is claimed. The following is information that may be classified as privileged, and under which Evidence Code Section or Government Code Section the assertion is to be applied.

Government Code Section 6254

- Records that are preliminary drafts, notes, or Department memoranda (interagency or intra agency) which are not retained by this Department in the ordinary course of business and when the public interest in withholding clearly outweighs the disclosure,
- Records pertaining to pending litigation to which this Department is a party,
- Any personnel, medical, or similar file when the disclosure would constitute an unwarranted invasion of personal privacy,
- Records of complaints, intelligence information, or security procedures.

The Department has experienced a certain degree of success in asserting privileges for the above information/records under Section 6254 of the Government Code; however, the following situations under Sections 1040 and 1041 of the Evidence Code requires sound judgment by Department personnel, as the courts often make dismissal of the case the price of assertion.

Evidence Code Section 1040

- Information acquired in confidence by a public employee, if the privilege is claimed by an authorized person, and:
  - Disclosure is forbidden by State or Federal law or,
  - Need to preserve the confidentiality of the information outweighs the necessity of disclosure.
- No privilege may be claimed if consent to disclose has been obtained from an authorized person.

Evidence Code Section 1041

- To refuse to disclose the identity of a person who has furnished information purporting to disclose a violation of law and to prevent another from disclosing such identity if:
  - Disclosure is forbidden by federal or state law or,
  - The need to preserve the confidentiality of his identity outweighs the necessity for disclosure.
- No privilege may be claimed if the consent to disclose has been obtained from an authorized person or the informer.

Reports containing information, as noted above, should be stamped as containing privileged information by the reporting unit. For uniformity, reports should be stamped in the narrative section just prior to the written report.

This procedure in no way eliminates the writing of confidential reports as outlined in section 4-01/020.60.

ıe purpose of the stamp is to alert an individual, station, or bureau receiving a motion for pre-trial discovery of subpoena duces tecum requesting information, from our reports and records, that our documents may contain information that has been Departmentally classified as privileged information and shall, in all cases, be evaluated prior to surrender. This stamp on a document will not automatically preclude the disclosure of the information. This specific immunity is to be asserted, when necessary, during legal proceedings.

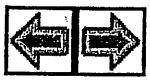
Personnel responsible for gathering information in answer to a court order shall, in all cases, advise the reporting unit when the privileged information stamp appears. The originating unit shall either declassify the information or be prepared to assert the privilege in court. If assistance or information is necessary in asserting the privilege, personnel should contact the Executive Planning Council (EPC) Staff, Legal Unit, (refer to section 3-09/210.00).

Any member may request that certain documents/reports be classified as containing privileged information; however, only watch commanders or permanent lieutenants and ranks above shall classify or declassify.

The stamp shall contain the following:

- "This document may contain privileged information,"
- Reference to the code sections,
- Name and rank of the classifier,
- Unit of assignment,
- Date of classification.

To provide uniformity, Records and Identification Bureau shall control the acquisition, supply and distribution of the stamps.



4-01/020.60 CONFIDENTIAL REPORTS

When URN numbers are requested from the Event Index (EI), the "Name Kind Code" (S = Suspect, V = Victim, C = Confidential, etc.) must be entered in the name kind code field.

Confidential reports are those that have a confidential distribution, and which the unit of assignment does not want released to anyone, including unauthorized Department personnel. The confidential Kind Code (C) should be very rarely used for other than homicide reports. Other examples of appropriate use of this code are: Open criminal investigations of County personnel; open criminal investigations of any law enforcement personnel; narcotic undercover operations where buy money is required, etc.

Reports that are not to be released as public information due to their sensitive nature e.g., non-sexual, child abuse cases, investigative reports, politically sensitive reports, etc. are not confidential reports. These reports fall under the parameters of Government Code Section 6254(f) and should be stamped/identified "Limited Distribution." THESE REPORTS SHALL NOT BE STAMPED "Confidential," with the exception of the following sex offense Penal Code Sections: 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 267, 281, 284, 285, 286, 288, 288a, 288.2, 288.5, and 289. They shall be processed in the normal manner with the original sent to Records and Identification Bureau for microfilming.

For additional information regarding confidentiality of these sex offense Penal Code sections, refer to manual section 5-09/350.00, Policy and Procedure for Sex Related Crimes.

All confidential reports shall be frequently reviewed by the concerned unit commander, and upon concurrence, held at the unit of assignment until no longer considered confidential. These reports shall then be processed in the normal manner with the original sent to Records and Identification Bureau for microfilming.

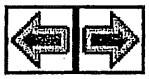
The station/unit initiating a confidential report is responsible for making the necessary Event Index entries after the report has been declassified and is no longer considered confidential.

Distribution of confidential reports will vary with the originating units.

In homicide cases, the complaint report shall be sent via JDIC or faxed as soon as possible to Homicide Bureau and the Coroner's Office. Both the complaint report and supplementary reports on homicide cases are confidential.

The distribution of confidential homicide reports shall be made by Homicide Bureau. All copies, except for the station file, shall be forwarded directly to the Homicide Bureau.

Revised 02/22/99



09/350.00 POLICY AND PROCEDURE FOR SEX RELATED CRIMES

The names and addresses of victims of 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 267, 273a, 273d, 281, 284, 285, 286, 288, 288a, 288.5, and 289 shall be confidential and not disclosed to the public.

The watch sergeant shall stamp all such reports as confidential.

In accordance with California Penal Code Section 293(a), it is mandatory for all personnel who receive a report from an alleged victim of a sex offense to advise the victim that his name will become a matter of public record unless he requests otherwise (pursuant to Section 6254 of the Government Code). Any written sex offense report shall indicate that the alleged victim has been so informed. The victim's response shall be documented by the appropriate notation on the pre-printed "Victim of a Sex Crime Request for Confidentiality" box on the reverse side of the Complaint Report form (SH-R-49, Rev. 5/93). The advisement shall be read to and signed by the victim. An additional notation shall be completed on the pre-printed "Sex Offense Victim Information" box on the front page of the Complaint Report. This section shall indicate if the report contains a sex offense victim's personal information.

In all alleged cases of violations of section 261, 261.5, 262, 286, 288a or 289 of the Penal Code, deputies assigned to the case shall furnish the victim with the following: a handout containing information regarding procedures to follow after a sexual assault; the names and locations of rape victim centers within the County; and a statement that sexual assault by a person known to the victim, including the victim's spouse, is also a crime. Deputies shall notify the local rape counseling center whenever the victim has been transported to a hospital for examination, provided the victim approves of the notification.

In all cases when the crime was an attempt, victims shall be provided the same information and notification.

Revised 02/22/99

Public Records

County of Los Angeles

Public Records Requests

Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. Records of the County of Los Angeles which are not exempt from disclosure are available for inspection and copying in accordance with the California Public Records Act upon a request that reasonably describes an identifiable record or records. (Los Angeles County Code § 2.170.010(a).)

The California Public Records Act is found in the California Government Code, beginning at Section 6250. Records subject to inspection and copying include any writings, meaning any handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including information available in an electronic format. (See, Government Code §§ 6252(f) and 6253.9.)

The County of Los Angeles does not maintain a centralized record keeping system. County departments, agencies, commissions and committees process innumerable requests for records on a daily basis at various public facilities dispersed throughout the County.

The list of all County departments, agencies, commissions and committees is available on the County's website at www.co.la.ca.us under the headings "County Departments" and "Commissions & Committees."

Requests to inspect and copy public records which are not otherwise immediately available to the public should be made directly to the responsible department or agency head, commission or committee secretary, or to his or her designee, as identified on the website of the department, agency, commission or committee.

The Public Affairs Office of the Chief Administrative Office, located at Room 358, Kenneth Hahn Hall of Administration, 500 W. Temple Street, Los Angeles, 90012, shall be responsible for directing the public to the appropriate department, agency, commission or committee.

Records may be described by their content. It is the responsibility of the department, agency, commission or committee to search for records based on the criteria set forth

in the records request, and to determine whether it has such records under its control.

Records shall be made promptly available for inspection, and for copying within ten (10) calendar days. In unusual circumstances, the ten (10) days may be extended by written notice from the department or agency head, commission or committee secretary, or from his or her designee, for no more than an additional fourteen (14) days as provided by law.

Within the timeframe for responding to a public records request, it is the responsibility of the department or agency head, commission or committee secretary, or his or her designee, to contact the Office of the County Counsel if any question exists whether any record, or portion of any record, is exempt from disclosure. The County Counsel shall be responsible for providing advice to the department, agency, commission or committee, and for assisting the department, agency, commission or committee in drafting a written response if an exemption is claimed.

A fee for copies of public records may be charged which covers the direct costs of duplication as determined by the County's Auditor-Controller. (Los Angeles County Code § 2.170.010(a).) It is the policy of the Los Angeles County Board of Supervisors to waive charges for duplicating routine records when requested by the media. (Board of Supervisors Policy Manual, "Media Policy Guidelines For Departments," Policy #3.140 adopted 03/29/94.)

Adopted by the Los Angeles County Board of Supervisors, April 2, 2002.

DEPARTMENT OF FINANCE

GRAY DAVIS, GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

November 20, 2002

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of October 21, 2002, the Department of Finance has reviewed the test claim submitted by Los Angeles County (claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 355, Statutes of 2001, (AB 1014, Papan), Chapter No. 982, Statutes of 2000, (AB 2799, Shelley), Chapter No. 945, Statutes of 2002, (AB 1962, Hollingsworth), and Chapter No. 1073, Statutes of 2002, (AB 2937, Shelley) are reimbursable state-mandated costs (Claim No. CSM-02-TC-10 "California Public Records Act: Disclosure Procedures"). Commencing with Page 1, of the test claim, claimant has identified the following new duties, which it asserts are reimbursable state mandates:

- Develop policies and protocols related to the Public Records Act (PRA),
- Conduct training on implementing new policies and procedures
- Purchase or develop database software for tracking and processing PRA requests
- Develop a website for public record disclosure requests
- Legal consultations with the County Counsel
- Purchase computers to monitor and document public record service actions, supplies and materials, contract services (computer maintenance), and travel.

The claimant has also identified increased staff time dedicated to PRA requests, such as:

- Assist in defining telephone, walk-in or written requests,
- Write and logging requests
- Research of the requests
- Notifications to requestors of availability
- Indicate date and time record will be available
- When availability is unknown consult with specialized personnel
- Document findings
- Provide the public records or a written denial of the request.

As a result of our review, we have concluded that a portion of this request may be a state mandate. The test claim legislation specifies the type of response that the claimant must give to the requestor and the timelines that must be met which could potentially result in a greater number of staff hours spent researching and helping requestors. Anything above and beyond staff time dedicated to expediting and or researching requests would not be considered state-mandated activities, and additional activities and equipment noted by the claimant are considered discretionary and therefore not reimbursable.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your October 21, 2002 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Tom Lutzenberger, Principal Program Budget Analyst, at (916) 445-8913, or Keith Gmeinder, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Calvin Smith

S. Calvin Smith
Program Budget Manager

Attachment

Attachment A

DECLARATION OF
DEPARTMENT OF FINANCE
CLAIM NO. CSM-02-TC-10—California Public Records Act: Disclosure Procedures

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

2. We concur that the Chapter No. 355, Statutes of 2001, (AB 1014, Papan), Chapter No. 982, Statutes of 2000, (AB 2799, Shelley), Chapter No. 945, Statutes of 2002, (AB 1962, Hollingsworth), and Chapter No. 1073, Statutes of 2002, (AB 2937, Shelley) sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

3. Attachment B is a true copy of Finance's analysis of AB 1014 prior to its enactment as Chapter No. 355, Statutes of 2001, (AB 1014, Papan).

4. Attachment C is a true copy of Finance's analysis of AB 2799 prior to its enactment as Chapter No. 982, Statutes of 2000, (AB 2799, Shelley).

5. Attachment D is a true copy of Finance's analysis of AB 1962 prior to its enactment as Chapter No. 945, Statutes of 2002, (AB 1962, Hollingsworth).

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

11/20/02
at Sacramento, CA

Tom Lutzenberger

PROOF OF SERVICE

Test Claim Name: California Public Records Act: Disclosure Procedures
Test Claim Number: CSM—02-TC-10

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, Eighth Floor, Sacramento, CA 95814.

On November 20, 2002, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, Eighth Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: Michael Havey, Bureau Chief
3301 C Street, Room 500
Sacramento, CA 95816

Mandate Resource Services
Attention: Harmeet Barkschat
5325 Elkhorn Boulevard #307
Sacramento, CA 95842

Mandated Cost Systems, Inc.
Attention: Steve Smith, CEO
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Cost Recovery Systems
Attention: Annette Chinn
705-2 East Bidwell Street #294
Folsom, CA 95630

County of Los Angeles
Office of Auditor-Controller's Office
Attention: Leonard Kaye
222 West Temple Street, Room 603
Los Angeles, CA 90012

SixTen & Associates
Attention: Keith B. Peterson, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Riverside County Sheriff's Office
Attention: Mark Sigman, Accountant II
4095 Lemon Street PO Box 512
Riverside, CA 92502

MAXIMUS
Attention: Pam Stone, Legal Counsel
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

David Wellhouse & Associates, Inc.
Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

Centration, Inc.
Attention: Andy Nichols
12150 Tributary Point Drive, Suite 140
Gold River, CA 95670

Spector, Middleton, Young & Minney, LLP
Attention: Paul Minney
7 Park Center Drive
Sacramento, CA 95825

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 20, 2002 at Sacramento, California.

Mary Latorre

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: August 23, 2001
POSITION: Oppose
SPONSOR: California Newspaper Publishers Association

BILL NUMBER: AB 1014
AUTHOR: L. Papan

BILL SUMMARY: Public Records Act: Disclosure Procedures

This bill would require government agencies, both state and local, to follow specified procedures when a member of the public requests a copy of, or information regarding a public record.

FISCAL SUMMARY

By increasing the duties of local agencies, this bill would result in a reimbursable state mandate. However, this cost is unknown since it depends on how many requests for public information are made to locals, and how much time is spent providing assistance to members of the public.

Additionally, this bill would result in unknown but potentially significant costs to state agencies by requiring agencies to assist members of the public in researching information.

COMMENTS

The Department of Finance is opposed to this measure since it would result in General Fund costs that are not budgeted in the 2001-02 Budget Act. Additionally, we note that government agencies receive hundreds of Public Records Act requests every month, and spend thousands of hours each year responding to those requests. While it is appropriate for state and local agencies to make available to the public all documents to which public access is granted, this bill may overly burden government agencies by requiring them to assist members of the public in researching the information as well.

Specifically, this bill would:

- Require agencies to assist an individual requesting to inspect or copy a copy of a public record. This would include helping the person to identify records and information that may be useful, describing the technology and physical location in which the records exist, and provide suggestions for overcoming legal or practical obstacles to obtaining the records.
- Provide that an agency has 10 days to determine whether the information requested is disclosable, and requires the agency to notify the requester of the determination as well as inform the requester as to when the information can be obtained.

Apparently, an independent audit was recently conducted of various local agencies to assess compliance with the California Public Records Act (PRA). The results showed that a high percentage of requests were denied or ignored, and little or no information was provided to the requester as to why the request was not honored. This bill attempts to address the lack of response to public inquiries by increasing the duties of state and local agencies receiving requests.

Some concerns have been raised that requiring state and local agencies to assist members of the public in finding ways to overcome any practical basis for denying access to the records or information could raise legal issues. It is unclear if this concern is warranted.

Analyst/Principal	Date	Program Budget Manager	Date
(0263) J. Lombard		S. Calvin Smith	8/24/01
Department Deputy Director	8/24/01	Original signed by Robert D. Miyashiro	AUG 24 2001

Governor's Office:	By:	Date:	Position Noted / Position Approved / Position Disapproved
	AR	8/24/01	Position Approved

Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) FC 2001-2002	FC 2002-2003	FC 2003-2004	Fund Code
9990/Var Depts	SO	No	See Fiscal Summary			0001
9990/Var Depts	LA	No	See Fiscal Summary			0001

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: July 6, 2000
POSITION: No position

BILL NUMBER: AB 2799
AUTHOR: K. Shelley, et al.

BILL SUMMARY: Public Records: Disclosure

This bill would revise various provisions in the Public Records Act (PRA) related to electronic copies of information.

FISCAL SUMMARY

The PRA provides that any person may receive a copy of any identifiable public record upon payment of fees covering direct costs of duplication or a statutory fee if applicable. This bill would provide that in regards to the payment of fees for records released in an electronic format, the requester of information would bear the "direct cost" of programming and computer services necessary to produce a record not otherwise readily produced, as specified. Therefore, any additional costs to the state would be paid by the requester.

COMMENTS

This bill would revise various provisions in the PRA related to electronic copies of information. Because the requester of such information would be responsible for the costs, we have no fiscal concerns.

The PRA provides that any person may receive a copy of any identifiable public record from any state or local agency upon payment of fees covering direct costs of duplication or a statutory fee if applicable. The act provides that it should not be construed to permit an agency to obstruct the inspection or copying of public records and requires any notification of denial of any request for records pursuant to the act to set forth the names and titles or positions of each person responsible for the denial. The act also requires computer data to be provided in a form determined by the agency. The PRA also requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the act or that, on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by the disclosure of the record.

This bill would:

- Provide that nothing in the PRA should be construed to permit an agency to delay or obstruct the inspection or copying of public records.
- Delete the requirement that computer data be provided in a form determined by the agency and would require any agency that has information that constitutes an identifiable public record not

Analyst/Principal	Date	Program Budget Manager	Date
(0263) J. Lombard		S. Calvin Smith	
	8/10/2000		8-10-00
Department Deputy Director			Date

Governor's Office: By: Date: Position Noted_____ Position Approved_____ Position Disapproved_____

otherwise exempt from disclosure that is in an electronic format to make that information available in an electronic format when requested by any person.

- Require the agency to make the information available in any electronic format in which it holds the information, but would not require release of a record in the electronic form in which security or integrity of the original record or any proprietary software that could be compromised.
- This bill would require a response to a written request for public records that includes a denial of the request in whole or in part to be in writing.

Because these requirements would apply to local agencies as well as state agencies, this bill would impose a state-mandated local program. However, this bill would provide that the requester of this information would bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record. Any costs upon local governments that result from this bill would be paid by the requester of information, therefore, no reimbursement would be required.

In the period of technology that we are currently in more people want access to information in an electronic format. However, there is not current authority under which a person seeking electronically available records could obtain such records in that format. For example, if an agency makes a CD or disk of copies of the records, a member of the public could not obtain records in that format. The public would have to buy copies made out of the printouts from the records. According to the author, the expense of copying these records in paper format, especially when there are so many records, makes it inaccessible to the public.

Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) FC 2000-2001	FC 2001-2002	FC 2002-2003	Fund Code
9901/Var Depts	SO	No	---------- See Fiscal Summary ----------			0001

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: August 5, 2002
POSITION: No position
SPONSOR: United States Justice Foundation

BILL NUMBER: AB 1962
AUTHOR: D. Hollingsworth

BILL SUMMARY: Electronic Communication

This bill would clarify the definitions of "writing" used in the Public Records Act and Evidence Code to include correspondence via facsimile and electronic mail.

FISCAL SUMMARY

Judicial Council staff indicate that this bill would not result in any increased costs to the courts.

The California Constitution requires the State to reimburse local government for the costs of any program or increased level of service mandated by the Legislature or any State agency. By increasing the types of public records local agencies are required to make available for public inspection, this bill could result in a state-mandated local program. However, although this bill may result in additional costs to local government, those costs are not reimbursable because this bill implements a court order. Section 17556(b) of the Government Code provides that the Commission on State Mandates shall not find a reimbursable mandate in a statute if the statute affirmed for the State that which had been declared existing law or regulation by action of the courts.

COMMENTS

Existing law established the Public Records Act (PRA), which requires state and local agencies to make specified records open to public inspection. Currently, the PRA and the Evidence Code define "writing" as handwriting, typing, printing, photostating, photographing, and other means of recording upon any tangible thing any form of communication or representation. The PRA also includes all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents in this definition.

This bill would add transmitting by electronic mail or facsimile to the definition of "writing" in both the PRA and Evidence Code. In addition, this bill would further clarify the definition by deleting references to specific types of items upon which writing can be stored and replacing it with the phrase "any tangible thing." These changes would make the definition for "writing" used in both the PRA and Evidence Code the same and consistent with current case law.

It is our understanding existing case law interpreted the PRA requirements to include electronic documents. Case law has also determined that computer printouts of records made electronically are admissible under the evidence code. Therefore, this bill would simply codify existing case law and make technical changes clarify and improve the consistency of existing law.

Analyst/Principal	Date	Program Budget Manager	Date
(0213) M. Caballin		S. Calvin Smith	8-16-02
for Mark Magnen	8/16/02	Calvin Smith	
Department Deputy Director	Original signed by Robert D. Miyashiro		Date AUG 18 2002
Governor's Office:	By: AR	Date: 8/19/02	Position Noted ___ Position Approved ✓ Position Disapproved

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED) **Form DF-43**

AUTHOR	AMENDMENT DATE	BILL NUMBER
D. Hollingsworth	August 5, 2002	AB 1962

Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) FC 2002-2003	FC 2003-2004	FC 2004-2005	Fund Code
0250/Judiciary	SO	No	---------- See Fiscal Summary ----------			0001

EXHIBIT C

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY
AUDITOR-CONTROLLER

January 8, 2003

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Higashi:

Review of State Agency Comments on Los Angeles County's Test Claim: Chapter 355, Statutes of 2001, Adding Section 6253.1 & Amending Section 6253 of the Government Code; Chapter 982, Statutes of 2000, Adding Section 6253.9 & Amending Sections 6253 and 6255 of the Government Code; Chapter 945, Statutes of 2002 & Chapter 1073, Statutes of 2002 [Both] Amending Section 6252 of the Government Code
California Public Records Act: Disclosure Procedures

We concur with the [November 20, 2002] State Department of Finance finding that a reimbursable state-mandated program is imposed upon local government under the subject legislation.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

for J. Tyler McCauley
Auditor-Controller

JTM:JN:LK

Mailing List

Claim Number: 02-TC-10
Issue: California Public Records Act: Disclosure Procedures

Ms. Harmeet Barkschat,
Mandate Resource Services
5325 Elkhorn Blvd. # 307
Sacramento, CA 95842

Mr. Mark Sigman, Accountant II
Riverside County Sheriff's Office
4095 Lemon Street, P.O. Box 512
Riverside, CA 92502

Ms. Annette Chinn,
Cost Recovery Systems
705-2 East Bidwell Street, Suite 294
Folsom, CA 95630

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

ORIGINALS

Mr. Steve Smith, CEO
Mandated Cost Systems, Inc.
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Mr. David Wellhouse,
Wellhouse & Associates, Inc.
9175 Kiefer Blvd., Suite 121
Sacramento, CA 95826

Ms. Susan Geanacou, Senior Staff Attorney
Department of Finance
915 l Street, 11th Floor
Sacramento, CA 95814

Mr. Michael Harvey, Bureau Chief
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Mr. Andy Nichols, Senior Manager
Centration, Inc.
12150 Tributary Point Drive
Gold River, CA 95670

Mr. Keith Gmeinder, Principal Analyst
Department of Finance
915 L Street, Suite 1190
Sacramento, CA 95814

Mr. Paul Minney
Spector, Middleton, Young & Minney, LLP
7 Park Center Drive
Sacramento, CA 95825

Mr. Keith Petersen, President
Six Ten & Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Ms. Pam Stone, Legal Counsel
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY
AUDITOR-CONTROLLER

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Hasmik Yaghobyan states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 9th day of January 2003, I served the attached:

Documents: Review of State Agency Comments on Los Angeles County's Test Claim: Chapter 355, Statutes of 2001, Adding Section 6253.1 & Amending Section 6253 of the Government Code; Chapter 982, Statutes of 2000, Adding Section 6253.9 & Amending Sections 6253 and 6255 of the Government Code; Chapter 945, Statutes of 2002 & Chapter 1073, Statutes of 2002 [Both] Amending Section 6252 of the Government Code , California Public Records Act: Disclosure Procedures, including *a 1 page letter of J. Tyler McCauley dated 1/8/03, CSM-02-TC-10, now* pending before the Commission on State Mandates.

upon all Interested Parties listed on the attachment hereto and by

[X] by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date. Commission on State Mandates - FAX as well as mail of originals.

[ ] by placing [ ] true copies [ ] original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.

[X] by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.

[ ] by personally delivering the document(s) listed above to the person(s) as set forth below at the indicated address.

PLEASE SEE ATTACHED MAILING LIST

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 9th day of January 2003, at Los Angeles, California.

Hasmik Yaghobyan

SixTen and Associates
Mandate Reimbursement Services

EXHIBIT D

KEITH B. PETERSEN, MPA, JD, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

June 26, 2003

Certified Mail: 7001 0360 0000 5999 9956

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: TEST CLAIM OF Riverside Unified School District
Statutes of 2001/Chapter 355
California Public Records Act (K-14)

Dear Ms. Higashi:

Enclosed are the original and seven copies of the Riverside Unified School District test claim for the above referenced mandate.

I have been appointed by the District as its representative for the test claim. The District requests that all correspondence originating from your office and documents subject to service by other parties be directed to me, with copies to:

Michael H. Fine,
Business Services & Governmental
Relations Division
Riverside Unified School District
3380 14th Street
Sacramento, California 95814

Cheryl Miller
Associate Vice President,
Business Services
Santa Monica Community College
1900 Pico Boulevard
Santa Monica, CA 90405-1628

The Commission regulations provide for an informal conference of the interested parties

within thirty days. If this meeting is deemed necessary, I request that it be conducted in conjunction with a regularly scheduled Commission hearing.

Sincerely,

Keith B. Petersen

C: Michael H. Fine, Business Services & Governmental Relations Division
Riverside Unified School District
Cheryl Miller, Associate Vice President, Business Services

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (1/91)

TEST CLAIM FORM

For Official Use Only

RECEIVED
JUL 09 2003
COMMISSION ON STATE MANDATES

Claim No. 02-TC-51

Local Agency or School District Submitting Claim

Riverside Unified School District

Contact Person	Telephone Number
Keith B. Petersen, President SixTen and Associates	Voice: 858-514-8605 Fax: 858-514-8645

Claimant Address

Riverside Unified School District
3380 14th Street
Riverside, California 92516-2800

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network c/o School Services of California 1121 L Street, Suite 1060 Sacramento, CA 95814	Voice: 916-446-7517 Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

California Public Records Act (K-14)

Chapter 355, Statutes of 2001
Chapter 982, Statutes of 2000
Chapter 83, Statutes of 1999
Chapter 620, Statutes of 1998
Chapter 923, Statutes of 1994
Chapter 926, Statutes of 1993
Chapter 970, Statutes of 1992
Chapter 463, Statutes of 1992
Chapter 908, Statutes of 1990
Chapter 1053, Statutes of 1985
Chapter 1657, Statutes of 1984
Chapter 802, Statutes of 1984
Chapter 163, Statutes of 1982
Chapter 535, Statutes of 1980
Chapter 556, Statutes of 1977
Chapter 1246, Statutes of 1975
Chapter 678, Statutes of 1975

Government Code Section 6253
Government Code Section 6253.1
Government Code Section 6253.5
Government Code Section 6253.9
Government Code Section 6254.3
Government Code Section 6255
Government Code Section 6259

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative	Telephone No.
Michael H. Fine, Deputy Superintendent Business Services & Governmental Relations Division	(909) 788-7134

Signature of Authorized Representative		Date
X Michael H. Fine	173	June 13, 2003

Claim Prepared By:
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BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

	No. CSM _____
Test Claim of	
	Chapter 355, Statutes of 2001 Chapter 982, Statutes of 2000 Chapter 83, Statutes of 1999 Chapter 620, Statutes of 1998 Chapter 923, Statutes of 1994 Chapter 926, Statutes of 1993 Chapter 970, Statutes of 1992 Chapter 463, Statutes of 1992 Chapter 908, Statutes of 1990 Chapter 1053, Statutes of 1985 Chapter 1657, Statutes of 1984 Chapter 802, Statutes of 1984 Chapter 163, Statutes of 1982 Chapter 535, Statutes of 1980 Chapter 556, Statutes of 1977 Chapter 1246, Statutes of 1975 Chapter 678, Statutes of 1975 (Continued on next page)
Riverside Unified School District,	
Test Claimant.	
	California Public Records Act (K-14)
	TEST CLAIM FILING

)	Government Code Section 6253
)	Government Code Section 6253.1
)	Government Code Section 6253.5
)	Government Code Section 6253.9
)	Government Code Section 6254.3
)	Government Code Section 6255
)	Government Code Section 6259
)	

PART I. AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code section 17551(a) to "...hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." Riverside Unified School District is a "school district" as defined in Government Code section 17519.[1]

PART II. LEGISLATIVE HISTORY OF THE CLAIM

This test claim alleges mandated costs reimbursable by the state for school districts, community college districts and county offices of education to comply with public records disclosure requirements including notification, assisting members of the public, responses in electronic format, redaction of records and the payment of courts

[1] Government Code Section 17519, added by Chapter 1459/84:

""School District" means any school district, community college district, or county superintendent of schools."

costs and attorney fees.

SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975

Chapter 1473, Statutes of 1968, Section 39, added Chapter 3.5 to Division 7 of Title 1 of the Government Code. Section 6251[2] provided that the chapter shall be known as the California Public Records Act.

Section 6252[3] provided definitions which included "school district" in its definition of a "local agency".

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[2] Government Code Section 6251, added by Chapter 1473, Statutes of 1968, Section 39:

"This chapter shall be known and may be cited as the California Public Records Act."

[3] Government Code Section 6252, as amended by Chapter 575, Statutes of 1970, Section 2:

"As used in this chapter:
(a) "State agency means every state office, officer, department, division, bureau, board, and commission or other state agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.
(b) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; or other local public agency.
(c) "Person" includes any natural person, corporation, partnership, firm, or association.
(d) "Public records" includes 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.
(e) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents."

Section 6253[4] required public records to be open for inspection at all times during the office hours of the agency and provided that every citizen has a right to inspect any public record, except as therein provided.

Sections 6253.5[5] and 6254[6] set forth exceptions to the public records disclosure

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[4] Government Code Section 6253, as amended by Chapter 664, Statutes of 1973. Section 1:

"(a) Public records are open to inspection at all times during the office hours of the state or local agency and every citizen has a right to inspect any public record, except as hereafter provided. Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section."

The following state and local bodies shall establish written guidelines for accessibility of records by July 1, 1974. A copy of these guidelines shall be posted in a conspicuous public place at the offices of such bodies by July 1, 1974, and a copy of such guidelines shall be available upon request free of charge to any person requesting that body's records:

[List of agencies, Department of Motor Vehicles through Golden Gate Bridge, Highway and Transporation District, intentionally omitted.]

(b) Guidelines and regulations adopted pursuant to this section shall be consistent with all other sections of this chapter and shall reflect the intention of the Legislature to make such records accessible to the public."

[5] Government Code Section 6253.5, as amended by Chapter 1445, Statutes of 1974, Section 10:

"Notwithstanding the provisions of Sections 6252 and 6253, statewide, county, city, and district initiative referendum, and recall petitions and all memoranda prepared by the county clerks in the examination of such petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving such petitions or who are responsible for the preparation of such memoranda."

[6] Government Code Section 6254, as amended by Chapter 1295, Statutes of 1970, Section 1.5:

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"Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding such records clearly outweighs the public interest in disclosure;

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, until such litigation or claim has been finally adjudicated or otherwise settled;

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy;

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies;

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of any state agency referred to in subdivision (1);

(3) Preliminary drafts, notes or interagency or intra-agency communications prepared by, on behalf of, or for the use of any state agency referred to in subdivision (1); or

(4) Information received in confidence by any state agency referred in subdivision (1).

(e) Geological and geophysical data, plant production data and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person;

(f) Records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any such investigatory or security files compiled by any other state or local agency for correctional, law enforcement or licensing purposes;

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination;

(h) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all of the contract agreement obtained, provided, however, the law of eminent domain shall not be affected by this provision;

(i) Information required from any taxpayer in connection with the collection of local

requirements.

Section 6255[7] provided that an agency was required to justify withholding any record by demonstrating that the record in question was exempt under express provisions of the appropriate chapter or, that on the facts of the particular case, the public interest served by not making the record public clearly outweighed the public interest served by disclosure of the record.

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taxes which is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying such information;

(j) Library and museum materials made or acquired and presented solely for reference or exhibition purposes; and

(k) Records the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(l) In the custody of or maintained by the Governor or employees of the Governor's office employed directly in his office, provided that public records shall not be transferred to the custody of the Governor's office to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with such licensing agency to establish his personal qualification for the license, certificate, or permit applied for.

Nothing in this section is to be construed as preventing any age ncy from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law."

[7]Government Code Section 6255, added by Chapter 1473, Statutes of 1968, Section 39:

"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 the record clearly outweighs the public interest served by disclosure of the record."

Section 6256[8] required that any person may receive a copy of any identifiable public record or copy thereof and that, upon request, an exact copy be provided unless it was impracticable to do so. Computer data was to be provided in a form determined by the agency.

Section 6257[9] required that a request for an identifiable public record or certified copy, be accompanied by payment of a reasonable fee.

Section 6258[10] provided that any person could institute proceedings in any court of competent jurisdiction to enforce his right to inspect or to receive a copy of any public

[8] Government Code Section 6256, as amended by Chapter 575, Statutes of 1970, Section 3:

"Any person may receive a copy of any identifiable public record or copy thereof. Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency."

[9] Government Code Section 6257, added by Chapter 1473, Statutes of 1968, Section 39:

"A request for a copy of an identifiable public record or information produced therefrom, or a certified copy of such record, shall be accompanied by payment of a reasonable fee or deposit established by the state or local agency, or the prescribed statutory fee, where applicable."

[10] Government Code Section 6258, as amended by Chapter 575, Statutes of 1970, Section 4:

"Any person may institute proceedings for injunctive or declarative relief in any court of competent jurisdiction to enforce his right to inspect or to receive a copy of any public record or class of public records under this chapter. The times for responsive pleadings and for hearings in such proceedings shall be set by the judge of the court with the object of securing a decision as to such matters at the earliest possible time."

record. The times for responsive pleadings and for hearings in such proceedings were to be set by the judge of the court with the object of securing a decision as to such matters at the earliest possible time.

Section 6259[11] provided a judicial procedure to be followed when a member of the public claimed public records were being improperly withheld.

SECTION 2. LEGISLATIVE HISTORY AFTER DECEMBER 31, 1974

Chapter 678, Statutes of 1975, Section 26, amended Government Code Section 6253.5 by making non-substantive, technical changes.

Chapter 1246, Statutes of 1975, Section 9, amended Government Code Section 6259[12] by requiring the court to award court costs and reasonable attorney fees to a

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[11]Government Code Section 6259, added by Chapter 1473, Statutes of 1968, Section 39:

"Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and such oral argument and additional evidence as the court may allow.

If the court finds that the public official's decision to refuse disclosure is not justified under the provisions of Sections 6254 or 6255, he shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure. Any person who fails to obey the order of the court shall be cited to show cause why he is not in contempt of court."

[12]Government Code Section 6259, as amended by Chapter 1246, Statutes of 1975, Section 9:

plaintiff who prevails in a petition alleging that public records were improperly withheld. Court costs and reasonable attorney's fees shall be awarded to a public agency only upon a finding that the plaintiff's case was clearly frivolous. Therefore, for the first time, a public agency could be required, when ordered by the court, to pay a plaintiff's court costs and attorney's fees.

Chapter 556, Statutes of 1977, Section 4, amended Government Code Section 6253.5[13] by adding a provision authorizing specified officers and entities to examine

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"Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and such oral argument and additional evidence as the court may allow.

If the court finds that the public official's decision to refuse disclosure is not justified under the provisions of Sections 6254 or 6255, he shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure. Any person who fails to obey the order of the court shall be cited to show cause why he is not in contempt of court. The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. Such costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency."

[13]Government Code Section 6253.5, as amended by Chapter 556, Statutes of 1977, Section 4:

"Notwithstanding the provisions of Sections 6252 and 6253, statewide, county,

materials upon court approval.

Chapter 535, Statutes of 1980, Section 1, amended Government Code Section 6253.5[14] by adding authority for proponents of a recall petition to examine insufficient

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city, and district initiative, referendum, and recall petitions and all memoranda prepared by the county clerks in the examination of such petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving such petitions or who are responsible for the preparation of such memoranda; provided, however, that the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, and a city attorney shall be permitted to examine such material upon approval of the appropriate superior court."

[14]Government Code Section 6253.5, as amended by Chapter 535, Statutes of 1980, Section 1:

"Notwithstanding the provisions of Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions and all memoranda prepared by the county clerks in the examination of such petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving such petitions or who are responsible for the preparation of such memoranda and, if the petition is found to be insufficient, by the proponents of the petition and such representatives of the proponents as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor; provided, however, that the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, and a city attorney shall be permitted to examine such material upon approval of the appropriate superior court.

If the proponents of a petition are permitted to examine the petition and memoranda, such examination shall commence not later than 21 days after certification of insufficiency.

As used in this section "proponents of the petition" means the following:

(a) For statewide initiative and referendum measures, the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he prepare a title and summary of the chief purpose and points of the proposed measure.

(b) For other initiative and referenda on measures, the person or persons

petitions in order to determine which signatures were disqualified and the reasons therefor.

Chapter 968, Statutes of 1981, Section 3.4, repealed former Government Code Section 6257 and Section 3.5 added a new Government Code Section 6257[15] which required that each state or local agency, upon request for a copy of a public record, make non-exempt records promptly available to any person, upon payment of fees covering only the direct costs of duplication or a statutory fee, if applicable. The amendment also required that any reasonably segregable portion of a record shall be provided after deletion of portions exempt by law. Therefore, for the first time, public agencies were required to delete exempted portions and provide redacted copies of public records.

Chapter 163, Statutes of 1982, Section 2, amended Government Code Section

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who publish a notice of intention to circulate petitions, or, where publication is not required, who file petitions with the clerk.

(c) For recall measures, the person or persons defined in Section 29711 of the Elections Code."

[15]Government Code Section 6257, added by Chapter 968, Statutes of 1981, Section 3.5:

"Except with respect to public records exempt by express provisions of law from disclosure, each state or local agency, upon any request for a copy of records, which reasonably describes an identifiable record, or information produced therefrom, shall make the records promptly available to any person, upon payment of fees covering direct costs of duplication, or a statutory fee, if applicable. Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt by law."

6253.5[16] by adding school district or community college district attorneys to the provision authorizing specified officers and entities to examine materials upon court approval. Subdivision (d) was added to further define "proponents of the petition" to include the person or persons having charge of the petition who submits the petition pursuant to

[16] Government Code Section 6253.5, as amended by Chapter 163, Statutes of 1982, Section 2:

"Notwithstanding the provisions of Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions, and petitions circulated pursuant to Section 5091 of the Education Code, and all memoranda prepared by the county clerks in the examination of such petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving such petitions or who are responsible for the preparation of such memoranda and, if the petition is found to be insufficient, by the proponents of the petition and such representatives of the proponents as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor; provided, however, that the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a school district or a community college district attorney, and a city attorney shall be permitted to examine such material upon approval of the appropriate superior court.

If the proponents of a petition are permitted to examine the petition and memoranda, such examination shall commence not later than 21 days after certification of insufficiency.

As used in this section "proponents of the petition" means the following:

(a) For statewide initiative and referendum measures, the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he prepare a title and summary of the chief purpose and points of the proposed measure.

(b) For other initiative and referenda on measures, the person or persons who publish a notice of intention to circulate petitions, or, where publication is not required, who file petitions with the clerk.

(c) For recall measures, the person or persons defined in Section 29711 of the Elections Code.

(d) For petitions circulated pursuant to Section 5091 of the Education Code, the person or persons having charge of the petition who submit the petition to the county superintendent of schools."

Education Code Section 5091. Therefore, for the first time, school districts may be required to examine petition materials pertaining to elections to fill a vacancy on the governing board, when appropriate, after obtaining approval of the superior court.

Chapter 802, Statutes of 1984, Section 1, amended Government Code Section 6259[17] to letter the two paragraphs as subdivisions (a) and (b). Subdivision (c) was

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[17]Government Code Section 6259, added by Chapter 1473, Statutes of 1968, Section 39, as amended by Chapter 802, Statutes of 1984, Section 1:

"(a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and such oral argument and additional evidence as the court may allow.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under the provisions of Sections 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

(c) In an action filed on or after January 1, 1985, an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of the extraordinary writ of review as defined in Section 1067 of the code of Civil Procedure. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency."

added to allow an order of the Superior Court to be reviewed immediately by an appellate court by an extraordinary writ of review. New subdivision (d) restated the provision of former subdivision (c) which allows the court to award attorney's fees and costs.

Chapter 1657, Statutes of 1984, Section 1, added Government Code Section 6254.3[18] which provides in subdivision (a) that the home addresses and home telephone numbers of state employees shall not be deemed to be public records and shall not be open to public inspection, with specified exceptions. Subdivision (b) provides that, upon

[18] Government Code Section 6254.3, added by Chapter 1657, Statutes of 1984, Section 1:

"(a) The home addresses and home telephone numbers of state employees shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

(1) To an agent, or a family member of the individual to whom the information pertains.

(2) To an officer or employee of another state agency necessary for the performance of its official duties.

(3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of state employees performing law enforcement-related functions shall not be disclosed.

(4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to state employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

(b) Upon written request of any employee, a state agency shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and a state agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee."

written request of any employee, a state agency shall not disclose the employee's home address or home telephone number to an employee organization and the state agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee for any use of which is deemed necessary and proper within the limitations of the standards of the agency.

Chapter 1053, Statutes of 1985, Section 1, amended Government Code Section 6253.5[19] by adding petitions for the reorganization of school districts and petitions for the

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[19]Government Code Section 6253.5, as amended by Chapter 1053, Statutes of 1985, Section 1:

"Notwithstanding the provisions of Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions, and petitions circulated pursuant to Section 5091 of the Education Code, petitions for the reorganization of school districts submitted pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, petitions for the reorganization of community college districts submitted pursuant to Part 46 (commencing with Section 74000) of the Education Code and all memoranda prepared by the county clerks in the examination of such petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving such petitions or who are responsible for the preparation of such memoranda and, if the petition is found to be insufficient, by the proponents of the petition and such representatives of the proponents as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor; provided, however, that the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a school district or a community college district attorney, and a city attorney shall be permitted to examine such material upon approval of the appropriate superior court.

If the proponents of a petition are permitted to examine the petition and memoranda, such examination shall commence not later than 21 days after certification of insufficiency.

As used in this section "proponents of the petition" means the following:

reorganization of community college districts to the list of materials which are not subject to public disclosure except as specified in the section. Subdivision (e) was added to define "proponents of the petition" for purposes of petitions circulated for the reorganization of school districts. Subdivision (f) was added to define "proponents of the petition" for purposes of petitions circulated for the reorganization of community college districts.

Chapter 908, Statutes of 1990, Section 2, amended subdivision (c) of Government Code Section 6259[20] by specifying the procedures required by a party

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(a) For statewide initiative and referendum measures, the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he prepare a title and summary of the chief purpose and points of the proposed measure.

(b) For other initiative and referenda on measures, the person or persons who publish a notice of intention to circulate petitions, or, where publication is not required, who file petitions with the clerk.

(c) For recall measures, the person or persons defined in Section 29711 of the Elections Code.

(d) For petitions circulated pursuant to Section 5091 of the Education Code, the person or persons having charge of the petition who submit the petition to the county superintendent of schools.

(e) For petitions circulated pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, the person or persons designated as chief petitioners under Section 35701 of the Education Code.

(f) For petitions circulated pursuant to Part 46 (commencing with Section 74000) of the Education Code, the person or persons designated as chief petitioners under Sections 74102, 74133, and 74152 of the Education Code."

[20]Government Code Section 6259, added by Chapter 1473, Statutes of 1968, Section 39, as amended by Chapter 908, Statutes of 1990, Section 2:

"(a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order

before filing a petition for review of a court order to disclose or not disclose public records.

Chapter 463, Statutes of 1992, Section 1, amended Government Code Section

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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. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and such oral argument and additional evidence as the court may allow.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under the provisions of Sections 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

(c) In an action filed on or after January 1, 1991 ~~1985~~, an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of the extraordinary writ, ~~of review as defined in Section 1067 of the code of Civil Procedure.~~ Upon entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within 10 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency."

6254.3[21] by adding employees of a school district or county office of education to those people whose addresses and telephone numbers are not deemed to be public records. Therefore, for the first time, school districts and county offices of education are required to limit disclosure of its employees' home addresses and telephone numbers to only those identified in subparagraphs (1) through (4) and, upon the written request of an employee, to also refuse disclosure to an employee organization.

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[21] Government Code Section 6254.3, as amended by Chapter 463, Statutes of 1992, Section 1:

"(a) The home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

(1) To an agent, or a family member of the individual to whom the information pertains.

(2) To an officer or employee of another state agency, school district, or county office of education when necessary for the performance of its official duties.

(3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of ~~state~~ employees performing law enforcement-related functions shall not be disclosed.

(4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to state, school districts, and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

(b) Upon written request of any employee, a state agency, school district, or county office of education shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and ~~a state~~ an agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee."

Chapter 970, Statutes of 1992, Section 22, amended Government Code Section 6253.5[22] by adding the definition of "petition" for purposes of the section, and by making technical changes.

Chapter 926, Statutes of 1993, Section 1, amended Government Code Section 6259 by making technical changes.

Chapter 923, Statutes of 1994, Section 32, amended Government Code Section 6253.5 by making technical changes.

Chapter 620, Statutes of 1998, Section 4, renumbered former Government Code Section 6253 as Government Code Section 6253.4, and Section 5, added a new Government Code Section 6253[23]. Subdivision (a) of new section 6253 requires that

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[22]Government Code Section 6253.5, as amended by Chapter 970, Statutes of 1992, Section 22:

"(a) As used in this section, "petition" shall mean any petition to which a registered voter has affixed his or her signature."

[23]Government Code Section 6253, added by Chapter 620, Statutes of 1998, Section 5:

"(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person, upon payment of fees covering direct costs of duplication, or a statutory fee, if applicable. Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency.

public records shall be open to inspection at all times during the office hours of the state or local agency and that every person has a right to inspect any public record except as therein provided. Subdivision (b) provides that the state or local agency must make records promptly available to any person upon payment of fees covering the direct costs of duplication or a statutory fee, if applicable. Subdivision (c) requires that each agency determine whether a request, in whole or in part, seeks copies of disclosable public

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(c) Each agency, upon request for a copy of records shall, within 10 days from receipt of the request, 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. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency 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 dispatched. No notice shall specify a date that would result in an extension for more than 14 days. As used in this section, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(d) Nothing in this chapter shall be construed to permit an agency to obstruct the inspection or copying of public records. Any notification of denial of any request for records shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter."

records in the possession of the agency and, for the first time, requires the agency to promptly notify the person making the request of that determination and the reasons therefore. Subdivision (c) also allows an agency, in unusual circumstances, to extend the time allowed for production and requires the head of the agency to provide written notice of that fact to the person making the request setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. Subdivision (d) provides that nothing in the chapter shall be construed to permit an agency to obstruct the inspection or copying of public records and, for the first time, requires that any notification of denial of any request for records shall set forth the names and titles or positions of each person responsible for the denial.

Chapter 620, Statutes of 1998, Section 10, repealed Government Code Section 6257.

Chapter 83, Statutes of 1999, Section 64, amended Government Code Section 6253 by making technical changes.

Chapter 982, Statutes of 2000, Section 1, amended Government Code Section 6253[24] by adding subdivision (c)(4) to add the need to compile data, to write

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[24]Government Code Section 6253, added by Chapter 620, Statutes of 1998, Section 5, as amended by Chapter 982, Statutes of 2000, Section 1:

"(c) Each agency, upon request for a copy of records shall, within 10 days from receipt of the request, 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. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the

programming language of a computer program, or to construct a computer report to extract data, to the list of examples of "unusual circumstances" which would justify an extension of time.

Chapter 982, Statutes of 2000, Section 2, added Government Code Section 6253.9[25] which, for the first time, requires agencies which have non-exempt public

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request setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data."

[25]Government Code Section 6253.9, added by Chapter 982, Statutes of 2000, Section 2:

"(a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(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. The cost of

records in an electronic format to make that information available in an electronic format, when requested.

Chapter 982, Statutes of 2000, Section 3, amended Government Code Section 6255[26] by adding subdivision (b) which requires that a response to a written request for

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duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.

(c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

(d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.

(e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute."

[26]Government Code Section 6255, as amended by Chapter 982, Statutes of 2000, Section 3:

"(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 ~~making~~ the record

inspection or copies of public records that includes a determination that the request is denied, in whole or in part, to be in writing. The section was also amended to make non-substantive technical changes. Therefore, for the first time, school districts are required, when a determination that a request for disclosure of a document is denied in whole or in part, to respond in writing.

Chapter 355, Statutes of 2001, Section 3, added Government Code Section 6253.1[27] which, for the first time, requires a public agency, upon receipt of a request to

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~~public~~ 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.

[27]Government Code Section 6253.1, added by Chapter 355, Statutes of 2001, Section 3:

"(a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do 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, if stated.

(2) Describe the information technology and physical location in which the records exist.

(3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

(b) The requirements of paragraph (1) of subdivision (a) shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records.

(c) The requirements of subdivision (a) are in addition to any action required of a public agency by Section 6253.

(d) This section shall not apply to a request for public records if any of the following applies:

(1) The public agency makes available the requested records pursuant to

inspect a public record by a member of the public, to do all of the following: (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.

PART III. STATEMENT OF THE CLAIM

SECTION 1. COSTS MANDATED BY THE STATE

The Government Code Sections referenced in this test claim result in school districts, community college districts and county offices of education incurring costs mandated by the state, as defined in Government Code section 17514[28], by creating new state-mandated duties related to the uniquely governmental function of providing service to students and the public and these statutes apply to school districts and do not

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Section 6253.
(2) The public agency makes available an index of its records."

[28] Government Code section 17514, added by Chapter 1459, Statutes of 1984:

""Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIIIB of the California Constitution."

apply generally to all residents and entities in the state.[29]

The new duties mandated by the state upon school districts, community colleges and county offices of education require state reimbursement of the direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, staff and student training and travel to implement the following activities:

A) Pursuant to Chapter 3.5 of the Government Code (Government Code Sections 6250, et. seq.) to establish and implement policies and procedures, and to periodically update those policies and procedures, to provide for the processing of requests for disclosure of public documents pursuant to the California Public Records Act.

B) Pursuant to Government Code Section 6253, subdivision (a), providing redacted copies of requested documents deleting portions exempted by law.

C) Pursuant to Government Code Section 6253, subdivision (b), providing copies of public records to the public, including the determination and collection of the fee.

D) Pursuant to Government Code Section 6253, subdivision (c), promptly notifying a

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[29] Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 225 Cal.App.3d 155; 275 Cal.Rptr. 449:

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. V. State of California (1987) 190 Cal.App.3d at p.537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

person making a request for a copy of records, within 10 days from receipt of the request, of the determination of whether the requested records are disclosable public records.

E) Pursuant to Government Code Section 6253, subdivision (c), when it is determined that an extension is necessary, setting forth the reasons for the extension in writing.

F) Pursuant to Government Code Section 6253, subdivision (c), when it is determined that an extension is necessary, setting forth, in writing, a date upon which a determination is expected to be dispatched.

G) Pursuant to Government Code Section 6253, subdivision (d), when denying a request for disclosure of public records, setting forth the names and titles or positions of each person responsible for the denial.

H) Pursuant to Government Code Section 6253.1, when embers of the public make a request to inspect a public record or obtain a copy of a public record,

(1) Assisting members of the public identify records and information that are responsive to the request or to the purpose of the request, if stated,

(2) Describing the information technology and physical location in which the records exist, and

(3) Providing suggestions for overcoming any practical basis for denying access to the records or information sought.

I) Pursuant to Government Code Section 6253.5, when necessary, examining

petitions for the district when petitions are filed to fill vacancies on the governing board and petitions for recall, after obtaining approval of the appropriate superior court.

J) Pursuant to Government Code Section 6253.9, subdivision (a), making disclosable public records in an electronic format available in an electronic format when requested.

K) Pursuant to Government Code Section 6254.3, subdivision (a), limiting disclosure of employees' home addresses and telephone numbers to those identified in subparagraphs (1) through (4) and, upon the written request of an employee, refusing disclosure to an employee organization.

L) Pursuant to Government Code Section 6254.3, subdivision (b), removing an employee's home address and home telephone number from any mailing list maintained by the agency when requested by that employee.

M) Pursuant to Government Code Section 6255, subdivision (b), responding in writing when a determination has been made that a request for disclosure of a document is denied in whole or in part.

N) Pursuant to Government Code Section 6259, when ordered by a court, paying to a prevailing plaintiff his or her court costs and reasonable attorney fees.

SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

None of the Government Code Section 17556[30] statutory exceptions to a finding of costs mandated by the state apply to this test claim. Note, that to the extent school districts may have previously performed functions similar to those mandated by the referenced code sections, such efforts did not establish a preexisting duty that would relieve the state of its constitutional requirement to later reimburse school districts when

[30] Government Code section 17556, as last amended by Chapter 589, Statutes of 1989:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

these activities became mandated.[31]

SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM

Local agencies are authorized to collect their direct costs of duplication or statutory fees when providing copies of public records pursuant to Government Code Section 6253, subdivision (b). To the extent such costs and fees are collected, they would reduce the expenses claimed. Otherwise, no funds are appropriated by the state for reimbursement of these costs mandated by the state and there is no other provision of law for recovery of costs from any other source.

PART IV. ADDITIONAL CLAIM REQUIREMENTS

The following elements of this claim are provided pursuant to Section 1183, Title 2, California Code of Regulations:

Exhibit 1: Declaration of Michael H. Fine
Riverside Unified School District

Declaration of Cheryl Miller
Santa Monica Community College District

Exhibit 2: Copies of Statutes Cited

Chapter 355, Statutes of 2001
Chapter 982, Statutes of 2000
Chapter 83, Statutes of 1999
Chapter 620, Statutes of 1998

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[31]Government Code Section 17565:

"If a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

Chapter 923, Statutes of 1994
Chapter 926, Statutes of 1993
Chapter 970, Statutes of 1992
Chapter 463, Statutes of 1992
Chapter 908, Statutes of 1990
Chapter 1053, Statutes of 1985
Chapter 1657, Statutes of 1984
Chapter 802, Statutes of 1984
Chapter 163, Statutes of 1982
Chapter 535, Statutes of 1980
Chapter 556, Statutes of 1977
Chapter 1246, Statutes of 1975
Chapter 678, Statutes of 1975

Exhibit 3: Copies of Code Sections Cited
Government Code Section 6253
Government Code Section 6253.1
Government Code Section 6253.5
Government Code Section 6253.9
Government Code Section 6254.3
Government Code Section 6255
Government Code Section 6259

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PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on June 13, 2003, at Riverside, California by:

Michael H. Fine
Deputy Superintendent
Business Services & Governmental Relations Division

Voice: (909) 788-7134
Fax: (909) 788-7110

PART VI. APPOINTMENT OF REPRESENTATIVE

Riverside Unified School District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.

Michael H. Fine
Deputy Superintendent
Business Services & Governmental Relations Division

6/13/03
Date

EXHIBIT 1
DECLARATION

DECLARATION OF Michael H. Fine

Riverside Unified School District

Test Claim of Riverside Unified School District

COSM No. _____

Chapter 355, Statutes of 2001
Chapter 982, Statutes of 2000
Chapter 83, Statutes of 1999
Chapter 620, Statutes of 1998
Chapter 923, Statutes of 1994
Chapter 926, Statutes of 1993
Chapter 970, Statutes of 1992
Chapter 463, Statutes of 1992
Chapter 908, Statutes of 1990
Chapter 1053, Statutes of 1985
Chapter 1657, Statutes of 1984
Chapter 802, Statutes of 1984
Chapter 163, Statutes of 1982
Chapter 535, Statutes of 1980
Chapter 556, Statutes of 1977
Chapter 1246, Statutes of 1975
Chapter 678, Statutes of 1975

Government Code Section 6253
Government Code Section 6253.1
Government Code Section 6253.5
Government Code Section 6253.9
Government Code Section 6254.3
Government Code Section 6255
Government Code Section 6259

California Public Records Act (K-14)

I, Michael H. Fine, Deputy Superintendent, Business Services & Governmental Relations Division, Riverside Unified School District , make the following declaration and statement.

In my capacity as Deputy Superintendent, Business Services & Governmental Relations Division, I am responsible for the receipt, processing and compliance with the

California Public Records Act. I am familiar with the provisions and requirements of the statutes and Government Code Sections enumerated above.

These Government Code sections require the Riverside Unified School District to implement the following activities:

A) Pursuant to Chapter 3.5 of the Government Code (Government Code Sections 6250, et. seq.) to establish and implement policies and procedures, and to periodically update those policies and procedures, to provide for the processing of requests for disclosure of public documents pursuant to the California Public Records Act.

B) Pursuant to Government Code Section 6253, subdivision (a), providing redacted copies of requested documents deleting portions exempted by law.

C) Pursuant to Government Code Section 6253, subdivision (b), retrieving, inspecting, and handling of files from which copies are made.

D) Pursuant to Government Code Section 6253, subdivision (c), promptly notifying a person making a request for a copy of records, within 10 days from receipt of the request, of the determination of whether the requested records are disclosable public records.

E) Pursuant to Government Code Section 6253, subdivision (c), when it is determined that an extension is necessary, setting forth the reasons for the extension in writing.

F) Pursuant to Government Code Section 6253, subdivision (c), when it is determined that an extension is necessary, setting forth, in writing, a date upon which a determination is expected to be dispatched.

G) Pursuant to Government Code Section 6253, subdivision (d), when denying a request for disclosure of public records, setting forth the names and titles or positions of each person responsible for the denial.

H) Pursuant to Government Code Section 6253.1, when members of the public make a request to inspect a public record or obtain a copy of a public record,

(1) Assisting members of the public identify records and information that are responsive to the request or to the purpose of the request, if stated,

(2) Describing the information technology and physical location in which the records exist, and

(3) Providing suggestions for overcoming any practical basis for denying access to the records or information sought.

I) Pursuant to Government Code Section 6253.5, when necessary, examining petitions that are filed to fill vacancies on the governing board and petitions for recall, after obtaining approval of the appropriate superior court.

J) Pursuant to Government Code Section 6253.9, subdivision (a), making disclosable public records in an electronic format available in an electronic format when requested.

K) Pursuant to Government Code Section 6254.3, subdivision (a), limiting disclosure

of employees' home addresses and telephone numbers to those identified in subparagraphs (1) through (4) and, upon the written request of an employee, refusing disclosure to an employee organization.

L) Pursuant to Government Code Section 6254.3, subdivision (b), removing an employee's home address and home telephone number from any mailing list maintained by the agency when requested by that employee.

M) Pursuant to Government Code Section 6255, subdivision (b), responding in writing when a determination has been made that a request for disclosure of a document is denied in whole or in part.

N) Pursuant to Government Code Section 6259, when ordered by a court, paying to a prevailing plaintiff his or her court costs and reasonable attorney fees.

It is estimated that the Riverside Unified School District, to the extent public records disclosure requests are made, incurred more than $1,000 in staffing and other costs, annually, in excess of any fees collected pursuant to Government Code Section 6253, subdivision (b) and funding provided to school districts and the state for the period from July 1, 2001 through June 30, 2002 to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where

so stated I declare that I believe them to be true.

EXECUTED this 25 day of June, 2003, at Riverside, California.

Michael H. Fine,
Deputy Superintendent
Business Services & Governmental Relations Division
Riverside Unified School District

DECLARATION OF Cheryl Miller

Santa Monica Community College District

Test Claim of Riverside Unified School District

COSM No. _____

Chapter 355, Statutes of 2001
Chapter 982, Statutes of 2000
Chapter 83, Statutes of 1999
Chapter 620, Statutes of 1998
Chapter 923, Statutes of 1994
Chapter 926, Statutes of 1993
Chapter 970, Statutes of 1992
Chapter 463, Statutes of 1992
Chapter 908, Statutes of 1990
Chapter 1053, Statutes of 1985
Chapter 1657, Statutes of 1984
Chapter 802, Statutes of 1984
Chapter 163, Statutes of 1982
Chapter 535, Statutes of 1980
Chapter 556, Statutes of 1977
Chapter 1246, Statutes of 1975
Chapter 678, Statutes of 1975

Government Code Section 6253
Government Code Section 6253.1
Government Code Section 6253.5
Government Code Section 6253.9
Government Code Section 6254.3
Government Code Section 6255
Government Code Section 6259

California Public Records Act (K-14)

I, Cheryl Miller, Associate Vice President Business Services, Santa Monica Community College District, make the following declaration and statement.

In my capacity as Associate Vice President Business Services, I am responsible for the receipt, processing and compliance with the California Public Records Act. I am familiar with the provisions and requirements of the statutes and Government Code

Sections enumerated above.

These Government Code sections require the Santa Monica Community College District to implement the following activities:

A) Pursuant to Chapter 3.5 of the Government Code (Government Code Sections 6250, et. seq.) to establish and implement policies and procedures, and to periodically update those policies and procedures, to provide for the processing of requests for disclosure of public documents pursuant to the California Public Records Act.

B) Pursuant to Government Code Section 6253, subdivision (a), providing redacted copies of requested documents deleting portions exempted by law.

C) Pursuant to Government Code Section 6253, subdivision (b), providing copies of public records to the public, including the determination and collection of the fee.

D) Pursuant to Government Code Section 6253, subdivision (c), promptly notifying a person making a request for a copy of records, within 10 days from receipt of the request, of the determination of whether the requested records are disclosable public records.

E) Pursuant to Government Code Section 6253, subdivision (c), when it is determined that an extension is necessary, setting forth the reasons for the extension in writing.

F) Pursuant to Government Code Section 6253, subdivision (c), when it is determined that an extension is necessary, setting forth, in writing, a date upon

which a determination is expected to be dispatched.

G) Pursuant to Government Code Section 6253, subdivision (d), when denying a request for disclosure of public records, setting forth the names and titles or positions of each person responsible for the denial.

H) Pursuant to Government Code Section 6253.1, when members of the public make a request to inspect a public record or obtain a copy of a public record,

(1) Assisting members of the public identify records and information that are responsive to the request or to the purpose of the request, if stated,

(2) Describing the information technology and physical location in which the records exist, and

(3) Providing suggestions for overcoming any practical basis for denying access to the records or information sought.

I) Pursuant to Government Code Section 6253.5, when necessary, examining petitions that are filed to fill vacancies on the governing board and petitions for recall, after obtaining approval of the appropriate superior court.

J) Pursuant to Government Code Section 6253.9, subdivision (a), making disclosable public records in an electronic format available in an electronic format when requested.

K) Pursuant to Government Code Section 6254.3, subdivision (a), limiting disclosure of employees' home addresses and telephone numbers to those identified in subparagraphs (1) through (4) and, upon the written request of an employee,

refusing disclosure to an employee organization.

L) Pursuant to Government Code Section 6254.3, subdivision (b), removing an employee's home address and home telephone number from any mailing list maintained by the agency when requested by that employee.

M) Pursuant to Government Code Section 6255, subdivision (b), responding in writing when a determination has been made that a request for disclosure of a document is denied in whole or in part.

N) Pursuant to Government Code Section 6259, when ordered by a court, paying to a prevailing plaintiff his or her court costs and reasonable attorney fees.

It is estimated that Santa Monica Community College District, to the extent public records disclosure requests are made, incurred more than approximately $1,000 in staffing and other costs, annually, in excess of any fees collected pursuant to Government Code Section 6253, subdivision (b), and of any funding provided to school districts and the state for the period from July 1, 2001 through June 30, 2002 to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the

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foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 3rd day of June, 2003, at Santa Monica, California.

Cheryl Miller

Cheryl Miller
Associate Vice President Business Services
Santa Monica Community College District

EXHIBIT 2
COPIES OF STATUTES CITED

CHAPTER 678

An act to amend Sections 491 and 10131.7 of, and to amend and renumber Section 10342 of, the Business and Professions Code, to amend Sections 3059 and 4456 of the Civil Code, to amend Sections 684.1 and 1699 of the Code of Civil Procedure, to amend Section 9506 of the Commercial Code, to amend Sections 1203, 1230, 1796, 6751.1, 13253.5, 14009, 14262, 16725, 17522.5, 20811, and 31913.5 of, to add an article heading immediately preceding Section 526 of, and to repeal Section 13192.3 of, the Education Code, to amend Section 14800 of the Elections Code, to amend Section 8022 of the Fish and Game Code, to amend Section 60014 of the Food and Agricultural Code, to amend Sections 4107, 6253.5, 8668, 14254, 14810, 20815, 53570, 55551, 68515, and 74662 of, to amend and renumber Sections 18850.1 and 18850.2 of, to amend and renumber the heading of Chapter 17 (commencing with Section 7290) of Division 7 of Title 1 of, and to repeal Section 34217.1 of, the Government Code, to amend Section 6038 of the Harbors and Navigation Code, to amend Sections 11007, 11161, 11163, 11164, 11167, 11176, 13915, 19881, and 33427 of, and to repeal Sections 19880 and 25956 of, the Health and Safety Code, to amend Section 12900 of the Insurance Code, to amend Sections 227, 2631.1, and 7354.5 of the Labor Code, to amend Section 626 of the Penal Code, to amend Section 5135 of, and to repeal Chapter 5 (commencing with Section 2851) of Part 2 of Division 1 of, the Public Utilities Code, to amend Section 7272.5 of, to amend and renumber Section 255.6 of, and to repeal Section 7272.5 of, the Revenue and Taxation Code, to amend and renumber Sections 2400, 2404, 2404.2, 2404.5, and 2406 of, and to add Chapter 18 (commencing with Section 27500) to Part 3 of Division 16 of, the Streets and Highways Code, to amend Sections 1461 and 2801 of the Unemployment Insurance Code, to add Chapter 7 (commencing with Section 12000) to Division 5 of, to repeal Section 12000 of, and to repeal Chapter 5 (commencing with Section 11900) of Division 5 of, the Vehicle Code, to amend Sections 12912 and 22264 of the Water Code, to amend Sections 727, 11151, and 16140 of, and to amend the heading of Division 4 (commencing with Section 4000) of, to repeal the heading of Article 2.3 (commencing with Section 16140) of, and to add a chapter heading immediately preceding Section 16140 of, Part 4 of Division 9 of, the Welfare and Institutions Code, to amend Section 8 of Chapter 1064 of the Statutes of 1973 and Section 1 of Chapter 1076 of the Statutes of 1974, and to repeal Chapter 805 of the Statutes of

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presented to him by the prime contractor,

(2) When the listed subcontractor becomes bankrupt or insolvent, or,

(3) When the listed subcontractor fails or refuses to perform his subcontract, or

(4) When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor as set forth in Section 4108, or

(5) When the prime contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions set forth in Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error, or

(6) When the listed subcontractor is not licensed pursuant to the Contractors License Law, or

(7) When the awarding authority, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work.

Prior to approval of the prime contractor's request for such substitution the awarding authority, or its duly authorized officer, shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and of the reasons for such request. Such notice shall be served by certified or registered mail to the last known address of such subcontractor. The listed subcontractor who has been so notified shall have five working days within which to submit written objections to the substitution to the awarding authority. Failure to file such written objections shall constitute the listed subcontractor's consent to the substitution.

If written objections are filed, the awarding authority shall give notice in writing of at least five working days to the listed subcontractor of a hearing by the awarding authority on the prime contractor's request for substitution.

(b) Permit any such subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, without the consent of the awarding authority, or its duly authorized officer.

(c) Other than in the performance of "change orders" causing changes or deviations from the original contract, sublet or subcontract any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which his original bid did not designate a subcontractor.

SEC. 26. Section 6253.5 of the Government Code is amended to read:

6253.5. Notwithstanding the provisions of Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions and all memoranda prepared by the county clerks in the examination of such petitions indicating which registered voters

have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving such petitions or who are responsible for the preparation of such memoranda.

SEC. 27. The heading of Chapter 17 (commencing with Section 7290) of Division 7 of Title 1 of the Government Code is amended and renumbered to read:

CHAPTER 17.5. USE OF A FOREIGN LANGUAGE IN PUBLIC SERVICES

SEC. 28. Section 8668 of the Government Code is amended to read:

8668. (a) Any disaster council previously accredited, the State Civil Defense and Disaster Plan, the State Emergency Resources Management Plan, the State Fire Disaster Plan, the State Law Enforcement Mutual Aid Plan, all previously approved civil defense and disaster plans, all mutual aid agreements, and all other documents and agreements existing as of the effective date of this chapter, shall remain in full force and effect until revised, amended, or revoked in accordance with the provisions of this chapter.

(b) Nothing in this chapter shall be construed to diminish or remove any authority of any city, county, or city and county granted by Section 7 of Article XI of the California Constitution.

SEC. 29. Section 14254 of the Government Code is amended to read:

14254. As used in this chapter, "project" includes the erection, construction, alteration, repair or improvement of any state structure, building, road, or other state improvement of any kind which will exceed in cost a total of ten thousand dollars ($10,000).

SEC. 30. Section 14810 of the Government Code is amended to read:

14810. The department shall adopt, publish and apply uniform standards of rating bidders, on the basis of questionnaires and required statements, with respect to contracts upon which each bidder is qualified to bid.

The department may remove, for a period not to exceed 90 calendar days, from any list of qualified bidders prepared by the department any bidder who, based upon his performance on contracts which he has previously been awarded by the state, has demonstrated a lack of reliability in complying with and completing such previously awarded contracts.

Any bidder temporarily removed under this section shall be returned to the list of qualified bidders at any time during this 90-day period, upon demonstrating to the department's satisfaction that the problems which resulted in the bidder's previously demonstrated unreliability in completing state contracts, have been corrected.

SEC. 31. Section 18850.1 of the Government Code, as added by

(8) Stateline Beach
(9) Celio Ranch
(10) Ward Valley (including Page Meadows)
(11) Blackwood Canyon

SEC. 80. Section 1 of Chapter 1076 of the Statutes of 1974 is amended to read:

Section 1. Chapter 7.7 (commencing with Section 25880) of Division 20 of the Health and Safety Code is repealed.

SEC. 81. Any section of any act enacted by the Legislature during the 1975 portion of the 1975–76 Regular Session, which takes effect on or before January 1, 1976, and which amends, amends and renumbers, or repeals a section amended, amended and renumbered, or repealed by this act, shall prevail over this act, whether such act is enacted prior or subsequent to this act.

CHAPTER 1246

An act to amend Sections 6252, 6254, 6257, and 6259 of, to add Sections 6261, 9131, 9132, 12022 and 12032, and to add Article 3.5 (commencing with Section 9070) to Chapter 1.5 of Part 1 of Division 2 of Title 2 of, the Government Code, relating to public records.

[Approved by Governor October 1, 1975. Filed with Secretary of State October 1, 1975.]

The people of the State of California do enact as follows:

SECTION 1. Article 3.5 (commencing with Section 9070) is added to Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code, to read:

Article 3.5. Legislative Open Records Act

9070. The Legislature finds and declares that access to information concerning the conduct of the people's business by the Legislature is a fundamental and necessary right of every citizen in this state.

9071. This article shall be known and may be cited as the Legislative Open Records Act.

9072. As used in this article:

(a) "Person" includes any natural person, corporation, partnership, firm, or association.

(b) "Legislature" includes any Member of the Legislature, any legislative officer, any standing, joint, or select committee or subcommittee of the Senate and Assembly, and any other agency or employee of the Legislature.

(c) "Legislative records" means any writing prepared on or after December 2, 1974 which contains information relating to the conduct of the public's business prepared, owned, used, or retained by the Legislature.

(d) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

9073. Legislative records are open to inspection at all times

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expenditures for the Governor in the following categories:

(a) Travel and living expense reimbursement.
(b) Automotive and charter or lease airplane expenses.
(c) Rent.
(d) Telephone.
(e) Postage.
(f) Printing.
(g) Office supplies.

SEC. 8. Section 6257 of the Government Code is amended to read:

6257. A request for a copy of an identifiable public record or information produced therefrom, or a certified copy of such record, shall be accompanied by payment of a reasonable fee or deposit established by the state or local agency, provided such fee shall not exceed ten cents ($0.10) per page or the prescribed statutory fee, where applicable.

SEC. 9. Section 6259 of the Government Code is amended to read:

6259. Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and such oral argument and additional evidence as the court may allow.

If the court finds that the public official's decision to refuse disclosure is not justified under the provisions of Section 6254 or 6255, he shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure. Any person who fails to obey the order of the court shall be cited to show cause why he is not in contempt of court.The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. Such costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

CHAPTER 556

An act to amend Sections 3512, 3756, and 27300 of the Elections Code, and to amend Section 6253.5 of the Government Code, relating to election petitions.

[Approved by Governor September 2, 1977. Filed with Secretary of State September 3, 1977.]

The people of the State of California do enact as follows:

SECTION 1. Section 3512 of the Elections Code is amended to read:

3512. Officers required by law to receive or file in their offices any initiative or referendum petition shall preserve the petition until eight months after the certification of the results of the election for which the petition qualified or attempted to qualify for placement on the ballot. Thereafter, the petition shall be destroyed as soon as practicable unless it is in evidence in some action or proceeding then pending or unless the officer has received a written request from the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a grand jury, or the governing body of a county, city and county, or district, including a school district, that the petition be preserved for use in a pending or ongoing investigation into election irregularities, the subject of which relates to the petition's qualification or disqualification for placement on the ballot, or in a pending or ongoing investigation into a violation of the Political Reform Act of 1974 as set forth in Title 9 (commencing with Section 81000) of the Government Code.

SEC. 2. Section 3756 of the Elections Code is amended to read:

3756. An initiative or referendum petition received or filed in the office of the county clerk shall be preserved until eight months after the certification of the results of the election for which the petition qualified or attempted to qualify for placement on the ballot. Public access to any such petition shall be restricted in accordance with the provisions of Section 6253.5 of the Government Code. At the end of the eight-month period, the petition shall be destroyed as soon as practicable unless it is in evidence in some action or proceeding then pending, or unless the clerk has received a written request from the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a grand jury, or the governing body of a county, city and county, or district including a school district, that the petition be preserved for use in a pending or ongoing investigation into election irregularities, or in a pending or ongoing investigation into a violation of the Political Reform Act of 1974 as set forth in Title 9 (commencing with Section 81000) of the Government Code.

SEC. 3. Section 27300 of the Elections Code is amended to read:

27300. The clerk or, in the case of the recall of a state officer, the Secretary of State, shall preserve in his office all recall petitions filed for eight months after the certification of the results of the election for which the petition qualified or, if no election is held, eight months after the clerks final examination of the petition. Public access to any such petition shall be restricted in accordance with provisions of Section 6253.5 of the Government Code. At the end of the eight-month period, the petition shall be destroyed as soon as

practicable, unless it is in evidence in some action or proceeding then pending or unless a written request is received from the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a grand jury, or the governing body of a county, city, or district, including a school district, that the petition be preserved for use in a pending or ongoing investigation into election irregularities, or in a pending or ongoing investigation into a violation of the Political Reform Act of 1974 as set forth in Title 9 (commencing with Section 81000) of the Government Code.

SEC. 4. Section 6253.5 of the Government Code is amended to read:

6253.5. Notwithstanding the provisions of Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions and all memoranda prepared by the county clerks in the examination of such petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving such petitions or who are responsible for the preparation of such memoranda; provided, however, that the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, and a city attorney shall be permitted to examine such material upon approval of the appropriate superior court.

CHAPTER 535

An act to amend Section 6253.5 of the Government Code, relating to public records.

[Approved by Governor July 16, 1980. Filed with Secretary of State July 17, 1980.]

The people of the State of California do enact as follows:

SECTION 1. Section 6253.5 of the Government Code is amended to read:

6253.5. Notwithstanding the provisions of Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions and all memoranda prepared by the county clerks in the examination of such petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving such petitions or who are responsible for the preparation of such memoranda and, if the petition is found to be insufficient, by the proponents of the petition and such representatives of the proponents as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor; provided, however, that the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, and a city attorney shall be permitted to examine such material upon approval of the appropriate superior court.

If the proponents of a petition are permitted to examine the petition and memoranda, such examination shall commence not later than 21 days after certification of insufficiency.

As used in this section "proponents of the petition" means the following:

(a) For statewide initiative and referendum measures, the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he prepare a title and summary of the chief purpose and points of the proposed measure.

(b) For other initiative and referenda on measures, the person or

persons who publish a notice of intention to circulate petitions, or, where publication is not required, who file petitions with the clerk.

(c) For recall measures, the person or persons defined in Section 29711 of the Elections Code.

SEC. 2. Notwithstanding Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act pursuant to these sections because the duties, obligations, or responsibilities imposed on local government by this act are minor in nature and will not cause any financial burden to local government. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

CHAPTER 163

An act to amend Section 5091 of the Education Code, and to amend Section 6253.5 of the Government Code, relating to elections.

[Approved by Governor April 24, 1982. Filed with Secretary of State April 26, 1982.]

The people of the State of California do enact as follows:

SECTION 1. Section 5091 of the Education Code is amended to read:

5091. (a) Whenever a vacancy occurs, or whenever a resignation has been filed with the county superintendent of schools containing a deferred effective date, the school district or community college district governing board shall, within 30 days of the vacancy or the filing of the deferred resignation, either order an election or make a provisional appointment to fill the vacancy. A governing board member may not defer the effective date of his or her resignation for more than 30 days after he or she files the resignation with the county superintendent of schools.

In the event that a governing board fails to make a provisional appointment or order an election within the prescribed 30-day period as required by this section, the county superintendent of schools shall call an election to fill the vacancy.

(b) When an election is ordered, it shall be held on the next regular election date provided pursuant to Chapter 1 (commencing with Section 2500) of Division 4 of the Elections Code not less than 98 days after the occurrence of the vacancy or after the written resignation is filed with the county superintendent of schools.

(c) If a provisional appointment is made within the 30-day period, the registered voters of the district may, within 30 days from the date of the appointment, petition for the conduct of a special election to fill the vacancy. A petition shall be deemed to bear a sufficient number of signatures if signed by at least the number of registered voters of the district equal to 1½ percent of the number of registered voters of the district at the time of the last regular election for governing board members.

The petition shall be submitted to the county superintendent of schools having jurisdiction who shall have 30 days to verify the signatures. If the petition is determined to be legally sufficient by the county superintendent of schools, the provisional appointment is terminated, and the county superintendent of schools shall call a special election to be conducted no later than the 120th day after the determination; provided, however, if a regular election date, as defined in Section 2500 of the Elections Code, occurs between the

120th day and the 150th day following the determination, the county superintendent of schools may call such election to be conducted on the regular election date.

(d) A provisional appointment made pursuant to subdivision (a) confers no powers or duties of a governing board member upon the appointee during the 30-day period following his appointment and within which a petition calling for special election may be filed. If a petition is not filed within the 30-day period, the appointee shall thereafter have all the powers and perform all the duties of a governing board member.

(e) A person appointed to fill a vacancy shall hold office only until the next regularly scheduled election for district governing board members, whereupon an election shall be held to fill the vacancy for the remainder of the unexpired term. A person elected at an election to fill the vacancy shall hold office for the remainder of the term in which the vacancy occurs or will occur.

(f) Whenever a petition calling for a special election is circulated, the petition shall contain the clerk's estimate of the cost of conducting the special election.

No person shall permit the list of names on petitions prescribed by this section to be used for any purpose other than qualification of the petition for the purpose of holding an election pursuant to this section.

The petition filed with the county superintendent of schools shall be subject to the restrictions in Section 6253.5 of the Government Code.

(g) Elections held pursuant to subdivisions (b) and (c) shall be conducted in as nearly the same manner as practicable as other governing board member elections.

SEC. 2. Section 6253.5 of the Government Code is amended to read:

6253.5. Notwithstanding the provisions of Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions, and petitions circulated pursuant to Section 5091 of the Education Code, and all memoranda prepared by the county clerks in the examination of such petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving such petitions or who are responsible for the preparation of such memoranda and, if the petition is found to be insufficient, by the proponents of the petition and such representatives of the proponents as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor; provided, however, that the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a school district or a community college district attorney, and a city attorney shall be permitted to examine such material upon approval of the appropriate superior

court.

If the proponents of a petition are permitted to examine the petition and memoranda, such examination shall commence not later than 21 days after certification of insufficiency.

As used in this section "proponents of the petition" means the following:

(a) For statewide initiative and referendum measures, the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he prepare a title and summary of the chief purpose and points of the proposed measure.

(b) For other initiative and referenda on measures, the person or persons who publish a notice of intention to circulate petitions, or, where publication is not required, who file petitions with the clerk.

(c) For recall measures, the person or persons defined in Section 29711 of the Elections Code.

(d) For petitions circulated pursuant to Section 5091 of the Education Code, the person or persons having charge of the petition who submit the petition to the county superintendent of schools.

CHAPTER 802

An act to amend Section 6259 of the Government Code, relating to public records.

[Approved by Governor August 28, 1984. Filed with Secretary of State August 29, 1984.]

The people of the State of California do enact as follows:

SECTION 1. Section 6259 of the Government Code is amended to read:

6259. (a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall 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. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and such oral argument and additional evidence as the court may allow.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under the provisions of Section 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

(c) In an action filed on or after January 1, 1985, an order of the court, either directing disclosure by a public official or supporting

the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of the extraordinary writ of review as defined in Section 1067 of the Code of Civil Procedure. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

CHAPTER 1657

An act to add Section 6254.3 to the Government Code, relating to public records.

[Approved by Governor September 30, 1984. Filed with Secretary of State September 30, 1984.]

The people of the State of California do enact as follows:

SECTION 1. Section 6254.3 is added to the Government Code, to read:

6254.3. (a) The home addresses and home telephone numbers of state employees shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

(1) To an agent, or a family member of the individual to whom the information pertains.

(2) To an officer or employee of another state agency when necessary for the performance of its official duties.

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(3) To an employee organization pursuant to regulations adopted by the Public Employment Relations Board, except that the home addresses and home telephone numbers of state employees performing law enforcement-related functions shall not be disclosed.

(4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to state employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

(b) Upon written request of any employee, a state agency shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and a state agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee.

SEC. 2. It is the intent of the Legislature that this act shall not apply to any court action filed prior to April 1, 1984.

SEC. 3. Nothing herein shall be deemed to affect existing rights under the provisions of Sections 1798.3 and 1798.60 of the Civil Code.

SEC. 4. This act shall not be construed to limit or affect Section 1808 of the Vehicle Code.

CHAPTER 1053

An act to amend Section 6253.5 of the Government Code, relating to public records.

[Approved by Governor September 26, 1985. Filed with Secretary of State September 27, 1985.]

The people of the State of California do enact as follows:

SECTION 1. Section 6253.5 of the Government Code is amended to read:

6253.5. Notwithstanding the provisions of Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions, petitions circulated pursuant to Section 5091 of the Education Code, petitions for the reorganization of school districts submitted pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, petitions for the reorganization of community college districts submitted pursuant to Part 46 (commencing with Section 74000) of the Education Code and all memoranda prepared by the county clerks in the examination of such petitions indicating which registered voters have signed

particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving such petitions or who are responsible for the preparation of such memoranda and, if the petition is found to be insufficient, by the proponents of the petition and such representatives of the proponents as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor; provided, however, that the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a school district or a community college district attorney, and a city attorney shall be permitted to examine such material upon approval of the appropriate superior court.

If the proponents of a petition are permitted to examine the petition and memoranda, such examination shall commence not later than 21 days after certification of insufficiency.

As used in this section "proponents of the petition" means the following:

(a) For statewide initiative and referendum measures, the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he prepare a title and summary of the chief purpose and points of the proposed measure.

(b) For other initiative and referenda on measures, the person or persons who publish a notice of intention to circulate petitions, or, where publication is not required, who file petitions with the clerk.

(c) For recall measures, the person or persons defined in Section 29711 of the Elections Code.

(d) For petitions circulated pursuant to Section 5091 of the Education Code, the person or persons having charge of the petition who submit the petition to the county superintendent of schools.

(e) For petitions circulated pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, the person or persons designated as chief petitioners under Section 35701 of the Education Code.

(f) For petitions circulated pursuant to Part 46 (commencing with Section 74000) of the Education Code, the person or persons designated as chief petitioners under Sections 74102, 74133, and 74152 of the Education Code.

CHAPTER 908

An act to amend Sections 6258 and 6259 of the Government Code, relating to public records.

[Approved by Governor September 13, 1990. Filed with Secretary of State September 14, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 6258 of the Government Code is amended to read:

6258. Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter. The times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.

SEC. 2. Section 6259 of the Government Code is amended to read:

6259. (a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall 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. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

(c) In an action filed on or after January 1, 1991, an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within 10 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

CHAPTER 463

An act to amend Section 6254.3 of the Government Code, relating to public records, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 9, 1992. Filed with Secretary of State August 10, 1992.]

The people of the State of California do enact as follows:

SECTION 1. Section 6254.3 of the Government Code is amended to read:

6254.3. (a) The home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

(1) To an agent, or a family member of the individual to whom the information pertains.

(2) To an officer or employee of another state agency, school district, or county office of education when necessary for the performance of its official duties.

(3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed.

(4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to state, school districts, and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

(b) Upon written request of any employee, a state agency, school district, or county office of education shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and an agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement the protections provided to school employees at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 970

An act to amend Sections 5022, 19700, 35105, 37612, and 72027 of the Education Code, to amend Sections 44, 60, 1006.3, 1633, 4052, 5354, 6163, 6864, 8944, 9444, 9744, 9854, 25500, and 27023 of, and to add Sections 311.6 and 5355 to, the Elections Code, to amend Section 6253.5 of the Government Code, to amend Sections 32100.5 of the Health and Safety Code, and to amend Section 9314 of the Public Resources Code, relating to elections.

148810

(b) No person may be a candidate nor have his or her name printed upon any ballot as a candidate for a party nomination for the office of State Senator or Member of the Assembly, or for any state constitutional office, or for Insurance Commissioner at the direct primary election unless he or she has filed the declaration of intention provided for in this section. However, if the incumbent of the office who is affiliated with any qualified political party files a declaration of intention, but for any reason fails to qualify for nomination for the office by the last day prescribed for the filing of nomination papers, an additional five days shall be allowed for the filing of nomination papers for the office, and any person, other than the incumbent if otherwise qualified, may file nomination papers for the office during the extended period, notwithstanding that he or she has not filed a written and signed declaration of intention to become a candidate for the office as provided in subdivision (a).

SEC. 21. Section 27023 of the Elections Code is amended to read:

27023. (a) Within seven days after the filing of the notice of intention, the officer sought to be recalled may file with the clerk, or in the case of a state officer, the Secretary of State, an answer, in not more than 200 words, to the statement of the proponents.

(b) If an answer is filed, the officer shall, within seven days after the filing of the notice of intention, also serve a copy of it, by personal delivery or by certified mail, on one of the proponents named in the notice of intention.

(c) The answer shall be signed and shall be accompanied by the printed name and business or residence address of the officer sought to be recalled.

SEC. 22. Section 6253.5 of the Government Code is amended to read:

6253.5. Notwithstanding the provisions of Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions, petitions circulated pursuant to Section 5091 of the Education Code, petitions for the reorganization of school districts submitted pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, petitions for the reorganization of community college districts submitted pursuant to Part 46 (commencing with Section 74000) of the Education Code and all memoranda prepared by the county clerks in the examination of the petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving the petitions or who are responsible for the preparation of that memoranda and, if the petition is found to be insufficient, by the proponents of the petition and the representatives of the proponents

as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor; provided, however, that the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a school district or a community college district attorney, and a city attorney shall be permitted to examine the material upon approval of the appropriate superior court.

If the proponents of a petition are permitted to examine the petition and memoranda, the examination shall commence not later than 21 days after certification of insufficiency.

(a) As used in this section, "petition" shall mean any petition to which a registered voter has affixed his or her signature.

(b) As used in this section "proponents of the petition" means the following:

(1) For statewide initiative and referendum measures, the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he or she prepare a title and summary of the chief purpose and points of the proposed measure.

(2) For other initiative and referenda on measures, the person or persons who publish a notice of intention to circulate petitions, or, where publication is not required, who file petitions with the clerk.

(3) For recall measures, the person or persons defined in Section 29711 of the Elections Code.

(4) For petitions circulated pursuant to Section 5091 of the Education Code, the person or persons having charge of the petition who submit the petition to the county superintendent of schools.

(5) For petitions circulated pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, the person or persons designated as chief petitioners under Section 35701 of the Education Code.

(6) For petitions circulated pursuant to Part 46 (commencing with Section 74000) of the Education Code, the person or persons designated as chief petitioners under Sections 74102, 74133, and 74152 of the Education Code.

SEC. 23. Section 32100.5 of the Health and Safety Code is amended to read:

32100.5. An election which shall be known as the hospital district general election, shall be held in each local hospital district on the first Tuesday after the first Monday in November in each even-numbered year, at which a successor shall be chosen to each officer whose term shall expire when the successor takes office pursuant to Section 23556 of the Elections Code. The hospital district general election shall be consolidated with the statewide general election pursuant to Chapter 4 (commencing with Section 23300), Part 2, Division 14 of the Elections Code.

The person receiving the highest number of votes for each office to be filled at the election shall be elected thereto. The term of office of each elective officer of the district elected, shall be four years, or

counties to waive or minimize the charges for costs of elections conducted pursuant to this division.

SEC. 25. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Moreover, no reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for other costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law for those other costs. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 926

An act to amend Sections 6086.13 and 17204 of the Business and Professions Code, to amend Sections 575.1, 712.020, 1094.6, 1987.5, 2020, and 2025 of, and to repeal Section 1167.6 of, the Code of Civil Procedure, and to amend Sections 6259 and 26800 of the Government Code, relating to civil remedies.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 6086.13 of the Business and Professions Code is amended to read:

6086.13. (a) Any order of the Supreme Court imposing suspension or disbarment of a member of the State Bar, or accepting a resignation with a disciplinary matter pending may include an order that the member pay a monetary sanction not to exceed five thousand dollars ($5,000) for each violation, subject to a total limit of fifty thousand dollars ($50,000).

(b) Monetary sanctions collected under subdivision (a) shall be deposited into the Client Security Fund.

(c) The State Bar shall, with the approval of the Supreme Court, adopt rules setting forth guidelines for the imposition and collection of monetary sanctions under this section.

(d) The authority granted under this section is in addition to the provisions of Section 6086.10 and any other authority to impose costs or monetary sanctions.

(e) Monetary sanctions imposed under this section shall not be collected to the extent that the collection would impair the collection of criminal penalties or civil judgments arising out of transactions connected with the discipline of the attorney. In the event monetary sanctions are collected under this section and criminal penalties or civil judgments arising out of transactions connected with the discipline of the attorney are otherwise uncollectible, those penalties or judgments may be reimbursed from the Client Security Fund to the extent of the monetary sanctions collected under this section.

SEC. 2. Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for any relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county in the

allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(4) Any party may use a video tape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

SEC. 10. Section 6259 of the Government Code is amended to read:

6259. (a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall 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. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

(c) In an action filed on or after January 1, 1991, an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of any order pursuant

to this section, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

SEC. 11. Section 26800 of the Government Code is amended to read:

26800. The county clerk shall act as clerk of the superior court in and for his or her county. However, in any county in which a superior court executive officer has been appointed pursuant to Section 69898, the term "county clerk" shall mean the superior court executive officer to the extent that the superior court, by local rule, has delegated any duties of the county clerk to the superior court executive officer.

SEC. 11.5. Section 3.5 of this bill incorporates amendments to Section 575.1 of the Code of Civil Procedure proposed by both this bill and SB 425. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 575.1 of the Code of Civil Procedure, and (3) this bill is enacted after SB 425, in which case Section 3 of this bill shall not become operative.

SEC. 12. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 923

An act to amend Sections 203 and 416.80 of the Code of Civil Procedure, to amend Sections 5000.1, 5000.5, 5006, 5008, 5010, 5010.7, 5013, 5018, 5019, 5029, 5091, 5342, 5344, 5363, 5440, 5441, 5442, 15101, 15121, 16062, 18558, 19700, 24903, 39310, 41022, and 84042 of the Education Code, to amend Sections 810.2, 1780, 6253.5, 6254.4, 6547, 6547.2, 7060.5, 12172, 12172.5, 16100.6, 23274, 23353, 23359, 23365, 23374.3, 23374.13, 23559, 23702, 23709, 23713, 23720, 23721, 23722, 24001, 24009, 25210.18a, 25210.23, 26298.10, 26298.12, 26802, 29907.5, 31105.2, 34050, 34450, 34452, 34457, 34458, 34460, 34871, 34882, 34904,

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that is 130 or more days after the vacancy occurs.

(2) If the number of remaining members of the board falls below a quorum, at the request of the district secretary, or a remaining board member, the board of supervisors or the city council may waive the 60-day period provided in subdivision (a) and appoint immediately to fill the vacancy as provided in subdivision (a), or may call an election to fill the vacancy. The election shall be held on the next available election date provided by Chapter 1 (commencing with Section 1000) of Division 1 of the Elections Code that is held 130 or more days after the vacancy occurs.

The board of supervisors or the city council shall only fill enough vacancies to provide the board with a quorum.

(d) Persons appointed to fill a vacancy shall hold office until the next district general election and thereafter until the person elected at that election to fill the vacancy has been qualified, but persons elected to fill a vacancy shall hold office for the unexpired balance of the term of office.

SEC. 32. Section 6253.5 of the Government Code is amended to read:

6253.5. Notwithstanding Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions, petitions circulated pursuant to Section 5091 of the Education Code, petitions for the reorganization of school districts submitted pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, petitions for the reorganization of community college districts submitted pursuant to Part 46 (commencing with Section 74000) of the Education Code and all memoranda prepared by the county elections officials in the examination of the petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving the petitions or who are responsible for the preparation of that memoranda and, if the petition is found to be insufficient, by the proponents of the petition and the representatives of the proponents as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor. However, the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a school district or a community college district attorney, and a city attorney shall be permitted to examine the material upon approval of the appropriate superior court.

If the proponents of a petition are permitted to examine the petition and memoranda, the examination shall commence not later than 21 days after certification of insufficiency.

(a) As used in this section, "petition" shall mean any petition to which a registered voter has affixed his or her signature.

(b) As used in this section "proponents of the petition" means the following:

(1) For statewide initiative and referendum measures, the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he or she prepare a title and summary of the chief purpose and points of the proposed measure.

(2) For other initiative and referenda on measures, the person or persons who publish a notice of intention to circulate petitions, or, where publication is not required, who file petitions with the elections official.

(3) For recall measures, the person or persons defined in Section 343 of the Elections Code.

(4) For petitions circulated pursuant to Section 5091 of the Education Code, the person or persons having charge of the petition who submit the petition to the county superintendent of schools.

(5) For petitions circulated pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, the person or persons designated as chief petitioners under Section 35701 of the Education Code.

(6) For petitions circulated pursuant to Part 46 (commencing with Section 74000) of the Education Code, the person or persons designated as chief petitioners under Sections 74102, 74133, and 74152 of the Education Code.

SEC. 33. Section 6254.4 of the Government Code is amended to read:

6254.4. (a) The home address, telephone number, occupation, precinct number, and prior registration information shown on the voter registration card for the following persons is confidential if the person requests confidentiality of that information at the time of registration or reregistration and shall not be disclosed to any person except pursuant to Section 2194 of the Elections Code:

(1) Any active or retired judge, magistrate, or court commissioner.

(2) Any active or retired district attorney, assistant district attorney, or deputy district attorney.

(3) Any active or retired public defender or assistant public defender or public defender investigator.

(4) Any active or retired peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(5) The spouse or children of any person included in paragraphs (1) to (4), inclusive, who are living with that person.

(b) Confidentiality granted under this section shall apply only to records prepared or generated on or after the date that the voter is granted confidentiality.

(c) A person who requests confidentiality of the information specified in subdivision (a) shall register or reregister to vote by means of a confidential affidavit of registration form which shall be prescribed by the Secretary of State and which shall be attested to under penalty of perjury by the affiant that he or she is a person entitled to confidential treatment pursuant to this section.

conservatee's being gravely disabled. The court shall make a specific determination regarding imposition of this disability.

(f) The disqualification of the person from possessing a firearm pursuant to subdivision (e) of Section 8103.

SEC. 269. Section 5358.3 of the Welfare and Institutions Code is amended to read:

5358.3. At any time, a conservatee or any person on his behalf with the consent of the conservatee or his counsel, may petition the court for a hearing to contest the rights denied under Section 5357 or the powers granted to the conservator under Section 5358. However, after the filing of the first petition for hearing pursuant to this section, no further petition for rehearing shall be submitted for a period of six months.

A request for hearing pursuant to this section shall not affect the right of a conservatee to petition the court for a rehearing as to his status as a conservatee pursuant to Section 5364. A hearing pursuant to this section shall not include trial by jury. If a person's right to vote is restored, the court shall so notify the county elections official pursuant to subdivision (c) of Section 2210 of the Elections Code.

SEC. 270. Section 5364 of the Welfare and Institutions Code is amended to read:

5364. At any time, the conservatee may petition the superior court for a rehearing as to his status as a conservatee. However, after the filing of the first petition for rehearing pursuant to this section, no further petition for rehearing shall be submitted for a period of six months. If the conservatorship is terminated pursuant to this section, the court shall, in accordance with subdivision (c) of Section 2210 of the Elections Code, notify the county elections official that the person's right to register to vote is restored.

SEC. 271. The Legislature declares that the changes made by this act are technical and nonsubstantive in nature, and are necessitated by the reorganization of the Elections Code by SB 1547 of the 1993–94 Regular Session.

SEC. 272. This act shall become operative only if SB 1547 of the 1993–94 Regular Session is chaptered.

SEC. 273. Any section of any act enacted by the Legislature during the 1994 calendar year that takes effect on or before January 1, 1995, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section amended by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, this act.

PUBLIC RECORDS—CALIFORNIA PUBLIC RECORDS ACT—DEFINITIONS

CHAPTER 620

S.B. No. 143

AN ACT to amend Section 6252 of, to amend and renumber Section 6253 of, to add Sections 6252.5 and 6253 to, to add a heading as Article 1 (commencing with Section 6250) to Chapter 3.5 of, to add Article 2 (commencing with Section 6275) to Chapter 3.5 of, Division 7 of Title 1 of, and to repeal Sections 6253.1, 6256, 6256.1, 6256.2, and 6257 of, the Government Code, relating to records.

[Approved by Governor September 19, 1998.]

[Filed with Secretary of State September 21, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 143, Kopp. Records.

(1) Existing provisions of the California Public Records Act require each state and local agency, as defined, to make its records open to public inspection at all times during office hours, except as specifically exempted from disclosure by law. The act also defines the terms "writing," "person," and "member of the public."

This bill would revise the definitions of local agency and "writing" and would define "public agency." The bill would also provide for public inspection of public records and copying in all forms, as specified. The bill would further require public agencies to ensure that systems used to collect and hold public records be designed to ensure ease of public access.

This bill would expressly state that notwithstanding the definition of "member of the public," an elected member or officer of any state or local agency is entitled to access to public records of that agency on the same basis as any other person and would state that it is declaratory of existing law.

This bill would incorporate changes made to the California Public Records Act by the Governor's Reorganization Plan of 1991, including adding the Department of Toxic Substances Control and the Office of Environmental Health Hazard Assessment to the list of state and local bodies that are required to establish written guidelines for accessibility of records.

(2) Existing law provides that the California Public Records Act shall not be construed to require disclosure of records, the disclosure of which is exempted or prohibited by provisions of federal or state law.

This bill would list specific provisions of law coming within that exemption.

By requiring a higher level of service of local agencies in administering the California Public Records Act, this bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed $1,000,000, shall be made from the State Mandates Claims Fund.

The people of the State of California do enact as follows:

SECTION 1. A heading as Article 1 (commencing with Section 6250) is added to Chapter 3.5 of Division 7 of Title 1 of the Government Code, to read:

Article 1. General Provisions

SEC. 2. Section 6252 of the Government Code is amended to read:

6252. As used in this chapter:

(a) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or nonprofit * * * entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

(c) "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.

(d) * * * "Public agency" means any state or local agency.

(e) "Public records" includes 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. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(f) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps,

magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

(g) "Member of the public" means any person, except 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.

SEC. 3. Section 6252.5 is added to the Government Code, to read:

6252.5. Notwithstanding the definition of "member of the public" in Section 6252, an elected member or officer of any state or local agency is entitled to access to public records of that agency on the same basis as any other person. Nothing in this section shall limit the ability of elected members or officers to access public records permitted by law in the administration of their duties.

This section does not constitute a change in, but is declaratory of, existing law.

SEC. 4. Section 6253 of the Government Code is amended and renumbered to read:

6253.4. (a) * * * Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section.

The following state and local bodies shall establish written guidelines for accessibility of records. A copy of these guidelines shall be posted in a conspicuous public place at the offices of these bodies, and a copy of the guidelines shall be available upon request free of charge to any person requesting that body's records:

Department of Motor Vehicles
Department of Consumer Affairs
Department of Transportation
Department of Real Estate
Department of Corrections
Department of the Youth Authority
Department of Justice
Department of Insurance
Department of Corporations
Secretary of State
State Air Resources Board
Department of Water Resources
Department of Parks and Recreation
San Francisco Bay Conservation and Development Commission
State Board of Equalization
State Department of Health Services
Employment Development Department
State Department of Social Services
State Department of Mental Health
State Department of Developmental Services
State Department of Alcohol and Drug Abuse
Office of Statewide Health Planning and Development
Public Employees' Retirement System
Teachers' Retirement Board
Department of Industrial Relations
Department of General Services
Department of Veterans Affairs
Public Utilities Commission
California Coastal Commission

State Water Resources Control Board
San Francisco Bay Area Rapid Transit District
All regional water quality control boards
Los Angeles County Air Pollution Control District
Bay Area Air Pollution Control District
Golden Gate Bridge, Highway and Transportation District
Department of Toxic Substances Control
Office of Environmental Health Hazard Assessment

(b) Guidelines and regulations adopted pursuant to this section shall be consistent with all other sections of this chapter and shall reflect the intention of the Legislature to make the records accessible to the public. The guidelines and regulations adopted pursuant to this section shall not operate to limit the hours public records are open for inspection as prescribed in Section 6253.

SEC. 5. Section 6253 is added to the Government Code, to read:

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person, upon payment of fees covering direct costs of duplication, or a statutory fee, if applicable. Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency.

(c) Each agency, upon a request for a copy of records shall, within 10 days from receipt of the request, 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. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency 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 dispatched. No notice shall specify a date that would result in an extension for more than 14 days. As used in this section, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(d) Nothing in this chapter shall be construed to permit an agency to obstruct the inspection or copying of public records. Any notification of denial of any request for records shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

SEC. 6. Section 6253.1 of the Government Code is repealed.

SEC. 7. Section 6256 of the Government Code is repealed.

SEC. 8. Section 6256.1 of the Government Code is repealed.

SEC. 9. Section 6256.2 of the Government Code is repealed.

SEC. 10. Section 6257 of the Government Code is repealed.

SEC. 11. Article 2 (commencing with Section 6275) is added to Chapter 3.5 of Division 7 of Title 1 of the Government Code, to read:

Article 2. Other Exemptions from Disclosure

6275. It is the intent of the Legislature to assist members of the public and state and local agencies in identifying exemptions to the California Public Records Act. It is the intent of the Legislature that, after January 1, 1999, each addition or amendment to a statute that exempts any information contained in a public record from disclosure pursuant to subdivision (k) of Section 6254 shall be listed and described in this article. The statutes listed in this article may operate to exempt certain records, or portions thereof, from disclosure. The statutes listed and described may not be inclusive of all exemptions. The listing of a statute in this article does not itself create an exemption. Requesters of public records and public agencies are cautioned to review the applicable statute to determine the extent to which the statute, in light of the circumstances surrounding the request, exempts public records from disclosure.

6276. Records or information not required to be disclosed pursuant to subdivision (k) of Section 6254 may include, but shall not be limited to, records or information identified in statutes listed in this article.

6276.02. Accident Reports, Admissibility as Evidence, Section 315, Public Utilities Code.

Acquired Immune Deficiency Syndrome, blood test results, written authorization not necessary for disclosure, Section 121010, Health and Safety Code.

Acquired Immune Deficiency Syndrome, blood test subject, compelling identity of, Section 120975, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of personal data of patients in State Department of Health Services programs, Section 120820, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of research records, Sections 121090, 121095, 121115, and 121120, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of vaccine volunteers, Section 121280, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of information obtained in prevention programs at correctional facilities and law enforcement agencies, Sections 7552 and 7554, Penal Code.

Acquired Immune Deficiency Syndrome, confidentiality of test results of person convicted of prostitution, Section 1202.6, Penal Code.

Acquired Immune Deficiency Syndrome, disclosure of results of HIV test, penalties, Section 120980, Health and Safety Code.

Acquired Immune Deficiency Syndrome, personal information, insurers tests, confidentiality of, Section 799, Insurance Code.

Acquired Immune Deficiency Syndrome, public safety and testing disclosure, Sections 121065 and 121070, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, production or discovery of records for use in criminal or civil proceedings against subject prohibited, Section 121100, Health and Safety Code.

Acquired Immune Deficiency Syndrome Public Health Records Confidentiality Act, personally identifying information confidentiality, Section 121025, Health and Safety Code.

Acquired Immune Deficiency Syndrome, test of criminal defendant pursuant to search warrant requested by victim, confidentiality of, Section 1524.1, Penal Code.

Acquired Immune Deficiency Syndrome, test results, disclosure to patient's spouse and others, Section 121015, Health and Safety Code.

Acquired Immune Deficiency Syndrome, test of person under Youth Authority, disclosure of results, Section 1768.9, Welfare and Institutions Code.

SEC. 12. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

MAINTENANCE OF CODES

CHAPTER 83

S.B. No. 966

AN ACT to amend Sections 2530.2, 2725.1, 4052, 4827, 10145, 10177, 10229, 10232, 11018.12, 17539.15, 17550.14, 17550.16, 17550.23, 17550.41, 19950.2, 21701.1, and 23104.2 of, and to amend and renumber Section 730 of, the Business and Professions Code, to amend Sections 1102.6c, 1739.7, 1793.22, 1815, and 3269 of the Civil Code, to amend Sections 631 and 1167.3 of the Code of Civil Procedure, to amend Sections 25102 and 28956 of the Corporations Code, to amend Sections 8927, 42238.95, 44259.3, 44403, 44579.4, 44731, 51201.5, 51554, 51555, 51871, 52122, 54745, 54748, 54761.3, 60603, 60640, 69621, and 89010 of the Education Code, to amend Sections 10262, 15112, and 15151 of the Elections Code, to amend Sections 4252, 4351, 4901, 6380, 7572, and 7575 of the Family Code, to amend Sections 6420 and 7151 of the Fish and Game Code, to amend Sections 221, 5852, 14651, 20797, and 31753 of the Food and Agricultural Code, to amend Sections 3517.65, 4560, 6253, 6505.5, 7073, 7260, 7262.5, 9359.01, 12652, 13965.2, 14838.5, 18523.3, 19141.3, 19175.6, 19576.5, 19582.3, 20068.2, 20677, 21028, 22200, 22209, 22754.5, and 54975 of, to amend the heading of Article 5 (commencing with Section 63043) of Chapter 2 of Division 1 of Title 6.7 of, to amend and renumber Sections 66400, 66401, 66402, and 66403 of, and to amend and renumber the heading of Chapter 6 (commencing with Section 66400) of Division 1 of Title 7 of, and to repeal Section 54953 of, the Government Code, to amend Sections 1206, 1261.5, 1261.6, 1300, 1351.2, 1357.09, 1357.50, 1357.51, 1367.24, 1442.5, 1502.6, 1522, 1746, 1771.9, 1797.191, 18020, 18025.5, 25989.1, 33392, 33492.22, 44015, 111940, 120440, 124980, and 129820 of, to amend and renumber Section 50518 of, and to repeal Section 33298 of, the Health and Safety Code, to amend Sections 1063.6, 1765.1, 10095, 10116.5, 10194.8, 10232.8, 10273.4, 10700, and 10841 of, and to amend and renumber Sections 12963.96 and 12963.97 of, the Insurance Code, to amend Sections 138.4, 201.5, 1771.5, 3716.2, 4707, and 5433 of the Labor Code, to amend Sections 136.2, 148.10, 290, 298, 299, 299.6, 350, 550, 594, 626.9, 653m, 790, 831.5, 1203.097, 1269b, 1347, 3003, 4536.5, 5066, 6051, 6065, 6126, 12071, 12085, 12086, 12370, 13515.55, and 13602 of the Penal Code, to amend Section 10218, 14575, and 33001 of the Public Resources Code, to amend Sections 64, 401.15, 995.2, 3772.5, 17275.6, 19057, 19141.6, 19271, 23038.5, 23610.5, 23701t, 23704, 24416.2, 41136, and 65004 of the Revenue and Taxation Code, to amend Section 1095 of the Unemployment Insurance Code, to amend Sections 2478, 2810, 4466, 11614, and 40000.15 of the Vehicle Code, to amend Section 1062 of the Water Code, to amend Sections 319, 366.26, 781, 1801, 5768.5, 6609.1, 10980, 11369, 11401, 12302.3, 16118, and 16501.1 of, to amend and renumber Sections 1790, 1791, 1792, 1793, and 11008.19 of, and to amend and repeal Section 17012.5 of, the Welfare and Institutions Code, and to amend Section 8.2 of Chapter 545 of the Statutes of 1943, Section 2 of Chapter 21 of the Statutes of 1998, Section 111 of Chapter 310 of the Statutes of 1998, Section 3 of Chapter 652 of the Statutes of 1998, Section 1 of Chapter 722 of the Statutes of 1998, Section 11 of Chapter 760 of the Statutes of 1998, Section 12 of Chapter 760 of the Statutes of 1998, and Section 10 of Chapter 969 of the Statutes of 1998, relating to maintenance of the codes.

[Filed with Secretary of State July 12, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 966, Committee on Judiciary. Maintenance of the codes.

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

This bill would restate existing provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature for consideration during 1999, and would not make any substantive change in the law.

The people of the State of California do enact as follows:

SECTION 1. Section 730 of the Business and Professions Code, as added by Chapter 400 of the Statutes of 1997, is amended and renumbered to read:

730.5. (a) It is unprofessional conduct * * * and a crime, as provided in Section 4935, for a physician and surgeon, osteopathic physician, dentist, or podiatrist to direct or supervise the

(d) * * * Existing state office buildings, at the discretion of the Director of General Services, may be retrofitted to accommodate a child care facility. State funds required for the retrofitting shall be subject to regular budgetary procedures and approvals.

(e) Space designed within a state-owned office building for the child care facility shall comply with the prevailing local and state safety building codes for child care facilities.

(f) The indoor area shall not exceed 2,100 square feet, nor be less than that required to accommodate 30 children, excluding space for restrooms, kitchen facilities, storage areas, and teacher offices. Outdoor play area space shall correspond with the indoor play area as * * * described in Title 22 of the California Code of Regulations.

(g) Utilization of the space shall be subject to terms and conditions * * * set forth by the Director of General Services. The terms shall include payment of rent, proof of financial responsibility, and maintenance of space. The space shall be made available to * * * employees who wish to establish child care facilities at a rate to be established by the Director of General Services based upon the actual cost to the state, the average cost of state-owned space in the area, or the statewide average cost of state-owned space, whichever is less. If, however, the director determines that a lower rent must be charged to ensure the viability of a child care facility, the director may charge a lower rate.

(h)(1) The * * * department or departments occupying the building * * * shall notify the employee-occupants in writing of the availability of space to be used for a child care facility no earlier than 180 days prior to the projected date of occupancy of a new building or space provided as the result of additions, alterations, or repairs to an existing state-owned building, and the additions, alterations, or repairs that both change and affect the use of 25 percent of the net square feet area of the building and include the addition to, alteration of, or repair of the first floor. If, within 30 days after full occupancy of a new office building or 30 days after the completion of additions, alterations, or repairs to an existing state-owned office building, the employee-occupants so desiring have not filed an application with the Secretary of State as a nonprofit corporation for the purpose of organizing a child care center, deposited two months' rent in a commercial or savings account, and entered into a contract with the Department of General Services, the space may be used for any other purpose, as long as no permanent alteration of the space occurs. Other purposes may include, but are not limited to, conference rooms, storage areas, or offices. The space for child care shall be held for the employee-occupants' nonprofit corporation only as long as they pay the monthly rent and meet the terms set forth in the contract. Payment of rent shall commence 30 days after full occupancy of a new office building or 30 days after completion of additions, alterations, or repairs, as specified in this section.

(2) If, at a later date, the employee-occupants so desiring (A) file an application with the Secretary of State as a nonprofit corporation for the purpose of organizing a child care facility, (B) deposit two months' rent in a commercial or savings account, and (C) notify the Director of General Services of those actions, then the space shall be reconverted for child care purposes within 180 days of the notice.

(i) Children * * * from families in which at least one parent or guardian is a state employee shall be given priority admission * * * over other children * * * to the child care facility.

(j) When a child care center within a state-owned office building has been operative for five years, the Director of General Services shall assess the child care needs of the state employees using the center and the office space needs of the building within which the center is located. If the assessment demonstrates a greater need for office space than for child care, the Director of General Services may close the child care center. Ninety days' written notice of the closure shall be given to the director or head teacher of the center * * *.

(k) This section does not apply to buildings that provide care or 24–hour residential care for patients, inmates, or wards of the state, such as state hospitals and correctional facilities.

SEC. 64. Section 6253 of the Government Code is amended to read:

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for

inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person * * * upon payment of fees covering direct costs of duplication, or a statutory fee * * * if applicable. Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, 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. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency 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 dispatched. No notice shall specify a date that would result in an extension for more than 14 days. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(d) Nothing in this chapter shall be construed to permit an agency to obstruct the inspection or copying of public records. Any notification of denial of any request for records shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

SEC. 65. Section 6505.5 of the Government Code is amended to read:

6505.5. If a separate agency or entity is created by the agreement, the agreement shall designate the treasurer of one of the contracting parties, or in lieu thereof, the county treasurer of a county in which one of the contracting parties is situated, or a certified public accountant to be the depositary and have custody of all the money of the agency or entity, from whatever source.

The treasurer or certified public accountant so designated shall do all of the following:

(a) Receive and receipt for all money of the agency or entity and place it in the treasury of the treasurer so designated to the credit of the agency or entity.

(b) Be responsible, upon his or her official bond, for the safekeeping and disbursement of all agency or entity money so held by him * * * or her.

(c) Pay, when due, out of money of the agency or entity * * * held by him or her, all sums payable on outstanding bonds and coupons of the agency or entity.

(d) Pay any other sums due from the agency or entity from agency or entity money, or any portion thereof, only upon warrants of the public officer performing the functions of auditor or controller who has been designated by the agreement * * *.

(e) Verify and report in writing on the first day of July, October, January, and April of each year to the agency or entity and to the contracting parties to the agreement the amount of money he or she holds for the agency or entity, the amount of receipts since his or her last report, and the amount paid out since his or her last report.

The officer performing the functions of auditor or controller shall be of the same public agency as the treasurer designated as depositary pursuant to this section. However, where a certified public accountant has been designated as treasurer of the entity, the auditor of one

statewide election held on June 2, 1998, in which case Section 5 of this act shall not become operative and shall not be submitted to the voters.

SEC. 217. Section 12 of Chapter 760 of the Statutes of 1998 is amended to read:

Sec. 12. Sections 5 and 6 of this act affect an initiative statute and shall become effective only when submitted to, and approved by, the voters pursuant to subdivision (c) of Section 10 of Article II of the California Constitution and in accordance with the provisions of Section 11 of this act.

SEC. 218. Section 10 of Chapter 969 of the Statutes of 1998 is amended to read:

Sec. 10. All funds appropriated and positions created for support of the office of the Inspector General in Item 0550–001–0001 of the Budget Act of 1998 shall be transferred upon approval of the Department of Finance to the office of the Inspector General as established pursuant to Section 2 of this act.

SEC. 219. Any section of any act enacted by the Legislature during the 1999 calendar year that takes effect on or before January 1, 2000, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 1999 calendar year and takes effect on or before January 1, 2000, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

PUBLIC RECORDS—INSPECTION OR COPYING—DELAYS

CHAPTER 982

A.B. No. 2799

AN ACT to amend Sections 6253 and 6255 of, and to add Section 6253.9 to, the Government Code, relating to public records.

[Filed with Secretary of State September 30, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2799, Shelley. Public records: disclosure.

(1) The California Public Records Act provides that any person may receive a copy of any identifiable public record from any state or local agency upon payment of fees covering direct costs of duplication or a statutory fee if applicable. The act provides that it shall not be construed to permit an agency to obstruct the inspection or copying of public records and requires any notification of denial of any request for records pursuant to the act to set forth the names and titles or positions of each person responsible for the denial. The act also requires computer data to be provided in a form determined by the agency.

This bill would provide that nothing in the act shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. This bill would delete the requirement that computer data be provided in a form determined by the agency and would require any agency that has information that constitutes an identifiable public record not otherwise exempt from disclosure that is in an electronic format to make that information available in an electronic format when requested by any person. The bill would require the agency to make the information available in any electronic format in which it holds the information, but would not require release of a record in the electronic form in which it is held if its release would jeopardize or compromise the security or integrity of the original record or any proprietary software in which it is maintained. Because these requirements would apply to local agencies as well as state agencies, this bill would impose a state-mandated local program.

Regarding payment of fees for records released in an electronic format, the bill would require that the requester bear the cost of programming and computer services necessary to produce a record not otherwise readily produced, as specified.

(2) The act requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the act or that, on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

This bill would require a response to a written request for public records that includes a denial of the request in whole or in part to be in writing. By imposing this new duty on local public officials, the bill would create a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 6253 of the Government Code is amended to read:

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.* * *

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, 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. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency 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 dispatched. No notice shall specify a date that would result in an extension for more than 14 days. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

SEC. 2. Section 6253.9 is added to the Government Code, to read:

6253.9. (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(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. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.

(c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

(d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.

(e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

SEC. 3. Section 6255 of the Government Code is amended to read:

6255. (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.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

STATE AGENCIES—PUBLIC RECORDS—DISCLOSURE

CHAPTER 355

A.B. No. 1014

AN ACT to amend Section 6253 of, and to add Section 6253.1 to, the Government Code, relating to public records.

[Filed with Secretary of State September 27, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1014, Papan. California Public Records Act: disclosure procedures.

(1) Existing law, the California Public Records Act, requires state and local agencies to make public records available upon receipt of a request that reasonably describes an identifiable record not otherwise exempt from disclosure, and upon payment of fees to cover costs.

This bill would require, when a member of the public requests to inspect or to obtain a copy of a public record, that, in order to assist the individual to make a focused and effective request that reasonably describes an identifiable record, the agency shall assist the member of the public to identify records and information that may be responsive to a request, describe the information technology and physical location in which the records exist, and provide suggestions for overcoming any practical basis for denying access to the records or information sought. The bill would specify that these requirements to assist a member of the public do not apply if the agency makes available the requested records, determines that the request should be denied based solely on an express exemption listed in the act, or makes available an index of its records.

The act provides that, upon a request for a copy of records, an agency has 10 days to determine whether the request seeks disclosable public records and to notify the requester of this determination and the reasons therefor. The act further provides that, in unusual circumstances, as defined, the agency may extend this time limit by written notice, which shall specify the reasons for the extension and the date on which a determination is expected to be dispatched.

This bill would require that, when the agency dispatches the determination of whether the request seeks disclosable public records, it state the estimated date and time when the records will be made available.

By imposing additional duties and responsibilities upon local agencies in connection with requests for inspection of records, this bill constitutes a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that this act, which requires state and local agencies to assist in a specified manner members of the public in making requests for public records, will further the purposes of the California Public Records Act and will result in more efficient use of public resources.

SEC. 2. Section 6253 of the Government Code is amended to read:

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, 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. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency 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 dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the

records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

SEC. 3. Section 6253.1 is added to the Government Code, to read:

6253.1. (a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do 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, if stated.

(2) Describe the information technology and physical location in which the records exist.

(3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

(b) The requirements of paragraph (1) of subdivision (a) shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records.

(c) The requirements of subdivision (a) are in addition to any action required of a public agency by Section 6253.

(d) This section shall not apply to a request for public records if any of the following applies:

(1) The public agency makes available the requested records pursuant to Section 6253.

(2) The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Section 6254.

(3) The public agency makes available an index of its records.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

EXHIBIT 3
COPIES OF CODE SECTIONS CITED

§ 6253. Public records open to inspection; agency duties; time limits

(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, 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. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency 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 dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

(Added by Stats.1998, c. 620 (S.B.143), § 5. Amended by Stats.1999, c. 83 (S.B.966), § 64; Stats.2000, c. 982 (A.B.2799), § 1; Stats.2001, c. 355 (A.B.1014), § 2.)

§ 6253.1. Assistance to members of the public regarding requests to inspect a public record or obtain a copy; duties of the public agency

(a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do 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, if stated.

(2) Describe the information technology and physical location in which the records exist.

(3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

(b) The requirements of paragraph (1) of subdivision (a) shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records.

(c) The requirements of subdivision (a) are in addition to any action required of a public agency by Section 6253.

(d) This section shall not apply to a request for public records if any of the following applies:

(1) The public agency makes available the requested records pursuant to Section 6253.

(2) The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Section 6254.

(3) The public agency makes available an index of its records.

(Added by Stats.2001, c. 355 (A.B.1014), § 3.)

§ 6253.5. Initiative, referendum, recall petitions, and petitions for reorganization of school districts or community college districts deemed not public records; examination by proponents

Notwithstanding Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions, petitions circulated pursuant to Section 5091 of the Education Code, petitions for the reorganization of school districts submitted pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, petitions for the reorganization of community college districts submitted pursuant to Part 46 (commencing with Section 74000) of the Education Code and all memoranda prepared by the county elections officials in the examination of the petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving the petitions or who are responsible for the preparation of that memoranda and, if the petition is found to be insufficient, by the proponents of the petition and the representatives of the proponents as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor. However, the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a school district or a community college district attorney, and a city attorney shall be permitted to examine the material upon approval of the appropriate superior court.

If the proponents of a petition are permitted to examine the petition and memoranda, the examination shall commence not later than 21 days after certification of insufficiency.

(a) As used in this section, "petition" shall mean any petition to which a registered voter has affixed his or her signature.

(b) As used in this section "proponents of the petition" means the following:

(1) For statewide initiative and referendum measures, the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he or she prepare a title and summary of the chief purpose and points of the proposed measure.

(2) For other initiative and referenda on measures, the person or persons who publish a notice of intention to circulate petitions, or, where publication is not required, who file petitions with the elections official.

(3) For recall measures, the person or persons defined in Section 343 of the Elections Code.

(4) For petitions circulated pursuant to Section 5091 of the Education Code, the person or persons having charge of the petition who submit the petition to the county superintendent of schools.

(5) For petitions circulated pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, the person or persons designated as chief petitioners under Section 35701 of the Education Code.

(6) For petitions circulated pursuant to Part 46 (commencing with Section 74000) of the Education Code, the person or persons designated as chief petitioners under Sections 74102, 74133, and 74152 of the Education Code.

(Added by Stats.1974, c. 1410, p. 3106, § 10; Stats.1974, c. 1445, p. 3155, § 10. Amended by Stats.1975, c. 678, p. 1483, § 26; Stats.1977, c. 556, p. 1782, § 4; Stats.1980, c. 535, § 1; Stats.1982, c. 163, p. 529, § 2; Stats.1985, c. 1053, § 1; Stats.1992, c. 970 (S.B.1260), § 22; Stats.1994, c. 923 (S.B.1546), § 32.)

§ 6253.9. **Information in an electronic format; costs; application; availability**

(a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(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. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.

(c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

(d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.

(e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

(Added by Stats.2000, c. 982 (A.B.2799), § 2.)

§ 6254.3. State, school district and county office of education employees; home address and phone number as public records; disclosure

(a) The home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

(1) To an agent, or a family member of the individual to whom the information pertains.

(2) To an officer or employee of another state agency, school district, or county office of education when necessary for the performance of its official duties.

(3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed.

(4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to state, school districts, and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

(b) Upon written request of any employee, a state agency, school district, or county office of education shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and an agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee.

(Added by Stats.1984, c. 1657, § 1. Amended by Stats.1992, c. 463 (A.B.1040), § 1, eff. Aug. 10, 1992.)

§ 6255. **Justification for withholding of records**

(a) The agency shall justify withholding any record by demonstrating that the record in question i exempt under express provisions of this chapter or that on the facts of the particular case the publi interest served by not disclosing the record * * * clearly outweighs the public interest served b disclosure of the record.

(b) A response to a written request for inspection or copies of public records that includes determination that the request is denied, in whole or in part, shall be in writing.

(Amended by Stats.2000, c. 982 (A.B.2799), § 3.)

§ 6259. Order of court; review; contempt; court costs and attorney fees

(a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall 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. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

(c) In an action filed on or after January 1, 1991, an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

(Added by Stats.1968, c. 1473, p. 2948, § 39. Amended by Stats.1975, c. 1246, p. 3212, § 9; Stats.1984, c. 802, § 1; Stats.1990, c. 908 (S.B.2272), § 2; Stats.1993, c. 926 (A.B.2205), § 10.)

Exhibit E

STATE OF CALIFORNIA

CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE
2 Q STREET
SACRAMENTO, CA 95814-6511
(916) 445-8752
HTTP://WWW.CCCCO.EDU

March 11, 2004

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Test Claim: California Public Records Act (K-14), 02-TC-51

Dear Ms. Higashi:

The Department of Finance has exercised privilege on this mandate and has instructed us not to respond.

Sincerely,

Frederick E. Harris

FREDERICK E. HARRIS, Assistant Vice Chancellor
College Finance and Facilities Planning

Exhibit F

Nancy Patton

From: Harris, Fred [FHARRIS@CCCCO.edu]
ent: Thursday, March 25, 2004 12:19 AM
o: Nancy Patton
Cc: 'kbpsixten@aol.com'; 'Duncan, William'; 'keith.gmeinder@dof.ca.gov'; 'mhavey@sco.ca.gov'; 'pminney@smymlaw.com'; 'steves@mcsed.com'; 'reynolds@reynolds-group.com'; 'CarolB@sscal.com'; 'apalkowi@mail.sandi.net'; 'steve@shieldscg.com'; 'bhunter@centration.com'; 'dscribner@smgjpa.org'; 'gshelton@cde.ca.gov'; 'billmcguire@cusd.com'; 'info@mcsed.com'; 'jill.bowers@doj.ca.gov'; 'lkaye@auditor.co.la.ca.us'; 'robert.dean@ccpoa.org'; 'pamstone@dmg.maxinc.com'; 'b.terkeurst@verizon.net'; 'mfine@rusd.k12.ca.us'; 'dhalpenny@sanjuan.edu'; 'marianne.omalley@lao.ca.gov'; 'Patton, Jerry'; 'Sharpe, Jon'; 'Temple, Bob'; 'Donner, Thomas'; 'AChinnCRS@aol.com'; 'Amann, Kathryn'; 'Dills, Debbie'; 'Podesto, Lynn'; 'Cervinka, Pete'; 'Todd, Thomas'; Turnage, Robert; Morrow, Victoria; Bruckman, Steve; Black, Ralph; 'harmeet@calsdrc.com'
Subject: Commission on State Mandate Test Claim 02TC51 re California Public Records Act (K-14)

Nancy, et.al. -

Please rescind the letter I previously sent on Test Claim 02TC51 that stated that the Department of Finance has exercised privilege on this mandate and has instructed us not to respond.

Upon further reflection and discussion, that is not accurate. The Chancellor's Office chooses not to respond to this test claim. We don't have anything to add to this issue, because the statute in question applies equally to all government entities and there's nothing unique to college districts that requires a response. Therefore, we defer to whatever analysis is provided to you by the Department of Finance.

Thanks,

fh

****
Frederick E. Harris, Assistant Vice Chancellor College Finance & Facilities Planning
Chancellor's Office, California Community Colleges

1102 Q Street, Fourth Floor
Sacramento, CA 95814-6511

fharris@cccco.edu
916/324-9508
916/323-8245 FAX
****

SixTen and Associates
Mandate Reimbursement Services

Exhibit G

KEITH B. PETERSEN, MPA, JD, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

April 30, 2004

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Test Claim 02-TC-51
Riverside Unified School District
California Public Records Act (K-14)

Dear Ms. Higashi:

I have received the comments of the Chancellor's Office of the California Community Colleges ("CCC") dated March 24, 2004, to which I now respond on behalf of the test claimant.

A. The Comments of CCC are Incompetent and Should be Excluded

Test claimant objects to the comments of CCC, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

> "...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief."

The comments of CCC do not comply with this essential requirement[1]. Since the Commission cannot use unsworn comments or comments unsupported by declarations, but must make conclusions based upon an analysis of the statutes and facts supported in the record, test claimant requests that the comments and assertions of CCC not be

[1] In fact, the comments of CCC were transmitted by an e-mail message which bore only the initials of the writer.

included in the Staff's analysis.

B. History of Response

The test claim was filed on June 23, 2003. By letter dated July 14, 2003, the Commission requested comments from public agencies.

By letter dated March 11, 2004[2], CCC advised the Commission that the Department of Finance had exercised some unexplained executive privilege on this mandate and had instructed CCC not to respond. A copy of that letter is attached hereto as Exhibit "A."

By e-mail transmission dated March 24, 2004, CCC advised the Commission that "[U]pon further reflection and discussion", its prior statement was "not accurate." Its comments went on to say:

> "The Chancellor's Office chooses not to respond to this test claim. We don't have anything to add to this issue, because the statute in question applies equally to all governmental entities and there's nothing unique to college districts that requires a response. Therefore, we defer to whatever analysis is provided to you by the Department of Finance."

C. These Comments Must Be Disregarded

The comment that the statute in question applies equally to all governmental entities is not one of the valid exceptions to mandate reimbursement set forth in Government Code Section 17556. Therefore, it must be disregarded.

If, by chance, CCC intended to object to the test claim on the grounds that the statute in question is a law of general application, that too must fail. As explained in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, the California Supreme Court explained:

> "Most private employers in the state already were required to provide unemployment protection to their employees. Extension of this requirement to local governments, together with the state government and nonprofit corporations, merely makes the local agencies 'indistinguishable in this respect from private employers.'" (Opinion, at page 67)

[2] The letter was actually transmitted by e-mail on March 16, 2004.

Therefore, a law of general application must make local agencies indistinguishable from private employers. The test claim statutes apply only to school districts, county offices of education and community college districts and not to private employers.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information or belief.

Sincerely,

Keith B. Petersen

C: Per Mailing List Attached

DECLARATION OF SERVICE

RE: California Public Records Act (K-14) 02-TC-51
CLAIMANT: Riverside Unified School District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of April 30, 2004 , addressed as follows:

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

FAX: (916) 445-0278

AND per mailing list attached

☒ **U.S. MAIL:** I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

☐ **OTHER SERVICE:** I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

(Describe)

☐ **FACSIMILE TRANSMISSION:** On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

☐ A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

☐ **PERSONAL SERVICE:** By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 4/30/04 , at San Diego, California.

D. Bramwell
Diane Bramwell

Commission on State Mandates

Original List Date: 7/14/2003
Last Updated:
List Print Date: 10/17/2003
Claim Number: 02-TC-51
Issue: California Public Records Act (K-14)

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Keith B. Petersen
SixTen & Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Claimant Representative
Tel: (858) 514-8605
Fax: (858) 514-8645

Mr. Michael H. Fine
Riverside Unified School District
3380 14th Street
Riverside, CA 92501

Claimant
Tel: (909) 788-1020
Fax:

Dr. Carol Berg
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

Tel: (916) 446-7517
Fax: (916) 446-2011

Mr. Paul Minney
Spector, Middleton, Young & Minney, LLP
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Ms. Harmeet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Tel: (916) 727-1350
Fax: (916) 727-1734

Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
P.O. Box 987
Sun City, CA 92586

Tel: (909) 672-9964
Fax: (909) 672-9963

Mr. Steve Smith
Mandated Cost Systems, Inc.
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670
Tel: (916) 669-0888
Fax: (916) 669-0889

Mr. Arthur Palkowitz
San Diego Unified School District
4100 Normal Street, Room 3159
San Diego, CA 92103-8363
Tel: (619) 725-7565
Fax: (619) 725-7569

Mr. Michael Havey
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816
Tel: (916) 445-8757
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Mr. Steve Shields
Shields Consulting Group, Inc.
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Tel: (916) 454-7310
Fax: (916) 454-7312

Ms. Beth Hunter
Centration, Inc.
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730
Tel: (866) 481-2642
Fax: (866) 481-5383

Mr. Keith Gmeinder
Department of Finance (A-15)
915 L Street, 8th Floor
Sacramento, CA 95814
Tel: (916) 445-8913
Fax: (916) 327-0225

Mr. Gerald Shelton
California Department of Education (E-08)
Fiscal and Administrative Services Division
1430 N Street, Suite 2213
Sacramento, CA 95814
Tel: (916) 445-0554
Fax: (916) 327-8306

Mr. Thomas J. Nussbaum (G-01)
California Community Colleges
Chancellor's Office
1102 Q Street, Suite 300
Sacramento, CA 95814-6549
Tel: (916) 445-2738
Fax: (916) 323-8245

Ms. Jeannie Oropeza
Department of Finance (A-15)
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814
Tel: (916) 445-0328
Fax: (916) 323-9530

EXHIBIT "A"
LETTER DATED MARCH 11, 2004

STATE OF CALIFORNIA

CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE
1102 Q STREET
SACRAMENTO, CA 95814-6511
(916) 445-8752
HTTP://WWW.CCCCO.EDU

March 11, 2004

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Test Claim: California Public Records Act (K-14), 02-TC-51

Dear Ms. Higashi:

The Department of Finance has exercised privilege on this mandate and has instructed us not to respond.

Sincerely,

Frederick E. Harris

FREDERICK E. HARRIS, Assistant Vice Chancellor
College Finance and Facilities Planning

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
NE: (916) 323-3562
.: (916) 445-0278
E-mail: csminfo@csm.ca.gov

EXHIBIT H

November 2, 2010

Mr. Leonard Kaye
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Mr. Keith Petersen
SixTen and Associates
3270 Arena Blvd., Suite 400-363
Sacramento, CA 95834

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

Re: NOTICE OF CONSOLIDATION AND REQUEST FOR COMMENTS
California Public Records Act: Disclosure Procedures; 02-TC-10
Government Code Sections 6252, 6253, 6253.1, 6253.9, and 6255
Statutes 2000, Chapter 982; Statutes 2001, Chapter 355; Statutes 2002, Chapter 945; and Statutes 2002, Chapter 1073.
Los Angeles County, Claimant

California Public Records Act (K-14); 02-TC-51
Government Code Sections 6253, 6253.1, 6253.5, 6253.9, 6254.3, 6255, and 6259;
Statutes 1975, Chapter 678; Statutes 1975, Chapter 1246; Statutes 1977, Chapter 556;
Statutes 1980, Chapter 535; Statutes 1982, Chapter 163; Statutes 1984, Chapter 802;
Statutes 1984, Chapter 1657; Statutes 1985, Chapter 1053; Statutes 1990, Chapter 908;
Statutes 1992, Chapter 463; Statutes 1992, Chapter 970; Statutes 1993, Chapter 926;
Statutes 1994, Chapter 923; Statutes 1998, Chapter 620; Statutes 1999, Chapter 83;
Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355.
Riverside Unified School District, Claimant

Dear Messrs. Kaye and Petersen:

After reviewing the *California Public Records Act: Disclosure Procedures* (02-TC-10) test claim and the *California Public Records Act (K-14)* (02-TC-51) test claim, Commission staff finds that they share common issues, allegations and involve some of the same statutes. Specifically, the test claims both address the California Public Records Act, which provides for the disclosure of public records kept by state and local agencies. For the sake of efficiency, the claims shall be consolidated pursuant to my authority under California Code of Regulations, title 2, section 1183.06, and effective 10 days from the service of this letter.

For future correspondence, the test claims will be designated *California Public Records Act* (02-TC-10 and 02-TC-51). A consolidated mailing list is enclosed.

As provided in the Commission's regulations this action and decision of the executive director may be appealed to the Commission for review. Please refer to California Code of Regulations, title 2, section 1181, subdivision (c).

Additionally, in 2004, California voters approved Proposition 59, which amended article I, section 3 of the California Constitution to include the right of public access to writings of government officials. In light of Proposition 59, it was determined that the *California Public Records Act: Disclosure Procedures* (02-TC-10) test claim and the *California Public Records Act (K-14)* (02-TC-51) test claim would require consideration of Government Code section 17556, subdivision (f). However, on March 13, 2007, Government Code section 17556, subdivision (f), was found unconstitutional by the superior court in *California School Boards Association (CSBA), et al. v. Commission on State Mandates, et al. [No. 06CS01335].* The court's judgment enjoined the Commission from taking any action to implement Government Code section 17556, subdivision (f). This decision was appealed, and as a result, the test claims were removed from the Commission's hearing calendar until a final court decision in *California School Boards Association, et al. v. Commission on State Mandates, et al.*

On March 9, 2009, the Third District Court of Appeal issued its decision in the *California School Boards Association* case (171 Cal.App.4th 1183). The court found part of Government Code section 17556, subdivision (f), unconstitutional. Specifically, the court found unconstitutional the part which provides that the Commission shall not find costs mandated by the state if the Commission finds "[t]he statute or executive order imposes duties that are ... *reasonably within the scope of* ... a ballot measure approved by the voters in a statewide election." However, the remaining language of Government Code section 17556, subdivision (f), was upheld as constitutional.

Statutes 2010, chapter 719 (Sen. Bill No. (SB) 856), removed the "reasonably within the scope of" language from Government Code section 17556, subdivision (f). As a result, Government Code section 17556, subdivision (f), provides that the Commission shall not find costs mandated by the state if the Commission finds:

> The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

In light of the Third District Court of Appeal's decision in *California School Boards Association* and the amendment made to Government Code section 17556, subdivision (f), the Commission requests comments from the claimants, interested parties, and affected state agencies, on Proposition 59's affect, if any, on the consolidated test claim, *California Public Records Act* (02-TC-10 and 02-TC-51). Please submit comments as soon as possible, but **not later than November 30, 2010**.

Please contact Kenny Louie at (916) 323-2611 if you have any questions or concerns regarding this matter.

Sincerely,

PAULA HIGASHI
Executive Director

J:mandates/2002/tc/02tc10/correspondence/consolidationltr110110

Original List Date: 7/14/2003
Last Updated: 10/5/2010
List Print Date: 11/02/2010
Claim Number: 02-TC-10 and 02-TC-51
Issue: California Public Records Act: Disclosure Procedures, California Public Records Act (K-14)

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Ms. Angie Teng State Controller's Office (B-08) Division of Accounting and Reporting 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: Email Fax:	(916) 323-0706 a.teng@sco.ca.gov
Mr. Dale Mangram Riverside County Auditor Controller's Office 4080 Lemon Street, 11th Floor Riverside, CA 92502	Tel: Email Fax:	(951) 955-3883 (951) 955-8133
Ms. Juliana F. Gmur MAXIMUS 2380 Houston Ave Clovis, CA 93611	Tel: Email Fax:	(916) 471-5513 julianagmur@msn.com (916) 366-4838
Mr. Jeff Carosone Department of Finance (A-15) 915 L Street, 8th Floor Sacramento, CA 95814	Tel: Email Fax:	(916) 445-8913 jeff.carosone@dof.ca.gov
Ms. Annette Chinn Cost Recovery Systems, Inc. 705-2 East Bidwell Street, #294 Folsom, CA 95630	Tel: Email Fax:	(916) 939-7901 achinncrs@aol.com (916) 939-7801
Ms. Jill Kanemasu State Controller's Office (B-08) Division of Accounting and Reporting 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: Email Fax:	(916) 322-9891 jkanemasu@sco.ca.gov
Mr. Jim Spano State Controller's Office (B-08) Division of Audits 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: Email Fax:	(916) 323-5849 jspano@sco.ca.gov (916) 327-0832
Mr. David Wellhouse David Wellhouse & Associates, Inc. 9175 Kiefer Blvd, Suite 121 Sacramento, CA 95826	Tel: Email Fax:	(916) 368-9244 dwa-david@surewest.net (916) 368-5723

Mr. Allan Burdick CSAC-SB 90 Service 2001 P Street, Suite 200 Sacramento, CA 95811	Tel: Email Fax:	(916) 443-9136 allan_burdick@mgtamer.com (916) 443-1766
Mr. Leonard Kaye Los Angeles County Auditor-Controller's Office 500 W. Temple Street, Room 603 Los Angeles, CA 90012	Tel: Email Fax:	(213) 974-9791 lkaye@auditor.lacounty.gov (213) 617-8106
Mr. Knoll Dorin City of Palmdale City Attorney's Office 38300 Sierra Highway Palmdale, CA 93550	Tel: Email Fax:	(661) 267-5108
Ms. Kimberley Nguyen MAXIMUS 3130 Kilgore Road, Suite 400 Rancho Cordova, CA 95670	Tel: Email Fax:	(916) 471-5516 kimberleynguyen@maximus.com (916) 366-4838
Ms. Evelyn Tseng City of Newport Beach 3300 Newport Blvd. P. O. Box 1768 Newport Beach, CA 92659-1768	Tel: Email Fax:	(949) 644-3127 tseng@city.newport-beach.ca.us (949) 644-3339
Mr. Jim Spano State Controller's Office (B-08) Division of Audits 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: Email Fax:	(916) 323-5849 jspano@sco.ca.gov (916) 327-0832
Mr. Michael H. Fine Riverside Unified School District Business Services & Government Relations 3380 Fourteenth Street Riverside, CA 92501	Tel: Email Fax:	(951) 778-7135 mfine@rusd.k12.ca.us (951) 778-5668
Mr. Jim Soland Legislative Analyst's Office (B-29) 925 L Street, Suite 1000 Sacramento, CA 95814	Tel: Email Fax:	(916) 319-8310 jim.soland@lao.ca.gov (916) 324-4281
Mr. Mike Brown School Innovations & Advocacy 11130 Sun Center Drive, Suite 100 Rancho Cordova, CA 95670	Tel: Email Fax:	(916) 669-5116 mbrown@sia-us.com (888) 487-6441
Mr. Robert Miyashiro Education Mandated Cost Network 1121 L Street, Suite 1060 Sacramento, CA 95814	Tel: Email Fax:	(916) 446-7517 robertm@sscal.com (916) 446-2011
Ms. Harmeet Barkschat Mandate Resource Services, LLC 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: Email Fax:	(916) 727-1350 harmeet@calsdrc.com (916) 727-1734
Ms. Sandy Reynolds Reynolds Consulting Group, Inc. P.O. Box 894059 Temecula, CA 92589	Tel: Email Fax:	(951) 303-3034 sandrareynolds_30@msn.com (951) 303-6607

Mr. Michael Johnston Clovis Unified School District 1450 Herndon Ave Clovis, CA 93611-0599	Tel: Email Fax:	(559) 327-9000 michaeljohnston@clovisusd.k12.ca.us (559) 327-9129
Mr. Steve Shields Shields Consulting Group, Inc. 1536 36th Street Sacramento, CA 95816	Tel: Email Fax:	(916) 454-7310 steve@shieldscg.com (916) 454-7312
Ms. Beth Hunter Centration, Inc. 8570 Utica Avenue, Suite 100 Rancho Cucamonga, CA 91730	Tel: Email Fax:	(866) 481-2621 bhunter@centration.com (866) 481-2682
Ms. Carol Bingham California Department of Education (E-08) Fiscal Policy Division 1430 N Street, Suite 5602 Sacramento, CA 95814	Tel: Email Fax:	(916) 324-4728 cbingham@cde.ca.gov (916) 319-0116
Mr. Frederick E. Harris California Community Colleges Chancellor's Office (G-01) 1102 Q Street Sacramento, CA 95814-6511	Tel: Email Fax:	(916) 324-9508 fharris@cccco.edu (916) 322-4783
Ms. Jeannie Oropeza Department of Finance (A-15) Education Systems Unit 915 L Street, 7th Floor Sacramento, CA 95814	Tel: Email Fax:	(916) 445-0328 jeannie.oropeza@dof.ca.gov (916) 323-9530
Mr. David E. Scribner Max8550 2200 Sunrise Boulevard, Suite 240 Gold River, California 95670	Tel: Email Fax:	(916) 852-8970 dscribner@max8550.com (916) 852-8978
Mr. Joe Rombold School Innovations & Advocacy 11130 Sun Center Drive, Suite 100 Rancho Cordova, CA 95670	Tel: Email Fax:	(916) 669-5116 joer@sia-us.com (888) 487-6441
Mr. David Cichella California School Management Group 3130-C Inland Empire Blvd. Ontario, CA 91764	Tel: Email Fax:	(209) 834-0556 dcichella@csmcentral.com (209) 834-0087
Mr. Jay Lal State Controller's Office (B-08) Division of Accounting & Reporting 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: Email Fax:	(916) 324-0256 JLal@sco.ca.gov (916) 323-6527
Ms. Susan Geanacou Department of Finance (A-15) 915 L Street, Suite 1280 Sacramento, CA 95814	Tel: Email Fax:	(916) 445-3274 susan.geanacou@dof.ca.gov (916) 449-5252
Ms. Jolene Tollenaar MGT of America 2001 P Street, Suite 200 Sacramento, CA 95811	Tel: Email Fax:	(916) 443-9136 jolene_tollenaar@mgtamer.com (916) 443-1766

Mr. Keith B. Petersen
SixTen & Associates
3270 Arena Blvd., Suite 400-363
Sacramento, CA 95834

Tel: (916) 419-7093
Email kbpsixten@aol.com
Fax: (916) 263-9701

EXHIBIT I

DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. ▪ GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

January 14, 2011

Mr. Drew Bohan
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Mr. Bohan:

As requested in your letter of November 2, 2010, the Department of Finance (Finance) reviewed the consolidated test claims "California Public Records Act: Disclosure Procedures," (02-TC-10 and 02-TC-51) and provides the following comments regarding the effect of Proposition 59:

Proposition 59 provides a constitutional right of public access to meetings of government bodies, and writings of government officials for public scrutiny. The underlying requirement of Proposition 59 requires public entities to provide access to information about the conduct of the people's business.

Finance attests that subdivision (f) of Government Code Section 17556 applies and the Commission should find there are no costs mandated by the state because the test claim statutes are necessary to implement Proposition 59. Applying the holding in *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859 to determine when duties imposed by a test claim statute are "necessary to implement a ballot measure" under subdivision (f) of Government Code section 17556, Finance asserts the following:

(1) Local agencies and school districts are mandated by a ballot measure, Proposition 59, to perform a duty. They must ensure that writings of public officials and agencies are open to public scrutiny, and that the people have the right of access to information concerning the conduct of the people's business.

(2) The Legislature enacted the statutes to implement the purpose of the ballot measure—to further the public's right to access government records. It is of no consequence under Government Code section 17556, subdivision (f), that the test claim statutes were enacted before the ballot measure was approved by the voters in 2004.

(3) Absent the test claim statutes, local agencies and school districts are still required to comply with the duties mandated by the ballot measure—to provide the right of access to the records and writings (and meetings) of government officials; and

(4) The requirements imposed by the test claim statutes are not reimbursable, but are considered part and parcel to the underlying ballot measure mandate. The requirements are intended to implement (i.e., are incidental to) the ballot measure mandate, and the costs are, in context, de minimis.

Based on the information provided, Finance believes that the test claim statutes are necessary to implement Proposition 59 and the Commission should find that there are no costs mandated by the state.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied your November 2, 2010 letter have been provided with copies of this letter via either United States Mail, e-mail, or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Lorena Romero, Associate Finance Budget Analyst at (916) 445-8913.

Sincerely,

Nona Martinez

NONA MARTINEZ
Assistant Program Budget Manager

Enclosure

Enclosure A

DECLARATION OF LORENA ROMERO
DEPARTMENT OF FINANCE
CLAIM NO. CSM—02-TC-10/02-TC-51

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

January 14, 2011
at Sacramento, CA

Lorena Romero

PROOF OF SERVICE

Test Claim Name: California Public Records Act
Test Claim Number: CSM--02-TC-10/02-TC-51

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8 Floor, Sacramento, CA 95814.

On 01.14.2011, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8 Floor, for Interagency Mail Service, addressed as follows:

A-16
Mr. Drew Bohan, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

SB 90 Service
C/O David M. Griffiths & Associates
Attention: Allan Burdick
4320 Auburn Boulevard, Suite 200
Sacramento, CA 95841

County of Los Angeles
Department of Auditor-Controller
Kenneth Hahn Hall of Administration
Attention: Leonard Kaye
500 West Temple Street, Suite 525
Los Angeles, CA 90012

County of San Bernardino
Office of Auditor / Controller / Recorder
Attention: Marcia Faulkner
222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415 - 0018

Wellhouse and Associates
Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on 01.14.2011 at Sacramento, California.

Tamara Johnson

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-3873
PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE
AUDITOR-CONTROLLER

MARIA M. OMS
CHIEF DEPUTY

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JUDI E. THOMAS

January 18, 2011

Mr. Drew Bohan
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Mr. Bohan:

LOS ANGELES COUNTY'S REVIEW
THE BALLOT INITIATIVE FUNDING DISCLAIMER'S APPLICATION
CALIFORNIA PUBLIC RECORDS ACT TEST CLAIMS (02-TC-10, 02-TC-51)

The County of Los Angeles respectfully submits its review of the ballot initiative funding disclaimer's application to the California Public Records Act test claims.

If you have any questions, please contact Leonard Kaye at (213) 974-9791 or lkaye@auditor.lacounty.gov.

Very truly yours,

Wendy L. Watanabe
Auditor-Controller

WLW:MMO:JN:CY:lk
H:\SB90\A Public Records Act Test Claim 11 10 10/Pub Rec. test claim response/Pub Rec test claim letter 1 13 11.doc

Enclosure

Los Angeles County's Review
The Ballot Initiative Funding Disclaimer's Application
California Public Record Act Test Claims (02-TC-10, 02-TC-51)

Executive Summary

This review addresses the question asked by Commission staff on "Proposition 59's affect, if any, on the consolidated test claim, *California Public Records Act*".

In 2002, the County of Los Angeles (County) and the Riverside School District (District) filed test claims to recover the costs for providing public record act services which were not required under prior law.

In 2004, voters approved Proposition 59 in order to place a brief and general declaration about the fundamental rights of access to public records in the California Constitution. Previously this declaration was found only in the 1968 California Public Records Act. Application of the ballot initiative funding disclaimer at the time required that test-claimed provisions be expressly included in the initiative. This was not the case here. Consequently, Proposition 59 had no affect on the test claims.

In 2005, the legislature (in Chapter 72 (AB 138)) added a second basis for applying the ballot initiative funding disclaimer. It was now sufficient to apply this disclaimer in cases where (test-claimed) duties are 'reasonably within the scope of a ballot measure'. Subsequently, in 2007, the Commission removed the County's test claim from the hearing calendar pending the outcome of a law suit challenging the new ballot initiative funding disclaimer's 'reasonably within' standard.

In 2009, the ballot initiative funding disclaimer provision declaring that no reimbursement is necessary for "duties that are reasonably within the scope of a ballot measure" was struck down by the courts. In 2010, the Legislature, in Chapter 719 (SB 856), replaced the "reasonably within" standard with a "necessary to implement" standard.

The test claim legislation was enacted long after the advent of the declaration of rights in the 1968 California Public Records Act and was not available, let alone necessary, for the implementation of those rights, subsequently incorporated in Proposition 59.

Accordingly, the ballot initiative funding disclaimer is not applicable here and reimbursement is required as claimed herein.

This review addresses an issue recently raised by Commission staff regarding the affect, if any, of the 2004 (Proposition 59) California public record ballot initiative in disqualifying reimbursement for public record services claimed by the County of Los Angeles (County) and the Riverside Unified School District (District) in 2002.

The County maintains that the ballot initiative funding disclaimer, found in Government Code Section 17556(f) is not applicable to the test claims being adjudicated here.

Section 17556(f), as amended on October 19, 2010 by the Statutes of 2010, Chapter 719 (S.B. 856) requires, in pertinent part, that:

> "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following:
>
> – – –
>
> (f) The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters."

The funding disqualification based on the test-claimed duties being 'expressly included in a ballot measure' is clearly not applicable here. Proposition 59 did not include any of the test-claimed duties.

Proposition 59

Regarding public records, Proposition 59 only contained a brief declaration of fundamental rights of public access to writings of public officials and agencies. This declaration was added to the California Constitution under Article 1 (Declaration of Rights), Section 3 (b)(1) and provides that:

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

As may be seen, the (above) language added by Proposition 59 was not lengthy or specific. It was a general and brief statement of the people's right of access to information concerning the conduct of the people's business and public scrutiny of the writings of public officials and agencies. This brief declaration of fundamental rights was nothing more than a declaration and was appropriately added to the Constitution, under Article 1 (Declaration of Rights).

Proposition 59's language (above), does not address or include any of the public record service duties added by the test claim legislation. For example, absent from Proposition 59, is any reference to the duties (included in the test claim legislation) which were imposed by Government Code Section 6253.1, added by Statutes of 2001, Chapter 355 (A.B. 1014):

> "(a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist a member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do 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, if stated.
>
> (2) Describe the information technology and physical location in which the records exist.
>
> (3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.
>
> (b) The requirements of paragraph (1) of subdivision (a), shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying from the requestor that will help identify the record or records.
>
> (c) The requirements of subdivision (a) are in addition to any action required of a public agency by Section 6253."

The duties imposed by Government Code Section 6253.1, in 2001 were in addition to those required under prior law, including the California Public Records Act of 1968. Consequently, this and the other test claim provisions were not available, let alone necessary, to implement prior law including the (above) declaration of rights in the California Public Records Act of 1968 and Proposition 59.

It should be noted that arguably the public record duties claimed herein may meet the standard of being 'reasonably within the scope of' Proposition 59. However, this standard was found to be impermissibly broad, as it allows for denial of reimbursement when reimbursement is constitutionally required. California School Boards Ass'n v. State (App. 3 Dist. 2009) 90 Cal.Rptr.3d 501, 171 Cal.App.4th 1183.

Accordingly, the test-claimed duties may arguably be 'reasonably within the scope of' actualizing the (above) fundamental rights found in Proposition 59, but this occurrence is not sufficient to invoke the current version of the ballot initiative funding disclaimer. What is required now is that the test-claimed duties be 'necessary to implement' the Proposition 59 ballot initiative.

However, the County's test claim legislation was first enacted in 2000, decades after the advent of the declaration of rights in the 1968 California Public Records Act (Act). Therefore, this test claim legislation was not available, let alone necessary, to implement the fundamental rights of access to information concerning the conduct of the people's business and public scrutiny of the writings of public officials and agencies found in the 1968 Act and Proposition 59.

Accordingly, the test claim legislation is not subject to the ballot initiative funding disclaimer and reimbursement is required as claimed herein.

Supplemental Duties

It should be noted that the County has submitted substantial evidence that the test-claimed duties are in addition to those found under prior law. In this regard, the County's 2002 test claim filing includes declarations and schedules prepared by Commander Richard L. Castro and Captain Michael R. McDermott with the County Sheriff's department and J. Tyler McCauley, the County's Auditor-Controller. Their declarations and schedules detail and document the new public records act requirements and compliance costs imposed upon the County.

Also, the County's 2002 test claim filing includes a "Public Records Act Manual" prepared by the County's Office of the County Counsel in 2002. This manual details many of the new public records duties claimed herein.

In addition, this filing includes a declaration prepared by Captain Shaun Mathers in the Risk Management Bureau of the County Sheriff's department. Captain Mathers has analyzed the County Sheriff's additional or supplemental public record act

work load imposed by the test claim legislation and prepared two schedules ("Public Records Act Requests" and "Public Records Act Processing") which detail the types, numbers and costs of public record requests.

Conclusion

The County has provided substantial evidence that the public records act requirements included in the test claim legislation were in addition to those found in prior law and were not available or necessary in implementing the (above) declaration of fundamental rights in the California Public Records Act of 1968 and Proposition 59. In addition, the test claim legislation was not expressly included in Proposition 59.

Accordingly, the County finds that the test claim legislation did not impose duties that are necessary to implement, or are expressly included in, the Proposition 59 ballot measure approved by the voters. Consequently, the ballot initiative funding disclaimer cannot be applied to disqualify reimbursement of the County's costs as claimed herein.

Los Angeles County's Review
The Ballot Initiative Funding Disclaimer's Application
Supplemental California Public Record Act Requirements
California Public Record Act Test Claims (02-TC-10, 02-TC-51)

Declaration of Shaun Mathers

Shaun Mathers makes the following declaration and statement under oath:

I, Shaun Mathers, Captain, in the Risk Management Bureau of the Los Angeles County Sheriff's Department, declare that I have served thirty (30) years in law enforcement and the past eight (8) years in the Risk Management Bureau where I am responsible for handling public record act requests for the Sheriff's department.

I declare that I have read the November 2, 2010 letter prepared by Ms. Paula Higashi, Executive Director of the Commission on State Mandates (Commission) regarding "Proposition 59's affect, if any" in nullifying reimbursement for implementing supplemental California Public Record Act requirements under current law.

I declare that it is my information or belief that the current standard for applying the ballot initiative funding disclaimer in Government Code section 17556, subdivision (f) was recently adopted by the Legislature, as noted by Ms. Higashi on page 2 of her November 2, 2010 letter:

> "Statutes 2010, chapter 719 (Sen. Bill No. (SB) 856), removed the "reasonably within the scope of language" from Government Code section 17556, subdivision (f). As a result Government Code section 17556, subdivision (f), provides that the Commission shall not find costs mandated by the state if the Commission finds:
>
> > The statute of executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters."

I declare that it is my information and belief that Proposition 59 placed in the California Constitution fundamental rights guaranteeing public scrutiny of governmental conduct and did not expressly include the additional or supplemental requirements in the test claim legislation, such as those found in Government Code Section 6253.1, added by Statutes of 2001, Chapter 355 (Assembly Bill 1014):

> "(a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist a member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do 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, if stated.
> (2) Describe the information technology and physical location in which the records exist.
> (3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.
>
> (b) The requirements of paragraph (1) of subdivision (a), shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying from the requestor that will help identify the record or records.
>
> (c) The requirements of subdivision (a) are in addition to any action required of a public agency by Section 6253."

I declare that it is my information or belief that the public records act requirements identified (above) were in addition or supplementary to the fundamental rights set forth in the California Public Records Act of 1968 and subsequently in Proposition 59.

I declare that it is my information and belief that the test claim legislation was not expressly included in Proposition 59.

I further declare that it is my information and belief that the test claim legislation was not necessary to implement the fundamental rights set forth in the California

Public Records Act of 1968 and subsequently in Proposition 59, as the California Public Records Act was implemented in 1968, well before the advent of the County's initial test claim statute in 2000.

I declare that it is my information or belief that the ballot initiative funding disclaimer is not applicable to the County's claim as the test claim legislation was not expressly included in Proposition 59 and not required to implement fundamental rights set forth in the California Public Records Act of 1968 and subsequently in Proposition 59.

I therefore declare that it is my information or belief that reimbursement of the County's additional or supplemental public record act duties is required as claimed herein.

I declare that I have analyzed the County Sheriff's additional or supplemental public record act work load and attach two schedules ("Public Records Act Requests" and "Public Records Act Processing") which detail the types, numbers and costs of requests.

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

1/11/11 COMMERCE, CA
Date and Place

Signature

PUBLIC RECORDS ACT REQUESTS
2004 - 2010

	2004	2005	2006	2007	2008	2009	2010*	Total
Total Requests	111	151	101	204	276	284	312	1439

Listed, below, are the main topic areas tracked during 2009 and 2010.

Not all requests are reflected, as they might lie outside the main categories.

	2004	2005	2006	2007	2008	2009	2010*	Total
Appellate Project						0	10	10
Audio 9-1-1						15	28	43
Booking Photos						4	3	7
Calls for Service						39	33	72
Contracts						7	16	23
Crime Statistics						10	18	28
Evidence Preservation						0	5	5
Incarceration						34	36	70
Miscellaneous						57	95	152
Personnel						5	4	9

* 2010 to date

The categories of Audio 9-1-1, Booking Photos, Calls for Service, Contracts, Crime Statistics, Incarceration, Personnel and a myriad of queries within Miscellaneous category, involve researching via a wide variety of databases, spreadsheets, and electronic systems, etc.

Some of the documents can be presented as printed, while others require labor-intensive redactions to be in compliance with privacy laws, security concerns, and/or policies regulating release of information. Depending on the nature and complexity of the request, some requests can require multiple man-hours of labor to generate the end-product as requested.

Examples of some recent time-intensive requests:

- 36 months of 9-1-1 calls for each station, by each Contract City and County area, for routine, priority and emergency response and the corresponding response times.
- Copies of Contracts for each of the City Contracts, Phase I and II Contracts for Maywood and Cudahy, and for any other cities from July 2005 to present.
- Requests for archival records related to the deployment and response of Department personnel at the Station Fire event.
- Crime stats within a 2 mile radius of a crime scene over a stated period of time - for use in a civil trial.
- A complex 4-page ACLU request for data, statistics, documents, from 2005 to present about our Mira Loma Facility, providing contracted services, etc., for housing Federal detainees.
- SEIU requesting personnel and demographic data on multiple payroll titles.
- Media requests for Rubén Salazar shooting archives.

PUBLIC RECORDS ACT PROCESSING

Public Records Act requests are received by the Discovery Unit via e-mail, facsimile, in person, incoming phone call, and forwarded from Stations, Bureaus, and Units within the Sheriff's Department, and from other County Departments.

- Track receipt of all Public Records Act requests.
- Determine whether the request falls within the jurisdiction of the Los Angeles Sheriff's Department (as we border many other jurisdictions).
- Determine whether the request reasonably describes any identifiable record(s).
  - Contact with the requesting party to clarify the request, as needed.
- Determine where the records(s) reside within the Department. This may entail research and coordination with a variety of entities that have oversight and/or ownership of the requested data/information.
  - Contact the appropriate Station, Bureau and/or Unit to initiate the acquisition of the record(s),
    - Ascertain an estimated time frame for producing the requested record(s).
      - Generate a 14-day extension letter, as needed.
      - Follow-up contacting the Station, Bureau, and/or Unit, as needed, for timely compliance.
    - Consult with County Counsel to clarify any legal concerns.
    - Send previously identified topic-specific requests to specialized personnel for processing external to the Discovery Unit's Public Records Act staff.
- Access the appropriate database to obtain the identified record(s).
- Assemble the requested record(s).
  - Review for content that must be redacted.
  - Redact the record(s) as required.
- Prepare outgoing correspondence to accompany the record(s).
  - Obtain supervisory approval and signature on outgoing correspondence.
- Copy and scan all documents.
- Obtain postage (metered) and take to the post office if it is after the daily US Mail delivery.
- Track the sending of all Public Records Act responses.

Personnel Assigned to Public Records Act Processing		Monthly	Yearly (2010)
Operations Assistant III	(Full Time)	$ 5,685.36	$ 68,224.32
Administrative Services Manager II	($ 7,457.09 [10% Time])	$ 754.70	$ 9,056.40
Lieutenant	($ 12,300.27 [10% Time])	$1,230.03	$ 14,760.36
Total		$ 7,670.09	$ 92,041.08

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-3873
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ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JUDI E. THOMAS

Los Angeles County's Review
The Ballot Initiative Funding Disclaimer's Application
California Public Records Act Test Claims (02-TC-10, 02-TC-51)

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, Los Angeles County's [County] representative in this matter, have prepared the attached review.

I declare that I have met and conferred with state and local officials, claimants and experts in preparing the attached review.

I declare that it is my information and belief that the ballot initiative funding disclaimer, in Government Code Section 17556(f), is not applicable to the above captioned test claims.

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information and belief, and as to those matters I believe them to be true.

1/13/11; Los Angeles, CA
Date and Place

Signature

Hearing Date: May 26, 2011
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ITEM __

TEST CLAIM

DRAFT STAFF ANALYSIS

Government Code Sections 6252, 6253, 6253.1, 6253.5, 6253.9, 6254.3, 6255, and 6259

Statutes of 1975, Chapters 678 and 1246; Statutes of 1977, Chapter 556;
Statutes of 1980, Chapter 535; Statutes of 1982, Chapter 163;
Statutes of 1984, Chapters 802 and 1657; Statutes of 1985, Chapter 1053;
Statutes of 1990, Chapter 908; Statutes of 1992, Chapters 463 and 970;
Statutes of 1993, Chapter 926; Statutes of 1994, Chapter 923; Statutes of 1998, Chapter 620;
Statutes of 1999, Chapter 83; Statutes 2000, Chapter 982; Statutes 2001, Chapter 355; and
Statutes 2002, Chapters 945 and 1073

California Public Records Act

02-TC-10 and 02-TC-51

County of Los Angeles and
Riverside Unified School District, Co-Claimants

EXECUTIVE SUMMARY

Overview

This consolidated test claim filed by County of Los Angeles and Riverside Unified School District addresses activities associated with the California Public Records Act (CPRA) (Gov. Code, § 6250 et seq.), which provides for the disclosure of public records kept by state and local agencies, including counties, kindergarten through 12th grade school districts and community college districts (K-14 districts), and county offices of education. These activities include: (1) providing copies of public records with portions exempted from disclosure redacted; (2) notifying a person making a public records request whether the requested records are disclosable; (3) assisting members of the public to identify records and information that are responsive to the request or the purpose of the request; (4) making disclosable public records in electronic formats available in electronic formats; and (5) removing an employee's home address and home telephone number from any mailing list maintained by the agency when requested by the employee.

In 2004, California voters approved Proposition 59, to incorporate the right of public access to information contained in the CPRA and other open meetings and public records laws, into the California Constitution.

Procedural History

The consolidated *California Public Records Act* (02-TC-10 and 02-TC-51) test claim was filed during the 2002-2003 fiscal year. As a result, the reimbursement period for any reimbursable state-mandated new program or higher level of service found in this test claim begins on July 1, 2001.

Between 2002 and 2011 the parties have requested and received extensions to file comments, the parties have filed comments, the unconsolidated *California Public Records Act: Disclosure Procedures* (02-TC-10) and *California Public Records Act (K-14)* (02-TC-51) test claims were removed from the Commissions hearing calendar due to ongoing litigation, and the test claims were consolidated to form the consolidated *California Public Records Act* (02-TC-10 and 02-TC-51) test claim.

Positions of the Parties

Claimants' Position

The claimants allege that the test claim statutes impose reimbursable state-mandated activities. Activities which are alleged to have resulted in reimbursable costs include: assisting members of the public in making an effective public records request, disclosing records in an electronic format, redacting information exempt from disclosure, limiting disclosure of K-14 district employees' home address and telephone numbers, removing a K-14 district employee's home address and telephone numbers when requested by the employee, and paying attorney fees to a prevailing plaintiff that brought suit against a K-14 district for improperly withholding public records.

On January 18, 2011 the County of Los Angeles submitted comments in response to the Commission's request for comments regarding the effect of Proposition 59 on the *California Public Records Act* (02-TC-10 and 02-TC-25) test claim. The County of Los Angeles argues:

> [T]he public records act requirements included in the test claim legislation were in addition to those found in prior law and were not available or necessary in implementing the . . . declaration of fundamental rights in the California Public Records Act of 1968 and Proposition 59. In addition, the test claim legislation was not expressly included in Proposition 59.
>
> Accordingly, the County finds that the test claim legislation did not impose duties that are necessary to implement, or are expressly included in, the Proposition 59 ballot measure approved by the voters. Consequently, the ballot initiative funding disclaimer cannot be applied to disqualify reimbursement of the County's costs . . . . (Original underline.)

The claimants' arguments will be addressed in the discussion below.

Department of Finance (Finance)

On November 20, 2002, Finance submitted comments in response to the unconsolidated *California Public Records Act: Disclosure Procedures* (02-TC-10) test claim. Finance found that a portion of the test claim may be a state mandate. Finance states:

> The test claim legislation specifies the type of response that the claimant must give to the requestor and the timelines that must be met which could potentially result in a greater number of staff hours spent researching and helping requestors. Anything above and beyond staff time dedicated to expediting and or researching requests would not be considered state-mandated activities, and additional

> activities and equipment noted by the claimant are considered discretionary and therefore not reimbursable.[1]

On January 14, 2011, Finance submitted comments in response to the Commission's request for comments regarding the effect of Proposition 59 on the *California Public Records Act* (02-TC-10 and 02-TC-51) test claim. Finance argues that the Commission should find that there are no costs mandated by the state because the test claim statutes are necessary to implement Proposition 59. Finance's arguments will be addressed in the discussion below.

California Community Colleges Chancellor's Office (Chancellor's Office)

On March 25, 2010, the Chancellor's Office submitted comments in response to the unconsolidated *California Public Records Act (K-14)* (02-TC-51) test claim. The Chancellor's Office states in relevant part:

> The Chancellor's Office chooses not to respond to this test claim. We don't have anything to add to this issue, because the statute in question applies equally to all government entities and there's nothing unique to college districts that requires a response. Therefore, we defer to whatever analysis is provided to you by the Department of Finance.[2]

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local governments and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local governments or school districts to be eligible for reimbursement, one or more similarly situated local governments or school districts must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. In making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.

[1] Department of Finance comments on *California Public Records Act: Disclosure Procedures* (02-TC-10) test claim, dated November 20, 2002.

[2] Chancellor's Office comments on *California Public Records Act (K-14)* (02-TC-51) test claim, dated March 25, 2004.

Claims

The following chart provides a brief summary of the claims and issues raised by the claimants, and staff's recommendation.

Claim	Description	Issues	Staff Recommendation
Government Code sections 6252, 6253, and 6253.9	These sections address making records open to the public, making copies of disclosable records, and the procedures to take when receiving a public records request.	Claimants allege that the test claim statutes impose state-mandated new programs or higher levels of service.	*Partially Approved*: Some of the activities are not new.
Government Code section 6253.1	This section addresses providing assistance to members of the public that are making public records requests.	Claimants allege that the test claim statute imposes a new program or higher level of service.	*Approved*.
Government Code section 6253.5	This section excludes initiatives, referenda, recall petitions, petitions for reorganization of K-14 districts, and any memoranda prepared by the county elections officials in the examination of the petitions indicating which registered voters have signed particular petitions from being deemed public records and provides that such records shall not be open to inspection.	The claimants allege that this test claim statute requires K-14 districts and county offices of education to examine records initiatives, referenda, recall, petitions, and petitions for reorganization, when authorized by a court.	*Denied*: Districts are not required to seek authorization to examine these records.
Government Code section 6254.3	This section prohibits the disclosure of a public employee's home address or telephone number, except in specified situations. In addition, it requires the removal of home address and telephone numbers from mailing lists upon request by an employee of a public agency.	The claimants allege that the test claim statute requires limiting disclosure of employee information and the removal of an employee's home address and telephone number upon request.	*Partially Approved*: Districts and county offices of education are required to remove employee home addresses and telephone numbers from mailing lists.

Government Code section 6255	This section addresses the provision of a justification for withholding records for which a public records request was made, and requires a response to a written request to be in writing.	The claimants allege that the test claim statute mandates a new program or higher level of service.	*Partially Approved*: Only providing a response in writing to a written request is a new program or higher level of service.
Government Code section 6259	This section addresses the payment of court costs and attorney fees for improperly withholding disclosable public records.	The claimants allege that the test claim statute mandates a new program or higher level of service.	*Denied*: Payment of court costs and attorney fees is not a program that provides a service to the public. Instead, it is a consequence for failing to provide a service.
"Ballot Measure" exception to finding costs mandated by the state	Government Code section 17556, subdivision (f), prohibits the Commission from finding costs mandated by the state for duties that are necessary to implement or expressly included in a ballot measure approved by the voters in a state-wide or local election.	Finance argues that the state-mandated activities are necessary to implement Prop. 59. The claimants disagree.	*17556 (f) does not apply*: There is no evidence in the law or in the record that the activities imposed by the test claim statutes are necessary to implement Prop. 59.
"Fee authority" exception to finding costs mandated by the state	Government Code section 17556, subdivision (d), prohibits the Commission from finding costs mandated by the state where a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increase level of service.	The claimants argue that the fee authority provided by the CPRA is insufficient to cover the costs mandated by the state.	*17556 (d) does not apply*: The fee authority provided by the CPRA is insufficient to cover all costs mandated by the state. However, the fee authority constitutes offsetting revenue that will be identified in the parameters and guidelines.

Staff Analysis

Staff makes the following findings:

Public records open to inspection (Gov. Code, §§ 6252, 6253, and 6253.9)

Section 6253 sets forth the right of every person to inspect any public record with exceptions, and the duties of public agencies that receive a request to inspect public records. Section 6253.9 addresses the form of disclosure of public records that are in an electronic format, and sets limits on the costs charged to the requester of information in an electronic format.

Some of the activities imposed by sections 6253 and 6253.9 are not new activities. However, sections 6253 and 6253.9 do impose state-mandate new programs or higher levels of service on counties, K-14 districts, and county offices of education.

Assistance to members of the public (Gov. Code, § 6253.1)

Section 6253.1 addresses the duty of a public agency to assist members of the public that request to inspect a public record. Section 6253.1 imposes a state-mandated new program or higher level of service on counties, K-14 districts, and county offices of education.

Initiative, referendum, recall petitions, and petitions for reorganization of K-14 districts (Gov. Code, § 6253.5)

Section 6253.5 excludes initiatives, referenda, recall petitions, petitions for reorganization of K-14 districts, and any memoranda prepared by the county elections officials in the examination of the petitions indicating which registered voters have signed particular petitions from being deemed public records and provides that such records shall not be open to inspection. Section 6253.5 also provides exceptions to the exclusion, in which specified individuals are permitted to examine such records.

The plain language of section 6253.5 does not impose any activities on counties, K-14 districts, or county offices of education. In addition, counties, K-14 districts, and county offices of education are not required to seek permission to examine the documents addressed in section 6253.5, and as a result, section 6253.5 does not impose a state-mandated new program or higher level of service.

Disclosure of home addresses and phone numbers of school district and county office of education employees (Gov. Code, § 6254.3)

Section 6254.3 provides that the home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and prohibits such records from being open to public inspection. Section 6254.3 authorizes the state, school districts, and county offices of education, to make such information open to public inspection in limited circumstances.

Section 6254.3 imposes a state-mandated new program or higher level of service on K-14 districts and county offices of education to remove the home address and telephone number of an employee from any mailing lists that the K-14 district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-14 district or county office of education to contact the employee.

Justification for withholding of records (Gov. Code, § 6255)

Section 6255 requires counties, K-14 districts, and county offices of education to provide a justification for withholding records for which a public records request was made, but providing a justification for withholding records is not a new requirement.

Section 6255 imposes a state-mandated new program or higher level of service to respond in writing 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.

Court costs and attorney fees (Gov. Code § 6259)

Section 6259 addresses the orders of the court in proceedings brought by a person seeking to enforce his or her right to inspect or to receive a copy of any public record or class of public records that a public agency has refused to disclose. Section 6259 requires the court to award court costs and attorney fees to a plaintiff that prevails in litigation alleging the improper withholding of public records by a public agency.

The payment of court costs and attorney fees is not a service to the public. Instead it is a consequence for failing to provide a service to the public when required by law, and as a result, does not constitute a program within the meaning of article XIII B, section 6 of the California Constitution.

Costs mandated by the state

Government Code section 17556, subdivision (f), prohibits the Commission from finding costs mandated by the state for duties that are necessary to implement or expressly included in a ballot measure approved by the voters in a state-wide or local election. In addition, Government Code section 17556, subdivision (d), prohibits the Commission from finding costs mandated by the state where a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

Neither subdivision (f) or (d), preclude the Commission from finding costs mandated by the state because there is no evidence in the law or in the record that the state-mandated activities are necessary to implement Proposition 59, and there is insufficient fee authority to cover the costs of all state-mandated activities. The fee authority applies only to the direct costs of providing an electronic copy to a person pursuant to Government Code section 6254.3, or the direct cost plus the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record if: (1) the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals; or (2) the request would require data compilation, extraction, or programming to produce the record. Under article XIII B, section 6, all costs mandated by the state, including direct and indirect costs, are reimbursable. However, the fee authority provided by the CPRA constitutes offsetting revenue that will be identified in the parameters and guidelines.

Conclusion

Staff concludes that Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255 impose reimbursable state-mandated programs on counties, K-14 districts, and county offices of education, within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514, for the following specific new activities:

1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic 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. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)
2. 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 county, K-14 district, or county office of education, and notify the person making

the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

3. If the 10-day time limit of Government Code section 6253 is extended by a county agency, K-14 district, or county office of education, due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

4. When a member of the public requests to inspect a public record or obtain a copy of a public record:

    a. assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;

    b. describe the information technology and physical location in which the records exist; and

    c. provide suggestions for overcoming any practical basis for denying access to the records or information sought.

    These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

5. Redact or withhold the home address and telephone number of employees of K-14 districts and county offices of education from records that contain disclosable information.

    This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-14 district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3, subd. (a) (Stats. 1992, ch. 463).)

6. For K-14 districts and county offices of education, remove the home address and telephone number of an employee from any mailing lists that the K-14 district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-14 district or county office of education to contact the employee. (Gov. Code, § 6254.3, subd. (b) (Stats. 1992, ch. 463).)

7. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).)

In addition, staff concludes that the fee authority set forth in Government Code section 6253.9, subdivisions (a)(2) and (b), as added by Statutes 2000, chapter 982, is offsetting revenue and shall be deducted from the costs of providing a copy of a disclosable electronic record in the electronic format requested pursuant to Government Code section 6253.9, subdivision (a)(2).

Any other test claim statutes and allegations not specifically approved above, do not impose a reimbursable state mandated program subject to article XIII B, section 6 of the California Constitution.

Staff Recommendation

Staff recommends that the Commission adopt this analysis to partially approve this test claim.

STAFF ANALYSIS

Co-Claimants

County of Los Angeles and Riverside Unified School District

Chronology

10/15/02	County of Los Angeles files the California Public Records Act: Disclosure Procedures (02-TC-10) test claim with the Commission on State Mandates (Commission)
11/20/02	Finance files comments on the 02-TC-10 test claim
01/08/03	County of Los Angeles files response to Finance comments on 02-TC-10
06/26/03	Riverside Unified School District files the California Public Records Act (K-14) (02-TC-51) test claim with the Commission
08/15/03	Finance files request for extension of time to file comments on the California Public Records Act (K-14) (02-TC-51) test claim
08/18/03	Commission staff grants Finance's extension of time for comments on the California Public Records Act (K-14) (02-TC-51) test claim to September 8, 2003
08/21/03	The California Community Colleges Chancellor's Office (Chancellor's Office) files request for extension of time to file comments on the California Public Records Act (K-14) (02-TC-51) test claim
08/28/03	Commission staff grants the Chancellor's Office extension of time for comments on the California Public Records Act (K-14) (02-TC-51) test claim to October 11, 2003
11/05/03	Finance files request for extension of time to file comments on the California Public Records Act (K-14) (02-TC-51) test claim
11/09/03	Commission staff grants Finance's extension of time for comments on the California Public Records Act (K-14) (02-TC-51) test claim to October 24, 2003
10/10/03	Chancellor's Office files request for extension of time to file comments on California Public Records Act (K-14) (02-TC-51) test claim
10/17/03	Commission staff grants the Chancellor's Office extension of time for comments on the California Public Records Act (K-14) (02-TC-51) test claim to December 15, 2003
10/28/03	Finance files request for extension of time for comments on the California Public Records Act (K-14) (02-TC-51) test claim
11/07/03	Commission staff grants Finance's extension of time for comments on the California Public Records Act (K-14) (02-TC-51) test claim to December 2, 2003

02/13/04	Finance files request for extension of time for comments on the California Public Records Act (K-14) (02-TC-51) test claim
02/18/04	Commission staff grants Finance's extension of time for comments on the California Public Records Act (K-14) (02-TC-51) test claim to March 19, 2004
03/11/04	Chancellor's Office files comments on the California Public Records Act (K-14) (02-TC-51) test claim
03/25/04	Chancellor's Office rescinds March 11, 2004 comments on the California Public Records Act (K-14) (02-TC-51) test claim
04/30/04	Riverside Unified School District files response to the Chancellor's Office comments on the California Public Records Act (K-14) (02-TC-51) test claim
08/02/07	Commission staff issues notice of removal of California Public Records Act: Disclosure Procedures (02-TC-10) and California Public Records Act (K-14) (02-TC-51) test claims from hearing calendar
11/02/10	Commission staff issues Notice of Consolidation of California Public Records Act: Disclosure Procedures (02-TC-10) and California Public Records Act (K-14) (02-TC-51) and Request for Comments
11/16/10	County of Los Angeles files request for extension of time to file requested comments
11/22/10	Commission staff grants extension of time for comments for the consolidated California Public Records Act (02-TC-10 and 02-TC-51) test claim to January 18, 2011
01/14/11	Finance files comments in response to Commission staff's request for comments
01/18/11	County of Los Angeles files comments in response to Commission staff's request for comments

I. Background

This test claim addresses activities associated with the California Public Records Act (CPRA) (Gov. Code, § 6250 et seq.), which provides individuals in California access to information concerning the conduct of the people's business. Prior to the adoption of the CPRA in 1968, the law governing disclosure of public records consisted of a "hodgepodge of statutes and court decisions."[3] The CPRA was adopted in order to more clearly define what constitutes a "public record" open to inspection and what information can be or is required to be withheld from disclosure. Since the 1968 adoption of the CPRA there have been numerous amendments to the CPRA; some of these amendments are the subject of this test claim.

On October 15, 2002 the County of Los Angeles filed the *California Public Records Act: Disclosure Procedures* (02-TC-10) test claim seeking reimbursement for costs associated with

[3] *Los Angeles Unified School Dist. v. Superior Court* (2007) 151 Cal.App.4th 759, 765.

the procedures used by counties for responding to public records requests. The County of Los Angeles alleges reimbursable costs for activities such as: (1) assisting members of the public to identify records and information that are responsive to the request or the purpose of the request; (2) estimate a date and time when the disclosable records will be made available; (3) respond in writing to a written request for inspection or copies of public records when the request is denied in whole or in part; (3) make information that constitutes an identifiable public record kept in electronic format available in the electronic format which it is held; and (4) include as a writing that can constitute a "public record" any photocopy, transmission by electronic mail or facsimile, and any record thereby created, regardless of the manner in which the record has been stored.[4]

On June 26, 2003, Riverside Unified School District filed the *California Public Records Act* (02-TC-51) test claim, which similarly seeks reimbursement for costs associated with complying with the CPRA. Riverside Unified School District alleges reimbursable state-mandated costs for K-14 districts and county offices of education to engage in activities including: (1) providing redacted copies of requested documents deleting portions exempted by law; (2) providing copies of public records to the public, including the determination and collection of the fee; (3) promptly notifying a person making a request for a copy of records, within 10 days from receipt of the request, of the determination of whether the requested records are disclosable records; and (4) removing an employee's home address and home telephone number from any mailing list maintained by the agency when requested by that employee.[5]

In 2004, California voters approved Proposition 59, which amended article I, section 3 of the California Constitution to include the right of public access to writings of government officials. In light of Proposition 59, it was determined that the *California Public Records Act: Disclosure Procedures* (02-TC-10) test claim and the *California Public Records Act (K-14)* (02-TC-51) test claim would require consideration of Government Code section 17556, subdivision (f), which provided that the Commission shall not find costs mandated by the state if the Commission finds:

> The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in, a ballot measure approved by voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.[6]

However, on March 13, 2007, Government Code section 17556, subdivision (f), was found unconstitutional by the superior court in *California School Boards Association (CSBA), et al. v. Commission on State Mandates, et al.* [No. 06CS01335*]*. The court's judgment enjoined the Commission from taking any action to implement Government Code section 17556, subdivision (f). This decision was appealed, and as a result, on August 2, 2007 the test claims were removed from the Commission's hearing calendar until a final court decision in *California School Boards Association, et al. v. Commission on State Mandates, et al*.

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[4] *California Public Records Act: Disclosure Procedures* (02-TC-10) test claim, pgs. 1-9.

[5] *California Public Records Act* (02-TC-51) test claim, pgs. 26-28.

[6] Government Code section 17556, subdivision (f), as amended by Statutes 2006, chapter 538.

On March 9, 2009, the Court of Appeal found Government Code section 17556, subdivision (f), constitutional except for the language "reasonably within the scope of." As a result of the court's decision, Government Code section 17556, subdivision (f) provides that the Commission shall not find costs mandated by the state if the Commission finds:

> The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.[7]

On November 2, 2010 the Commission consolidated the *California Public Records Act: Disclosure Procedures* (02-TC-10) and *California Public Records Act (K-14)* (02-TC-51) test claims to form the consolidated *California Public Records Act* (02-TC-10 and 02-TC-51) test claim.

A. Claimants' Position

The claimants allege that the test claim statutes impose reimbursable state-mandated activities. Activities which are alleged to have resulted in reimbursable costs include: assisting members of the public in making an effective public records request, disclosing records in an electronic format, redacting information exempt from disclosure, limiting disclosure of K-14 district employees' home address and telephone numbers, removing a K-14 district employee's home address and telephone numbers when requested by the employee, and paying attorney fees to a prevailing plaintiff that brought suit against a K-14 district for improperly withholding public records.[8]

On March 25, 2004, the California Community Colleges Chancellor's Office (Chancellor's Office) indicated that it would defer to the analysis of the Department of Finance (Finance) regarding the test claim, because the CPRA applies equally to all government entities, and as a result, there is nothing unique to the college districts that requires a response from the Chancellor's Office. Interpreting this as a comment that districts are not entitled to reimbursement, the school district claimant, Riverside Unified School District, argues that the Chancellor's Office comments must be disregarded. The claimant states:

> The comment that the statute in question applies equally to all government entities is not one of the valid exceptions to mandate reimbursement set forth in Government Code section 17556. Therefore, it must be disregarded.
>
> If, by chance, CCC intended to object to the test claim on the grounds that the statute in question is a law of general application, that too must fail. [¶] . . . . [A] law of general application must make local agencies indistinguishable from private employers. The test claim statutes apply only to school districts, county offices of education and community college districts and not to private employers.

[7] Government Code section 17556, subdivision (f), as amended by Statutes 2010, chapter 719.

[8] 02-TC-10 Test Claim Filing and Attachments (Test Claim 02-TC-10), dated October 10, 2002. 02-TC-51 Test Claim Filing and Attachments (Test Claim 02-TC-51), submitted June 26, 2003.

On January 18, 2011 the County of Los Angeles submitted comments in response to the Commission's request for comments regarding the effect of Proposition 59 on the consolidated *California Public Records Act* (02-TC-10 and 02-TC-25) test claim. The County of Los Angeles argues:

> [T]he public records act requirements included in the test claim legislation were in addition to those found in prior law and were not available or necessary in implementing the . . . declaration of fundamental rights in the California Public Records Act of 1968 and Proposition 59. In addition, the test claim legislation was not expressly included in Proposition 59.
>
> Accordingly, the County finds that the test claim legislation did not impose duties that are necessary to implement, or are expressly included in, the Proposition 59 ballot measure approved by the voters. Consequently, the ballot initiative funding disclaimer cannot be applied to disqualify reimbursement of the County's costs . . . . (Original underline.)

The claimants' arguments will be addressed in the discussion below.

B. Department of Finance's Position (Finance)

On November 20, 2002, Finance submitted comments in response to the unconsolidated *California Public Records Act: Disclosure Procedures* (02-TC-10) test claim. Finance found that a portion of the test claim may be a state mandate. Finance states:

> The test claim legislation specifies the type of response that the claimant must give to the requestor and the timelines that must be met which could potentially result in a greater number of staff hours spent researching and helping requestors. Anything above and beyond staff time dedicated to expediting and or [*sic*] researching requests would not be considered state-mandated activities, and additional activities and equipment noted by the claimant are considered discretionary and therefore not reimbursable.[9]

On January 14, 2011, Finance submitted comments in response to the Commission's request for comments regarding the effect of Proposition 59 on the consolidated *California Public Records Act* (02-TC-10 and 02-TC-51) test claim. Finance argues that the Commission should find that there are no costs mandated by the state because the test claim statutes are necessary to implement Proposition 59. Finance's arguments will be addressed in the discussion below.

C. Chancellor's Office Position

On March 25, 2010, the Chancellor's Office submitted comments in response to the unconsolidated *California Public Records Act (K-14)* (02-TC-51) test claim. The Chancellor's Office states in relevant part:

> The Chancellor's Office chooses not to respond to this test claim. We don't have anything to add to this issue, because the statute in question applies equally to all government entities and there's nothing unique to college districts that requires a

[9] Department of Finance comments on *California Public Records Act: Disclosure Procedures* (02-TC-10) test claim, dated November 20, 2002.

response. Therefore, we defer to whatever analysis is provided to you by the Department of Finance.[10]

II. Discussion

The courts have found that article XIII B, section 6 of the California Constitution[11] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[12] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[13] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[14] In addition, the required activity or task must be new, constituting a "new program," and it must create a "higher level of service" over the previously required level of service.[15]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[16] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim

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[10] Chancellor's Office comments on *California Public Records Act (K-14)* (02-TC-51) test claim, dated March 25, 2004.

[11] California Constitution, article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

[12] *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th727, 735 (*Kern High School Dist*.).

[13] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[14] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[15] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist*.); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[16] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*Los Angeles I*); *Lucia Mar, supra*, 44 Cal.3d 830, 835).

legislation.[17] A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."[18] Finally, the newly required activity or increased level of service must impose costs mandated by the state.[19]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[20] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[21]

A. Some of the test claim statutes impose state-mandated new programs or higher levels of service subject to article XIII B, section 6 of the California Constitution

The following discussion will introduce each test claim statute or groups of test claim statutes with a header that describes the content of the statutes. The discussion will then analyze whether each statute or groups of statutes under the header impose state-mandated new programs or higher levels of service.

Public records open to inspection (Gov. Code, §§ 6252, 6253, and 6253.9)

Section 6253 sets forth the right of every person to inspect any public record, with exceptions, and the duties of public agencies that receive a request to inspect public records. Section 6253.9 addresses the form of disclosure of public records that are in an electronic format, and sets limits on the costs charged to the requester of information in an electronic format.

Interpreting statutes begins with examining the statutory language, giving the words their ordinary meaning, and if the words are unambiguous the plain meaning of the language governs.[22] The plain language of Government Code sections 6253 and 6253.9 require counties, K-14 districts, and county offices of education to engage in the following activities:

1. Make public records open to inspection at all times during the office hours of the county, K-14 district, or county office of education, by every person, except for public records exempted from disclosure or prohibited from disclosure. (Gov. Code, § 6253, subd. (a) (Stats. 2001, ch. 982); and Gov. Code, § 6253.9, subd. (a)(1) (Stats. 2000, ch. 982).)

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[17] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[18] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 877.

[19] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[20] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[21] *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[22] *Estate of Griswold* (2001) 25 Cal.4th 904, 910-911.

2. Make any reasonably segregable portion of a record available for inspection after the deletion of the portions that are exempted by law. (Gov. Code, § 6253, subd. (a) (Stats. 2001, ch. 982).)
3. Provide a copy, or exact copy unless impractical, of disclosable records, upon request for a copy or exact copy of records that reasonably describes an identifiable record or records. (Gov. Code, § 6253, subd. (b) (Stats. 2001, ch. 982).)
4. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic 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. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)
5. 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 county, K-14 district, or county office of education, and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)
6. If the 10-day time limit of Government Code section 6253 is extended by a county agency, K-14 district, or county office of education, due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

Staff finds that the above activities are mandated by the state.

In addition, the claimants argue that the provision of a copy of disclosable records pursuant to Government Code section 6253, subdivision (b), includes "the determination and collection of the fee" that public agencies are authorized to charge for duplication of public records.[23] However, the plain language of subdivision (b) does not require public agencies to determine or collect a fee. As a result, counties, K-14 districts, and county offices of education are not mandated to determine or collect fees for the duplication of public records.

Staff further finds that the above state-mandated activities carry out the governmental function of providing a service to the public by providing access to information regarding the business of the public, and as a result, constitute a program within the meaning of article XIII B, section 6 of the California Constitution. Although the above activities constitute "programs" it is necessary to determine whether they are new in comparison with the legal requirements in effect immediately before the enactment of the test claim legislation. The following discussion will address each activity in the order listed above.

Since 1968, counties, K-14 districts, and county offices of education were required to make public records open to inspection at all times during the office hours of the county, K-14 district, or county office of education, by every person, except for public records exempted from disclosure or prohibited from disclosure.[24] However, the claimants argue that "public records"

[23] Test Claim 02-TC-51, *supra*, p. 26.

[24] Former Government Code section 6253 (Stats. 1968, ch.1473).

that are required to be open for inspection did not include records made by "photocopying, transmitting by electronic mail or facsimile [or]. . . . any record thereby created, regardless of the manner in which the record has been stored," until the definition of "writing" as used in the CPRA was amended in 2002 to specifically include these methods of keeping information.[25] Thus, the claimants assert that publicly disclosing information kept in these formats is a new activity.

However, in 1970 the Legislature defined "public records" to include:

> [A]ny 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*.[26] (Italics added.)

"Writing" as used in the CPRA was defined to include:

> [H]andwriting, typewriting, printing, photostating, photographing, and *every other means of recording* upon *any form of communication or representation*, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and *other documents*.[27] (Italics added.)

The above language indicates that the Legislature intended public records to include every conceivable kind of record that is involved in the governmental process. To find otherwise would conflict with the purpose and focus of the CPRA, which is to make disclosable *information* open to the public, not simply the documents prepared, owned, used, or retained by a public agency.[28] This interpretation is consistent with the court's discussion of what constitutes a public record in *San Gabriel Tribune v. Superior Court*, which included in its discussion the following description by the Assembly Committee on Statewide Information Policy:

> This definition [of what constitutes a public record] is intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record-keeping instrument as it is developed.[29]

As a result, staff finds that making public records open to inspection by every person at all times during the office hours of the county, K-14 district, or county office of education, does not constitute a new program or higher level of service regardless of the form which the public records are kept.

The claimants also argue that prior to 1981 state and local agencies were not required to provide redacted copies of requested documents.[30] In 1981, the CPRA was specifically amended to

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[25] Test Claim 02-TC-10, *supra*, p. 8, citing to Statutes, 2002, chapter 945.

[26] Former Government Code section 6252, subdivision (d).

[27] Former Government Code section 6252, subdivision (e).

[28] *Nor Cal. Police Practices* (1979) 90 Cal.App.3d 116, p. 123-124.

[29] *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 774, citing to Volume 58 Opinions of the Attorney General 629, 633-634 (1975), which cites to Assembly Committee on Statewide Information Policy California Public Records Act of 1968 (1 Appendix to Journal of Assembly 7, Reg. Sess. (1970), See also AG opinion 53 Ops.Cal.Atty.Gen. 136, 140-143).

provide, "Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt by law."[31] However, this amendment only codified the interpretation of the CPRA accorded to it by case law. Prior to the 1981 amendment courts had already held that the CPRA requires segregation of exempt materials from nonexempt materials contained in a single document and to make the nonexempt materials open for inspection and copying.[32] In 1979, after noting that the focus of the CPRA is information and not documents the court in *Nor. Cal. Police Practices Project v. Craig* concluded:

> [W]here nonexempt materials are not inextricably intertwined with exempt materials and are otherwise reasonably segregable therefrom, segregation is required to serve the objective of the [CPRA] to make public records available for public inspection and copying unless a particular statute makes them exempt.[33]

As a result, staff finds that the general duty to make any reasonably segregable portion of a record available for inspection after the deletion of the portions that are exempted by law does not constitute a new program or higher level of service subject to articles XIII B, section 6 of the California Constitution.

In regard to providing copies or exact copies of public records upon a request that reasonably describes an identifiable record, public agencies have been required to engage in this activity since the 1968 enactment of the CPRA. Former Government Code sections 6256 and 6257 provided:

> 6256. Any person may receive a copy of any identifiable public record or shall be provided with a copy of all information contained therein. Computer data shall be provided in a form determined by the agency.
>
> 6257. A request for a copy of an identifiable public record or information produced therefrom, or certified copy of such record, shall be accompanied by payment of a reasonable fee or deposit established by the state or local agency, or the prescribed statutory fee, where applicable.[34]

A "certified copy" is a duplicate of an original document, certified as an exact reproduction of the original.[35] Thus, since 1968 public agencies were required to provide copies or exact copies of public records upon a request of identifiable public records. As a result, staff finds that providing a copy, or exact copy unless impractical, of disclosable records, upon request for a

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[30] Test Claim 02-TC-51, *supra*, pgs. 11 and 26, citing to Statutes 1981, chapter 968.

[31] Former Government Code section 6257 (Stats. 1981, ch. 968).

[32] *Nor Cal. Police Practices* (1979) 90 Cal.App.3d 116, p. 123-124.

[33] *Ibid*. This interpretation of the CPRA is retroactive to the initial enactment of the CPRA in 1968 as it involves no novel or unforeseeable judicial expansion of the statutory language in question. For retroactivity of judicial statutory interpretation see *County of San Diego v. State Bd. of Control* (1984) 161 Cal.App.3d 868, 870.

[34] Former Government Code sections 6256 and 6257 (Stats. 1968, ch. 1473).

[35] Black's Law Dictionary (Seventh Ed. 1999) p. 337.

copy or exact copy of records that reasonably describes an identifiable record, does not constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Although staff has found that making public records, including records in an electronic format, *open to inspection* at all times does not constitute a new program or higher level of service, *providing an electronic copy* of a public record kept in an electronic format does constitute a new program or higher level of service. Prior to 2000, public agencies were not required to provide the public with an *electronic* copy of a public record kept in an electronic format. Instead, public agencies were given discretion to provide "[c]omputer data . . . in a form determined by the agency."[36] One of the purposes for enacting section 6253.9, and requiring public agencies to provide an electronic copy, was to substantially increase the availability of public records to the public and to reduce the cost and inconvenience to the public associated with large volumes of paper records.[37] In essence, the intent was to provide a higher level of the service of providing public records to the public. As a result, staff finds that the requirement to provide an electronic copy of a public record kept in an electronic format constitutes a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

The claimants have pled the activities mandated by Government Code section 6253, subdivision (c), relating to providing a person making a public records request notice of the determination of whether records are disclosable and whether an extension is needed by the public agency to make a determination, as added in 1981.[38] Immediately prior to 1981, public agencies were not required to engage in these activities. As a result staff finds that the activities mandated by Government Code section 6253 constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

In summary, staff finds the following activities constitute state-mandated new programs or higher levels of service subject to article XIII B, section 6 of the California Constitution.

1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic 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. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)
2. 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 county, K-14 district, or county office of education, and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

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[36] Former Government Code section 6253, subdivision (b) (Stats. 1998, ch. 620).

[37] Assembly Committee on Governmental Organization, third reading analysis of AB 2799 (1999-2000 Regular Session) as amended July 6, 2000. See also, Senate Rules Committee, Office of Senate Floor Analyses, third reading analysis of AB 2799 (1999-2000 Regular Session) as amended July 6, 2000.

[38] Test Claim 02-TC-51, *supra*, pgs. 11 and 26-27. Statutes 1981, chapter 968.

3. If the 10-day time limit of Government Code section 6253 is extended by a county agency, K-14 district, or county office of education, due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

Assistance to members of the public (Gov. Code, § 6253.1)

Section 6253.1 addresses the duty of a public agency to assist members of the public that request to inspect a public record. Staff finds that section 6253.1 mandates counties and K-14 districts to engage in the following activities:

> When a member of the public requests to inspect a public record or obtain a copy of a public record:
>
> a. assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;
>
> b. describe the information technology and physical location in which the records exist; and
>
> c. provide suggestions for overcoming any practical basis for denying access to the records or information sought.
>
> This duty is not triggered if: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

The claimants pled Government Code section 6253.1 as added in 2001.[39] Immediately before 2001, counties and K-14 districts were not required to engage in the activities mandated by section 6253.1. In addition, the above activities are unique to public agencies and implement the state policy of increasing access to information regarding the people's business.[40] As a result, staff finds that the activities mandated by Government Code 6253.1 constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Initiative, referenda, recall petitions, and petitions for reorganization of K-14 districts (Gov. Code, § 6253.5)

Section 6253.5 excludes initiatives, referenda, recall petitions, petitions for reorganization of K-14 districts, and any memoranda prepared by the county elections officials in the examination of the petitions indicating which registered voters have signed particular petitions from being deemed public records and provides that such records shall not be open to inspection.

[39] Statutes 2001, chapter 355.

[40] Government Code section 6250, which states that access to information concerning the people's business is a fundamental and necessary right of every person in this state.

Section 6253.5 also provides exceptions to the exclusion, in which specified individuals are permitted to examine such records.

The claimants assert that section 6253.5 requires K-14 districts to engage in the following activity:

> [W]hen necessary, [examine] petitions for the district when petitions are filed to fill vacancies on the governing board and petitions for recall, after obtaining approval of the appropriate superior court.[41]

However, section 6253.5 does not impose any requirements on K-14 districts. As described above, section 6253.5 prohibits disclosure of petitions, and provides exceptions to this prohibition. One of the exceptions allows a K-14 district attorney to review a petition upon the approval of the appropriate superior court. This exception does not require K-14 districts to seek this approval. As a result, staff finds that Government Code section 6253.5 does not impose any state-mandated new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Disclosure of home addresses and phone numbers of school district and county office of education employees (Gov. Code, § 6254.3)

Section 6254.3 provides that the home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and prohibits such records from being open to public inspection. Section 6254.3 authorizes the state, school districts, and county offices of education, to make such information open to public inspection in limited circumstances.

Specifically, section 6254.3 provides:

> (a) The home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:
>
> (1) To an agent, or a family member of the individual to whom the information pertains.
>
> (2) To an officer or employee of another state agency, school district, or county office of education when necessary for the performance of its official duties.
>
> (3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed.
>
> (4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to state, school districts, and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

[41] Test Claim 02-TC-51, *supra*, p. 28.

(b) Upon written request of any employee, a state agency, school district, or county office of education shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and an agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee.

Although, the language of subdivision (a) is prohibitory in nature, section 6254.3 must be read in the context of the whole statutory scheme and not as individual parts or words standing alone.[42] As discussed above, section 6253 of the CPRA requires the redaction of information that is exempted or prohibited from disclosure from records that contain disclosable information. Section 6254.3 prohibits the disclosure of the home address and telephone number of employees of K-14 districts and county offices of education. Thus, if a record that contains disclosable information also contains the addresses and telephone numbers of employees of K-14 districts and county offices of education, the addresses and telephone numbers must be redacted from the record, except in the limited circumstances listed in section 6254.3, subdivisions (a)(1)-(4), in which K-14 districts and county offices of education have the discretion to release this information.

Pursuant to the plain language of the statute read in light of the whole CPRA, staff finds that section 6254.3 requires K-14 districts and county offices of education to engage in the following activities:

1. Redact or withhold the home address and telephone number of employees of K-14 districts and county offices of education from records that contain disclosable information.

   This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-14 district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

2. Remove the home address and telephone number of an employee from any mailing list maintained by the K-14 district or county office of education if requested by the employee, except for lists used exclusively by the K-14 district or county office of education to contact the employee. (Gov. Code, § 6254.3, subd. (b) (Stats. 1992, ch. 463).)

In order to determine whether the activity required by section 6254.3 constitutes a state-mandated activity it is necessary to look at the underlying program to determine if the claimant's

[42] *Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 218.

participation in the underlying program is voluntary or legally compelled.[43] Here, K-14 districts and county offices of education are required to remove the home address and telephone number of an employee from *any* mailing list maintained by the K-14 districts or county offices of education if requested by the employee. "Any mailing list" includes mailing lists that K-14 districts and county offices of education are legally required to maintain and those voluntarily maintained by the K-14 districts or county offices of education. In regard to mailing lists that K-14 districts and county offices of education voluntarily maintain, the requirement to remove from the mailing list the home address and telephone number of an employee that requests the removal is triggered by the decision by K-14 districts and county offices of education to voluntarily maintain a mailing list. As a result, staff finds in regard to voluntarily maintained mailing lists, the activity required by section 6254.3 is not a state-mandated activity. However, staff finds that the following requirements do constitute state-mandated activities:

1. Redact or withhold the home address and telephone number of employees of K-14 districts and county offices of education from records that contain disclosable information.

   This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-14 district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3, subd. (a) (Stats. 1992, ch. 463).)

2. For K-14 districts and county offices of education, remove the home address and telephone number of an employee from any mailing lists that the K-14 district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-14 district or county office of education to contact the employee. (Gov. Code, § 6254.3, subd. (b) (Stats. 1992, ch. 463).)

The claimants have pled section 6254.3 as last amended in 1992.[44] Immediately prior to the 1992 amendment, section 6254.3 only applied to state employers and state employees.[45] In addition, although the general duty to redact information that is exempt or prohibited from disclosure existed prior to the adoption of section 6254.3, the specific duty to redact the home address and telephone number of an employee of a K-14 district or county office of education did not exist. Thus, the scope of what must be withheld from disclosure, and as a result, redacted

[43] *Kern High School Dist., supra*, 30 Cal.4th 727, 743.

[44] Statutes 1992, chapter 463.

[45] Government Code section 6254.3 as added by Statutes 1984, chapter 1657.

from records containing disclosable information increased. As a result, the state-mandated activities imposed by section 6254.3 are new.

In addition, these mandates impose requirements that are unique to public agencies and implement the state policy of increasing access to information regarding the people's business while being mindful of the right of individuals to privacy.[46] As a result, staff finds that Government Code section 6254.3 imposes state-mandated new programs or higher levels of service subject to article XIII B, section 6 of the California Constitution:

Justification for withholding of records (Gov. Code, § 6255)

Section 6255 addresses the provision of a justification for withholding records for which a public records request was made. Staff finds that section 6255 mandates counties, K-14 districts and county offices of education to engage in the following activities:

1. 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. (Gov. Code, § 6255, subd. (a).)
2. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b).)

The claimants pled section 6255 as last amended in 2000.[47] Since 1968, section 6255 required the justification of withholding records by demonstrating that the record in question is exempt or that the public interest served by not disclosing the record outweighs the public interest served by disclosing the record. As a result, that state-mandated activity does not constitute a new program or higher level of service.

However, immediately prior to the amendment of section 6255 in 2000, districts were not required to respond to written requests *in writing* that includes a determination that the request is denied. In addition, this mandate imposes requirements that are unique to public agencies and implement the state policy of increasing access to information regarding the people's business.[48] As a result, staff finds that Government Code section 6255, subdivision (b), imposes the following state-mandated new program or higher level of service subject to article XIII B, section 6 of the California Constitution:

> If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).)

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[46] Government Code section 6250, which states, "In enacting [the CPRA], the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."

[47] Statutes 2000, chapter 982.

[48] Government Code section 6250, which states that access to information concerning the people's business is a fundamental and necessary right of every person in this state.

Court costs and attorney fees (Gov. Code § 6259)

Section 6259 addresses the orders of the court in proceedings brought by a person seeking to enforce his or her right to inspect or to receive a copy of any public record or class of public records that a public agency has refused to disclose. Specifically, the court is required to order the officer or person charged with withholding the requested records to disclose the public record or show cause why he or she should not disclose the record.[49] If the court determines that the public official was not justified in refusing to disclose the record, the court is required to order the public official to make the record public.[50] In addition, the court is required to award court costs and reasonable attorney fees to the plaintiff if public records are disclosed as a result of the plaintiff filing suit.[51] If the court finds that the plaintiff's case is clearly frivolous, the court is required to award court costs and reasonable attorney fees to the public agency.[52] In addition, section 6259 sets forth the procedure for appealing a decision by a court.[53]

The claimants argue that section 6259 imposes the following reimbursable state-mandated new program or higher level of service:

> [W]hen ordered by a court, [pay] to a prevailing plaintiff his or her court costs and reasonable attorney fees.[54]

However, the payment of court costs and reasonable attorney fees is not a program or service provided to the public. Instead, it is a consequence of failing to provide a legally required program or service, specifically the service of making public records open for inspection by the public or providing copies of public records to the public. Thus, staff finds that the provisions of Government Code section 6259 do not impose a reimbursable state-mandated new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

B. The state-mandated new programs or higher levels of service impose costs mandated by the state on counties, K-14 districts, county offices of education within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556

In order for the test claim statutes to impose a reimbursable state-mandated program under the California Constitution, the test claim statutes must impose costs mandated by the state.[55] Government Code section 17514 defines "cost mandated by the state" as follows:

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[49] Government Code section 6259, subdivision (a).

[50] Government Code section 6259, subdivision (b).

[51] Government Code section 6259, subdivision (d). See also, *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1390-1391, in which the court defines "prevail," as used in Government Code section 6259, as a situation when the plaintiff files an action which results in the defendant releasing a copy of a previously withheld document. The court further finds that an action results in the release of previously withheld document if the lawsuit motivated the defendants to produce the documents.

[52] *Ibid*.

[53] Government Code section 6259, subdivision (c).

[54] Test Claim 02-TC-51, *supra*, p. 28.

> [A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

"Any increased costs" for which claimants may seek reimbursement include both direct and indirect costs.[56]

The claimants estimated that they "incurred more than $1,000 in staffing and other costs, annually, in excess of any fees collected pursuant to Government Code Section 6253, subdivision (b) and funding provided to school districts and the state for the period from July 1, 2001 through June 30, 2002"[57] to implement all duties alleged by the claimants to be mandated by the state. Thus, the claimants have met the minimum burden of showing costs necessary to file a test claim pursuant to Government Code section 17564.

However, pursuant to Government Code section 17556, subdivision (f), Finance argues that the claimants are not entitled to reimbursement for the state-mandated new program or higher levels of service imposed by Government Code sections 6253, 6253.9, 6253.1, 6254.3, and 6255, because the activities mandated by the code sections are necessary to implement a ballot measure approved by voters.[58] In addition, under Government Code section 6253.9, the claimants have fee authority for the costs of producing electronic copies of public records kept in an electronic format. Thus, it is also necessary to determine whether the claimants are precluded from reimbursement pursuant to the "ballot measure" and "fee authority" exceptions to reimbursement found in Government Code section 17556, subdivisions (f) and (d).

Ballot measure exception

Government Code section 17556, subdivision (f), prohibits a finding of costs mandated by the state for duties that are necessary to implement or expressly included in a ballot measure approved by the voters in a state-wide or local election.[59] The prohibition applies regardless of whether the statute was enacted before or after the date on which the ballot measure was approved by voters.

The claimants argue that the ballot measure exception to reimbursement in Government Code section 17556, subdivision (f), does not apply here because the test claim statutes were "enacted long after the advent of the declaration of rights in the 1968 California Public Records Act and [were] not available, let alone necessary, for the implementation of those rights, subsequently

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[55] *Lucia Mar*, *supra*, 44 Cal.3d 830, 835; Government Code section 17514.

[56] Government Code section 17564.

[57] Test Claim 02-TC-51, Exhibit 1 Declarations of Michael H. Fine, of Riverside Unified School District, and Cheryl Miller of Santa Monica Community College District.

[58] Finance Response to Request for Comments, dated January 14, 2011.

[59] Government Code section 17556, subdivision (f). See *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, finding that the language, "reasonably within the scope of," to be violative of the California Constitution.

incorporated in Proposition 59."[60] In addition, the claimants note that Proposition 59 does not expressly include the activities mandated by the test claim statutes.

In 2004, California voters approved Proposition 59 to incorporate the right of access to information concerning the people's business that was already provided by various state laws, including the CPRA, into article I, section 3 of the California Constitution. The amendment to the Constitution provides in relevant part:

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

The purpose of Proposition 59 was to "create a constitutional right for the public to access government information. As a result, a government entity would have to demonstrate to a somewhat greater extent than under current law why information requested by the public should be kept private."[61]

None of the state-mandated new programs or higher levels of service imposed by the test claim statutes are expressly included in the Proposition 59. As a result, it is necessary to determine whether the state-mandated activities are "necessary to implement" Proposition 59.

The court in *California School Boards Association v. State of California*, found that duties imposed by a test claim statute or executive order that are not expressly included in a ballot measure approved by the voters in a statewide or local election are "necessary to implement" the ballot measure pursuant to Government Code section 17556, subdivision (f), when the additional requirements imposed by the state are intended to implement the ballot measure mandate, and the costs are, in context, de minimis such that the requirements are considered part and parcel of the underlying ballot measure mandate.[62] The court also makes a distinction between activities that are "necessary to implement" a ballot measure, and those that are "reasonably within the scope of" a ballot measure. In essence, for an activity to be necessary to implement a ballot measure, it must be more narrowly related to the ballot measure than an activity that simply has anything to do with the subject matter of the ballot measure.[63]

The court borrowed this analysis from the California Supreme Court's decision in *San Diego Unified School Dist*. which addressed whether state imposed procedural requirements that exceeded federal due process requirements constituted a federal mandate. The court found that the state requirements were designed to make the underlying federal due process right enforceable and to set forth procedural details that were not expressly articulated in the case law establishing the respective due process rights. Thus, the state requirements were merely

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[60] Claimant Response to Request for Comments, dated January 18, 2011.

[61] Ballot Pamphlet, General Election (November 2, 2004) Proposition 59 at <http://library.uchastings.edu/cgi-bin/starfinder/26556/calprop.txt> [as of March 21, 2011].

[62] *California School Boards Association v. State of California, supra*, 171 Cal.App.4th at p. 1217.

[63] *Id*. at pgs. 1213-1216.

incidental to fundamental federal due process requirements and viewed singly or cumulatively they did not significantly increase the costs of compliance with the federal mandate.[64]

Here, because Proposition 59 incorporated the fundamental right of access to information present in the CPRA into the constitution, and the provisions of the CPRA are intended to implement the right of access to public information set forth in the CPRA, it could be argued that the provisions of the CPRA also are intended to implement the ballot measure mandate (i.e. providing open access to information concerning the conduct of the people's business). However, unlike in *San Diego Unified School Dist*., the state-mandated activities imposed by the test claim statutes, such as providing electronic copies to the public, assisting members of the public to make a request, and providing a written denial to a written request for public records, are not merely incidental to the right of access to information concerning the conduct of the people's business. Instead they impose additional requirements unnecessary to enforce the general right to access information regarding the people's business, and are not narrowly tailored to fit the definition of "necessary to implement." Finding that the state-mandated activities are necessary to implement Proposition 59 would suggest that any activity that has anything to do with open government would be necessary to implement Proposition 59. In addition, there is no concrete evidence in the law or in record that the costs of the state-mandated activities, singly or cumulatively, do not significantly increase the cost of complying with the ballot measure mandate.[65] [66] As a result, staff finds that the record supports the finding of costs mandated by the state and that the Government Code section 17556, subdivision (f), exception does not apply to deny these activities.

Fee authority exception

Government Code section 17556, subdivision (d), prohibits a finding of costs mandated by the state where a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. In addition, the court in *Clovis Unified School Dist. v. Chiang* notes that to the extent that a local agency or school district has the authority to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost.[67]

In regard to providing electronic copies of disclosable public records kept in an electronic format, Government Code section 6253.9, subdivision (a)(2), gives fee authority to counties, K-14 districts, and county offices of education, for the "direct costs" of producing a record in an electronic format. The fee authority that public agencies have under subdivision (a)(2) is limited to the direct cost of producing an electronic copy. The fee authority does not attach to the

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[64] *San Diego School Dist*., *supra*, 33 Cal.4th at p. 889.

[65] *California School Boards Association v. State of California, supra*, 171 Cal.App.4th at p. 1217. See also, *Dept. of Finance v. Commission on State Mandates* (*POBRA*) (2009) 170 Cal.App.4th 1355, regarding a concrete showing of evidence.

[66] Pursuant to Government Code section 17564, the claimants estimated under the penalty of perjury that they "incurred more than $1,000 in staffing and other costs, annually," in order to meet the burden of showing costs necessary to file a test claim.

[67] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812, citing to *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 401.

indirect costs such as the inspection of and handling of the file. Under article XIII B, section 6, all costs mandated by the state, including direct and indirect costs, are reimbursable.[68] As a result this fee authority is insufficient to preclude a finding of costs mandated by the state pursuant to Government Code section 17556, subdivision (d).

Government Code section 6253.9, subdivision (b), expands a public agency's fee authority to include the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record if: (1) the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals; or (2) the request would require data compilation, extraction, or programming to produce the record. This increased fee authority, however, is not expanded to *all costs*, both direct *and indirect*. As a result, staff finds that the fee authority under Government Code section 6253.9, subdivision (b), is insufficient to preclude a finding of costs mandated by the state pursuant to Government Code section 17556, subdivision (d).

Government Code section 6253.9, subdivisions (a)(2) and (b), however, provides offsetting revenue for the mandated activity of providing an electronic copy of disclosable public records kept in an electronic format and will be identified in the parameters and guidelines.

Pursuant to the above discussion, staff finds that the state-mandated new programs or higher levels of service impose costs mandated by the state on counties, K-14 districts, and county offices of education, within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556.

III. Conclusion

Staff concludes that Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255 impose reimbursable state-mandated programs counties, K-14 districts, and county offices of education, within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514, for the following specific new activities:

1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic 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. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)
2. 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 county, K-14 district, or county office of education, and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)
3. If the 10-day time limit of Government Code section 6253 is extended by a county agency, K-14 district, or county office of education, due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a

[68] Government Code section 17564.

determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

4. When a member of the public requests to inspect a public record or obtain a copy of a public record:

    a. assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;

    b. describe the information technology and physical location in which the records exist; and

    c. provide suggestions for overcoming any practical basis for denying access to the records or information sought.

    These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

5. Redact or withhold the home address and telephone number of employees of K-14 districts and county offices of education from records that contain disclosable information.

    This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-14 district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3, subd. (a) (Stats. 1992, ch. 463).)

6. For K-14 districts and county offices of education, remove the home address and telephone number of an employee from any mailing lists that the K-14 district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-14 district or county office of education to contact the employee. (Gov. Code, § 6254.3, subd. (b) (Stats. 1992, ch. 463).)

7. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).)

In addition, staff concludes that the fee authority set forth in Government Code section 6253.9, subdivisions (a)(2) and (b), as added by Statutes 2000, chapter 982, is offsetting revenue and

shall be deducted from the costs of providing a copy of a disclosable electronic record in the electronic format requested.

Any other test claim statutes and allegations not specifically approved above, do not impose a reimbursable state mandated program subject to article XIII B, section 6 of the California Constitution.

IV. Staff Recommendation

Staff recommends that the Commission adopt this analysis to partially approve this test claim.

Exhibit L

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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WENDY L. WATANABE
AUDITOR-CONTROLLER

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JUDI E. THOMAS

April 18, 2011

Mr. Drew Bohan
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Mr. Bohan:

LOS ANGELES COUNTY'S REVIEW
COMMISSION STAFF DRAFT ANALYSIS
CALIFORNIA PUBLIC RECORDS ACT TEST CLAIMS (O2-TC-10, 02-TC-51)

The County of Los Angeles respectfully submits its review of the Commission staff draft analysis of the California Public Records Act test claims.

If you have any questions, please contact Leonard Kaye at (213) 974-9791 or lkaye@auditor.lacounty.gov.

Very truly yours,

Wendy L. Watanabe
Auditor-Controller

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Enclosure

Los Angeles County's Review
Commission Staff Draft Analysis
California Public Record Act Test Claims (02-TC-10, 02-TC-51)

Los Angeles County's Review
Commission Staff Draft Analysis
California Public Record Act Test Claims (02-TC-10, 02-TC-51)

Executive Summary

On March 30, 2011, Commission staff issued their draft analysis of the California Public Records Act (CPRA) test claims filed by the County of Los Angeles (County) and Riverside School District (District). The County concurs with the Commission staff findings that reimbursable activities include:

> "(1) providing copies of public records with portions exempted from disclosure redacted; (2) notifying a person making a public records request whether the requested records are disclosable; (3) assisting members of the public to identify records and information that are responsive to the request or the purpose of the request; (4) making disclosable public records in electronic formats available in electronic formats; and (5) removing an employee's home address and home telephone number from any mailing list maintained by the agency when requested by the employee."

However, the County maintains that reimbursement should also be provided for court costs and attorney fees as these are legal costs necessarily incurred in the course of providing CPRA services. Commission staff disagree and find that these legal costs are a consequence of the County failing to provide requested information ... failing to provide a CPRA service. But the County contends that not providing requested information when legally prohibited from doing so is also a CPRA service... and so, legal costs are reimbursable.

The County agrees with the Commission staff findings that the ballot initiative and fee authority funding disclaimers do not bar reimbursement for otherwise allowable costs. As staff note, the ballot initiative funding disclaimer is not applicable as the test claim legislation was not available or necessary in implementing Proposition 59; and. the fee authority funding disclaimer is not applicable as the CPRA fee authority is insufficient to recover all costs mandated by the state.

Finally, as cities and other public local agencies are mandated to provide CPRA services, the Commission staff analysis should refer to all public local agencies, not just counties, as eligible claimants.

Local Agencies

The California Public Records Act (CPRA) requires public local agencies to provide the CPRA services claimed herein. Consequently, these public local agencies should be specified as eligible claimants in Commission's decision.

Specifically, a "public agency", which is subject to CPRA requirements, means "any state or local agency". (Government Code section 6252(d). A "public" "local agency" is further defined under section 6252(a) as including:

> "... a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952."

A legislative body of a public local agency includes those defined in Section 54952(c) as follows:

> " (1) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:
>
> (A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity.
>
> B) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.
>
> (2) Notwithstanding subparagraph (B) of paragraph (1), no board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that receives funds from a local agency and, as of February 9, 1996, has a member of the legislative body of the local agency as a full voting member of the governing body of that private corporation, limited liability company, or other entity shall be relieved from the public

meeting requirements of this chapter by virtue of a change in status of the full voting member to a nonvoting member."

A legislative body of a public local agency includes those defined in Section 54952(d) as follows:

> "The lessee of any hospital the whole or part of which is first leased pursuant to subdivision (p) of Section 32121 of the Health and Safety Code[1] after January 1, 1994, where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority."

It should also be noted that under Article XIII B, section 6 of the California Constitution, "local agencies" are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service such as those found by Commission staff in these CPRA test claims. An eligible claimant is a "local agency" as defined in Government Code Section 17518 as:

> "Local agency" means any city, county, special district, authority, or other political subdivision of the state."

Accordingly, for all of the above reasons, eligible local agency claimants should be specified as follows:

> An eligible local agency claimant is any city, county, city and county; special district; or municipal corporation; or other political subdivision; or any board, commission or agency thereof; or other local public agency; joint powers authority or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Government Code Section 54952."

[1] The provisions of subdivision (p) of Section 32121 of the Health and Safety Code are found in Appendix I.

Court Costs and Attorney Fees

The County maintains that reimbursement should be provided for court costs and attorney fees as these are legal costs necessarily incurred in the course of providing CPRA services. Commission staff disagree and find that these legal costs are a consequence of the County failing to provide requested information ... failing to provide a CPRA service. Specifically, staff indicate, on page 26 of their analysis, that:

> " ... the payment of court costs and reasonable attorney fees is not a program or service provided to the public. Instead, it is a consequence of failing to provide a legally required program or service, specifically the service of making public records open for inspection by the public or providing copies of public records to the public. Thus, staff finds that the provisions of Government Code section 6259 do not impose a reimbursable state-mandated new program or higher level of service subject to article XIII B, section 6 of the California Constitution."

The County respectfully disagrees with the Commission staff notion that the only CPRA service is "... making public records open for inspection by the public or providing copies of public records to the public". The County contends that there is a CPRA service in not "... making public records open for inspection by the public or providing copies of public records to the public" when legally prohibited from doing so.

Reimbursable CPRA services, as noted by Commission staff on page 1 of their analysis, require "notifying a person making a public records request whether the requested records are disclosable". These CPRA service costs as well as court costs and attorney fees are incurred when requested information may not be provided. Yet, Commission staff maintain that notifications are reimbursable and court costs and attorney fees are not.

Further, even where the requested information is not disclosed, and such action is upheld by the courts, the local agency, in all but frivolous cases, must necessarily bear court costs and attorney fees pursuant to Government Code Section 6259(d):

> "The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not

become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency."

In addition to reimbursement for court costs and attorney fees where the public agency's action are upheld in all but frivolous cases, such reimbursement is also required where the public agency's action is not expressly prohibited by CPRA. This reimbursement is required as the public agency is mandated to make a judgment in compliance with Government Code Section 6255(a) which requires that:

"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." (Emphasis added.)

Not to make these judgments is not to provide CPRA services. Moreover, these judgments are required in order to provide notification as to whether requested information is disclosable, an activity found to be reimbursable by staff, as previously noted. In addition, the requirements to make these judgments are pervasive. Consider the following CPRA provisions:

"**6254.** Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

- - -

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

- - -

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the

> disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information."

Clearly, the mandated balancing and weighing of interests require legal analysis and, if necessary, litigation in the courts. Therefore, reimbursement of court costs and attorney fees in carrying out these CPRA services is required.

Conclusion

Reimbursement for court costs and attorney fees should be provided as follows:

> Court costs and attorney fees are reimbursable when the public agency prevails, in all but frivolous cases, and when the public agency does not prevail in cases where the public agency's actions are not expressly prohibited by the California Public Records Act.

An eligible local agency claimant is:

> Any city, county, city and county; special district; or municipal corporation; or other political subdivision; or any board, commission or agency thereof; or other local public agency; joint powers authority; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Government Code Section 54952.

Appendix I
Los Angeles County's Review
Commission Staff Draft Analysis
California Public Record Act Test Claims (02-TC-10, 02-TC-51)

Health and Safety Code Section 32121(p)

"Each local district shall have and may exercise the following powers:

- - -

(p) (1) To transfer, at fair market value, any part of its assets to one or more corporations to operate and maintain the assets. A transfer pursuant to this paragraph shall be deemed to be at fair market value if an independent consultant, with expertise in methods of appraisal and valuation and in accordance with applicable governmental and industry standards for appraisal and valuation, determines that fair and reasonable consideration is to be received by the district for the transferred district assets. Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(2) To transfer, for the benefit of the communities served by the district, in the absence of adequate consideration, any part of the assets of the district, including, without limitation, real property, equipment, and other fixed assets, current assets, and cash, relating to the operation of the district's health care facilities to one or more nonprofit corporations to operate and maintain the assets.

(A) A transfer of 50 percent or more of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if all of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least five properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(ii) The transfer agreement provides that the hospital district shall approve all initial board members of the nonprofit corporation and any subsequent board members as may be specified in the transfer agreement.

(iii) The transfer agreement provides that all assets transferred to the nonprofit corporation, and all assets accumulated by the corporation during the term of the transfer agreement arising out of, or from, the operation of the transferred assets, are to be transferred back to the district upon termination of the transfer agreement, including any extension of the transfer agreement.

(iv) The transfer agreement commits the nonprofit corporation to o perate and maintain the district's health care facilities and its assets for the benefit of the communities served by the district.

(v) The transfer agreement requires that any funds received from the district at the outset of the agreement or any time thereafter during the term of the agreement be used only to reduce district indebtedness, to acquire needed equipment for the district health care facilities, to operate, maintain, and make needed capital improvements to the district's health care facilities, to provide supplemental health care services or facilities for the communities served by the district, or to conduct other activities that would further a valid public purpose if undertaken directly by the district.

(B) A transfer of 10 percent or more but less than 50 percent of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if both of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(ii) The transfer agreement meets all of the requirements of clauses (iii) to (v), inclusive, of subparagraph (A).

(C) Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more nonprofit corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(D) Notwithstanding the other provisions of this paragraph, a hospital district shall not transfer any portion of its assets to a private nonprofit organization that is owned or controlled by a religious creed, church, or sectarian denomination in the absence of adequate consideration.

(3) If the district board has previously transferred less than 50 percent of the district's assets pursuant to this subdivision, before any additional assets are transferred, the board shall hold a public hearing and shall make a public determination that the additional assets to be transferred will not, in combination with any assets previously transferred, equal 50 percent or more of the total assets of the district.

(4) The amendments to this subdivision made during the 1991-92 Regular Session, and the amendments made to this subdivision and to Section 32126 made during the 1993-94 Regular Session, shall only apply to transfers made on or after the effective dates of the acts amending this subdivision. The amendments to this subdivision made during those sessions shall not apply to either of the following:

(A) A district that has discussed and adopted a board resolution prior to September 1, 1992, that authorizes the development of a business plan for an integrated delivery system.

(B) A lease agreement, transfer agreement, or both between a district and a nonprofit corporation that were in full force and effect as of September 1, 1992, for as long as that lease agreement, transfer agreement, or both remain in full force and effect.

(5)Notwithstanding paragraph (4), if substantial amendments are proposed to be made to a transfer agreement described in subparagraph (A) or (B) of paragraph (4), the amendments shall be fully discussed in advance of the district board's decision to adopt the amendments in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(6) Notwithstanding paragraphs (4) and (5), a transfer agreement described in subparagraph (A) or (B) of paragraph (4) that provided for the transfer of less than 50 percent of a district's assets shall be subject to the requirements of this subdivision when subsequent amendments to that transfer agreement would result in the transfer, in sum or by increment, of 50 percent or more of a district's assets to the nonprofit corporation.

(7) For purposes of this subdivision, a "transfer" means the transfer of ownership of the assets of a district. A lease of the real property or the tangible personal property of a district shall not be subject to this subdivision except as specified in Section 32121.4 and as required under Section 32126.

(8) Districts that request a special election pursuant to paragraph (1) or (2) shall reimburse counties for the costs of that special election as prescribed pursuant to Section 10520 of the Elections Code.

(9) (A) Nothing in this section, including subdivision (j), shall be construed to permit a local district to obtain or be issued a single consolidated license to operate a separate physical plant as a skilled nursing facility or an intermediate care facility that is not located within the boundaries of the district.

(B)Notwithstanding subparagraph (A), Eastern Plumas Health Care District may obtain and be issued a single consolidated license to operate a separate physical plant as a skilled nursing facility or an intermediate care facility that is located on the campus of the Sierra Valley District Hospital. This subparagraph shall have no application to any other district and is intended only to address the urgent need to preserve skilled nursing or intermediate care services within the rural County of Sierra.

(C) Subparagraph (B) shall only remain operative until the Sierra Valley District Hospital is annexed by the Eastern Plumas Health Care District. In no event shall

the Eastern Plumas Health Care District increase the number of licensed beds at the Sierra Valley District Hospital during the operative period of subparagraph (B).

(10) A transfer of any of the assets of a district to one or more nonprofit corporations to operate and maintain the assets shall not be required to meet paragraphs (1) to (9), inclusive, of this subdivision if all of the following conditions apply at the time of the transfer:

(A) The district has entered into a loan that is insured by the State of California under Chapter 1 (commencing with Section 129000) of Part 6 of Division 107.

(B) The district is in default of its loan obligations, as determined by the Office of Statewide Health Planning and Development.

(C) The Office of Statewide Health Planning and Development and the district, in their best judgment, agree that the transfer of some or all of the assets of the district to a nonprofit corporation or corporations is necessary to cure the default, and will obviate the need for foreclosure. This cure of default provision shall be applicable prior to the office foreclosing on district hospital assets. After the office has foreclosed on district hospital assets, or otherwise taken possession in accordance with law, the office may exercise all of its powers to deal with and dispose of hospital property.

(D)The transfer and all arrangements necessary thereto are discussed in advance of the transfer in at least one properly noticed open and public meeting in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code). The meeting referred to in this paragraph shall be noticed and held within 90 days of notice in writing to the district by the office of an event of default. If the meeting is not held within this 90-day period, the district shall be deemed to have waived this requirement to have a meeting.

(11) If a transfer under paragraph (10) is a lease, the lease shall provide that the assets shall revert to the district at the conclusion of the leasehold interest. If the transfer is a sale, the proceeds shall be used first to retire the obligation insured by the office, then to retire any other debts of the district. After providing for debts, any remaining funds shall revert to the district.

(12) A health care district shall report to the Attorney General, within 30 days of any transfer of district assets to one or more nonprofit or for-profit corporations, the type of transaction and the entity to whom the assets were transferred or leased."

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-3873
PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE
AUDITOR-CONTROLLER

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JUDI E. THOMAS

Los Angeles County's Review
Commission Staff Draft Analysis
California Public Record Act Test Claims (02-TC-10, 02-TC-51)

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, Los Angeles County's [County] representative in this matter, have prepared the attached review.

I declare that I have met and conferred with local officials, claimants and experts in preparing the attached review.

I declare that it is my information and belief that claimed costs, including court costs and attorneys' fees as specified in the attached review, are reimbursable "costs mandated by the state" as defined in Government Code Section 17514.

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information and belief, and as to those matters I believe them to be true.

April 12, 2011; Los Angeles, CA
Date and Place

Signature

SixTen and Associates
Mandate Reimbursement Services

KEITH B. PETERSEN, President

San Diego
5252 Balboa Avenue, Suite 900
San Diego, CA 92117
Telephone: (858) 514-8605
Fax: (858) 514-8645
www.sixtenandassociates.com

Sacramento
P.O. Box 340430
Sacramento, CA 95834-0430
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Fax: (916) 263-9701
E-Mail: kbpsixten@aol.com

April 18, 2011

Drew Bohan, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: CSM 02-TC-10 County of Los Angeles
CSM 02-TC-51 Riverside Unified School District
California Public Records Act

Dear Mr. Bohan:

I have received the Commission's Draft Staff Analysis (DSA) for the above referenced consolidated test claim dated March 30, 2011, to which I respond on behalf of the test claimant for 02-TC-51, Riverside Unified School District.

PART 1. NEW PROGRAM STANDARD OF REVIEW

The DSA (15,16) states that to determine if a program is new or imposes a higher level of service, the statutes pled "must be compared with the legal requirements in effect immediately before the enactment." This is incorrect. The County of Los Angeles test claim was filed on October 15, 2002. The Riverside Unified School District test claim was filed on June 26, 2003. These filings are effective prior to the September 30, 2003, effective date of Statutes of 2002, Chapter 1124 (for mandates that became effective before January 1, 2002)[1], which first established at Government Code Section 17551,

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[1] Statutes of 2002, Chapter 1124, is generally effective September 30, 2002. However, the amendment that added Government Code section 17551, subdivision (c), delayed the effective date of that subdivision for mandates effective before January 1, 2002, by one year to September 30, 2003:

(c) Local agency and school district test claims shall be filed not later than three years following the date the mandate became effective, *or in the case of*

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subdivision (c), time limits for filing on statutes enacted after December 31, 1974. Based on the date these test claims were submitted, the standard of review is to compare the statutes pled on the effective date of the test claim filing (for these test claims, July 1, 2001) to the status of the law as of December 31,1974, pursuant to Government Code Section 17514.

The Commission, however, decided to the contrary on this issue in the March 24, 2011, Statement of Decision for 02-TC-25,46,31, Discrimination Complaint Procedures, relying upon *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859. The legal issue here is identical to that in the Discrimination Complaint Procedures test claim. The test claimant raises it here for purposes of the record and does not waive the issue. The proposed statement of decision should be revised to compare the statutes and laws effective July 1, 2001 (the effective reimbursement date of these test claims), to the law as it existed on December 31, 1974.

PART 2. PROGRAM STATUTES ANALYSIS

Section 6253-Collection of the Fee

The DSA (17) asserts that the plain language of Section 6253, subdivision (b), does not require the agency to determine or collect a fee for the duplication of records. Chapter 620, Statutes of 1998, Section 4, renumbered former Government Code Section 6253 as Government Code Section 6253.4, and at Section 5, added a new Government Code Section 6253. Subdivision (b) states:

> (b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person, *upon payment of fees covering direct costs of duplication, or a statutory fee, if applicable.* Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency. (*Emphasis added.*)

The unambiguous plain meaning of this Section is that collection of the fee is a condition precedent to providing the records, so it is a necessary activity to comply with the mandate to provide the records. Furthermore, to collect the fee, the amount must be determined.

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mandates that became effective before January 1, 2002, the time limit shall be one year from the effective date of this subdivision. (Emphasis added)

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Regarding the scope of this activity prior to 1975 (DSA 19), Section 6256, as amended by Chapter 575, Statutes 1970, Section 3, stated:

> Any person may receive a copy of any identifiable public record or copy thereof. Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency.

Section 6256 only required that the agency provide a copy, without any condition of collecting fees. This Section was amended in 1981 and then repealed by Chapter 620, Statutes of 1998, Section 7, in favor of new Section 6253,

Prior to 1975, Section 6257, as added by Chapter 1473, Statutes, 1968, Section 39, stated:

> A request for a copy of an identifiable public record or information produced therefrom, or a certified copy of such record, shall be accompanied by payment of a reasonable fee or deposit established by the state or local agency, or the prescribed statutory fee, where applicable.

Section 6257 only stated that the requesting party include the fee with the request. The 1968 language did not create a statutory condition precedent to releasing the records, that is, performing the mandate, nor did it require the agency to determine the amount of the fee and the collection of the fee prior to the release of the records. This Section was amended in 1975, 1976, repealed and replaced in 1981, and then repealed by Chapter 620, Statutes of 1998, Section 10, in favor of new Section 6253.

Section 6259 Court Costs and Attorney Fees

The DSA (26) concludes that Section 6253, subdivision (d), is not a new program or higher level of service, but rather it is a consequence of failing to perform the mandate to provide public records access.

Section 6259, as added by Chapter 1473, Statutes of 1968, Section 39, and as first amended by Chapter 1246, Statutes of 1975, Section 9, states:

> Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and such oral argument and additional evidence as the court may allow.

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> If the court finds that the public official's decision to refuse disclosure is not justified under the provisions of Sections 6254 or 6255, he shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure. Any person who fails to obey the order of the court shall be cited to show cause why he is not in contempt of court. The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. Such costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

The DSA has already concluded that there is a limited mandate to provide public records access as determined by changes from legislation enacted after December 31, 1974, or as otherwise excepted. To perform that mandate of appropriate public access, the agency has the affirmative duty to the people of California and certain protected classes of persons, such as peace officers and public agency employees, not to disclose the information described in Section 6254 and to provide a written justification for that non-disclosure pursuant to Section 6255. The evaluation of the public records for non-disclosable information is necessary to implement the mandated activity to disclose the disclosable portion of the record.

Sections 6254 and 6255 are heavily litigated. The West's Annotated California Code has about 150 case notes for these two sections. The standard for judicial review merely requires alleging the *appearance* of agency error. Costs and fees are awarded to the plaintiff should the court agree with the plaintiff that the agency non-disclosure was not justified, that is, neither correct nor reasonable in its inception or implementation. To the contrary, any award of costs and fees to the agency requires a higher standard, that the plaintiff's case was *clearly frivolous*, that is, something a reasonable person would never take seriously. However, that determination is made only after the court performs the required evaluation, which is after the public agency has incurred costs to respond to the petition. The standards are not mirror opposites by any means.

The court's determination is not a finding of failure to implement the mandate to disclose or not disclose the records, but instead, it is a conclusion as to whether the justification for the action was reasonable. The litigation costs incurred by the public agency are a necessary and reasonable consequence of its statutory duty to comply with Sections 62253, 6254 and 6255. Therefore, to the extent that the subject matter of the litigation pertains to information not to be disclosed pursuant to legislation enacted after December 31, 1974, the costs and fees incurred by the public agency to respond to the writ and the court are reimbursable, as well as any award assessed against the

public agency.

Certification

By my signature below, I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this submission is true and complete to the best of my own knowledge or information or belief, and that any attached documents are true and correct copies of documents received from or sent by the state agency which originated the document.

Executed on April 18, 2011 at Sacramento, California, by

Keith B. Petersen

C: Commission electronic service list
Mail service to CLM Financial Consulting, Inc.

Received
April 18, 2011
Commission on
State Mandates

DECLARATION OF SERVICE

Re: Test Claim 02-TC-10 County of Los Angeles
Test Claim 02-TC-51 Riverside Unified School District
California Public Records Act

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above-named claimants. I am 18 years of age or older and not a party to the entitled matter. My business address is P.O. Box 340430, Sacramento, CA 95834-0430.

On the date indicated below, I served the attached letter dated April 18, 2011, to:

Cheryl Miller
CLM Financial Consultants, Inc.
1241 North Fairvale Avenue
Covina, CA 91722

☒ **U.S. MAIL:** I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

❑ **OTHER SERVICE:** I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

(Describe)

❑ **FACSIMILE TRANSMISSION:** On the date below from facsimile machine number (916) 263-9701, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

☐ A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

❑ **PERSONAL SERVICE:** By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on April 18, 2011, at Sacramento, California.

Barbara Rinkle

DEPARTMENT OF FINANCE
EDMUND G. BROWN JR. • GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

April 20, 2011

Mr. Drew Bohan
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Mr. Bohan:

The Department of Finance (Finance) reviewed the draft staff analysis on the consolidated test claims "California Public Records Act" (02-TC-10 and 02-TC-51) filed by the County of Los Angeles and the Riverside Unified School District. The consolidated test claims were found to be partially reimbursable state mandates by the Commission on State Mandates (Commission) staff.

As stated in our January 14, 2011 comments, Finance maintains that the test claim statutes are necessary to implement Proposition 59 and the Commission should find that there are no costs mandated by the state pursuant to subdivision (f) of Government Code section 17556.

As required by the Commission regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied the adopted draft staff analysis have been provided with copies of this letter via either United States Mail or email. Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents e-filed with the Commission need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions or need additional information regarding this letter, please contact Carla Shelton, Associate Finance Budget Analyst at (916) 445-8913.

Sincerely,

Nona Martinez

NONA MARTINEZ
Assistant Program Budget Manager

Enclosure

Received
April 19, 2011
Commission on
State Mandates

Enclosure A

DECLARATION OF CARLA SHELTON
DEPARTMENT OF FINANCE
CLAIM NO. CSM-- 02-TC-10 and 02-TC-51

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

April 20, 2011
at Sacramento, CA

Carla Shelton

Received
April 19, 2011
Commission on
State Mandates

PROOF OF SERVICE

Test Claim Name: California Public Records Act
Test Claim Number: CSM-- 02-TC-10 and 02-TC-51

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8 Floor, Sacramento, CA 95814.

On April 20, 2011, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and non-state agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8 Floor, for Interagency Mail Service, addressed as follows:

A-16
Mr. Drew Bohan, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

League of California Cities
Attention: Ernie Silva
1400 K Street
Sacramento, CA 95815

Wellhouse and Associates
Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 20, 2011 at Sacramento, California.

Tamara Johnson

Commission on State Mandates

Original List Date: 11/2/2010
Last Updated: 3/11/2011
List Print Date: 03/30/2011
Claim Number: 02-TC-10 and 02-TC-51
Issue: California Public Records Act

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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CALIFORNIA DRIVE-IN RESTAURANT ASSOCIATION, et al., Respondents,
v.
MARGARETE L. CLARK, as Chief of the Division of Industrial Welfare, etc., et al., Appellants.
L. A. No. 18093.

Supreme Court of California
June 16, 1943.

HEADNOTES

(1) Administrative Law--Rules of Administrative Agencies--Interpretation.
Generally, the same rules of construction and interpretation which apply to statutes govern the construction and interpretation of rules and regulations of administrative agencies.

(2) Statutes § 87, 92--Repeal by Implication--Rule AgainstRepeal by Inconsistent Statute--Necessity for Clear Repugnancy.
The presumption is against repeals by implication, especially where the prior act has been generally understood and acted upon; and to overcome the presumption the two acts must be irreconcilable, clearly repugnant and so inconsistent that they cannot have concurrent operation.
See 23 **Cal.Jur.** 694; 25 **R.C.L.** 918.
(3) Statutes § 124--Construction--Circumstances Indicating Legislative Intent--Object to Be Accomplished.
The purpose and object sought to be accomplished by legislation is an important factor in determining the legislative intent.

(4a, 4b) Labor § 17--Regulation of Tipping--Rules and Statutes.
Section 3 of Order 12-A of the Industrial Welfare Commission and Lab. Code, §§ 350-356, are not irreconcilable, but entirely harmonious, since the basic policy underlying the order is the regulation of wages, hours and working conditions for minors and adult female employees in eating establishments, the subject of tipping being embraced only incidentally in furtherance of that general purpose, and the statute is concerned exclusively with tipping in respect to its relation to the public, the Legislature having expressly stated that its purpose was to prevent fraud upon the public.

(5) Labor § 17--Regulation of Tipping--Construction of Order.
Conceding that the effect of § 3 of Order 12-A of the Industrial Welfare Commission is to prohibit deduction of tips from employees' wages and that Lab. Code, §§ 350-356, impliedly authorizes their deduction, such prohibition should be strictly limited, and the section will not be violated in instances where the employer retains the entire amount of all tips received above the minimum wage, or deducts the tips from the amount of any wages it has agreed to pay in excess of a specified minimum.

(6) Labor § 17--Regulation of Tipping--Construction of Lab. Code, §§ 350-356.
That Lab. Code, §§ 350-356, authorize tipping is not a necessary conclusion, since the statute does not purport to legalize the retention or deduction of tips received by employees and is nothing more than a comprehensive regulation requiring that the public be informed of an employer's retention of tips.

(7) Labor § 17--Regulation of Tipping--Construction of Order.
Section 3 of Order 12-A of the Industrial Welfare Commission, given a liberal meaning to effectuate the ends in view, prohibits the retention by the employer of any amount of tips received by the employee below the minimum wage.

(8) Labor § 17--Regulation of Tipping--Purpose of Lab. Code, §§ 350-356.
If it be assumed that the Legislature in enacting Lab. Code, §§ 350-356, was endeavoring to avoid the difficulty encountered in reference to Stats. 1917, p. 257, still it did not purport to authorize deduction of tips from the minimum wage but merely regulated the retention of tips by employers regardless of whether such retention was or was not a violation of § 3 of Order 12-A of the Industrial Welfare Commission.

(9) Statutes § 180(2)--Aids to Construction--Contemporaneous Construction-- Executive or

Departmental Construction.
While it is a rule of statutory interpretation that the construction given a statute by the administrative agency charged with its enforcement is a significant factor to be considered by the courts in ascertaining the meaning of the statute, where there is no ambiguity and the interpretation is clearly erroneous, such administrative interpretation does not give legal sanction to a long continued incorrect construction.

(10) Trial § 379--Findings--Conclusiveness.
A finding constituting a conclusion of law is not binding upon the appellate court.

(11) Labor § 17--Regulation of Tipping--Validity of Order.
Section 3 of Order 12-A of the Industrial Welfare Commission is not invalid as an unconstitutional interference with freedom of contract as between employer and employee, since in the field of regulation of wages and hours by legislative authority constitutional guarantees relating to freedom of contract must give way to reasonable police regulations, and the Legislature did not act arbitrarily or capriciously, but reasonable grounds appear for the policy established by § 3 of the order.
See 15 **Cal.Jur.** 575; 31 **Am.Jur.** 1080.
(12) Labor § 17--Regulation of Tipping--Validity of Order.
Section 3 of Order 12-A of the Industrial Welfare Commission does not create an improper discrimination in respect to employers or the employees affected. The particular evils at which it is aimed are a part of the minimum wage policy and must be viewed in that light, hence it applies only to situations where such wages are fixed.
See 31 **Am.Jur.** 1038.
(13) Labor § 17--Regulation of Tipping--Validity of Order--Finding of Commission.
The fact that no finding by the Industrial Welfare Commission as a basis for Order 12-A appears in the order itself is not of importance, since § 6(a) of the minimum wage law (Stats. 1913, p. 632, as amended by Stats. 1921, p. 378) merely requires that the order shall specify "the minimum wage for women and minors in the occupation in question, maximum hours ... and the standard conditions of labor. ..."

(14a, 14b) Labor § 17--Regulation of Tipping--As Implied Power.
The adoption of § 3 of Order 12-A is within the implied power of the Industrial Welfare Commission, flowing from its power to fix minimum wages delegated to the commission.

(15) Administrative Law--Power of Administrative Agency to Adopt Rules and Regulations.
While an administrative agency may not, under the guise of its rule-making power, abridge or enlarge its authority or exceed the powers given to it by statutes, the authority of an administrative board or officer to adopt reasonable rules and regulations deemed necessary to the due and efficient exercise of the powers expressly granted cannot be questioned, and is implied from the power granted.

SUMMARY

APPEAL from a judgment of the Superior Court of Los Angeles County. Charles D. Ballard, Judge. Reversed.

Action for injunction and declaratory relief. Judgment for plaintiffs reversed.

COUNSEL

Robert W. Kenny, Attorney General, Earl Warren, Attorney General, Burdette J. Daniels and Alberta Belford, Deputies *290 Attorney General, Leo L. Schaumer and E. A. Lackmann for Appellants.

Thorpe & Bridges, Gerald Bridges, Frank R. Johnston and E. R. Young for Respondents.

CARTER, J.

Plaintiffs, operators of drive-in restaurants, successfully challenged in the superior court the validity of a regulation of the Industrial Welfare Commission, designated Order 12-A. Defendants, the Chief of the Division of Industrial Welfare of the Department of Industrial Relations and the members of the Industrial Welfare Commission of the Division of Industrial Welfare of the Department of Industrial Relations, appeal from the judgment entered for plaintiffs.

Plaintiffs are independent owners of establishments serving food and beverages. Their patronage consists chiefly of motorists who are served while remaining in their vehicles, however, service may be obtained in the

owner's restaurant buildings. Most of the employees are girls and women commonly referred to as "car hops." The employment arrangement contemplates that the tips received by the employees shall constitute their wages, except that the employers make up the difference if the tips received fall below the minimum wage for minors and adult females fixed by the Industrial Welfare Commission. Plaintiffs posted in their business establishments, the notices required by a statute of 1929, hereinafter set forth. In 1940, plaintiffs were advised by the Chief of the Division of Industrial Welfare that their employment arrangement violated Order 12-A, in that they could not consider the tips received by the minor and female adult employees in computing and paying the minimum wage, and that they would be required to comply with said order.

Order 12-A became effective on June 8, 1923. In section 1 it fixed a minimum wage of $16 per week to be paid to all female adult or minor employees in restaurants or other places where food and drinks were sold. Section 2 fixed the maximum amount the employer could deduct from the minimum wage for meals and lodging furnished the employee. Section 3, here in question, reads: "No employer may include tips or gratuities received by employees designated in section *291 1 hereof as part of the legal minimum wages fixed by said section of this Order." The remaining nine sections deal with hours of labor, working conditions, the employer's duty to keep records, and the like.

In 1929 (Stats. 1929, p. 1971), a statute was passed by the Legislature, now appearing in sections 350-356 of the Labor Code. Section 351 of the Labor Code reads:

"Every employer or agent who collects, takes, or receives any gratuity or a part thereof, paid, given to, or left for an employee by a patron, or who deducts any amount from wages due an employee on account of such gratuity, or who requires an employee to credit the amount, or any part thereof, of such gratuity against and as a part of the wages due the employee from the employer, shall keep posted in a conspicuous place at the location where his business is carried on, in a place where it can easily be seen by the patrons thereof, a notice, in lettering or printing of not less than 48-point black- face type, to the following effect:

"(a) If not shared by the employees, that any gratuities paid, given to, or left for employees by patrons go to and belong to the business or employer and are not shared by the employees thereof.

"(b) If shared by the employees, the extent to which gratuities are shared between employer and employees."

Section 352 specifies that the notice shall also state the extent to which employees are required to accept gratuities in lieu of wages or permit them to be credited against their wages. The provisions apply to all businesses having one or more persons in service. A gratuity "includes any tip, gratuity, money, or part thereof, which has been paid or given to or left for an employee by a patron of a business over and above the actual amount due such business for services rendered or for goods, food, drink, or articles sold or served to such patron."

A penalty is imposed for violation of the act, and it is declared that:

"The Legislature expressly declares that the purpose of this article is to prevent fraud upon the public in connection with the practice of tipping and declares that this article is passed for a public reason and cannot be contravened by a private agreement. As a part of the social public policy *292 of this State, this article is binding upon all departments of the State." (Lab. Code, sec. 356.)

Whether the 1929 statute impliedly annulled section 3 of said Order 12-A must be determined in the light of the appropriate rules of statutory construction. (1) Generally, the same rules of construction and interpretation which apply to statutes govern the construction and interpretation of rules and regulations of administrative agencies. (*Miller v. United States*, 294 U.S. 435 [55 St.Ct. 440, 79 L.Ed. 977].) (2) With reference to implied repeals of statutes this court stated in *Penziner v. West American Finance Co.*, 10 Cal.2d 160, 176 [74 P.2d 252]:

"The presumption is against repeals by implication, especially where the prior act has been generally understood and acted upon. To overcome the presumption the two acts must be irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation. The courts are bound, if possible, to maintain the integrity of both statutes if the two

may stand together. Where a modification will suffice, a repeal will not be presumed." (See 23 Cal.Jur. 694, et seq.) (3) The purpose and object sought to be accomplished by legislation is an important factor in determining the legislative intent. (*San Francisco v. San Mateo County,* 17 Cal.2d 814 [112 P.2d 595].)

(4a) Applying those rules to the instant case we find no repugnancy. The statute of 1929 and section 3 of Order 12-A rather than being irreconcilable are entirely harmonious. The basic policy underlying the order is the regulation of wages, hours and working conditions for minors and adult female employees in eating establishments. The subject of tipping is embraced only incidentally in the furtherance of that general purpose. Broadly, it was designed to deal with the industrial welfare of such employees, and the relation of their welfare to the general public interest. On the other hand the statute is concerned exclusively with tipping in respect to its relation to the public which patronizes not only restaurant establishments but many other businesses. The Legislature expressly stated that its purpose is "to prevent fraud upon the public," a policy underlying no part of the order. Section 3 of the order states that tips received by the designated employees may not be included in the minimum wage therein fixed. (5) If it be conceded that the effect ***293** of said section is to prohibit the deduction of tips from the employees' wages, and that the statute impliedly authorizes such deduction as asserted by plaintiffs, such prohibition should be strictly limited, and said section would not be violated in instances where the employer retained the entire amount of all tips received *above* the minimum wage, or deducted the tips from the amount of any wages he agreed to pay in excess of the specified minimum. It does not apply to male employees or persons employed in businesses other than those mentioned.

(6) Further, it is not necessary to conclude that the statute authorizes tipping. It does not purport to authorize or legalize the retention or deduction of the tips received by the employees. It is nothing more than a comprehensive regulation in respect to advising the public of the retention of tips by the employer whether such retention is legal or not, the essential requirement being that the public be informed of the practice. Fairly interpreted, the posting of the notice is required regardless of whether such retention or deduction is being made from the minimum legal wage fixed by section 3. (7) It may be said that section 3 given a liberal meaning to effectuate the ends in view, prohibits the retention by the employer of any amount of tips received by the employee below the minimum wage, because if the employer could retain such tips he would be, in effect, accomplishing indirectly that which he could not do directly, namely, including the tips in the legal wage. It would be a subterfuge for him to receive all the tips and pay the minimum wage. The end result would be counting the tips as a part of the legal wage. That conclusion does not mean that section 3 and the statute are inconsistent to that extent. (4b) The purpose of the statute and section 3 are entirely different. The statute does not purport to cover the special field of tipping in regard to its effect on the minimum wage law. It is aimed at the protection of the public against fraud.

(8) For the same reasons the historical arguments advanced by plaintiffs are not persuasive. True, a statute was enacted in 1917 (Stats. 1917, p. 257) which made it unlawful for an employer to demand tips received by his employee in consideration of the latter's being hired or retained. That act, like the 1929 act, was broad in its scope and did not purport ***294** to affect tipping in relation to minimum wages. It was declared invalid in *In re Farb,* 178 Cal. 592 [174 P. 320, 3 A.L.R. 301], and thereafter the 1929 act was passed. Both of those statutes were aimed at the prevention of a fraud on the public and were not concerned with the effect on the inclusion of tips in minimum wages and the purpose of section 3 of said Order 12-A. If it be assumed that the Legislature in passing the 1929 statute was endeavoring to avoid the difficulty encountered with reference to the 1917 act in *In re Farb, supra,* still it did not purport to authorize the deduction of tips from the minimum wage. It was regulating the retention of tips by employers regardless of whether such retention was or was not a violation of section 3 of Order 12-A. The statute and the order were designed for fundamentally different purposes.

(9) Plaintiffs urge that because the predecessors in office of defendants did not enforce section 3 of Order 12-A, they must have considered it annulled by the 1929 statute, and some of the plaintiffs having been so advised by executive officers of defendants predecessors, the statute should be interpreted to annul said section 3. It is undoubtedly a rule of statutory interpretation that the construction given a statute by the administrative agency charged with the enforcement

of it is a significant factor to be considered by the courts in ascertaining the meaning of such statute. (*Los Angeles County v. Superior Court,* 17 Cal.2d 707 [112 P.2d 10]; 23 Cal.Jur. 776-7.) But where there is no ambiguity and the interpretation is clearly erroneous, such administrative interpretation does not give legal sanction to a long continued incorrect construction. The administrative interpretation cannot alter the clear meaning of a statute. (*Los Angeles County v. Superior Court, supra;* 23 Cal.Jur. 776.) We have seen that the 1929 statute does not purport to legalize the deduction or retention of tips by an employer, nor does section 3 of Order 12-A prohibit tipping; it merely prohibits the inclusion of tips in the minimum wage for certain employees. The alleged implied nullification which is not favored in the law does not exist.

(10) The trial court found: "... that in adopting section 3 of Order 12A ... defendant ... acted in excess of its jurisdiction." That finding is not, as claimed by plaintiffs, binding upon this court, inasmuch as it is a conclusion of law. In ***295** support of it plaintiffs challenge the constitutionality of section 3, and the validity of the adoption of the order.

(11) Plaintiffs contend that section 3 is invalid because it is an unconstitutional interference with the freedom of contract as between employer and employee. (United States Const., Fourteenth Amendment; Cal.Const., art. I, secs. 1, 13; art. XX, sec. 18.) The main premise relied upon by plaintiffs is that section 3 prohibits an employer and his employee from agreeing that the former shall retain all tips received by the latter, citing *In re Farb, supra,* declaring unconstitutional the 1917 act (*supra.*), and denouncing such practice. It has heretofore been pointed out that the 1917 act was not aimed at and did not involve any restrictions on such contracts directly as a part and in aid of the minimum wage requirements. The 1917 act applied expressly to any and all employees without regard to whether a legal wage was fixed for them. For that reason we do not consider the Farb case as necessarily supporting plaintiffs' position. Furthermore, the reasoning of the Farb case is out of line with the later authorities upholding minimum wage legislation. (See *United States v. Darby,* 312 U.S. 100 [61 S.Ct. 451, 85 L.Ed. 609, 132 A.L.R. 1430]; *West Coast Hotel Co. v. Parrish,* 300 U.S. 379 [57 S.Ct. 578, 81 L.Ed. 703, 108 A.L.R. 1330]; 31 Am.Jur., Labor, sec. 503; 130 A.L.R. 273; 132 A.L.R. 1443.) There is a distinct difference between a comprehensive prohibition of retention of tips by employers, and the prohibition of such practice as a part of an order fixing minimum wages.

It must be remembered that in the field of regulation of wages and hours by legislative authority, constitutional guarantees relating to freedom of contract must give way to reasonable police regulations. The Supreme Court of the United States in discussing the regulation of hours and wages of women employees stated in *West Coast Hotel Co. v. Parrish, supra,* at 392:

"This power under the Constitution to restrict freedom of contract has had many illustrations. That it may be exercised in the public interest with respect to contracts between employer and employee is undeniable. Thus statutes have been sustained limiting employment in underground mines and smelters to eight hours a day (***296***Holden v. Hardy,* 169 U.S. 366 [18 S.Ct. 383, 42 L.Ed. 780]; in requiring redemption in cash of store orders or other evidences of indebtedness issued in the payment of wages (*Knoxville Iron Co. v. Harbison,* 183 U.S. 13 [22 S.Ct. 1, 46 L.Ed. 55]); in forbidding the payment of seamen's wages in advance (*Patterson v. Bark Eudora,* 190 U.S. 169 [23 S.Ct. 821, 47 L.Ed. 1002]); in making it unlawful to contract to pay miners employed at quantity rates upon the basis of screened coal instead of the weight of the coal as originally produced in the mine (*McLean v. Arkansas,* 211 U.S. 539 [29 S.Ct. 206, 53 L.Ed. 315]); in prohibiting contracts limiting liability for injuries to employees (*Chicago, B. & Q. R. Co. v. McGuire supra* [219 U.S. 549 (31 S.Ct. 259, 55 L.Ed. 328)]); in limiting hours of work of employees in manufacturing establishments (*Bunting v. Oregon,* 243 U.S. 426 [37 S.Ct. 435, 61 L.Ed. 830]); and in maintaining workmen's compensation laws (*New York Central R. Co. v. White,* 243 U.S. 188 [37 S.Ct. 247, 61 L.Ed. 667]; *Mountain Timber Co. v. Washington,* 243 U.S. 219 [37 S.Ct. 260, 61 L.Ed. 685]). In dealing with the relation of employer and employed, the Legislature has necessarily a wide field of discretion in order that there may be suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression. *Chicago, B. & Q. R. Co. v. McGuire, supra,* p. 570." And at page 399:

"The legislature had the right to consider that its

minimum wage requirements would be an important aid in carrying out its policy of protection. The adoption of similar requirements by many States evidences a deepseated conviction both as to the presence of the evil and as to the means adapted to check it. *Legislative response to that conviction cannot be regarded as arbitrary or capricious, and that is all we have to decide.* Even if the wisdom of the policy be regarded as debatable and its effects uncertain, still the legislature is entitled to its judgment." (Emphasis added.) Many other illustrations could be given. In the recent case of *Williams* v. [*Jacksonville*] *Terminal Co.*, 315 U.S. 386 [62 S.Ct. 659, 86 L.Ed. 914], the court had before it the question of whether the tips received by red caps could be counted as a part of the minimum wage under the Fair Labor Standards Act (29 U.S.C.A. 201 et seq.) It was held ***297** that they could and that legally speaking such tips were wages under the agreement between the employer and employee. However, the court was careful to point out that the Fair Labor Standards Act did not prohibit the inclusion of tips in the minimum wage, and it recognized that such a prohibition might well be valid. It stated at page 388:

"The Fair Labor Standards Act is not intended to do away with tipping. Nor does it appear that Congress intended by the general minimum wage to give the tipping employments an earnings-preference over the nonservice vocations. The petitioners do not dispute the railroad's contention that, during the entire period, each red cap received as earnings-cash pay plus tips-a sum equal to the required minimum wage. Nor is there denial of increased pay to the red caps on account of the minimum wage guarantee of the challenged plan as compared with the former tipping system. The guarantee also betters the mischief of irregular income from tips and increases wage security. *The desirability of considering tips in setting a minimum wage, that is whether tips from the viewpoint of social welfare should be counted as part of that legal wage, is not for judicial decision. We deal here only with the petitioners' assertion that the wages Act requires railroads to pay the red caps the minimum wage without regard to their earnings from tips.*" (Emphasis added.)

The presumption is that the Legislature had adequate and reasonable basis for its police regulations and that a statute providing for such regulations is constitutional (5 Cal.Jur. 628, et seq.), and, as expressed in *West Coast Hotel Co. v. Parrish, supra,* the only question to be decided is whether it acted arbitrarily or capriciously. There may be others, but certain reasonable grounds appear for the policy established by section 3 of Order 12-A. As we have seen from the foregoing quotation from *Williams v. Terminal Co., supra,* that possibility is recognized where the court declared that whether the social welfare required that tips be not counted as part of the minimum wage was not for "judicial decision." It cited for that statement, Anderson, *Tips & Legal Minimum Wages,* XXXI American Labor Legislation Review 11, at page 13, where it was aptly said that if the tips received were to be counted as a part of the minimum ***298** wage "... the employee would be required to report to her employer the amount of tips received each week, in order that he in turn could know the amount of wage he must pay to make up the $16.

"If this practice were followed the purpose of the minimum-wage law would soon be defeated. It would not be long before employers discovered which of their employees were costing them the most money. Obviously, the girls who received the least in tips would have to be paid the highest wages to make up the $16. Gradually the girls receiving low tips would be dismissed, whether efficient or not, and those with ability to wile larger tips from an irresponsible public would be employed in their places. The workers would be no slower than the employers in discovering the effects of the reporting system on their welfare. The dismissal of one or two workers would be sufficient to warn the others that if they were to retain their jobs their tips must equal those of their more fortunate co-workers. There is always one effective way out of a situation like this for a worker who is desperately in need of a job, and that is to report to the employer a greater amount of tips than actually is received. The whole purpose of the minimum wage law, that of guaranteeing the worker a living wage, would be defeated if this practice were permitted and the State authorities would be almost helpless to correct the situation. To prevent just this kind of abuse, most State minimum-wage orders for hotels and restaurants contain a provision that under no circumstances shall tips be counted as a part of the legal minimum wage." In order that the welfare of the employees be advanced and the benefits of the minimum wage law be preserved, it may well be said that section 3 has a reasonable basis. If the employees may be induced, and in effect coerced, by fear of dismissal by an employment contract requiring the tips to be counted as a part of the

minimum wage, to report their tips as equal to the minimum wage even though they are not, the minimum wage requirement is seriously undermined. By indirect method they would be forced into a position of receiving less than the standard fixed. If the employer is permitted to retain the tips in an amount equal to the minimum wage, which as seen would be a violation of section 3, the same condition would exist. The fear of dismissal might well coerce the employees to turn over as tips ***299** a portion of their own funds when the tips received were not equal to the legal wage. The effectiveness of the minimum wage law would be thus impaired. With the employer prevented from retaining tips in the amount of the minimum legal wage, a salutary result would follow. The benefits of the minimum wage law would be preserved, and the dignity of the laborer and his social position would be advanced by relieving him of the necessity of resorting to the undignified conduct encouraged by the tipping practice.

The Legislature clearly sets forth the purpose sought to be obtained by the fixing of minimum wages as that adequate to supply the necessary cost of proper living and to maintain the health and welfare of the employees. (Lab. Code, sec. 1182.) We perceive that that purpose may be thwarted if tips may be included in the minimum wage.

The foregoing discussion does not mean that tips may not be considered wages under certain circumstances such as, computation of compensation under workmen's compensation laws. (*Hartford Acc. & Indem. Co. v. Industrial Acc. Com.*, 41 Cal.App. 543 [183 P. 234]; 29 Cal.L.Rev. 774; 75 A.L.R. 1223, and generally *Williams v. Terminal Co., supra.*) An employer may permit his employee to retain the tips and the arrangement may be that they shall be compensation, but section 3 is aimed at the evils above-mentioned in connection with *minimum wages,* and merely because tips may be termed wages under certain circumstances does not mean that they may be counted as part of the minimum wage where to do so would contravene the policy of section 3 and permit the evils there denounced.

(12) In their contention that section 3 is not uniform and is discriminatory (United States Const., Fourteenth Amendment; Cal.Const., art. I, sec. 21; art. IV, sec. 25), plaintiffs suggest that section 3 would not be violated if the employment contract called for all tips to be retained by the employer, citing *Settrie v. Falkner,* Commerce Clearing House Labor Law Service, 3d ed. sec. 60, 779. Apparently that case does not appear in the reporter system nor the Ohio Appellate Reports, but in any event we are not persuaded by its reasoning. Section 3 does present such a situation.

Section 3 creates no improper discrimination in respect to employers or the employees affected. The particular evils ***300** at which it is aimed are a part of the minimum wage policy and must be viewed in that light, hence it applies only to situations where such wages are fixed. A reasonable classification has been made. There are many instances where classifications with reference to wages and hours have been upheld. (See *Matter of Application of Martin,* 157 Cal. 51 [106 P. 235, 26 L.R.A. N.S. 242], hours of employment in underground mines; *Matter of Application of Miller,* 162 Cal. 687 [124 P. 427], hours of labor for women but not men.) It is said in 31 Am.Jur., Labor, sec. 414:

"The relation of employer and employee has long been the basis for specific legislation, and statutes applicable only to such relation are not subject to the objection that they constitute class legislation. Moreover, the equal protection of the laws is not denied by the classification of occupations if such classification has a reasonable basis. Such classification may be based upon matters which are personal to the individuals who are acting as employees. For example, statutory regulations with reference to labor of women or children or both may be sustained as against the objection that they constitute an arbitrary discrimination because they do not extend to men. Moreover, the classification may be based not only on the character of the employees but upon the nature of the employer's business, since the character of the work may largely depend upon the nature and the incidents of the business in connection with which the work is done. A statute dealing with employees in a particular line of business does not create an arbitrary discrimination merely because the operation of the statute is not extended to other lines of business having their own circumstances and conditions, or to domestic service."

(13) It is contended that there was no finding by the Industrial Welfare Commission as a basis for its Order 12-A, and that such finding was necessary to the validity of said order; that is, that the wages fixed were adequate to supply the cost of proper living as speci-

fied in the minimum wage law at the time of its adoption. (Stats. 1913, p. 632, as amended.) That contention must necessarily be limited to the claim that such finding must appear in the order itself inasmuch as the appeal is on the judgment roll alone and hence all of the court's findings must be deemed to have been supported by the evidence. Plaintiffs, respondents herein, are bound by those ***301** findings. The trial court found that the order was adopted by the commission pursuant to and under the authority of the minimum wage laws; that on "June 8, 1923, the ... Commission promulgated Order 12-A for the hotel and restaurant industries. That *prior to the formulation and adoption* of said Order 12-A, and in the manner and form prescribed by statute, a conference denominated a wage board of the employers and employees of the said hotel and restaurant industries was called by said commission; that thereafter and prior to the adoption of said Order 12-A, and within the time and in the manner prescribed by law a public hearing was called and held upon said proposed Order 12-A, at which said meeting and wage board conference the employers and employees of said restaurant industry of the State of California were regularly represented.

"That at said public hearing and other meetings witnesses were sworn, testimony taken, and evidence received. It is further true that *every act and thing required by statute to be done by said Commission in the promulgation and adoption of said Order 12-A was done by said Commission within the time and in the manner and form required by statute."* (Emphasis added.) It was also found that the order was in full force and effect except as otherwise found in the findings referring to its constitutionality and implied repeal by the 1929 statute.

There have been decisions by the United States Supreme Court both ways upon the question of the necessity of findings by an administrative agency as a basis for a rule or regulation issued by it. In *Panama Ref. Co. v. Ryan,* 293 U.S. 388 [55 S.Ct. 241, 79 L.Ed. 446], findings were declared necessary to support a presidential order. The most recent holding by that court in *Pacific States Box & Basket Co. v. White,* 296 U.S. 176 [56 S.Ct. 159, 80 L.Ed. 138, 101 A.L.R. 853], is that no findings are necessary where the statute does not require them to support the order of the Department of Agriculture of the State of Oregon fixing the sizes for containers of horticultural products, although a violation of the order is a misdemeanor. That holding is a definite departure from the broad rule announced in *Panama Ref. Co. v. Ryan, supra.* (See 49 Harv.L.Rev. 827.) Other cases have considered the question. (See *American Telephone & Telegraph Co. v. United States,* 14 F.Supp. 121; *Bayley v. Southland Gasoline Co.,* 131 F.2d 412; ***302***Twin City Milk Producers Assn. v. McNutt,* 122 F.2d 564.) We have not been referred to and have been unable to find any case in California on the subject, and while some of the federal court cases indicate that the findings must appear in the order, plaintiffs have suffered no prejudice. The findings of the trial court show that if findings were required by the statute the commission made them. The mere fact that they do not appear on the face of the order is not therefore of importance. The statute did not require that the findings appear on the face of the order. Section 6(c) of the act states merely that the order shall specify "the minimum wage for women and minors in the occupation in question, the maximum hours ... and the standard conditions of labor. ..." (Stats. 1913, p. 632, as amended Stats. 1921, p. 378.)

(14a) The adoption of section 3 of Order 12-A was within the power and authority delegated to the Industrial Welfare Commission by the Legislature. The Constitution authorizes the Legislature to provide a minimum wage for women and minors and for the comfort, health, safety and general welfare of employees, and to confer upon a commission the authority it deems necessary to carry out those purposes. (Cal. Const., art. XX, sec. 17 I/2.) The act under which Order 12-A was promulgated empowers the commission to fix "a minimum wage to be paid to women and minors engaged in any occupation, which shall not be less than a wage adequate to supply such women and minors the necessary cost of proper living and to maintain the health and welfare of such women and minors," and to establish the maximum working hours and the standard conditions of labor. (Stats. 1913, p. 632, sec. 6, as amended Stats. 1921, p. 378.) In our previous discussion of the constitutionality of section 3 we have shown that it had a direct relation to minimum wages and was a natural and important incident thereof. It is an incident of the establishment of minimum wages similar to the provisions in Order 12-A, which specify to what extent board and lodging furnished by the employer may be considered wages. The power to provide safeguards to insure the receipt of the minimum wage and to prevent evasion and subterfuge, is necessarily an implied power flowing from the power to fix a minimum wage delegated to

the commission.

(15) It is true that an administrative agency may not, under the guise of its rule making power, abridge or enlarge its authority or exceed the powers given to it by the statute ***303** the source of its power. (*Boone v. Kingsbury,* 206 Cal. 148 [273 P. 797]; *California E. Com. v. Black-Foxe Military Inst.,* 43 Cal.App.2dSupp. 868 [110 P.2d 729]; *Hodge v. McCall,* 185 Cal. 330 [197 P. 86]; *Bank of Italy v. Johnson,* 200 Cal. 1 [251 P. 784].) However, "the authority of an administrative board or officer, ... to adopt reasonable rules and regulations which are deemed necessary to the due and efficient exercise of the powers expressly granted cannot be questioned. This authority is implied from the power granted." (*Bank of Italy v. Johnson, supra,* 20.) (See, also, *Crawford v. Imperial Irrigation Dist.,* 200 Cal. 318 [253 P. 725]; 21 Cal.Jur. 874.) (14b) In the instant case the power to adopt section 3 may be implied as a power to make effective the order fixing the minimum wage. The power to fix that wage does not confine the agency to that single act. It may adopt rules to make it effective. Plaintiffs cite *Adolph Coors Co. v. Corbett,* (Cal.App.) 123 P.2d 74, decided by the District Court of Appeal. A hearing was granted by this court in that case and thereafter it was dismissed. It is not a controlling authority.

The judgment is reversed.

Gibson, C. J., Shenk, J., Curtis, J., and Edmonds, J., concurred.
Traynor, J., and Schauer, J., did not participate herein.
Respondents' petition for a rehearing was denied July 15, 1943. Traynor, J., and Schauer, J., did not participate therein. ***304**

Cal.
California Drive-In Restaurant Ass'n v. Clark
22 Cal.2d 287, 140 P.2d 657, 147 A.L.R. 1028, 7 Lab.Cas. P 61,672

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161 Cal.App.3d 868, 207 Cal.Rptr. 886
(Cite as: 161 Cal.App.3d 868)

COUNTY OF SAN DIEGO, Plaintiff and Appellant,
v.
STATE BOARD OF CONTROL, Defendant and Respondent.

Civ. No. 31053.

Court of Appeal, Fourth District, Division 1, California.
Nov 14, 1984.

SUMMARY

The trial court denied a petition by the County of San Diego to compel the state Board of Control to reimburse the county for investigation expenses in the trial of a 15-year-old indigent defendant on 2 counts of first degree murder with special circumstance allegations. (Superior Court of San Diego County, No. 498677, Jack R. Levitt, Judge.)

The Court of Appeal affirmed. The court applied retroactively the rule Pen. Code, § 987.9, providing an indigent defendant investigation funds in the trial of a capital case, is not applicable where the death penalty is not possible. The court held, because Pen. Code, § 190.5, prohibited imposing the death penalty on minors, Pen. Code, § 987.9, did not authorize expenditures for experts and investigators and the county was not entitled to reimbursement for such expenditures. (Opinion by Brown (Gerald), P. J., with Staniforth and Wiener, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Criminal Law § 43--Rights of Accused--Fair Trial--Indigents-- Appointment of Investigator--Capital Cases--Retroactivity of Decision.

Retroactive application of judicial statutory interpretation is proper where the interpretation of the statute involves no novel or unforeseeable judicial expansion of the statutory language in question. Thus, in a mandamus proceeding to compel reimbursement to a county from the state Board of Control for investigation funds for a 15-year-old indigent defendant, authorized by the trial court pursuant to Pen. Code, § 987.9, allowing such funds in the trial of a capital case, a later Supreme Court decision holding a capital case is one in which the death penalty may be imposed, and the statute does not apply if such penalty is not possible, applied retroactively to support the lower court's denial of the petition for mandate, since Pen. Code, § 190.5, prohibiting imposing the death penalty on minors, made the death penalty impossible.

[See **Cal.Jur.3d,** Criminal Law, § 145; **Am.Jur.2d,** Criminal Law, § 733.]

COUNSEL

Lloyd M. Harmon, Jr., County Counsel, Howard P. Brody, Chief Deputy County Counsel, and Nathan C. Northup, Deputy County Counsel, for Plaintiff and Appellant.

John K. Van de Kamp, Attorney General, N. Eugene Hill, Assistant Attorney General, and Beth Lori Faber, Deputy Attorney General, for Defendant and Respondent.

BROWN (Gerald), P. J.

The County of San Diego (County) appeals a judgment denying its petition for writ of mandate against the Board of Control of the State of California (Board).

I

The People charged 15-year-old Brenda S. with 2 counts of first degree murder with special circumstance allegations. The County spent $26,035, authorized by the court, for experts and investigators to help S.' counsel prepare her defense. The Board refused to reimburse the County for these funds. The superior court denied the County's petition in mandate to require the Board to pay.

II

(1)Penal Code section 987.9 permits an attorney for an indigent defendant to ask the court for investigation funds in the trial of a capital case. Revenue and Taxation Code section 2231 authorizes state reimbursement for state mandated expenses. A "capital case" is one where the death penalty may actually be imposed; funds are not authorized under section 987.9 where the death penalty is not possible (*Sand v. Superior Court* (1983) 34 Cal.3d 567, 572 [194

Cal.Rptr. 480, 668 P.2d 787]). Here the death penalty ***870** is impossible because Penal Code section 190.5 prohibits imposing the death penalty on minors. Section 987.9 does not authorize expenditures for experts and investigators for S.'s defense and the County is not entitled to reimbursement from the Board for such expenditures.

III

The County contends absent any case construing section 987.9, the court hearing the matter in 1979 reasonably interpreted the words "capital case" in section 987.9 to authorize funds for S.'s defense. The County asserts under these circumstances this court should not retroactively apply *Sand's* definition of "capital case" to S.'s case. However, retroactive application of judicial statutory interpretation is proper where, as here, the court's interpretation of the statute involves no "novel [or] unforeseeable judicial expansion of the statutory language in question ...." (*Chambers v. Municipal Court* (1977) 65 Cal.App.3d 904, 912 [135 Cal.Rptr. 695]; see also *Ross v. Oregon* (1913) 227 U.S. 150, 161 [57 L.Ed. 458, 463, 33 S.Ct. 220].) This court must apply *Sand* in determining whether section 987.9 authorized the County's appropriation for S.'s defense (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455 [20 Cal.Rptr. 321, 369 P.2d 937]).

The superior court properly denied the County's petition for mandate.

The judgment is affirmed.

Staniforth, J., and Wiener, J., concurred. ***871**

Cal.App.4.Dist.
County of San Diego v. State Bd. of Control
161 Cal.App.3d 868, 207 Cal.Rptr. 886

END OF DOCUMENT

Estate of DENIS H. GRISWOLD, Deceased.
NORMA B. DONER-GRISWOLD, Petitioner and Respondent,
v.
FRANCIS V. SEE, Objector and Appellant.

No. S087881.

Supreme Court of California
June 21, 2001.

SUMMARY

After an individual died intestate, his wife, as administrator of the estate, filed a petition for final distribution. Based on a 1941 judgment in a bastardy proceeding in Ohio, in which the decedent's biological father had confessed paternity, an heir finder who had obtained an assignment of partial interest in the estate from the decedent's half siblings filed objections. The biological father had died before the decedent, leaving two children from his subsequent marriage. The father had never told his subsequent children about the decedent, but he had paid court-ordered child support for the decedent until he was 18 years old. The probate court denied the heir finder's petition to determine entitlement, finding that he had not demonstrated that the father was the decedent's natural parent pursuant to Prob. Code, § 6453, or that the father had acknowledged the decedent as his child pursuant to Prob. Code, § 6452, which bars a natural parent or a relative of that parent from inheriting through a child born out of wedlock on the basis of the parent/child relationship unless the parent or relative acknowledged the child and contributed to the support or care of the child. (Superior Court of Santa Barbara County, No. B216236, Thomas Pearce Anderle, Judge.) The Court of Appeal, Second Dist., Div. Six, No. B128933, reversed.

The Supreme Court affirmed the judgment of the Court of Appeal. The court held that, since the father had acknowledged the decedent as his child and contributed to his support, the decedent's half siblings were not subject to the restrictions of Prob. Code, § 6452. Although no statutory definition of "acknowledge" appears in Prob. Code, § 6452, the word's common meaning is: to admit to be true or as stated; to confess. Since the decedent's father had confessed paternity in the 1941 bastardy proceeding, he had acknowledged the decedent under the plain terms of the statute. The court also held that the 1941 Ohio judgment established the decedent's biological father as his natural parent for purposes of intestate succession under Prob. Code, § 6453, subd. (b). Since the identical issue was presented both in the Ohio proceeding and in this California proceeding, the Ohio proceeding bound the parties in this proceeding. (Opinion by Baxter, J., with George, C. J., Kennard, Werdegar, and Chin, JJ., concurring. Concurring opinion by Brown, J. (see p. 925).)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d) Parent and Child § 18--Parentage of Children-- Inheritance Rights--Parent's Acknowledgement of Child Born Out of Wedlock:Descent and Distribution § 3--Persons Who Take--Half Siblings of Decedent.

In a proceeding to determine entitlement to an intestate estate, the trial court erred in finding that the half siblings of the decedent were precluded by Prob. Code, § 6452, from sharing in the intestate estate. Section 6452 bars a natural parent or a relative of that parent from inheriting through a child born out of wedlock unless the parent or relative acknowledged the child and contributed to that child's support or care. The decedent's biological father had paid court-ordered child support for the decedent until he was 18 years old. Although no statutory definition of "acknowledge" appears in § 6452, the word's common meaning is: to admit to be true or as stated; to confess. Since the decedent's father had appeared in a 1941 bastardy proceeding in another state, where he confessed paternity, he had acknowledged the decedent under the plain terms of § 6452. Further, even though the father had not had contact with the decedent and had not told his other children about him, the record disclosed no evidence that he disavowed paternity to anyone with knowledge of the circumstances. Neither the language nor the history of § 6452 evinces a clear intent to make inheritance contingent upon the decedent's awareness of the relatives who claim an inheritance right.

[See 12 Witkin, Summary of Cal. Law (9th ed. 1990) Wills and Probate, §§ 153, 153A, 153B.]

(2) Statutes §

29--Construction--Language--Legislative Intent.

In statutory construction cases, a court's fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. A court begins by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, the court presumes the lawmakers meant what they said, and the plain meaning of the language governs. If there is ambiguity, however, the court may then look to extrinsic sources, including the ostensible objects to be achieved and the legislative history. In such cases, the court selects the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoids an interpretation that would lead to absurd consequences.

(3) Statutes § 46--Construction--Presumptions--Legislative Intent--Judicial Construction of Certain Language.

When legislation has been judicially construed and a subsequent statute on the same or an analogous subject uses identical or substantially similar language, a court may presume that the Legislature intended the same construction, unless a contrary intent clearly appears.

(4) Statutes § 20--Construction--Judicial Function.

A court may not, under the guise of interpretation, insert qualifying provisions not included in a statute.

(5a, 5b) Parent and Child § 18--Parentage of Children--Inheritance Rights--Determination of Natural Parent of Child Born Out of Wedlock:Descent and Distribution § 3--Persons Who Take--Half Siblings of Decedent.

In a proceeding to determine entitlement to an intestate estate, the trial court erred in finding that the half siblings of the decedent, who had been born out of wedlock, were precluded by Prob. Code, § 6453 (only "natural parent" or relative can inherit through intestate child), from sharing in the intestate estate. Prob. Code, § 6453, subd. (b), provides that a natural parent and child relationship may be established through Fam. Code, § 7630, subd. (c), if a court order declaring paternity was entered during the father's lifetime. The decedent's father had appeared in a 1941 bastardy proceeding in Ohio, where he confessed paternity. If a valid judgment of paternity is rendered in Ohio, it generally is binding on California courts if Ohio had jurisdiction over the parties and the subject matter, and the parties were given reasonable notice and an opportunity to be heard. Since the Ohio bastardy proceeding decided the identical issue presented in this California proceeding, the Ohio proceeding bound the parties in this proceeding. Further, even though the decedent's mother initiated the bastardy proceeding prior to adoption of the Uniform Parentage Act, and all procedural requirements of Fam. Code, § 7630, may not have been followed, that judgment was still binding in this proceeding, since the issue adjudicated was identical to the issue that would have been presented in an action brought pursuant to the Uniform Parentage Act.

(6) Judgments § 86--Res Judicata--Collateral Estoppel--Nature of Prior Proceeding--Criminal Conviction on Guilty Plea.

A trial court in a civil proceeding may not give collateral estoppel effect to a criminal conviction involving the same issues if the conviction resulted from a guilty plea. The issue of the defendant's guilt was not fully litigated in the prior criminal proceeding; rather, the plea bargain may reflect nothing more than a compromise instead of an ultimate determination of his or her guilt. The defendant's due process right to a civil hearing thus outweighs any countervailing need to limit litigation or conserve judicial resources.

(7) Descent and Distribution § 1--Judicial Function.

Succession of estates is purely a matter of statutory regulation, which cannot be changed by the courts.

COUNSEL

Kitchen & Turpin, David C. Turpin; Law Office of Herb Fox and Herb Fox for Objector and Appellant.

Mullen & Henzell and Lawrence T. Sorensen for Petitioner and Respondent.

BAXTER, J.

Section 6452 of the Probate Code (all statutory references are to this code unless otherwise indicated) bars a "natural parent" or a relative of that parent from inheriting through a child born out of wedlock on the basis of the parent and child relationship unless the parent or relative "acknowledged the child" and "contributed to the support or the care of the child." In this case, we must determine whether section 6452

precludes the half siblings of a child born out of wedlock from sharing in the child's intestate estate where the record is undisputed that their father appeared in an Ohio court, admitted paternity of the child, and paid court-ordered child support until the child was 18 years old. Although the father and the out-of-wedlock child apparently never met or communicated, and the half siblings did not learn of the child's existence until after both the child and the father died, there is no indication that the father ever denied paternity or knowledge of the out-of-wedlock child to persons who were aware of the circumstances.

Since succession to estates is purely a matter of statutory regulation, our resolution of this issue requires that we ascertain the intent of the lawmakers who enacted section 6452. Application of settled principles of statutory ***908** construction compels us to conclude, on this uncontroverted record, that section 6452 does not bar the half siblings from sharing in the decedent's estate.

Factual and Procedural Background

Denis H. Griswold died intestate in 1996, survived by his wife, Norma B. Doner-Griswold. Doner-Griswold petitioned for and received letters of administration and authority to administer Griswold's modest estate, consisting entirely of separate property.

In 1998, Doner-Griswold filed a petition for final distribution, proposing a distribution of estate property, after payment of attorney's fees and costs, to herself as the surviving spouse and sole heir. Francis V. See, a self-described "forensic genealogist" (heir hunter) who had obtained an assignment of partial interest in the Griswold estate from Margaret Loera and Daniel Draves, [FN1] objected to the petition for final distribution and filed a petition to determine entitlement to distribution.

> FN1 California permits heirs to assign their interests in an estate, but such assignments are subject to court scrutiny. (See § 11604.)

See and Doner-Griswold stipulated to the following background facts pertinent to See's entitlement petition.

Griswold was born out of wedlock to Betty Jane Morris on July 12, 1941 in Ashland, Ohio. The birth certificate listed his name as Denis Howard Morris and identified John Edward Draves of New London, Ohio as the father. A week after the birth, Morris filed a "bastardy complaint" [FN2] in the juvenile court in Huron County, Ohio and swore under oath that Draves was the child's father. In September of 1941, Draves appeared in the bastardy proceeding and "confessed in Court that the charge of the plaintiff herein is true." The court adjudged Draves to be the "reputed father" of the child, and ordered Draves to pay medical expenses related to Morris's pregnancy as well as $5 per week for child support and maintenance. Draves complied, and for 18 years paid the court-ordered support to the clerk of the Huron County court.

> FN2 A "bastardy proceeding" is an archaic term for a paternity suit. (Black's Law Dict. (7th ed. 1999) pp. 146, 1148.)

Morris married Fred Griswold in 1942 and moved to California. She began to refer to her son as "Denis Howard Griswold," a name he used for the rest of his life. For many years, Griswold believed Fred Griswold was his father. At some point in time, either after his mother and Fred Griswold ***909** divorced in 1978 or after his mother died in 1983, Griswold learned that Draves was listed as his father on his birth certificate. So far as is known, Griswold made no attempt to contact Draves or other members of the Draves family.

Meanwhile, at some point after Griswold's birth, Draves married in Ohio and had two children, Margaret and Daniel. Neither Draves nor these two children had any communication with Griswold, and the children did not know of Griswold's existence until after Griswold's death in 1996. Draves died in 1993. His last will and testament, dated July 22, 1991, made no mention of Griswold by name or other reference. Huron County probate documents identified Draves's surviving spouse and two children-Margaret and Daniel-as the only heirs.

Based upon the foregoing facts, the probate court denied See's petition to determine entitlement. In the court's view, See had not demonstrated that Draves was Griswold's "natural parent" or that Draves "acknowledged" Griswold as his child as required by section 6452.

The Court of Appeal disagreed on both points and reversed the order of the probate court. We granted

Doner-Griswold's petition for review.

Discussion

(1a) Denis H. Griswold died without a will, and his estate consists solely of separate property. Consequently, the intestacy rules codified at sections 6401 and 6402 are implicated. Section 6401, subdivision (c) provides that a surviving spouse's share of intestate separate property is one-half "[w]here the decedent leaves no issue but leaves a parent or parents or their issue or the issue of either of them." (§ 6401, subd. (c)(2)(B).) Section 6402, subdivision (c) provides that the portion of the intestate estate not passing to the surviving spouse under section 6401 passes as follows: "If there is no surviving issue or parent, to the issue of the parents or either of them, the issue taking equally if they are all of the same degree of kinship to the decedent ...."

As noted, Griswold's mother (Betty Jane Morris) and father (John Draves) both predeceased him. Morris had no issue other than Griswold and Griswold himself left no issue. Based on these facts, See contends that Doner-Griswold is entitled to one-half of Griswold's estate and that Draves's issue (See's assignors, Margaret and Daniel) are entitled to the other half pursuant to sections 6401 and 6402.

Because Griswold was born out of wedlock, three additional Probate Code provisions-section 6450, section 6452, and section 6453-must be considered. ***910**

As relevant here, section 6450 provides that "a relationship of parent and child exists for the purpose of determining intestate succession by, through, or from a person" where "[t]he relationship of parent and child exists between a person and the person's natural parents, regardless of the marital status of the natural parents." (*Id.*, subd. (a).)

Notwithstanding section 6450's general recognition of a parent and child relationship in cases of unmarried natural parents, section 6452 restricts the ability of such parents and their relatives to inherit from a child as follows: "If a child is born out of wedlock, neither a *natural parent* nor a relative of that parent inherits from or through the child on the basis of the parent and child relationship between that parent and the child unless both of the following requirements are satisfied: [¶] (a) The parent or a relative of the parent *acknowledged the child.* [¶] (b) The parent or a relative of the parent contributed to the support or the care of the child." (Italics added.)

Section 6453, in turn, articulates the criteria for determining whether a person is a "natural parent" within the meaning of sections 6450 and 6452. A more detailed discussion of section 6453 appears *post*, at part B.

It is undisputed here that section 6452 governs the determination whether Margaret, Daniel, and See (by assignment) are entitled to inherit from Griswold. It is also uncontroverted that Draves contributed court-ordered child support for 18 years, thus satisfying subdivision (b) of section 6452. At issue, however, is whether the record establishes all the remaining requirements of section 6452 as a matter of law. First, did Draves acknowledge Griswold within the meaning of section 6452, subdivision (a)? Second, did the Ohio judgment of reputed paternity establish Draves as the natural parent of Griswold within the contemplation of sections 6452 and 6453? We address these issues in order.

A. *Acknowledgement*

As indicated, section 6452 precludes a natural parent or a relative of that parent from inheriting through a child born out of wedlock unless the parent or relative "acknowledged the child." (*Id.*, subd. (a).) On review, we must determine whether Draves acknowledged Griswold within the contemplation of the statute by confessing to paternity in court, where the record reflects no other acts of acknowledgement, but no disavowals either.

(2) In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272 [***911** 105 Cal.Rptr.2d 457, 19 P.3d 1196].) "We begin by examining the statutory language, giving the words their usual and ordinary meaning." (*Ibid.*; *People v. Lawrence* (2000) 24 Cal.4th 219, 230 [99 Cal.Rptr.2d 570, 6 P.3d 228].) If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. (*Day v. City of Fontana*, *supra*, 25 Cal.4th at p. 272; *People v. Lawrence*, *supra*, 24 Cal.4th at pp. 230-231.) If there is ambiguity, however, we may then look to extrinsic sources, including the ostensible

objects to be achieved and the legislative history. (*Day v. City of Fontana*, *supra*, 25 Cal.4th at p. 272.) In such cases, we " ' "select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." ' " (*Ibid.*)

(1b) Section 6452 does not define the word "acknowledged." Nor does any other provision of the Probate Code. At the outset, however, we may logically infer that the word refers to conduct other than that described in subdivision (b) of section 6452, i.e., contributing to the child's support or care; otherwise, subdivision (a) of the statute would be surplusage and unnecessary.

Although no statutory definition appears, the common meaning of "acknowledge " is "to admit to be true or as stated; confess." (Webster's New World Dict. (2d ed. 1982) p. 12; see Webster's 3d New Internat. Dict. (1981) p. 17 ["to show by word or act that one has knowledge of and agrees to (a fact or truth) ... [or] concede to be real or true ... [or] admit"].) Were we to ascribe this common meaning to the statutory language, there could be no doubt that section 6452's acknowledgement requirement is met here. As the stipulated record reflects, Griswold's natural mother initiated a bastardy proceeding in the Ohio juvenile court in 1941 in which she alleged that Draves was the child's father. Draves appeared in that proceeding and publicly " confessed" that the allegation was true. There is no evidence indicating that Draves did not confess knowingly and voluntarily, or that he later denied paternity or knowledge of Griswold to those who were aware of the circumstances. [FN3] Although the record establishes that Draves did not speak of Griswold to Margaret and Daniel, there is no evidence suggesting he sought to actively conceal the facts from them or anyone else. Under the plain terms of section 6452, the only sustainable conclusion on this record is that Draves acknowledged Griswold.

> FN3 Huron County court documents indicate that at least two people other than Morris, one of whom appears to have been a relative of Draves, had knowledge of the bastardy proceeding.

Although the facts here do not appear to raise any ambiguity or uncertainty as to the statute's application, we shall, in an abundance of caution, ***912** test our conclusion against the general purpose and legislative history of the statute. (See *Day v. City of Fontana*, *supra*, 25 Cal.4th at p. 274; *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 93 [40 Cal.Rptr.2d 839, 893 P.2d 1160].)

The legislative bill proposing enactment of former section 6408.5 of the Probate Code (Stats. 1983, ch. 842, § 55, p. 3084; Stats. 1984, ch. 892, § 42, p. 3001), the first modern statutory forerunner to section 6452, was introduced to effectuate the Tentative Recommendation Relating to Wills and Intestate Succession of the California Law Revision Commission (the Commission). (See 17 Cal. Law Revision Com. Rep. (1984) p. 867, referring to 16 Cal. Law Revision Com. Rep. (1982) p. 2301.) According to the Commission, which had been solicited by the Legislature to study and recommend changes to the then existing Probate Code, the proposed comprehensive legislative package to govern wills, intestate succession, and related matters would "provide rules that are more likely to carry out the intent of the testator or, if a person dies without a will, the intent a decedent without a will is most likely to have had." (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319.) The Commission also advised that the purpose of the legislation was to "make probate more efficient and expeditious." (*Ibid.*) From all that appears, the Legislature shared the Commission's views in enacting the legislative bill of which former section 6408.5 was a part. (See 17 Cal. Law Revision Com. Rep., *supra*, at p. 867.)

Typically, disputes regarding parental acknowledgement of a child born out of wedlock involve factual assertions that are made by persons who are likely to have direct financial interests in the child's estate and that relate to events occurring long before the child's death. Questions of credibility must be resolved without the child in court to corroborate or rebut the claims of those purporting to have witnessed the parent's statements or conduct concerning the child. Recognition that an in-court admission of the parent and child relationship constitutes powerful evidence of an acknowledgement under section 6452 would tend to reduce litigation over such matters and thereby effectuate the legislative objective to "make probate more efficient and expeditious." (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319.)

Additionally, construing the acknowledgement requirement to be met in circumstances such as these is neither illogical nor absurd with respect to the intent of an intestate decedent. Put another way, where a parent willingly acknowledged paternity in an action initiated to establish the parent-child relationship and thereafter was never heard to deny such relationship (§ 6452, subd. (a)), and where that parent paid all court-ordered support for that child for 18 years (*id.*, subd. (b)), it cannot be said that the participation ***913** of that parent or his relative in the estate of the deceased child is either (1) so illogical that it cannot represent the intent that one without a will is most likely to have had (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319) or (2) "so absurd as to make it manifest that it could not have been intended" by the Legislature (*Estate of De Cigaran* (1907) 150 Cal. 682, 688 [89 P. 833] [construing Civ. Code, former § 1388 as entitling the illegitimate half sister of an illegitimate decedent to inherit her entire intestate separate property to the exclusion of the decedent's surviving husband]).

There is a dearth of case law pertaining to section 6452 or its predecessor statutes, but what little there is supports the foregoing construction. Notably, *Lozano v. Scalier* (1996) 51 Cal.App.4th 843 [59 Cal.Rptr.2d 346] (*Lozano*), the only prior decision directly addressing section 6452's acknowledgement requirement, declined to read the statute as necessitating more than what its plain terms call for.

In *Lozano*, the issue was whether the trial court erred in allowing the plaintiff, who was the natural father of a 10-month-old child, to pursue a wrongful death action arising out of the child's accidental death. The wrongful death statute provided that where the decedent left no spouse or child, such an action may be brought by the persons "who would be entitled to the property of the decedent by intestate succession." (Code Civ. Proc., § 377.60, subd. (a).) Because the child had been born out of wedlock, the plaintiff had no right to succeed to the estate unless he had both "acknowledged the child " and "contributed to the support or the care of the child" as required by section 6452. *Lozano* upheld the trial court's finding of acknowledgement in light of evidence in the record that the plaintiff had signed as "Father" on a medical form five months before the child's birth and had repeatedly told family members and others that he was the child's father. (*Lozano*, *supra*, 51 Cal.App.4th at pp. 845, 848.)

Significantly, *Lozano* rejected arguments that an acknowledgement under Probate Code section 6452 must be (1) a witnessed writing and (2) made after the child was born so that the child is identified. In doing so, *Lozano* initially noted there were no such requirements on the face of the statute. (*Lozano*, *supra*, 51 Cal.App.4th at p. 848.) *Lozano* next looked to the history of the statute and made two observations in declining to read such terms into the statutory language. First, even though the Legislature had previously required a witnessed writing in cases where an illegitimate child sought to inherit from the father's estate, it repealed such requirement in 1975 in an apparent effort to ease the evidentiary proof of the parent-child relationship. (*Ibid.*) Second, other statutes that required a parent-child relationship expressly contained more formal acknowledgement requirements for the assertion of certain other rights or privileges. (See *id.* at p. 849, citing ***914**Code Civ. Proc., § 376, subd. (c), Health & Saf. Code, § 102750, & Fam. Code, § 7574.) Had the Legislature wanted to impose more stringent requirements for an acknowledgement under section 6452, *Lozano* reasoned, it certainly had precedent for doing so. (*Lozano*, *supra*, 51 Cal.App.4th at p. 849.)

Apart from Probate Code section 6452, the Legislature had previously imposed an acknowledgement requirement in the context of a statute providing that a father could legitimate a child born out of wedlock for all purposes "by publicly acknowledging it as his own." (See Civ. Code, former § 230.) [FN4] Since that statute dealt with an analogous subject and employed a substantially similar phrase, we address the case law construing that legislation below.

> FN4 Former section 230 of the Civil Code provided: "The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this Chapter do not apply to such an adoption." (Enacted 1 Cal. Civ. Code (1872) § 230, p. 68, repealed by

Stats. 1975, ch. 1244, § 8, p. 3196.)

> In 1975, the Legislature enacted California's Uniform Parentage Act, which abolished the concept of legitimacy and replaced it with the concept of parentage. (See *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 828-829 [4 Cal.Rptr.2d 615, 823 P.2d 1216].)

In *Blythe v. Ayres* (1892) 96 Cal. 532 [31 P. 915], decided over a century ago, this court determined that the word "acknowledge," as it appeared in former section 230 of the Civil Code, had no technical meaning. (*Blythe v. Ayers*, *supra*, 96 Cal. at p. 577.) We therefore employed the word's common meaning, which was " 'to own or admit the knowledge of.' " (*Ibid.* [relying upon Webster's definition]; see also *Estate of Gird* (1910) 157 Cal. 534, 542 [108 P. 499].) Not only did that definition endure in case law addressing legitimation (*Estate of Wilson* (1958) 164 Cal.App.2d 385, 388-389 [330 P.2d 452]; see *Estate of Gird*, *supra*, 157 Cal. at pp. 542-543), but, as discussed, the word retains virtually the same meaning in general usage today-"to admit to be true or as stated; confess." (Webster's New World Dict., *supra*, at p. 12; see Webster's 3d New Internat. Dict., *supra*, at p. 17.)

Notably, the decisions construing former section 230 of the Civil Code indicate that its public acknowledgement requirement would have been met where a father made a single confession in court to the paternity of a child.

In *Estate of McNamara* (1919) 181 Cal. 82 [183 P. 552, 7 A.L.R. 313], for example, we were emphatic in recognizing that a single unequivocal act could satisfy the acknowledgement requirement for purposes of statutory legitimation. Although the record in that case had contained additional evidence of the father's acknowledgement, we focused our attention on his ***915** one act of signing the birth certificate and proclaimed: "A more public acknowledgement than the act of [the decedent] in signing the child's birth certificate describing himself as the father, it would be difficult to imagine." (*Id.* at pp. 97-98.)

Similarly, in *Estate of Gird*, *supra*, 157 Cal. 534, we indicated in dictum that "a public avowal, made in the courts" would constitute a public acknowledgement under former section 230 of the Civil Code. (*Estate of Gird*, *supra*, 157 Cal. at pp. 542-543.)

Finally, in *Wong v. Young* (1947) 80 Cal.App.2d 391 [181 P.2d 741], a man's admission of paternity in a verified pleading, made in an action seeking to have the man declared the father of the child and for child support, was found to have satisfied the public acknowledgement requirement of the legitimation statute. (*Id.* at pp. 393-394.) Such admission was also deemed to constitute an acknowledgement under former Probate Code section 255, which had allowed illegitimate children to inherit from their fathers under an acknowledgement requirement that was even more stringent than that contained in Probate Code section 6452. [FN5] (*Wong v. Young*, *supra*, 80 Cal.App.2d at p. 394; see also *Estate of De Laveaga* (1904) 142 Cal. 158, 168 [75 P. 790] [indicating in dictum that, under a predecessor to Probate Code section 255, father sufficiently acknowledged an illegitimate child in a single witnessed writing declaring the child as his son].) Ultimately, however, legitimation of the child under former section 230 of the Civil Code was not found because two other of the statute's express requirements, i.e., receipt of the child into the father's family and the father's otherwise treating the child as his legitimate child (see *ante*, fn. 4), had not been established. (*Wong v. Young*, *supra*, 80 Cal.App.2d at p. 394.)

> FN5 Section 255 of the former Probate Code provided in pertinent part: " 'Every illegitimate child, whether born or conceived but unborn, in the event of his subsequent birth, is an heir of his mother, and also of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father, and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock ....' " (*Estate of Ginochio* (1974) 43 Cal.App.3d 412, 416 [117 Cal.Rptr. 565], italics omitted.)

Although the foregoing authorities did not involve section 6452, their views on parental acknowledgement of out-of-wedlock children were part of the legal landscape when the first modern statutory forerunner to that provision was enacted in 1985. (See former § 6408.5, added by Stats. 1983, ch. 842, § 55, p. 3084, and amended by Stats. 1984, ch. 892, § 42, p. 3001.) (3) Where, as here, legislation has been judicially construed and a subsequent statute on the same

or an analogous subject uses identical or substantially similar language, we may presume that the Legislature intended the ***916** same construction, unless a contrary intent clearly appears. (*In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1437 [35 Cal.Rptr.2d 155]; see also *People v. Masbruch* (1996) 13 Cal.4th 1001, 1007 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *Belridge Farms v. Agricultural Labor Relations Bd.* (1978) 21 Cal.3d 551, 557 [147 Cal.Rptr. 165, 580 P.2d 665].) (1c) Since no evidence of a contrary intent clearly appears, we may reasonably infer that the types of acknowledgement formerly deemed sufficient for the legitimation statute (and former § 255, as well) suffice for purposes of intestate succession under section 6452. FN6

FN6 Probate Code section 6452's acknowledgement requirement differs from that found in former section 230 of the Civil Code, in that section 6452 does not require a parent to "publicly" acknowledge a child born out of wedlock. That difference, however, fails to accrue to Doner-Griswold's benefit. If anything, it suggests that the acknowledgement contemplated in section 6452 encompasses a broader spectrum of conduct than that associated with the legitimation statute.

Doner-Griswold disputes whether the acknowledgement required by Probate Code section 6452 may be met by a father's single act of acknowledging a child in court. In her view, the requirement contemplates a situation where the father establishes an ongoing parental relationship with the child or otherwise acknowledges the child's existence to his subsequent wife and children. To support this contention, she relies on three other authorities addressing acknowledgement under former section 230 of the Civil Code: *Blythe v. Ayers*, *supra*, 96 Cal. 532, *Estate of Wilson*, *supra*, 164 Cal.App.2d 385, and *Estate of Maxey* (1967) 257 Cal.App.2d 391 [64 Cal.Rptr. 837].

In *Blythe v. Ayres*, *supra*, 96 Cal. 532, the father never saw his illegitimate child because she resided in another country with her mother. Nevertheless, he "was garrulous upon the subject" of his paternity and "it was his common topic of conversation." (*Id.* at p. 577.) Not only did the father declare the child to be his child, "to all persons, upon all occasions," but at his request the child was named and baptized with his surname. (*Ibid.*) Based on the foregoing, this court remarked that "it could almost be held that he shouted it from the house-tops." (*Ibid.*) Accordingly, we concluded that the father's public acknowledgement under former section 230 of the Civil Code could "hardly be considered debatable." (*Blythe v. Ayres*, *supra*, 96 Cal. at p. 577.)

In *Estate of Wilson*, *supra*, 164 Cal.App.2d 385, the evidence showed that the father had acknowledged to his wife that he was the father of a child born to another woman. (*Id.* at p. 389.) Moreover, he had introduced the child as his own on many occasions, including at the funeral of his mother. (*Ibid.*) In light of such evidence, the Court of Appeal upheld the trial court's finding that the father had publicly acknowledged the child within the contemplation of the legitimation statute. ***917**

In *Estate of Maxey*, *supra*, 257 Cal.App.2d 391, the Court of Appeal found ample evidence supporting the trial court's determination that the father publicly acknowledged his illegitimate son for purposes of legitimation. The father had, on several occasions, visited the house where the child lived with his mother and asked about the child's school attendance and general welfare. (*Id.* at p. 397.) The father also, in the presence of others, had asked for permission to take the child to his own home for the summer, and, when that request was refused, said that the child was his son and that he should have the child part of the time. (*Ibid.*) In addition, the father had addressed the child as his son in the presence of other persons. (*Ibid.*)

Doner-Griswold correctly points out that the foregoing decisions illustrate the principle that the existence of acknowledgement must be decided on the circumstances of each case. (*Estate of Baird* (1924) 193 Cal. 225, 277 [223 P. 974].) In those decisions, however, the respective fathers had not confessed to paternity in a legal action. Consequently, the courts looked to what other forms of public acknowledgement had been demonstrated by fathers. (See also *Lozano*, *supra*, 51 Cal.App.4th 843 [examining father's acts both before and after child's birth in ascertaining acknowledgement under § 6452].)

That those decisions recognized the validity of different forms of acknowledgement should not detract from the weightiness of a father's in-court acknowledgement of a child in an action seeking to

establish the existence of a parent and child relationship. (See *Estate of Gird*, *supra*, 157 Cal. at pp. 542-543; *Wong v. Young*, *supra*, 80 Cal.App.2d at pp. 393-394.) As aptly noted by the Court of Appeal below, such an acknowledgement is a critical one that typically leads to a paternity judgment and a legally enforceable obligation of support. Accordingly, such acknowledgements carry as much, if not greater, significance than those made to certain select persons (*Estate of Maxey*, *supra*, 257 Cal.App.2d at p. 397) or "shouted ... from the house-tops " (*Blythe v. Ayres*, *supra*, 96 Cal. at p. 577).

Doner-Griswold's authorities do not persuade us that section 6452 should be read to require that a father have personal contact with his out-of-wedlock child, that he make purchases for the child, that he receive the child into his home and other family, or that he treat the child as he does his other children. First and foremost, the language of section 6452 does not support such requirements. (See *Lozano*, *supra*, 51 Cal.App.4th at p. 848.) (4) We may not, under the guise of interpretation, insert qualifying provisions not included in the statute. (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349 [45 Cal.Rptr.2d 279, 902 P.2d 297].)

(1d) Second, even though *Blythe v. Ayres*, *supra*, 96 Cal. 532, *Estate of Wilson*, *supra*, 164 Cal.App.2d 385, and *Estate of Maxey*, *supra*, ***918**257 Cal.App.2d 391, variously found such factors significant for purposes of legitimation, their reasoning appeared to flow directly from the express terms of the controlling statute. In contrast to Probate Code section 6452, former section 230 of the Civil Code provided that the legitimation of a child born out of wedlock was dependent upon three distinct conditions: (1) that the father of the child "publicly acknowledg[e] it as his own"; (2) that he "receiv[e] it as such, with the consent of his wife, if he is married, into his family"; and (3) that he "otherwise treat[] it as if it were a legitimate child." (*Ante*, fn. 4; see *Estate of De Laveaga*, *supra*, 142 Cal. at pp. 168-169 [indicating that although father acknowledged his illegitimate son in a single witnessed writing, legitimation statute was not satisfied because the father never received the child into his family and did not treat the child as if he were legitimate].) That the legitimation statute contained such explicit requirements, while section 6452 requires only a natural parent's acknowledgement of the child and contribution toward the child's support or care, strongly suggests that the Legislature did not intend for the latter provision to mirror the former in all the particulars identified by Doner-Griswold. (See *Lozano*, *supra*, 51 Cal.App.4th at pp. 848-849; compare with Fam. Code, § 7611, subd. (d) [a man is "presumed" to be the natural father of a child if "[h]e receives the child into his home and openly holds out the child as his natural child"].)

In an attempt to negate the significance of Draves's in-court confession of paternity, Doner-Griswold emphasizes the circumstance that Draves did not tell his two other children of Griswold's existence. The record here, however, stands in sharp contrast to the primary authority she offers on this point. *Estate of Baird*, *supra*, 193 Cal. 225, held there was no public acknowledgement under former section 230 of the Civil Code where the decedent admitted paternity of a child to the child's mother and their mutual acquaintances but actively concealed the child's existence and his relationship to the child's mother from his own mother and sister, with whom he had intimate and affectionate relations. In that case, the decedent not only failed to tell his relatives, family friends, and business associates of the child (193 Cal. at p. 252), but he affirmatively denied paternity to a half brother and to the family coachman (*id.* at p. 277). In addition, the decedent and the child's mother masqueraded under a fictitious name they assumed and gave to the child in order to keep the decedent's mother and siblings in ignorance of the relationship. (*Id.* at pp. 260-261.) In finding that a public acknowledgement had not been established on such facts, *Estate of Baird* stated: "A distinction will be recognized between a mere failure to disclose or publicly acknowledge paternity and a willful misrepresentation in regard to it; in such circumstances there must be no purposeful concealment of the fact of paternity. " (*Id.* at p. 276.) ***919**

Unlike the situation in *Estate of Baird*, Draves confessed to paternity in a formal legal proceeding. There is no evidence that Draves thereafter disclaimed his relationship to Griswold to people aware of the circumstances (see *ante*, fn. 3), or that he affirmatively denied he was Griswold's father despite his confession of paternity in the Ohio court proceeding. Nor is there any suggestion that Draves engaged in contrivances to prevent the discovery of Griswold's existence. In light of the obvious dissimilarities, Doner-Griswold's reliance on *Estate of Baird* is misplaced.

Estate of Ginochio, supra, 43 Cal.App.3d 412, likewise, is inapposite. That case held that a judicial determination of paternity following a vigorously contested hearing did not establish an acknowledgement sufficient to allow an illegitimate child to inherit under section 255 of the former Probate Code. (See *ante,* fn. 5.) Although the court noted that the decedent ultimately paid the child support ordered by the court, it emphasized the circumstance that the decedent was declared the child's father *against his will* and at no time did he admit he was the father, or sign any writing acknowledging publicly or privately such fact, or otherwise have contact with the child. (*Estate of Ginochio, supra,* 43 Cal.App.3d at pp. 416-417.) Here, by contrast, Draves did not contest paternity, vigorously or otherwise. Instead, Draves stood before the court and openly admitted the parent and child relationship, and the record discloses no evidence that he subsequently disavowed such admission to anyone with knowledge of the circumstances. On this record, section 6452's acknowledgement requirement has been satisfied by a showing of what Draves did and did not do, not by the mere fact that paternity had been judicially declared.

Finally, Doner-Griswold contends that a 1996 amendment of section 6452 evinces the Legislature's unmistakable intent that a decedent's estate may not pass to siblings who had no contact with, or were totally unknown to, the decedent. As we shall explain, that contention proves too much.

Prior to 1996, section 6452 and a predecessor statute, former section 6408, expressly provided that their terms did not apply to "a natural brother or a sister of the child" born out of wedlock. [FN7] In construing former section 6408, *Estate of Corcoran* (1992) 7 Cal.App.4th 1099 [9 Cal.Rptr.2d 475] held that a half sibling was a "natural brother or sister" within the meaning of such ***920** exception. That holding effectively allowed a half sibling and the issue of another half sibling to inherit from a decedent's estate where there had been no parental acknowledgement or support of the decedent as ordinarily required. In direct response to *Estate of Corcoran,* the Legislature amended section 6452 by eliminating the exception for natural siblings and their issue. (Stats. 1996, ch. 862, § 15; see Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751 (1995-1996 Reg. Sess.) as amended June 3, 1996, pp. 17-18 (Assembly Bill No. 2751).) According to legislative documents, the Commission had recommended deletion of the statutory exception because it "creates an undesirable risk that the estate of the deceased out-of-wedlock child will be claimed by siblings with whom the decedent had no contact during lifetime, and of whose existence the decedent was unaware." (Assem. Com. on Judiciary, Analysis of Assem. Bill No. 2751 (1995-1996 Reg. Sess.) as introduced Feb. 22, 1996, p. 6; see also Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra,* at pp. 17-18.)

> FN7 Former section 6408, subdivision (d) provided: "If a child is born out of wedlock, neither a parent nor a relative of a parent (except for the issue of the child *or a natural brother or sister of the child or the issue of that brother or sister*) inherits from or through the child on the basis of the relationship of parent and child between that parent and child unless both of the following requirements are satisfied: [¶] (1) The parent or a relative of the parent acknowledged the child. [¶] (2) The parent or a relative of the parent contributed to the support or the care of the child. " (Stats. 1990, ch. 79, § 14, p. 722, italics added.)

This legislative history does not compel Doner-Griswold's construction of section 6452. Reasonably read, the comments of the Commission merely indicate its concern over the "undesirable risk" that unknown siblings could rely on the statutory exception to make claims against estates. Neither the language nor the history of the statute, however, evinces a clear intent to make inheritance contingent upon the decedent's awareness of or contact with such relatives. (See Assem. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra,* at p. 6; see also Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra,* at pp. 17-18.) Indeed, had the Legislature intended to categorically preclude intestate succession by a natural parent or a relative of that parent who had no contact with or was unknown to the deceased child, it could easily have so stated. Instead, by deleting the statutory exception for natural siblings, thereby subjecting siblings to section 6452's dual requirements of acknowledgement and support, the Legislature acted to prevent sibling inheritance under the type of circumstances presented in *Estate of Corcoran, supra,* 7 Cal.App.4th 1099, and to substantially reduce the risk

noted by the Commission. [FN8] *921

FN8 We observe that, under certain former versions of Ohio law, a father's confession of paternity in an Ohio juvenile court proceeding was not the equivalent of a formal probate court "acknowledgement" that would have allowed an illegitimate child to inherit from the father in that state. (See *Estate of Vaughan* (2001) 90 Ohio St.3d 544 [740 N.E.2d 259, 262-263].) Here, however, Doner-Griswold does not dispute that the right of the succession claimants to succeed to Griswold's property is governed by the law of Griswold's domicile, i.e., California law, not the law of the claimants' domicile or the law of the place where Draves's acknowledgement occurred. (Civ. Code, §§ 755, 946; see *Estate of Lund* (1945) 26 Cal.2d 472, 493-496 [159 P.2d 643, 162 A.L.R. 606] [where father died domiciled in California, his out-of-wedlock son could inherit where all the legitimation requirements of former § 230 of the Civ. Code were met, even though the acts of legitimation occurred while the father and son were domiciled in two other states wherein such acts were not legally sufficient].)

B. *Requirement of a Natural Parent and Child Relationship*

(5a) Section 6452 limits the ability of a "natural parent" or "a relative of that parent" to inherit from or through the child "on the basis of the parent and child relationship between that parent and the child."

Probate Code section 6453 restricts the means by which a relationship of a natural parent to a child may be established for purposes of intestate succession. [FN9] (See *Estate of Sanders* (1992) 2 Cal.App.4th 462, 474-475 [3 Cal.Rptr.2d 536].) Under section 6453, subdivision (a), a natural parent and child relationship is established where the relationship is presumed under the Uniform Parentage Act and not rebutted. (Fam. Code, § 7600 et seq.) It is undisputed, however, that none of those presumptions applies in this case.

FN9 Section 6453 provides in full: "For the purpose of determining whether a person is a 'natural parent' as that term is used is this chapter: [¶] (a) A natural parent and child relationship is established where that relationship is presumed and not rebutted pursuant to the Uniform Parentage Act, Part 3 (commencing with Section 7600) of Division 12 of the Family Code. [¶] (b) A natural parent and child relationship may be established pursuant to any other provisions of the Uniform Parentage Act, except that the relationship may not be established by an action under subdivision (c) of Section 7630 of the Family Code unless any of the following conditions exist: [¶] (1) A court order was entered during the father's lifetime declaring paternity. [¶] (2) Paternity is established by clear and convincing evidence that the father has openly held out the child as his own. [¶] (3) It was impossible for the father to hold out the child as his own and paternity is established by clear and convincing evidence."

Alternatively, and as relevant here, under Probate Code section 6453, subdivision (b), a natural parent and child relationship may be established pursuant to section 7630, subdivision (c) of the Family Code, [FN10] if a court order was entered during the father's lifetime declaring paternity. [FN11] (§ 6453, subd. (b)(1).)

FN10 Family Code section 7630, subdivision (c) provides in pertinent part: "An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 7611 ... may be brought by the child or personal representative of the child, the Department of Child Support Services, the mother or the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor. An action under this subdivision shall be consolidated with a proceeding pursuant to Section 7662 if a proceeding has been filed under Chapter 5 (commencing with Section 7660). The parental rights of the alleged natural father shall be determined as set forth in Section 7664."

FN11 See makes no attempt to establish Draves's natural parent status under other provisions of section 6453, subdivision (b).

See contends the question of Draves's paternity was fully and finally adjudicated in the 1941 bastardy proceeding in Ohio. That proceeding, he ***922** argues, satisfies both the Uniform Parentage Act and the Probate Code, and should be binding on the parties here.

If a valid judgment of paternity is rendered in Ohio, it generally is binding on California courts if Ohio had jurisdiction over the parties and the subject matter, and the parties were given reasonable notice and an opportunity to be heard. (*Ruddock v. Ohls* (1979) 91 Cal.App.3d 271, 276 [154 Cal.Rptr. 87].) California courts generally recognize the importance of a final determination of paternity. (E.g., *Weir v. Ferreira* (1997) 59 Cal.App.4th 1509, 1520 [70 Cal.Rptr.2d 33] (*Weir*); *Guardianship of Claralyn S.* (1983) 148 Cal.App.3d 81, 85 [195 Cal.Rptr. 646]; cf. *Estate of Camp* (1901) 131 Cal. 469, 471 [63 P. 736] [same for adoption determinations].)

Doner-Griswold does not dispute that the parties here are in privity with, or claim inheritance through, those who are bound by the bastardy judgment or are estopped from attacking it. (See *Weir*, *supra*, 59 Cal.App.4th at pp. 1516-1517, 1521.) Instead, she contends See has not shown that the issue adjudicated in the Ohio bastardy proceeding is identical to the issue presented here, that is, whether Draves was the natural parent of Griswold.

Although we have found no California case directly on point, one Ohio decision has recognized that a bastardy judgment rendered in Ohio in 1950 was res judicata of any proceeding that might have been brought under the Uniform Parentage Act. (*Birman v. Sproat* (1988) 47 Ohio App.3d 65 [546 N.E.2d 1354, 1357] [child born out of wedlock had standing to bring will contest based upon a paternity determination in a bastardy proceeding brought during testator's life]; see also Black's Law Dict., *supra*, at pp. 146, 1148 [equating a bastardy proceeding with a paternity suit].) Yet another Ohio decision found that parentage proceedings, which had found a decedent to be the "reputed father" of a child, [FN12] satisfied an Ohio legitimation statute and conferred standing upon the illegitimate child to contest the decedent's will where the father-child relationship was established prior to the decedent's death. (*Beck v. Jolliff* (1984) 22 Ohio App.3d 84 [489 N.E.2d 825, 829]; see also *Estate of Hicks* (1993) 90 Ohio App.3d 483 [629 N.E.2d 1086, 1088-1089] [parentage issue must be determined prior to the father's death to the extent the parent-child relationship is being established under the chapter governing descent and distribution].) While we are not bound to follow these Ohio authorities, they persuade us that the 1941 bastardy proceeding decided the identical issue presented here.

> FN12 The term "reputed father" appears to have reflected the language of the relevant Ohio statute at or about the time of the 1941 bastardy proceeding. (See *State ex rel. Discus v. Van Dorn* (1937) 56 Ohio App. 82 [8 Ohio Op. 393, 10 N.E.2d 14, 16].)

Next, Doner-Griswold argues the Ohio judgment should not be given res judicata effect because the bastardy proceeding was quasi-criminal in nature. ***923** It is her position that Draves's confession may have reflected only a decision to avoid a jury trial instead of an adjudication of the paternity issue on the merits.

To support this argument, Doner-Griswold relies upon *Pease v. Pease* (1988) 201 Cal.App.3d 29 [246 Cal.Rptr. 762] (*Pease*). In that case, a grandfather was sued by his grandchildren and others in a civil action alleging the grandfather's molestation of the grandchildren. When the grandfather cross-complained against his former wife for apportionment of fault, she filed a demurrer contending that the grandfather was collaterally estopped from asserting the negligent character of his acts by virtue of his guilty plea in a criminal proceeding involving the same issues. On appeal, the judgment dismissing the cross-complaint was reversed. (6) The appellate court reasoned that a trial court in a civil proceeding may not give collateral estoppel effect to a criminal conviction involving the same issues if the conviction resulted from a guilty plea. "The issue of appellant's guilt was not fully litigated in the prior criminal proceeding; rather, appellant's plea bargain may reflect nothing more than a compromise instead of an ultimate determination of his guilt. Appellant's due process right to a hearing thus outweighs any countervailing need to limit litigation or conserve judicial resources." (*Id.* at p. 34, fn. omitted.)

(5b) Even assuming, for purposes of argument only, that *Pease*'s reasoning may properly be invoked

where the father's admission of paternity occurred in a bastardy proceeding (see *Reams v. State ex rel. Favors* (1936) 53 Ohio App. 19 [6 Ohio Op. 501, 4 N.E.2d 151, 152] [indicating that a bastardy proceeding is more civil than criminal in character]), the circumstances here do not call for its application. Unlike the situation in *Pease*, neither the in-court admission nor the resulting paternity judgment at issue is being challenged by the father (Draves). Moreover, neither the father, nor those claiming a right to inherit through him, seek to litigate the paternity issue. Accordingly, the father's due process rights are not at issue and there is no need to determine whether such rights might outweigh any countervailing need to limit litigation or conserve judicial resources. (See *Pease*, *supra*, 201 Cal.App.3d at p. 34.)

Additionally, the record fails to support any claim that Draves's confession merely reflected a compromise. Draves, of course, is no longer living and can offer no explanation as to why he admitted paternity in the bastardy proceeding. Although Doner-Griswold suggests that Draves confessed to avoid the publicity of a jury trial, and not because the paternity charge had merit, that suggestion is purely speculative and finds no evidentiary support in the record. ***924**

Finally, Doner-Griswold argues that See and Griswold's half siblings do not have standing to seek the requisite paternity determination pursuant to the Uniform Parentage Act under section 7630, subdivision (c) of the Family Code. The question here, however, is whether the judgment in the bastardy proceeding initiated by Griswold's mother forecloses Doner-Griswold's relitigation of the parentage issue.

Although Griswold's mother was not acting pursuant to the Uniform Parentage Act when she filed the bastardy complaint in 1941, neither that legislation nor the Probate Code provision should be construed to ignore the force and effect of the judgment she obtained. That Griswold's mother brought her action to determine paternity long before the adoption of the Uniform Parentage Act, and that all procedural requirements of an action under Family Code section 7630 may not have been followed, should not detract from its binding effect in this probate proceeding where the issue adjudicated was identical with the issue that would have been presented in a Uniform Parentage Act action. (See *Weir*, *supra*, 59 Cal.App.4th at p. 1521.) Moreover, a prior adjudication of paternity does not compromise a state's interests in the accurate and efficient disposition of property at death. (See *Trimble v. Gordon* (1977) 430 U.S. 762, 772 & fn. 14 [97 S.Ct. 1459, 1466, 52 L.Ed.2d 31] [striking down a provision of a state probate act that precluded a category of illegitimate children from participating in their intestate fathers' estates where the parent-child relationship had been established in state court paternity actions prior to the fathers' deaths].)

In sum, we find that the 1941 Ohio judgment was a court order "entered during the father's lifetime declaring paternity" (§ 6453, subd. (b)(1)), and that it establishes Draves as the natural parent of Griswold for purposes of intestate succession under section 6452.

Disposition

(7) " 'Succession to estates is purely a matter of statutory regulation, which cannot be changed by the courts.' " (*Estate of De Cigaran*, *supra*, 150 Cal. at p. 688.) We do not disagree that a natural parent who does no more than openly acknowledge a child in court and pay court-ordered child support may not reflect a particularly worthy predicate for inheritance by that parent's issue, but section 6452 provides in unmistakable language that it shall be so. While the Legislature remains free to reconsider the matter and may choose to change the rules of succession at any time, this court will not do so under the pretense of interpretation.

The judgment of the Court of Appeal is affirmed.

George, C. J., Kennard, J., Werdegar, J., and Chin, J., concurred. ***925**

BROWN, J.

I reluctantly concur. The relevant case law strongly suggests that a father who admits paternity in court with no subsequent disclaimers "acknowledge[s] the child" within the meaning of subdivision (a) of Probate Code section 6452. Moreover, neither the statutory language nor the legislative history supports an alternative interpretation. Accordingly, we must affirm the judgment of the Court of Appeal.

Nonetheless, I believe our holding today contravenes the overarching purpose behind our laws of intestate succession-to carry out "the intent a decedent without a will is most likely to have had." (16 Cal.

Law Revision Com. Rep. (1982) p. 2319.) I doubt most children born out of wedlock would have wanted to bequeath a share of their estate to a "father" who never contacted them, never mentioned their existence to his family and friends, and only paid court-ordered child support. I doubt even more that these children would have wanted to bequeath a share of their estate to that father's other offspring. Finally, I have *no* doubt that most, if not all, children born out of wedlock would have balked at bequeathing a share of their estate to a "forensic genealogist."

To avoid such a dubious outcome in the future, I believe our laws of intestate succession should allow a parent to inherit from a child born out of wedlock only if the parent has some sort of parental connection to that child. For example, requiring a parent to treat a child born out of wedlock as the parent's own before the parent may inherit from that child would prevent today's outcome. (See, e.g., *Bullock v. Thomas* (Miss. 1995) 659 So.2d 574, 577 [a father must "openly treat" a child born out of wedlock "as his own " in order to inherit from that child].) More importantly, such a requirement would comport with the stated purpose behind our laws of succession because that child likely would have wanted to give a share of his estate to a parent that treated him as the parent's own.

Of course, this court may not remedy this apparent defect in our intestate succession statutes. Only the Legislature may make the appropriate revisions. I urge it to do so here. ***926**

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FONTANA UNIFIED SCHOOL DISTRICT,
Plaintiff and Appellant,
v.
NANCY BURMAN, Defendant and Appellant
L.A. No. 32230.

Supreme Court of California
May 12, 1988.

SUMMARY

In a hearing by a commission on professional competence to consider charges against a tenured teacher initiated by a school district's notice of intent to dismiss her (Ed. Code, § 44932, subd. (a)), the commission determined that the teacher should not be dismissed, even though it found her guilty of dishonesty, a cause for discipline and a ground for dismissal. In mandamus proceedings by the school district, the trial court denied the writ. (Superior Court of San Bernardino County, No. 223230, Charles Bierschbach, Judge.) The Court of Appeal, Fourth Dist., Div. Two, No. E001561, reversed.

The Supreme Court reversed the judgment of the Court of Appeal with directions to enter judgment affirming the trial court in part and reversing in part and directing it to enter judgment denying the petition for a writ of mandate and to award the teacher reasonable costs and attorney fees. Stating the principal question on appeal was whether the commission had the discretion to determine that the teacher should not be dismissed as a permanent employee once it found her guilty of dishonesty within the meaning of Ed. Code, § 44932, subd. (a)(3), or whether, as the Court of Appeal found, her dismissal was mandatory once cause for discipline on that ground had been found to exist, the court held a commission on professional competence is empowered to exercise its collective wisdom and discretion to determine that dismissal is not appropriate in a given case. The court also held the commission was not an indispensable party in the administrative mandamus proceedings. (Opinion by Arguelles, J., expressing the unanimous view of the court.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d) Schools § 46--Teachers--Suspension or Dismissal-- Appeals Before Personnel Commission--Commission on Professional Competence--Discretion.
In a hearing by a commission on professional competence to consider charges against a tenured teacher initiated by the school district's notice of intent to dismiss her (Ed. Code, § 44932, subd. (a)), the commission had the discretion to determine that the teacher should not be dismissed, even though the commission found her guilty of dishonesty, a cause for discipline and a ground for dismissal. Under Ed. Code, § 44944, subd. (c), a commission has only two options when a school district seeks only to dismiss a teacher: It may choose to dismiss or not to dismiss. The fact the commission found a cause for discipline existed did not mandate the imposition of the only statutorily authorized discipline of dismissal and it was prohibited from imposing suspension. The commission's role is not limited to resolving the factual question whether the charged conduct occurred, but also to resolve the ultimate issue presented by a disciplinary proceeding: whether the conduct demonstrates such unfitness to teach as to warrant terminating the teacher's employment.
[See **Cal.Jur.3d**, Schools, § 440; **Am.Jur.2d**, Schools, § 185.]
(2) Statutes § 21--Construction--Legislative Intent.
A fundamental rule of statutory construction is that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent the court turns first to the words themselves for the answer. It is required to give effect to statutes according to the usual, ordinary import of the language employed in framing them, and, if possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided, and when used in a statute, words must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear. Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole.

(3) Schools § 40--Teachers--Suspension or Dismissal--Statutory Scheme.
Viewed in the context of the entire statutory scheme, a fair reading of Ed. Code, § 44944, recognizes the discretion given both an employing school district and a commission on professional competence in disciplinary matters. The district may determine when to seek disciplinary action and what discipline to seek. It may, by choosing to pursue only a dismissal sanction, preclude the commission from imposing suspension. And it may, by invoking the procedures of Ed. Code, § 44939, accompany the notice of dismissal with an immediate suspension of the employee without pay. But nothing in the statutory scheme indicates that the commission must be bound by the district's choice to the extent that it is required to approve the employee's dismissal if it is not persuaded, in the exercise of its discretion, that an offense is serious enough to warrant that step.

(4) Statutes § 45--Construction--Presumptions--Prior Judicial Construction.
When the Legislature amends a statute without altering portions of the provision that have previously been judicially construed, the Legislature is presumed to have been aware of and to have acquiesced in the previous judicial construction. The judicial construction given words and phrases are presumed adopted when those portions of an existing statute are used in a subsequent legislative enactment.

(5) Administrative Law § 104--Judicial Review and Relief--Methods-- Administrative Mandamus--Parties--Dismissal of Teacher--Commission on Professional Competence--Indispensable Parties.
In a mandamus proceeding (Code Civ. Proc., § 1094.5) by a school district to review a decision of a commission on professional competence that the penalty of dismissal should not be imposed on a tenured teacher, in which the teacher was named the respondent, the commission was not an indispensable party. The commission is not a standing body but an ad hoc group whose decision, once made, becomes the decision of the employing school district (Ed. Code, § 44944, subd. (c)), and the commission serves no identifiable function in the remainder of the review process. As the commission need not be before the court to enable the court to accord complete relief between the employing school district and the employee, it is not an indispensable party within the meaning of Code Civ. Proc., § 389, subd. (a).

(6) Costs § 20--Attorney Fees--Statutory Provisions--Teacher Dismissal Proceedings.
Although Ed. Code, § 44944, subd. (e), authorizing the payment of attorney fees to an employee whom the commission on professional competence has determined should not be dismissed or suspended, does not expressly provide for the award of fees if judicial review of a commission decision is sought, fees should be awarded to a prevailing employee for any such review proceedings as well, and costs should be awarded under the general provisions of Code Civ. Proc., § 1032, subd. (b) (costs to prevailing party). The amount of attorney fees is not limited by Gov. Code, § 800, allowing $1,500 in costs and attorney fees on determination that the administrative proceeding was the result of arbitrary or capricious action.

COUNSEL

Wagner, Sisneros & Wagner and John J. Wagner for Plaintiff and Appellant.

Joseph R. Symkowick and Michael E. Hersher as Amici Curiae on behalf of Plaintiff and Appellant.

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ARGUELLES, J.

The decision of a school district to dismiss or to suspend a permanent certificated employee, such as a tenured teacher, for disciplinary or performance-related reasons is subject to review at the employee's request by a local commission on professional competence. The commission is charged by statute with the responsibility of determining whether the employee should or should not be dismissed or suspended, but its powers are circumscribed in part by the employing district's initial choice of sanction. Under Education Code section 44944, subdivision (c), [FN1] the commission has no power "to dispose of [a] charge of dismissal by imposing probation or other alternative sanctions" and may impose suspension as a

sanction only if the employing district sought that result.

FN1 All further statutory references are to the Education Code unless otherwise indicated.

We are called upon in this case to decide whether the statute requires a local commission on professional competence to sustain a school district's notice of intent to dismiss a tenured elementary school teacher whenever the commission finds that one of the statutorily authorized grounds for dismissal exists, or whether such a commission has discretion to determine that dismissal is not warranted although cause for some measure of ***212** discipline may exist. We conclude the Court of Appeal erred in holding the commission had no discretion and therefore reverse its order mandating the teacher's discharge.

Facts

The facts of this case are not complex and are undisputed on all material points. Nancy Burman, a tenured teacher employed for 14 years with the Fontana Unified School District in San Bernardino County (district) and then serving as a school principal, decided some time prior to December 8, 1983, to call in sick so that she could attend the first California landing of the space shuttle at Edwards Air Force Base on that day. She arranged for a third party to call her school on December 8 to report that she was ill and would not be at work. In fact, she was not ill and the information given at her request was false.

On the evening of December 7, Burman had dinner with the principal of another school. During the course of a long evening that extended into the following morning, Burman (a) invited a custodian from the friend's school to join the two women for dinner during the custodian's duty hours, (b) returned to her own school after dinner and invited the custodian on duty there to go along with the three to a nightclub, where the group remained for several hours and consumed alcoholic beverages, and (c) invited the others to accompany her to see the space shuttle land at 5 in the morning. The shuttle was delayed by computer problems, and the group left without seeing the landing. Burman returned to her house early that afternoon, where she was confronted by the district superintendent and other district personnel. She initially lied about where she had been that day and denied knowing where the other principal was, but confessed after a short period of time that she had not been ill and that the other principal was at that moment inside the house.

The district's board of education voted to discharge Burman for immoral conduct. Proceeding under section 44939, the district placed Burman on immediate suspension without pay and served notice on her that she would be dismissed 30 days later unless she demanded a hearing. [FN2] The notice set ***213** forth four of the statutorily authorized grounds for dismissal of a teacher, charging Burman with immoral conduct, dishonesty, evident unfitness for service, and persistent violation of or refusal to obey district regulations. [FN3]

FN2 Section 44939 provides, in pertinent part: "*Upon the filing of written charges, duly signed and verified by the person filing them with the governing board of a school district, or upon a written statement of charges formulated by the governing board, charging a permanent employee of the district with immoral conduct*, conviction of a felony or of any crime involving moral turpitude, with incompetency due to mental disability, with willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, with violation of Section 51530, with knowing membership by the employee in the Communist Party or with violation of any provision in Sections 7001 to 7007, inclusive [sections repealed by Stats. 1981, ch. 470, § 11, p. 1738], *the governing board may, if it deems such action necessary, immediately suspend the employee from his duties and give notice to him of his suspension, and that 30 days after service of the notice, he will be dismissed, unless he demands a hearing.*" (Italics added.)

This portion of section 44939 augments, at the option of a district and in the limited circumstances specified, the procedures found in section 44934 for disciplining a permanent employee. Section 44934 similarly requires a written statement of charges

and 30 days notice of the intent to take disciplinary action, but incorporates by reference the full (and more extensive) range of statutory grounds for imposing discipline (see § 44932, subd. (a)) and authorizes proceedings to suspend the employee for a specified period of time rather than to dismiss. Immediate suspension of the employee without pay before expiration of the 30-day notice period is available only if the district institutes a dismissal proceeding based upon one of the grounds specified in section 44939.

FN3 The grounds for dismissal of a teacher are specified in section 44932, subdivision (a): "No permanent employee shall be dismissed except for one or more of the following causes: [¶] (1) Immoral or unprofessional conduct. [¶] (2) Commission, aiding, or advocating the commission of acts of criminal syndicalism, as prohibited by Chapter 188, Statutes of 1919, or in any amendment thereof. [¶] (3) Dishonesty. [¶] (4) Incompetency. [¶] (5) Evident unfitness for service. [¶] (6) Physical or mental condition unfitting him to instruct or associate with children. [¶] (7) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him. [¶] (8) Conviction of a felony or of any crime involving moral turpitude. [¶] (9) Violation of Section 51530 of this code or conduct specified in Section 1028 of the Government Code, added by Chapter 1418 of the Statutes of 1947. [¶] (10) Violation of any provision in Sections 7001 to 7007, inclusive, of this code [sections repealed by Stats. 1981, ch. 470, § 11, p. 1738]. [¶] (11) Knowing membership by the employee in the Communist Party. [¶] (12) Alcoholism or other drug abuse which makes the employee unfit to instruct or associate with children."

Subdivision (b) of section 44932 provides in turn that, unless the question is governed by a collective bargaining agreement adopted in accordance with Government Code section 3543.2, a permanent employee may be suspended for unprofessional conduct, a ground that under subdivision (a)(1) may also support the dismissal of such an employee. These two provisions are supplemented by section 44933, which allows the suspension or the dismissal of a permanent employee for unprofessional conduct consisting of acts or omissions other than those specified in section 44932.

Burman timely requested a hearing under section 44944, subdivision (a), and a commission on professional competence was convened to consider the matter. [FN4] The commission, on a two-to-one vote, found her guilty only of ***214** the dishonesty charge. The charges of immoral conduct, evident unfitness for duty, and persistent violation of or refusal to obey reasonable regulations of the district were not sustained.

FN4 Subdivision (b) of section 44944 specifies the composition of the body charged with conducting the hearing called for in the section and provides, in pertinent part: "The hearing provided for in this section shall be conducted by a Commission on Professional Competence. One member of the commission shall be selected by the employee, one member shall be selected by the governing board, and one member shall be an administrative law judge of the Office of Administrative Hearings who shall be chairperson and a voting member of the commission and shall be responsible for assuring that the legal rights of the parties are protected at the hearing. ... [¶] The member selected by the governing board and the member selected by the employee shall not be related to the employee and shall not be employees of the district initiating the dismissal or suspension and shall hold a currently valid credential and have at least five years' experience within the past 10 years in the discipline of the employee."

Although the commission made a finding that "[c]ause exists for disciplinary action against respondent under Education Code Section 44932(a)(3), based upon the charge of dishonesty," it found dismissal unwarranted. The commission noted that Burman had a previously

unblemished record and made an express finding that her actions "represented isolated conduct ... not likely of repetition under any set of circumstances in the future." The commission also found by way of mitigation that Burman had not been involved in any prior disciplinary action, that she had received no prior warnings or counseling with regard to abuse of sick leave or her dealings with school custodians, that there was no evidence of any prior abuse of sick leave, and that her evaluations as a district employee had been satisfactory or better. On this record, the commission determined that Burman was not unfit to continue as a teacher and concluded that "the penalty of dismissal should not be imposed." [FN5]

FN5 The commission observed that it would have unanimously found Burman "guilty of unprofessional conduct within the meaning of Sections 44932(a)(1) and 44933" - apparently on the basis of her initial dishonest responses to the superintendent's questions and what it seems to have viewed as "questionable conduct" with the custodians - and would have ordered her suspended had that course been open to it. As the district had sought only Burman's dismissal, the proceeding was not "a suspension proceeding" within the meaning of section 44944, subdivision (c), and the commission lacked the authority to order Burman suspended.

The commission's finding that "[c]ause exists for disciplinary action against respondent under Education Code Section 44932(a)(3), based upon the charge of dishonesty" was therefore technically incorrect - as suspension, which the commission deemed the appropriate discipline, is available only in a proceeding under section 44932, subdivision (b) or section 44933, and cause may have existed for disciplinary action under those statutes, not under subdivision (a) of section 44932. We view the commission's "finding" as an attempt to specify the proper *substantive* ground for the discipline it thought appropriate, not as a determination in favor of dismissal inconsistent with its express conclusion that Burman was not unfit to continue as a teacher.

The district sought review in the superior court by petition for a writ of mandate. [FN6] The petition named only Burman as the respondent, and she demurred on the ground that the commission was the proper party ***215** respondent and the district had accordingly failed to join an indispensable party within the applicable statute of limitations. The trial court overruled the demurrer and considered the merits of the matter, exercising its independent judgment on the evidence as required by section 44945. The court incorporated the commission's findings and decision into its own statement of decision and entered judgment denying the writ, also awarding Burman $1,500 in costs and attorney fees.

FN6 Section 44945 specifies that "[t]he decision of the Commission on Professional Competence may, on petition of either the governing board or the employee, be reviewed by a court of competent jurisdiction in the same manner as a decision made by a hearing officer under Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. ..." Government Code section 11523 in turn states that "[j]udicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure ...." A proceeding in administrative mandamus commenced by a petition under Code of Civil Procedure section 1094.5 is the proper avenue for review of a decision rendered under section 44944. (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1982) 135 Cal.App.3d 278, 283 [185 Cal.Rptr. 203].)

The district appealed on the merits, and Burman cross-appealed to challenge the overruling of her demurrer and the trial court's failure to award her a greater amount in costs and attorney fees. The Court of Appeal reversed, rejecting Burman's contention that the commission was an indispensable party and concluding that under section 44944, subdivision (c), neither the commission nor the trial court had any alternative but to rule that Burman should be dismissed "once a cause for discipline under Education Code section 44932, subdivision (a)(3) had been found ... to exist ...." We granted review to determine whether the Court of Appeal properly interpreted the statute.

Discussion

1. *Commission Discretion*

(1a) The principal question on this appeal is whether the commission had the discretion to determine that Burman should not be dismissed as a permanent employee once it found her "guilty of dishonesty within the meaning of Education Code Section 44932(a)(3)," or whether, as the Court of Appeal held, her dismissal was mandatory once cause for discipline on that ground had been found to exist. Resolution of this question requires us to determine the proper interpretation of subdivision (c) of section 44944, a task we cannot perform without a clear understanding of the statutory framework within which a commission on professional competence acts. We turn first to an examination of that subject.

A. *The Statutory Framework.* The provisions of the Education Code allow a district substantial leeway in determining when to take disciplinary action against a permanent employee and what action to take. Except in the case of an employee charged with certain sex offenses (see §§ 44010, 44940), a district is not required to take action. In all other situations, the district has discretion. It *may*, if it so chooses, initiate disciplinary proceedings under section 44934. It *may*, if it so chooses and if one of the grounds specified in subdivision (a) of section 44932 exists, seek the dismissal rather than the suspension of an employee. And it *may*, if it so chooses and if the ground for dismissal is also one of those specified in section 44939, *216 immediately suspend the employee without pay pending the disposition of the dismissal proceeding. Its discretion is limited only by the requirement that the ground asserted as the basis for taking disciplinary action be one authorized by statute *and* by the provision for review of its decision by a commission on professional competence if the employee requests a hearing.

Sections 44932 and 44933 specify the grounds for dismissal and suspension of teachers. Subdivision (a) of section 44932 identifies 12 specific grounds - including immoral or unprofessional conduct and, most relevant for present purposes, dishonesty - for which a permanent employee may be dismissed. It states, in fact, that "[n]o permanent employee shall be dismissed *except for* one or more of [those] causes ..." (italics added). Subdivision (b) provides in turn that a permanent employee may be suspended on grounds of unprofessional conduct, and section 44933 indicates that either dismissal or suspension may be sought on a charge of unprofessional conduct consisting of acts or omissions other than those enumerated in section 44932. [FN7] In the present case, the district proceeded solely on the basis of subdivision (a) of section 44932 and sought only to dismiss, not to suspend, Burman.

FN7 Although "unprofessional conduct" is identified in section 44932 as one of the 12 specific grounds for which a permanent employee may be dismissed, it appears to have a broader import than the others. The phrase refers generally to conduct demonstrating unfitness to teach (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174 [197 Cal.Rptr. 390]), and a particular act or omission on the part of a teacher may constitute unprofessional conduct as well as one of the other enumerated grounds. (*Id.* at p. 1175; see *Board of Education v. Swan* (1953) 41 Cal.2d 546, 551 [261 P.2d 261].) Section 44933 - by providing that unprofessional conduct may consist of "acts or omissions other than those specified in section 44932" - suggests that each of the specific acts or omissions listed in subdivisions (a)(2) through (a)(12) of section 44932 may also amount to unprofessional conduct supporting either a dismissal proceeding under subdivision (a)(1) or a suspension proceeding under subdivision (b).

The distinction between charges brought under subdivision (a) of section 44932 and those brought under subdivision (b) of that section - and between an attempt under either section 44932 or 44933 to dismiss an employee and an attempt under the statutes only to suspend - is significant. Subdivision (c) of section 44944 offers a commission on professional competence only three choices in resolving a disciplinary proceeding. It must determine either that the employee should be dismissed, that the employee should be suspended, or that the employee should not be dismissed or suspended. And the subdivision expressly provides: "The commission shall not have the power to dispose of [a] charge of dismissal by imposing probation or other alternative sanctions. The imposition of suspension ... shall be available only in a suspension proceeding authorized pursuant to subdivi-

sion (b) of Section 44932 or Section 44933." [FN8] *217

FN8 Subdivision (c) of section 44944 provides in full: "The decision of the Commission on Professional Competence shall be made by a majority vote, and the commission shall prepare a written decision containing findings of fact, determinations of issues, and a disposition which shall be, solely: [¶] (1) That the employee should be dismissed. [¶] (2) That the employee should be suspended for a specific period of time without pay. [¶] (3) That the employee should not be dismissed or suspended. [¶] The decision of the Commission on Professional Competence that the employee should not be dismissed or suspended shall not be based on nonsubstantive procedural errors committed by the school district or governing board unless the errors are prejudicial errors. [¶] The commission shall not have the power to dispose of the charge of dismissal by imposing probation or other alternative sanctions. The imposition of suspension pursuant to paragraph (2) shall be available only in a suspension proceeding authorized pursuant to subdivision (b) of Section 44932 or Section 44933. [¶] The decision of the Commission on Professional Competence shall be deemed to be the final decision of the governing board. [¶] The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section as may be necessary to effectuate this section. [¶] The governing board and the employee shall have the right to be represented by counsel."

The statutory scheme thus limits a commission to only two options where, as here, a school district seeks only to dismiss a teacher under subdivision (a) of section 44932. The commission then may not impose suspension, nor may it achieve the same result by ordering dismissal and staying its order on conditions amounting to probation. [FN9] It may only choose to dismiss or not to dismiss.

FN9 The latter possibility, in fact, was foreclosed by the Legislature in direct response to a Court of Appeal decision (*Governing Board v. Commission on Professional Competence (Pickering)* (1977) 72 Cal.App.3d 447 [140 Cal.Rptr. 206]) holding that the power to dismiss included the power to stay an order of dismissal on conditions of probation, effectively resulting in suspension rather than dismissal. (See *Powers v. Commission on Professional Competence* (1984) 157 Cal.App.3d 560, 580-581 [204 Cal.Rptr. 185].) Within six months of the *Pickering* decision, a bill was introduced to "clarify that the commission is limited in its disposition of the case to dismissing the employee or not dismissing the employee" (Legis. Counsel's Dig., Assem. Bill No. 2401, 4 Stats. 1978 (Reg. Sess.) Summary Dig., p. 324), and subdivision (c) of section 44944 was amended to provide: "The commission shall not have the power to dispose of the charge of dismissal by imposing probation, suspension of a dismissal or a nondismissal, or other alternative sanctions." (Stats. 1978, ch. 1172, § 1, p. 3782.)

Although the section was later amended by the Hughes-Hart Educational Reform Act of 1983 (Stats. 1983, ch. 498, § 59, p. 2086) to read in its present form, and the explicit bar against "suspension of a dismissal or a nondismissal" was eliminated, the legislative history indicates that no substantive change was intended. The Senate's attempt to give a commission on professional competence the authority to dispose of a charge of dismissal by suspending the employee (Sen. Bill No. 813 (1982-1983 Reg. Sess.) as amended May 16, 1983) was rejected by the Assembly in favor of the language of the 1978 amendment (Assem. Amend. to Sen. Bill No. 813 (1982-1983 Reg. Sess.) June 8, 1983), and the final bill reported out of conference established the present statutory scheme - for the first time differentiating between dismissal and suspension charges, and expressly limiting the power to suspend to proceedings seeking that end. In light of that limitation, no explicit prohibition against "suspension of a dismissal or a nondismissal" was necessary to effectuate the legislative intent.

In the present case, the commission chose not to dismiss. Although the trial court upheld the commission's action, the Court of Appeal found the decision im-

proper, ruling that if a commission finds that cause for discipline exists, then, as a matter of law, discipline must be imposed, and that, in light of the statutory limitations on the commission's power to impose suspension, the discipline here could only be dismissal. Burman contends ***218** that the Court of Appeal misinterpreted section 44944, subdivision (c) as barring the exercise of discretion and requiring a commission to authorize dismissal even when the commission concludes that dismissal is inappropriate. The proposition that section 44944, subdivision (c) compels the imposition of discipline, when a finding is made that cause for discipline exists, thus lies at the heart of this case. We turn then to that question.

B. *Education Code Section 44944*. We are guided by numerous precepts of statutory construction as we approach the task of determining whether subdivision (c) of section 44944 should be interpreted to bar the exercise of discretion by a commission on the propriety of the sanction of dismissal where cause for discipline is established. (2) "We begin with the fundamental rule that a court 'should ascertain the intent of the Legislature so as to effectuate the purpose of the law.' [Citation.] In determining such intent '[t]he court turns first to the words themselves for the answer.' [Citation.] We are required to give effect to statutes 'according to the usual, ordinary import of the language employed in framing them.' [Citations.] 'If possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose.' [citation]; 'a construction making some words surplusage is to be avoided.' [Citation.] 'When used in a statute [words] must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear.' [Citations.] Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole. [Citations.]" (*Palos Verdes Faculty Assn.* v. *Palos Verdes Peninsula Unified Sch. Dist.* (1978) 21 Cal.3d 650, 658-659 [147 Cal.Rptr. 359, 580 P.2d 1155] [quoting *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230 [110 Cal.Rptr. 144, 514 P.2d 1224]].)

(1b) The "words [of the statute] themselves" do not compel the interpretation advanced by the Court of Appeal. Section 44932 provides that a teacher cannot be dismissed unless certain grounds are found to exist; it does not provide that a teacher *must* be dismissed if one of those grounds is found. Similarly, section 44944 provides that the commission is to decide whether a teacher should or should not be dismissed; it does not provide that the commission *must* dismiss a teacher if it finds that one of the statutory grounds exists.

(3) Viewed in the context of the entire statutory scheme, a fair reading of section 44944 recognizes the discretion given both an employing school district and a commission. The district may determine when to seek disciplinary action and what discipline to seek. It may, by choosing to pursue only a dismissal sanction, preclude the commission from imposing ***219** suspension. [FN10] And it may, by invoking the procedures of section 44939, accompany the notice of dismissal with an immediate suspension of the employee without pay. But nothing in the statutory scheme indicates that the commission must be bound by the district's choice to the extent that it is required to approve an employee's dismissal if it is not persuaded, in the exercise of its discretion, that an offense is serious enough to warrant that step.

> FN10 By way of example, the commission's inability here to impose discipline on an employee who plainly merited some measure of punishment flowed not from the commission's exercise of a power it did not possess (i.e., to choose not to dismiss Burman) but from the district's decision to take an all or nothing tack - exercising its power to suspend Burman immediately without pay and seeking perhaps to preclude the commission from determining, as it indicated it would have, that suspension was the more appropriate sanction for Burman's misconduct.

(1c) We thus cannot accept the proposition that discipline *must* be imposed, when a finding is made that cause for discipline exists. The Court of Appeal thought this the clear intent of the 1978 legislative nullification of the decision in *Pickering, supra*, 72 Cal.App.3d 447, that a commission had the power to stay an order of dismissal. But the Legislature acted only to bar a commission from suspending the impact of its order once the statutory determination was made "[t]hat the employee should be dismissed" or "[t]hat the employee should not be dismissed ...." Nothing in either the 1978 or later amendments purported to limit a commission's ability to determine that, although

cause for *some* discipline existed, the harsh sanction of *dismissal* was not warranted. [FN11]

FN11 Indeed, the fact that the Legislature acted in 1978 to foreclose a commission from suspending "a nondismissal," as well as a dismissal, suggests on the face of things that a commission had been and remained empowered to choose not to dismiss, and was precluded only from attempting to make other than an all-or-nothing decision.

(4) In addition to the general rules for ascertaining legislative intent previously noted, "[i]t is a well-established principle of statutory construction that when the Legislature amends a statute without altering portions of the provision that have previously been judicially construed, the Legislature is presumed to have been aware of and to have acquiesced in the previous judicial construction." (*Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 734 [180 Cal.Rptr. 496, 640 P.2d 115, 30 A.L.R.4th 1161].) The judicial construction given words and phrases are presumed adopted when those portions of an existing statute are used in a subsequent legislative enactment. (*Ibid.; People v. Curtis* (1969) 70 Cal.2d 347, 355 [74 Cal.Rptr. 713, 450 P.2d 33].)

This presumption facilitates our examination of a commission's role in disciplinary matters. We held in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-230 [82 Cal.Rptr. 175, 461 P.2d 375], that the ***220** phrase "immoral or unprofessional conduct," one of the statutory grounds for dismissing or suspending a permanent employee (§ 44932, subd. (a)(1)), embraced only conduct demonstrating unfitness to teach. Reasoning that the phrase was otherwise too vague and too broad to withstand constitutional challenge, we held that the alleged misconduct of a tenured teacher should be measured against seven criteria in determining whether dismissal was warranted: (1) the likelihood that the conduct would recur; (2) the existence of aggravating or extenuating circumstances; (3) the impact of publicity; (4) the effect on teacher-student relationships; (5) any disruption of the educational process; (6) the employee's motive for the conduct; and (7) the proximity or remoteness in time of the conduct. (*Id.* at p. 230; see also *Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 696-697 [139 Cal.Rptr. 700, 566 P.2d 602]; *San Dieguito High School Dist., supra*, 135 Cal.App.3d at p. 284.) The Legislature must be presumed to have adopted this construction in its continued use of the identical phrase in both the 1978 and the more extensive 1983 amendments to the Education Code.

(1d) Application of this standard indicates that a commission has broad discretion in disciplinary matters. Its role is not merely to determine whether the charged conduct in fact occurred, but to decide whether that conduct - measured against the *Morrison* criteria (*supra*, 1 Cal.3d 214) - demonstrates unfitness to teach and thus constitutes "immoral or unprofessional conduct" within the meaning of the statute. [FN12]

FN12 Although *Morrison* concerned itself only with the proper definition of "immoral or unprofessional conduct," its analysis requires an identical approach to an attempt to discipline a permanent employee on grounds of dishonesty, as here. Dishonest conduct may range from the smallest fib to the most flagrant lie. Not every impropriety will constitute immoral or unprofessional conduct, and not every falsehood will constitute "dishonesty" as a ground for discipline.

We find other provisions relevant to our inquiry in section 44944. Subdivision (c) itself does not merely restrict a commission's options for the disposition of a particular disciplinary proceeding; it also requires a commission to issue "a written decision containing findings of fact, [and] determinations of issues ...." (§ 44944, subd. (c).) That a commission must determine issues as well as make findings of fact supports our conclusion that its role is not limited to resolving the factual question whether the charged conduct occurred, but that it is to resolve the ultimate issue presented by a disciplinary proceeding: whether the conduct demonstrates such unfitness to teach as to warrant terminating the teacher's employment. [FN13]
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FN13 Still other subdivisions of section 44944 tend to confirm the discretionary role of a commission. Subdivision (a) subjects proceedings before a commission to the provisions of the Administrative Procedure Act (Gov. Code, § 11500 et seq.), with minor exclusions and modifications not relevant to present purposes. Among the provisions so incorporated is Government Code section

11506, subdivision (d), which allows a respondent to file a statement in mitigation even if no defense to the charges is tendered. This permission would be less relevant in commission proceedings if a commission did not retain the power to take mitigating factors into consideration and to determine that, under the *Morrison* criteria, dismissal was not an appropriate penalty even though a particular charge of misconduct was found to be true. Absent such discretion, there would also seem to be less purpose to the requirement that the members of the commission selected by the district and the employee be credentialed teachers with substantial recent experience in the employee's particular field. (§ 44944, subd. (b).)

That a commission must play a discretionary role is also suggested by contrasting the proceedings for the dismissal or suspension of permanent, tenured employees with those now in effect for the dismissal or suspension of probationary, nontenured employees. A probationary employee may be dismissed during the school year for unsatisfactory performance or for cause or, as an alternative to dismissal, may be suspended without pay for a specified period of time. (§ 44948.3, subds. (a), (b).) [FN14] The employee may demand a hearing, as in the case of a permanent employee, but a commission on professional competence is not convened. Instead, the hearing may be conducted by an administrative law judge, who prepares a "recommended decision" for the governing board of the employing school district. (§ 44948.3, subd. (a)(2).) The final decision, however, is that of the district. The commission occupies a position of greater import in proceedings involving a permanent employee, for "[t]he decision of the Commission on Professional Competence shall be deemed to be the final decision of the governing board." (§ 44944, subd. (c).) The Legislature was quite able to specify a procedure placing the final disciplinary decision in the hands of a teacher's employer when it so chose. The significantly different provisions of section 44944 necessarily betoken a greater and a discretionary role for a commission in disciplinary proceedings involving a permanent employee.

FN14 Section 44948.3 (adopted by Stats. 1983, ch. 498, § 61, p. 2090) applies only to probationary employees whose terms commenced during or after the 1983-1984 fiscal year or who are employed by a school district having an average daily attendance of at least 250 pupils. Other probationary employees have greater rights, commensurate with those accorded permanent employees, as far as disciplinary proceedings during the school year are concerned (see §§ 44932, subd. (b), 44948), but are subject to procedures similar to those specified in section 44948.3 in challenging a denial of reemployment for the succeeding school year. (See § 44948.5.)

Given the structure of the proceedings and, in particular, the words of the statute and the need to measure conduct against the criteria specified in *Morrison, supra*, 1 Cal.3d 214, we conclude the Legislature intended more of a commission on professional competence than a simple determination whether cause exists for disciplinary action, resulting inexorably in the imposition of the sanction previously selected by the employing school district. We avoid surplusage, give effect to each portion of the statute and harmonize each part of the entire statutory scheme by recognizing that the commission retains discretion to choose between the options given it by statute. ***222**

This interpretation of the statute works no great infringement on the ability of school districts to govern their affairs and to control the conduct of their permanent employees. The same conduct, in the judgment of the employing district, may constitute grounds for suspending or for dismissing a permanent employee, and nothing in the statutory scheme limits the ability of a district to pursue alternative sanctions, either simultaneously (cf. *Von Durjais v. Board of Trustees* (1978) 83 Cal.App.3d 681, 686-687 [148 Cal.Rptr. 192]; *Board of Education* v. *Commission on Professional Competence (Smyth)* (1976) 61 Cal.App.3d 664, 670 [132 Cal.Rptr. 516]) or, as principles of double jeopardy do not bar successive administrative proceedings to revoke a license (see *Kendall v. Bd. of Osteopathic Examiners* (1951) 105 Cal.App.2d 239, 248-249 [233 P.2d 107]; cf. *Rinaldo v. Board of Medical Examiners* (1932) 123 Cal.App. 712, 716 [12 P.2d 32]), in succession. [FN15]

FN15 Although generally "no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters

occurring more than four years prior to the filing of the notice" (§ 44944, subd. (a)), this limitation seems to be more of a bar against the use of stale information to buttress a current charge than a true statute of limitations restricting a district's options. To the extent that it might be taken as an explicit statute of limitations, it would seem inapplicable to a successive application based upon the same charge of misconduct and differing only as to the proposed discipline.

Limitations questions in administrative matters are properly evaluated under rules similar to those employed in judicial proceedings. (See 2 Cal.Jur.3d, Administrative Law, § 144, p. 366.) Given that the identical conduct would be at issue in the two proceedings and that the employee would have received timely notice of the charges, could complain of no prejudice in gathering evidence and could ordinarily point to no bad faith or unreasonable conduct on the part of the employing district, the doctrine of equitable tolling would generally preserve a district's right to proceed in this fashion. (See *Addison v. State of California* (1978) 21 Cal.3d 313, 319 [146 Cal.Rptr. 224, 578 P.2d 941].) Complaints of stale claims would be more appropriately subject to a laches analysis than a strict statute of limitations bar. (Cf. *Gore v. Board of Medical Quality Assurance* (1980) 110 Cal.App.3d 184 [167 Cal.Rptr. 881].)

We conclude that a commission on professional competence is empowered to exercise its collective wisdom and discretion to determine that dismissal is not appropriate in a given case. The statutes do not preclude a district from preserving its options by seeking alternative sanctions simultaneously or successively, and no other reading of the statutes is capable of fully implementing the balance struck by the Legislature between the discretion given districts to select the degree of discipline and limit the options available to the commission, and the protection from arbitrary action accorded their permanent employees. FN16 ***223**

FN16 By recognizing that alternative sanctions may be sought either simultaneously or successively, at a district's option, we harmonize the discretion accorded school districts to select the appropriate degree of discipline and that given a commission on professional competence. Were a school district limited to a single disciplinary proceeding, practical considerations might lead it to charge in the alternative in many, if not most, cases, for to seek an employee's dismissal alone might lead to no discipline being imposed and a district might deem suspension of the employee preferable to that outcome. But to charge in the alternative in every case would vest the commission with the power to opt for suspension in each case - a result that is at odds with the legislative limitations on the options available to a commission. The availablility of successive proceedings allays these concerns.

Nor need we fear that the authority to institute successive proceedings would be invoked routinely to the prejudice of district employees guilty of only minor misconduct. If a district opted to seek first only the dismissal of an employee and its attempt was not sustained by a commission, it would be required to pay the costs of the hearing and the employee's attorney fees (§ 44944, subd. (e)), and the imposition of any lesser discipline would be delayed. Moreover, an employee suspended without pay whose dismissal was then not allowed would be entitled to compensation for lost wages even if some lesser measure of discipline were later permitted. (See *Von Durjais, supra*, 83 Cal.App.3d at p. 687.) These potential costs, and the simple inefficiency of moving separately rather than in a single proceeding, should suffice to limit exercise of the authority to cases in which a district held an abiding belief that no discipline less than dismissal was warranted, while at the same time preserving the district's ability to ensure that it could seek the imposition of some discipline if the commission disagreed with the initial judgment on the appropriate degree of discipline and if the district determined that a successive proceeding was warranted.

2. *Commission as Indispensable Party*

(5) As we reverse the Court of Appeal on the question of commission discretion, we need not, strictly speaking, address Burman's contention that her demurrer to the district's mandamus petition should have been granted because the commission was an unjoined, indispensable party. We did not limit our grant of review under California Rules of Court, rule 29.2(b), to the discretion issue, however, and we think it appropriate to speak to the indispensable party question for the guidance of the bench and bar in future cases, for on this point we agree with the Court of Appeal and find Burman's contentions unpersuasive.

We must acknowledge that Burman's arguments have facial appeal. The district's challenge to the commission's decision was properly brought under Code of Civil Procedure section 1094.5 (*San Dieguito Union High School Dist., supra*, 135 Cal.App.3d at p. 283), and that statute specifies only two possible dispositions of such a petition: "The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. ..." (Code Civ. Proc., § 1094.5, subd. (f).) Burman accordingly contends only the commission could be the subject of a judgment ordering it as respondent to set aside its decision (see *State of California v. Superior Court* (1974) 12 Cal.3d 237, 255 [115 Cal.Rptr. 524 P.2d 1281] [only the California Coastal Commission and its members could be proper subjects of petition for writ of administrative mandamus]) and asserts that the district's petition should have been dismissed because the statute of limitations specified in Government Code section 11523 expired without the joinder of the commission as an indispensable party. (See *Kupka v. Board of Administration* (1981) 122 Cal.App.3d 791, 794-795 [176 Cal.Rptr. 214]; *Sierra Club, Inc. v. California Coastal Com.* (1979) 95 Cal.App.3d 495, 502 [157 Cal.Rptr. 190].) ***224**

Facial appeal is all Burman's arguments have, however, for she overlooks the unusual nature of a commission on professional competence. It is not a standing body; it is an ad hoc group more akin to an arbitration tribunal, two of whose members are named by the parties to the dispute. (§ 44944, subd. (b).) It is a nominal, transitory body whose residence is immaterial for venue purposes in an administrative mandamus proceeding. (*Sutter Union High School Dist. v. Superior Court* (1983) 140 Cal.App.3d 795, 798 [190 Cal.Rptr. 182].) Its decision, once made, becomes the decision of the employing school district (§ 44944, subd. (c)), and the commission serves no identifiable function in the remainder of the review process. (Cf. *Compton v. Board of Trustees* (1975) 49 Cal.App.3d 150, 157-158 [122 Cal.Rptr. 493].) It is a different type of entity than the usual respondent named in a mandamus matter, and although it may be - and usually is - named in proceedings for review of a decision made under section 44944, it is not an indispensable party whose absence is fatal to the court's jurisdiction.

Although Code of Civil Procedure section 1094.5, subdivision (f) generally prescribes that an administrative mandamus proceeding be disposed of by denial of the writ or a direction to a named respondent to set aside its decision, that section comes into play in commission matters only by application of Government Code section 11523, which specifies that judicial review may be had "by filing a petition for writ of mandate in accordance with the provisions of the Code of Civil Procedure, *subject, however, to the statutes relating to the particular agency*." (Italics supplied.) The "statutes relating to the [commission]" include section 44944, subdivision (e), which provides for the allocation of costs if the commission's decision "is finally reversed or vacated" by the reviewing court. The statutes thus recognize the power of a court to directly set aside the order of the commission. As the commission therefore need not be before the court to enable the court to accord complete relief between the employing school district and the employee, it is not an indispensable party within the meaning of Code of Civil Procedure section 389, subdivision (a), and Burman's demurrer was properly overruled. [FN17]

FN17 Moreover, under section 44944, subdivision (c), the decision of the commission becomes "the final decision of the governing board." In effect then, a strict application of the statutes relied on by Burman would require a district to bring an action against itself to set aside its own order. "Statutes are to be given a reasonable and commonsense interpretation consistent with the apparent legislative purpose and intent 'and which, when applied, will result in wise policy rather than mischief or absurdity.' [Citation.]" (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1392 [241

Cal.Rptr. 67, 743 P.2d 1323].) We decline to construe the statutes as Burman urges.

3. *Award of Attorney Fees*

Finally, Burman contends the trial court erred in awarding her but $1,500 in costs and attorney fees. She requests that we remand the matter to ***225** permit her to demonstrate the greater amount of costs and fees actually incurred. The Court of Appeal had no occasion to address this question in view of its decision on the merits. The point is properly before us, and we will do as Burman requests.

(6) Section 44944, subdivision (e) specifies that "[i]f the Commission on Professional Competence determines that the employee should not be dismissed or suspended, the governing board shall pay the expenses of the hearing, including ... reasonable attorney fees incurred by the employee." Although the statute does not expressly provide for the award of fees if judicial review of a commission decision is sought, fees should be awarded to a prevailing employee for any such review proceedings as well (*Russell v. Thermalito Union School Dist.* (1981) 115 Cal.App.3d 880, 884 [176 Cal.Rptr. 1]; *Board of Education* v. *Commission on Professional Competence (Lujan)* (1980) 102 Cal.App.3d 555, 562-563 [162 Cal.Rptr. 590]), and costs should be awarded under the general provisions of the Code of Civil Procedure. (Code Civ. Proc., § 1032, subd. (b) ["Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding."].)

It appears that the trial court in this case may have awarded Burman $1,500 in costs and attorney fees in the mistaken belief that Government Code section 800 precluded it from awarding a greater amount. That section reads, in pertinent part: "In any civil action to ... review the ... determination of any administrative proceeding ... where it is shown that the ... determination of such proceeding was the result of arbitrary or capricious action ... the complainant if he prevails in the civil action may collect reasonable attorney's fees, but not to exceed one thousand five hundred dollars. ..." Because section 44944, subdivision (e) expressly provides for the award of fees in permanent employee dismissal proceedings, however, its provisions, imposing no limitation, should govern. (*Forker v. Board of Trustees* (1984) 160 Cal.App.3d 13, 21 [206 Cal.Rptr. 303].)

As we cannot tell whether the trial court based its award on an implicit finding that $1,500 was a reasonable fee or whether it erroneously believed that no more than that sum could be awarded, we conclude that Burman's request for a remand on this point should be granted. On remand, she is entitled to request reasonable fees for all trial and appellate proceedings. [FN18] (*Ibid.*) ***226**

FN18 In the Court of Appeal, the district contended that no remand on the attorney fee question was warranted because Burman had failed to provide the trial court with any information showing that she incurred a greater amount of fees. Given that section 44944, subdivision (e) specifies no procedure for claiming fees, it would have been appropriate for Burman to file such a memorandum after judgment was entered. (See Code Civ. Proc., § 1033.5, subd. (a)(10); Cal. Rules of Court, rule 870(a)(1).) The trial court, however, made its award of $1,500 in fees without affording Burman the opportunity to file such a memorandum. As the district has not raised any issue before us on the attorney fee question, we need not decide the appropriate procedure, nor need we discuss at this time Burman's avowed intention to seek enhancement of any fee award under a "lodestar" theory. (See *Sternwest Corp. v. Ash* (1986) 183 Cal.App.3d 74, 76-77 [227 Cal.Rptr. 804].)

Conclusion

We recognize that cogent arguments were made on both sides of this case. On the one hand, the statutory scheme contemplates the exercise of discretion by a commission on professional competence and the rendition of judgments on the propriety of dismissing an employee found guilty of misconduct. On the other hand, we have a clear legislative intent to limit the authority of a commission to dispose of dismissal charges by suspension.

On balance, we believe Education Code section 44944 is best read to vest discretion in a commission on professional competence not to dismiss an employee even though a cause for discipline is found to exist.

Our interpretation recognizes the discretion initially conferred on an employing school district to determine whether to charge an employee and what charges to pursue, but confirms the commission's role as the professional body charged with determining the appropriateness of a given sanction. We reject Burman's contention that the commission is an indispensable party in proceedings of this nature and remand the attorney fee question to the trial court for further proceedings consistent with this opinion.

The judgment of the Court of Appeal is reversed. The Court of Appeal is directed to enter judgment affirming the trial court in part and reversing in part and directing it to enter judgment denying the petition for a writ of mandate and to award Burman reasonable costs and attorney fees in accordance with this opinion.

Lucas, C. J., Mosk, J., Broussard, J., Panelli, J., Eagleson, J., and Spencer (Vaino H.), J., [FN*] concurred. ***227**

FN* Presiding Justice, Court of Appeal, Second Appellate District, Division One, assigned by the Chairperson of the Judicial Council.

Cal.
Fontana Unified School Dist. v. Burman
45 Cal.3d 208, 753 P.2d 689, 246 Cal.Rptr. 733, 46 Ed. Law Rep. 781

END OF DOCUMENT

HIn re JOHNNY B. DAPPER on Habeas Corpus.
Crim. No. 12720.

Supreme Court of California
May 28, 1969.

HEADNOTES

(1) Criminal Law § 1038.7(7)--Writ of Coram Nobis--Review.
The granting or denying of a petition for writ of error *coram nobis* is an appealable order, governed by the same procedural rules that apply to appeals from a judgment of conviction.
See **Cal.Jur.2d,** Coram Nobis, § 26; **Am.Jur.2d,** Coram Nobis and Allied Statutory Remedies, § 29.
(2) Habeas Corpus § 8.1--Grounds--Relief Not Warranted.
A habeas corpus petitioner, convicted of five counts of a municipal code violation, could not attack a stipulation by the prosecutor and court-appointed defense counsel that three previously dismissed counts be reinstated, included in an appealable order granting his petition for writ of error *coram nobis,* which also set aside his guilty plea and sentence on the other two counts after which he was found guilty by a jury on all five counts, where the reinstatement of the dismissed charges might have been an integral part of the order granting the writ, where petitioner did not appeal from the order, move to set it aside, or to vacate the writ, but attacked only the portion of the order which, based on the stipulation, directed reinstatement of the dismissed charges, and where petitioner never urged that the order be set aside in its entirety but took advantage of it by withdrawing his guilty pleas and proceeding to trial on the merits of all of the charges.

(3) Criminal Law § 107(11)--Rights of Accused--Aid of Counsel--Competence of Counsel.
In a five-count prosecution for violation of a municipal code in which defendant pleaded guilty to and was sentenced on two counts and the other counts were thereupon dismissed "in furtherance of justice," the decision of court-appointed defense counsel to enter into a stipulation that the dismissed counts be reinstated, made part of an order granting defendant's petition for writ of *coram nobis* under which he withdrew his guilty pleas and proceeded to trial on the merits of all the charges, even if beyond his attorney's authority, did not show that he was incompetent, where the record did not show that counsel was unaware of the facts or the law applicable to the *coram nobis* proceeding, and, so far as appeared from the record, the determination to enter into the stipulation might have been the wisest course to follow to secure the vacation of defendant's convictions.

(4) Criminal Law § 12--Prohibition by Law--Repeal of StatutesMunicipal Corporations § 228--Ordinances--Effect of Repeal.
The outright repeal of a criminal statute without a saving clause bars prosecution for violations of the statute committed before the repeal; and the rule applies equally to local ordinances.
See **Cal.Jur.2d,** Criminal Law, § 102; **Am.Jur.,** Statutes (1st ed § 568).
(5) Municipal Corporations § 229--Ordinances--Effect of Repeal.
Prosecutions under repealed city ordinances, part of a municipal code, for violations committed before the repeal, were not saved by a savings clause of the municipal code which referred to ordinances repealed by the code and not to ordinances comprising the code which were subsequently repealed.
See **Cal.Jur.2d,** Municipal Corporations, § 409; **Am.Jur.,** Municipal Corporations (1st ed § 201).
(6) Criminal Law § 12--Prohibition by Law--Repeal of Statutes.
The rule which bars prosecution under a repealed law for offenses occurring before repeal does not apply where there is an outright appeal and a substantial reenactment; and in such case it is presumed that the legislative body did not intend that there should be a remission of crimes not reduced to final judgment.

(7) Statutes § 95(3)--Repeal--Simultaneous Re-enactment.
When a statute, although new in form, reenacts an older statute without substantial change, even though it repeals the older statute, the new statute is but a continuation of the old, and there is no break in the continuous operation of the old statute, and no abatement of any of the legal consequences of acts done under the old statute; the rule especially applies to the consolidation, revision, or codification of statutes.

(8) Municipal Corporations § 229--Ordinances--Effect of Repeal.
A prosecution for violation of a municipal code section could be validly maintained against defendant for violations committed before its repeal, where the section had been substantially reenacted and could be considered to be continuous in operation from the date the section was originally adopted.

(9) Municipal Corporations § 229--Ordinances--Effect of Repeal.
No prosecution for violation of municipal code sections could be validly maintained against defendant for violations committed before their repeal, where the sections had not been substantially reenacted, and no savings clause was applicable.

(10) Municipal Corporations § 229--Ordinances--Effect of Repeal.
Prosecution of a defendant for violation of a municipal code section, repealed before the prosecution had been reduced to final judgment, was barred by the "outright repeal of a criminal statute," where defendant was charged, inter alia, with the accumulation of "broken wood" specifically punishable under the repealed section, but where the list of items, accumulation of which was prohibited in the new section, omitted the significant item-"broken wood," and where there was no applicable savings clause.

(11) Municipal Corporations § 229--Ordinances--Effect of Repeal.
A repealed municipal code section was not substantially reenacted by a new section so as to permit prosecution of a defendant for violations committed before its repeal, where the purpose of the new section, requiring that accumulations of weeds be not permitted to remain in any court, yard, vacant lot or open space and that weeds be cut down only when property was endangered, was to prevent fires, whereas the repealed section contained no mention of cut-down weeds, but did prohibit certain types of growing weeds, no longer an offense under the new section unless they endanger property, and where there was no applicable savings clause.

SUMMARY

PROCEEDING in habeas corpus to have vacated convictions for violations of a repealed municipal code. Writ granted.

COUNSEL

Johnny B. Dapper, in pro. per., for Petitioner.

Edward T. Butler, City Attorney, Kenneth H. Lounsbery and J. David Franklin, Deputy City Attorneys, for Respondent.

PETERS, J.

Johnny B. Dapper petitions for a writ of habeas corpus.

In August 1966, he was charged with five counts of violating the San Diego Municipal Code: Count 1 [§ 55.30.10], permitting combustible material and debris to accumulate; count 2 [§ 55.36], allowing rubbish to remain without a permit; count 3 [§ 55.30.7(c)], storing lumber without a permit; count 4 [§ 44.0350], accumulating debris so as to afford a shelter for rats; and count 5 [§ 55.35], allowing dangerous weeds.

Dapper pleaded guilty to and was sentenced on counts 1 and 5. The other counts were dismissed "in furtherance of justice." Upon Dapper's petition, the court granted a petition for a writ of error *coram nobis,* including in its order a stipulation by the district attorney and Dapper's court-appointed counsel that the dismissed counts be reinstated.

A jury trial was held, and Dapper was found guilty on all ***187** five counts. On count 1, he was sentenced to pay a fine of $500 and serve 180 days in jail; execution of judgment was stayed, and he was placed on probation for three years. On count 5, he was sentenced to 180 days in jail; except for three days, execution of sentence was stayed, and he was placed on probation for three years. The sentences were to run consecutively. As a condition of probation, he was required "to clean up his property."

Dapper contends that he could not be validly prosecuted under counts 2, 3, and 4, because section 1387 of the Penal Code bars the refiling of misdemeanor complaints which have been dismissed. [FN1] He argues that the stipulation to the reinstatement of the dismissed counts is invalid, because it was made over his objection, and shows incompetence of counsel. However, even assuming that Dapper objected to the

stipulation at the time it was made and that because of his objection it was improper for counsel to enter into the stipulation, Dapper may not in this proceeding attack the stipulation, and the stipulation does not show incompetence of counsel.

> FN1 Section 1387 of the Penal Code states: "An order for the dismissal of the action, made as provided in this chapter, is a bar to any other prosecution for the same offense if it is a misdemeanor, but not if it is a felony."

(1) The granting or denying of a petition for writ of error *coram nobis* is an appealable order, governed by the same procedural rules that apply to appeals from a judgment of conviction. (*People v. Griggs*, 67 Cal.2d 314, 316 [61 Cal.Rptr. 641, 431 P.2d 225]; *In re Horowitz*, 33 Cal.2d 534, 537 [203 P.2d 513].) (2) The reinstatement of the dismissed charges may have been an integral part of the order granting the writ, and had Dapper attacked the order on the basis of the part reinstating the charges, the entire order may have been held inseverable. (Cf. *Hamasaki v. Flotho*, 39 Cal.2d 602, 608-610 [248 P.2d 910]; *People v. Dominguez*, 256 Cal.App.2d 623, 629 [64 Cal.Rptr. 290]; *People v. Williams*, 247 Cal.App.2d 394, 409-410 [55 Cal.Rptr. 550]; *People* ex rel. *Dept. of Public Works v. Mascotti*, 206 Cal.App.2d 772, 778-779 [23 Cal.Rptr. 846, 24 Cal.Rptr. 679]; *People v. Mason*, 184 Cal.App.2d 182, 187 [7 Cal.Rptr. 525].) He did not appeal the order granting the writ or move to set aside the order and vacate the writ. He has attacked only the portion of the order which, based on the stipulation, directed reinstatement of the dismissed charges. He has never urged that the order should be set aside in its entirety. Instead, he has taken advantage of ***188** the order by withdrawing his guilty pleas and proceeding to trial on the merits of all of the charges. We are satisfied that in the circumstances of this case he may not be permitted at this time to attack the order granting the writ after he has taken advantage of those portions which are favorable to him.

(3) The decision of the attorney to enter into the stipulation, even if beyond his authority, does not show that he was incompetent. The record does not show that counsel was unaware of the facts or the law applicable to the *coram nobis* proceeding, and, so far as appears from the record, the determination to enter into the stipulation may have been the wisest course to follow to secure the vacation of defendant's convictions. (Cf. *In re Hawley*, 67 Cal.2d 824, 828-829 [63 Cal.Rptr. 831, 433 P.2d 919].)

Dapper further contends that the municipal court had no jurisdiction to prosecute him under San Diego Municipal Code sections 55.30.10, 55.36, 55.30.7(c), and 55.35 because, although the provisions were in effect when the violations were allegedly committed, "on or about" June 30, 1966, the sections were repealed June 20, 1967, before the prosecution of Dapper had been reduced to final judgment in October 1967. This contention does not apply to count 4, accumulating debris so as to afford a shelter for rats, because that section has not been repealed.

(4) The law is well-established that "the outright repeal of a criminal statute without a saving clause bars prosecution for violations of the statute committed before the repeal." (*Sekt v. Justice's Court*, 26 Cal.2d 297, 304 [159 P.2d 17, 167 A.L.R. 833].) The rule applies equally to local ordinances. (*Spears v. County of Modoc*, 101 Cal. 303, 304, 307 [35 P. 869].)

(5) Respondent contends that the San Diego Municipal Code contains such a saving clause. The clause on which respondent relies reads: "Neither the adoption of this Code nor the repeal *hereby* of any Ordinance of this City shall in any manner effect [*sic*] the prosecution for violation of Ordinances, *which violations were committed prior to the effective date hereof, ...*" (San Diego Mun. Code, § 11.04; italics added.) It is patently clear that the savings clause refers to ordinances repealed *by* the code, and not to ordinances comprising the code which are subsequently repealed. It is equally clear that the "violations" referred to, prosecution for which is preserved, are violations occurring before the adoption of the code and not violations like those involved here which ***189** occurred after adoption. In brief, prosecution under the repealed ordinances in this case is not saved by section 11.04 of the San Diego Municipal Code. [FN2]

> FN2 In contrast, the savings clause in section 9608 of the Government Code, would preserve the prosecution of offenses in circumstances such as those in the instant case: "The termination or suspension (by whatsoever means effected) of any law creating a criminal offense does not constitute a bar to the indictment or information and punishment of an act already committed in violation

> of the law so terminated or suspended, unless the intention to bar such indictment or information and punishment is expressly declared by an applicable provision of law."

Respondent next contends that, even absent a valid savings clause, Dapper can be prosecuted under the repealed municipal code sections because San Diego Municipal Code Ordinance 9651 (new series), which repealed the challenged sections, simultaneously enacted the Uniform Fire Code, which, respondent asserts, contains substantially the same provisions as those in the repealed sections.

(6) It is established that the rule which bars prosecution under a repealed law for offenses occurring before repeal does not apply "where there is an outright repeal and a substantial reenactment," because it will be presumed that the legislative body "did not intend that there should be a remission of crimes not reduced to final judgment." (*Sekt v. Justice's Court, supra,* 26 Cal.2d 297, 306.) (7) "When a statute, although new in form, re-enacts an older statute without substantial change, even though it repeals the older statute, the new statute is but a continuation of the old. There is no break in the continuous operation of the old statute, and no abatement of any of the legal consequences of acts done under the old statute. Especially does this rule apply to the consolidation, revision, or codification of statutes, because, obviously, in such event the intent of the Legislature is to secure clarification, a new arrangement of clauses, and to delete superseded provisions, and not to affect the continuous operation of the law." (*Sobey v. Molony,* 40 Cal.App.2d 381, 385 [104 P.2d 868]; see also, *Pacific Mail S.S. Co. v. Joliffe* (1864) 69 U.S. (2 Wall.) 450, 458 [17 L.Ed. 805]; *Cort v. Steen,* 36 Cal.2d 437, 440 [224 P.2d 723]; *Perkins Mfg. Co. v. Clinton Constr. Co.,* 211 Cal. 228, 236 [295 P. 1, 75 A.L.R. 439]; *Carter v. Stevens,* 208 Cal. 649, 651 [284 P. 217]; *San Joaquin etc. Irr. Co. v. Stevinson,* 164 Cal. 221, 234 [128 P. 924]; *Wayne v. Bureau of Private Investigators & Adjusters,* 201 Cal.App.2d 427, 438-439 [20 Cal.Rptr. 194]; *Orange County Water Dist. v. Farnsworth,* 138 Cal.App.2d 518, 524-525 [292 P.2d 927]; ***190***People v. Atkinson,* 115 Cal.App.2d 425, 426-427 [252 P.2d 67]; *Jones v. City of South San Francisco,* 96 Cal.App.2d 427, 432-433 [216 P.2d 25].)

Preliminarily, we note that the entire San Diego Municipal Code-both the repealed sections and the portions of the Uniform Fire Code which replaced the repealed sections-are subject to section 11.12 of that code, captioned "Violations-A Misdemeanor," which states: "It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this Code." The punishment provided by the section for either violating a provision or failing to comply with any mandatory requirement is a fine of not more than $500 or imprisonment in jail for not more than six months, or both.

Section 11.12 makes clear that an act is subject to punishment whether the language be, for example, "It is unlawful to. ..." or, "No person shall. ..." Since section 11.12 was neither amended nor repealed, it is clear that the punishment is the same for violation of either the repealed or the new sections.

(8, 9) A comparison of the repealed sections and the new sections based on, or incorporated by reference to, the Uniform Fire Code, convinces us that, as respondent contends, section 55.36 (count 2) has been substantially reenacted and may be considered to be continuous in operation from the date the section was originally adopted; but contrary to respondent's contention, section 55.30.10 (count 1), section 55.30.7(c) (count 3) and section 55.35 (count 5) have not been substantially reenacted, and therefore no prosecution may be validly maintained against Dapper for violation of those sections.

1. Section 55.30.7(c) stated: "It shall be unlawful ... To keep ... lumber ... without ... a permit from the Fire Marshal." Respondent cites us to no comparable provision contained in the provisions of the Uniform Fire Code, as adopted by San Diego Ordinance 9651 (new series).

(10) 2. With respect to former section 55.30.10 respondent urges that its provisions have been substantially reenacted by sections 27.05a and 1.44 of the Uniform Fire Code (UFC), incorporated by reference into the San Diego Municipal Code. Although the list of items, "accumulation" of which is prohibited in both the repealed and the new sections, contains many of the same items, one significant item-"broken ***191** wood"-has been omitted from the prohibited list of items in the new section. [FN3]

FN3 Repealed section 55.30.10 stated: "Any

> accumulation of combustible or inflammable material, boxes, broken wood, trash, waste paper, rags, or other debris of any kind ... is ... prohibited, ..."
>
> Section 27.05a of the Uniform Fire Code (incorporated by reference in § 55.1 of Ord. 9651 (new series) of the San Diego Mun. Code) prohibits: "Accumulations of waste paper, hay, grass, straw, weeds, litter or combustible or flammable waste [which includes, under UFC, § 1.44: 'magazines, books, trimmings from lawns, trees, flower gardens, pasteboard boxes, rags, paper, straw, sawdust, packing material, shavings, boxes ... rubbish and refuse ....']."

The information against Dapper charging him in count 1 with the violation of section 55.30.10, specified, inter alia, the accumulation of "broken wood."

Thus, both the section as written and as charged involves an offense, accumulating "broken wood," that is no longer punishable. We must hold that the rule of *Sekt v. Justice's Court, supra,* 26 Cal.2d 297, 304, applies, and the prosecution of Dapper is barred by the "outright repeal of a criminal statute."

(11) 3. Respondent contends that section 55.35 has been substantially reenacted by section 27.05a, discussed above. Section 55.35 made it unlawful to allow any "vacant land, yard or premises" to "be overrun or overgrown with noxious or dangerous weeds." Section 27.05a states that "Accumulations of ... weeds ... shall not be permitted to remain ... in any court, yard, vacant lot or open space," and that "All weeds ... when same endangers property ... shall be cut down and removed. ..."

Although section 27.05a requires that "weeds" be cut down only when property is endangered, repealed section 55.35 required that "noxious" weeds be cut down, whether or not the weeds are dangerous. The phrase "noxious weeds" has a meaning distinct and different from "weeds ... [which] endanger property." In California, " 'Noxious weed' means any species of plant which is, or is liable to be, detrimental or destructive and difficult to control or eradicate." (Agr. Code, § 52256.) "Primary noxious weeds" consist of 13 specified species (Agr. Code, § 52257), while "secondary noxious weeds" refers to all other species of noxious weeds (Agr. Code, § 52258).

The purpose of the provisions of section 27.05a (contained in the UFC) is to prevent fires. Thus, any "accumulations" ***192** of weeds-that is, cut-down or loose weeds-and other loose items are prohibited, while growing weeds are prohibited only when they endanger property. In contrast, section 55.35 contained no mention of cut-down weeds, but did prohibit certain types of growing weeds.

In sum, neither the prohibitions nor the purpose of section 55.35 are reenacted by section 27.05a. Dapper was charged with allowing his property to be overrun with "noxious or dangerous weeds." It is no longer an offense to allow property to be overrun with "noxious" weeds. The conviction for violating section 55.35 (count 5) must also be reversed.

Finally, respondent contends that repealed section 55.36 was substantially reenacted by section 27.36 of the Uniform Fire Code, included as section 55.27.36 of the San Diego Municipal Code. We agree. The sections are virtually identical. [FN4]

> FN4 Section 55.36 stated: "It shall be unlawful for any person to dump or throw rubbish of any kind upon any lot or tract of land ... except by the written permission of the City Council; and it shall be unlawful ... to place or allow to be placed, or allow to remain on any premises ... such rubbish without the written permission of the City Council."
>
> Section 27.36 of the Uniform Fire Code states: "No person shall dump or throw rubbish of any kind upon any lot or tract of land ... except by the written permission of the City Council; and no occupant or owner of any premises shall place or allow to be placed, or allow to remain on said premises such rubbish without the written permission of the City Council."

In summary, Dapper was convicted of five counts of violating the San Diego Municipal Code. The convictions on count 1 (violation of § 55.30.10), count 3 (§ 55.30.7(c)) and count 5 (§ 55.35) are invalid, because the sections have been repealed and have not been substantially reenacted by any provisions of ordinance

9651 (new series) of the San Diego Municipal Code. The conviction on count 2 (violation of § 55.36) is valid, because the repealed section was substantially reenacted by provisions of ordinance 9651 of the San Diego Municipal Code. The conviction on count 4 (violation of § 44.0350) is valid; that section has not been repealed.

Dapper's further contentions that he was denied a fair trial, was inadequately represented by counsel, was convicted based on false testimony, and was subject to cruel and unusual punishment, are without merit.

Because of our disposition of this matter, we need not reach Dapper's final contention that the sentences imposed on ***193** counts 1 and 5 are cumulative punishment for the same offense, in violation of section 654 of the Penal Code. [FN5]

> FN5 Dapper has not been sentenced on either of the valid convictions (counts 2 and 4). It would be premature for this court to decide whether separate sentences for these counts would violate section 654. We must assume that any sentence imposed by the trial court will be consistent with the requirements of section 654.

The writ is granted. The Appellate Department of the Superior Court of San Diego County is directed to recall the remittitur in case number Crim. 12056 to vacate the convictions and judgments on count 1 and count 5, to vacate the conviction on count 3, and to remand the case to the municipal court to enter judgment on count 2 and count 4 in accordance with the views expressed herein.

Traynor, C. J., Tobriner, J., Mosk, J., Burke, J., and Sullivan, J., concurred.
McCOMB, J.

I concur in that part of the opinion that upholds the convictions on counts 2 and 4. I dissent from that part of the opinion that directs the court to vacate the convictions and judgments on counts 1 and 5 and to vacate the conviction on count 3.

Petitioner's application for a rehearing was denied June 25, 1969. ***194**

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88 Cal.App.4th 1381, 107 Cal.Rptr.2d 29, 01 Cal. Daily Op. Serv. 3889, 2001 Daily Journal D.A.R. 4751
(Cite as: 88 Cal.App.4th 1381)

LOS ANGELES TIMES, Plaintiff and Appellant,
v.
ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY, Defendant and Respondent.

No. B143895.

Court of Appeal, Second District, California.
May 14, 2001.

SUMMARY

A newspaper filed a mandamus petition under the California Public Records Act (Gov. Code, § 6250 et seq.) to require a transportation authority to disclose two documents. The trial court issued an order finding that one of the documents was exempt from disclosure but ordering disclosure of the other document, with certain redactions. Neither the newspaper nor the authority sought review of the order. Four months later, the newspaper moved for an award of court costs and attorney fees under Gov. Code, § 6259, subd. (d). The trial court denied the motion on the grounds that it was time-barred and that the newspaper was not the prevailing party. (Superior Court of Los Angeles County, No. BS059777, Dzintra I. Janavs, Judge.)

The Court of Appeal reversed and remanded for an award to the newspaper of court costs and attorney fees. The court held that the attorney fees order was reviewable on appeal even if the underlying disclosure order was not. The court also held that the motion for costs and attorney fees was not untimely, since, under Cal. Rules of Court, rule 870.2(b)(1), the newspaper had 180 days from entry of the order to file its motion. Finally, the court held, the newspaper was the prevailing party even though it obtained only one of the documents it sought, and even though its request for the documents was oral rather than written. (Opinion by Boland, J., [FN*] with Johnson, Acting P. J., and Woods, J., concurring.)

FN* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Records and Recording Laws § 16--Inspection of Public Records--Procedure--Actions; Review--Request for Attorney Fees--Reviewability of Order.

An order denying a newspaper's motion for attorney fees in its suit against a transportation authority to obtain copies of documents under the California Public Records Act (Gov. Code, § 6250 et seq.) was reviewable on appeal. A 1984 amendment of Gov. Code, § 6259, subd. (c), making disclosure orders reviewable only by extraordinary writ, was intended to expedite appellate review of judicial rulings relating to the withholding of public records, but was not intended to eliminate review by appeal of orders involving only attorney fees and costs. Further, even though the underlying disclosure order was not appealable, an order denying attorney fees may be appealable as a final judgment under Code Civ. Proc., § 904.1, subd. (a)(1), when, as in this case, it has all the earmarks of a final judgment.

[See 2 Witkin, Cal. Evidence (4th ed. 2000) Witnesses, § 299.]

(2) Statutes § 33--Construction--Language--Words and Phrases--Noscitur a Sociis (Meaning Derived from Context).

The plain meaning rule of statutory construction does not require or allow a court to read a single sentence of a statutory provision in isolation. Words in a statute must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear.

(3a, 3b) Costs § 28--Attorney Fees--Procedure--Time for Filing Request.

In a proceeding by a newspaper to obtain copies of documents from a transportation authority under the California Public Records Act (Gov. Code, § 6250 et seq.), the trial court erred in ruling that plaintiff's motion for attorney fees, which it made 132 days after entry of the trial court's minute order requiring the disclosure of one document and authorizing the withholding of another, was untimely. Since the disclosure order was not mailed by the clerk or served by either party on the other, plaintiff was entitled, under Cal. Rules of Court, rule 870.2(b)(1), to 180 days from entry of the order to file its motion for fees.

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(4) Judgments § 4--Notice--Right to Receive Written Notice of Entry.

A party's actual knowledge of the entry of judgment is not enough to waive its right to receive written notice of entry.

(5) Records and Recording Laws § 16--Inspection of Public Records-- Procedure--Actions; Review--Request for Attorney Fees--Who Is Prevailing Party--Partial Success in Obtaining Documents.

In a proceeding by a newspaper to obtain copies of documents from a transportation authority under the California Public Records Act (Gov. Code, § 6250 et seq.), the trial court erred in denying the newspaper's motion for attorney fees on the ground that it was not the prevailing party because it succeeded in obtaining disclosure of only one of the two documents it had requested. The act mandates a fee award to a plaintiff if it prevails, and to a defendant only if the plaintiff's case is clearly frivolous. A plaintiff prevails if it files an action that results in the defendant's releasing a copy of a previously withheld document. It was undisputed that the transportation authority disclosed one of the documents only because the newspaper sued it.

(6) Records and Recording Laws § 16--Inspection of Public Records-- Procedure--Actions; Review--Request for Attorney Fees--Who Is Prevailing Party--Need for Written Request.

In a proceeding by a newspaper to obtain copies of documents from a transportation authority under the California Public Records Act (Gov. Code, § 6250 et seq.), the trial court erred in denying the newspaper's motion for attorney fees on the ground that it was not the prevailing party because it had made only an oral request for records and the act contemplates a written one. Gov. Code, § 6253, subd. (b), requires that records not exempt from disclosure be made available upon a request for a copy of records that reasonably describes an identifiable record or records. A written request is not required. Further, it was clear from the time the newspaper filed its petition that two documents were in dispute, and that the authority resisted disclosure on multiple grounds. If the act affords trial courts discretion to deny attorney fees on equitable grounds, it had no discretion to do so on the ground that the oral request caused needless work.

COUNSEL

Gibson, Dunn & Crutcher, Theodore J. Boutrous, Jr., Timothy L. Alger; and Karlene W. Goller for Plaintiff and Appellant.

Keesal, Young & Logan, Samuel A. Keesal, Jr., Elizabeth P. Beazley and James R. Greene for Defendant and Respondent. ***1384**

BOLAND, J. [FN*]

FN* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Summary

The Los Angeles Times (the Times) appeals from an order denying its motion for attorney fees incurred in its suit against the Alameda Corridor Transportation Authority (Authority) to obtain copies of two documents under the California Public Records Act. The Authority moves to dismiss the appeal on the ground that the attorney fee order is reviewable only by extraordinary writ. On the merits, the Authority argues that the motion for attorney fees was untimely and that the Times did not prevail in the litigation, principally because it did not obtain all the documents it sought. We conclude the order is appealable, and the trial court erred in refusing to award attorney fees.

Factual and Procedural Background

The Times filed a petition for a writ of mandate, seeking access to several documents from the Authority under the California Public Records Act. (Gov. Code § 6250 et seq.) The documents were (1) an audit report prepared by the Long Beach City Auditor concerning financial transactions by the former chief financial officer of the Authority, and (2) certain "narrative documents" and an "attached report" referred to in the publicly released portions of a risk assessment study of the Authority conducted by KPMG (referred to as the KPMG narratives). [FN1] The Times's interest in these documents was prompted by news reports that the Authority's chief financial officer had inadvertently transferred $3 million of the Authority's funds to her personal bank account.

FN1 In its petition, the Times also asked for the letter by which the Authority engaged KPMG to perform the study. In its response to the Times's petition, the Authority pro-

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> vided a copy of that letter. The Authority also advised that the "attached report" referred to in the study was an appendix that had already been made public. So, the documents in dispute were only the Long Beach audit report and the KPMG narratives.

After several hearings and an in camera review of the two documents, on January 5, 2000, the trial court issued an order (1) finding the Long Beach audit report exempt from disclosure on three of the seven grounds asserted by the Authority, but (2) ordering disclosure of the KPMG narratives, with ***1385** certain redactions. Neither the Times nor the Authority sought review of the court's order. Four months later, the Times moved for an award of court costs and attorney fees under Goverment Code section 6259, subdivision (d) of the California Public Records Act, which mandates such an award to a plaintiff who "prevail[s] in litigation filed pursuant to" section 6259.

The Authority opposed the award, arguing that the Times should have made a written, not an oral, request for the records; the motion for fees was untimely; the Times was not the prevailing party; and the fees were unreasonable. On June 21, 2000, the trial court denied the Times's motion on the grounds it was time-barred and the Times was not the prevailing party.

On July 17, 2000, the Times sought an extraordinary writ from this court to compel the trial court to grant its motion for attorney fees. Three days later the writ was summarily denied.

The Times then filed a notice of appeal from the trial court's order. The Authority filed a motion to dismiss the appeal, and a ruling on that motion was deferred for consideration together with the merits of the case.

Discussion

I. *The Motion to Dismiss the Appeal*

We conclude that an order denying attorney fees under the California Public Records Act is reviewable on appeal, and accordingly deny the Authority's motion to dismiss the appeal.

A. *Section 6259 of the California Public Records Act does not limit appellate review of attorney fee orders to review by extraordinary writ.*

(1a) A court order either directing disclosure of public records or refusing disclosure is not appealable, but is immediately reviewable by extraordinary writ. (Gov. Code, § 6259, subd. (c).) The Authority says this statutory provision also applies to a court order denying a motion for attorney fees, so that we have no jurisdiction to consider the Times's appeal of the order denying fees.

We disagree. Both case law and the legislative history of the California Public Records Act support our conclusion that an order denying attorney fees under Goverment Code section 6259 is reviewable on appeal.

In *Butt v. City of Richmond* (1996) 44 Cal.App.4th 925, 929, 931 [52 Cal.Rptr.2d 232], the court held it had jurisdiction to hear an appeal from a ***1386** superior court decision finding the plaintiff's document request under the California Public Records Act frivolous, and awarding attorney fees to the city. The court pointed out that the Legislature's purpose in providing for review by extraordinary writ of orders compelling or refusing disclosure of public records was to accelerate appellate review. Acceleration was considered necessary to prevent public agencies from delaying disclosure of public records by appealing and using continuances, thus frustrating the intent of the California Public Records Act. (*Id.* at p. 930.) The court observed that the prejudice inherent in any delay caused by appeal of disclosure rulings is not present when appellate review concerns only entitlement to costs and attorney fees. *Butt* found "nothing in the legislative history of section 6259(c) to indicate the Legislature intended to accelerate appellate review of such orders." (*Id.* at p. 931; see also *Motorola Communication & Electronics, Inc. v. Department of General Services* (1997) 55 Cal.App.4th 1340, 1342, 1344 fn. 2 [64 Cal.Rptr.2d 477] [affirming denial of Motorola's request for attorney fees and noting that "[a]n order granting or denying attorney fees under the Public Records Act is reviewable on appeal from a final judgment in the proceeding"].)

The legislative history of both the 1984 and 1990 amendments to Government Code section 6259, subdivision (c), confirms the conclusion reached in *Butt v. City of Richmond.* The 1984 amendment made disclosure orders reviewable only by extraordinary writ. The "exclusive purpose" of that amendment was to speed appellate review. (*Times Mirror Co. v. Superior*

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Court (1991) 53 Cal.3d 1325, 1334 [283 Cal.Rptr. 893, 813 P.2d 240].) The bill was intended " 'to expedite appellate review of judicial rulings *relating to the withholding of public records* by providing for the review to be by petition for issuance of a writ rather than by appeal.' " (*Id.* at p. 1335, quoting Assem. Com. on the Judiciary, Analysis of Sen. Bill No. 2222 (1983-1984 Reg. Sess.) Aug. 6, 1984, italics added.)

The Authority argues the "plain language" of the second sentence of Government Code section 6259, subdivision (c), requires the conclusion that an attorney fee order under section 6259 is reviewable only by extraordinary writ. The sentence specifies the timing requirements for filing a writ petition, and says: "Upon entry of *any order pursuant to this section*, a party shall, in order to obtain review of the order, file a petition within 20 days ...." [FN2] (Gov. Code § 6259, subd. (c), italics added.) ***1387**

> FN2 The full text of subdivision (c) is as follows: "(c) In an action filed on or after January 1, 1991, an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court." (Gov. Code, § 6259, subd. (c).)

The Authority's "plain language" argument fails for several reasons. (2) First, the "plain meaning" rule of statutory construction does not require, or allow, us to read a single sentence of a statutory provision in isolation. Words in a statute " 'must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear.' " (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230 [110 Cal.Rptr. 144, 514 P.2d 1224], quoting *Johnstone v. Richardson* (1951) 103 Cal.App.2d 41, 46 [229 P.2d 9].) (1b) While the sentence on which the Authority relies refers to "any order pursuant to this section," the preceding and succeeding sentences, and every other use of the word "order" in Government Code section 6259, are clearly addressed to orders "either directing disclosure by a public official or supporting the decision of the public official refusing disclosure ...." (Gov. Code § 6259, subd. (c).) Unless we view the sentence in a vacuum, the words "any order" in the second sentence must likewise refer to any order directing or refusing disclosure.

Moreover, the language "any order" on which the Authority relies was not even included in the statute until 1991. It was part of an amendment passed in 1990 to clarify the Legislature's intention that the purpose of writ review was to expedite appellate consideration, not to preclude review on the merits. (*Times Mirror Co. v. Superior Court, supra*, 53 Cal.3d at p. 1336 [scope of writ review of orders under Gov. Code, § 6259 not confined to acts in excess of jurisdiction].) To accomplish this clarification, the Legislature eliminated the reference to writs of review "as defined in Section 1067 of the Code of Civil Procedure," referring instead to "extraordinary" writs. The Legislature also added specific timing requirements for filing writ petitions, containing the "any order" language, as well as burden of proof requirements for obtaining a stay of the order.

In short, the context of the 1984 and 1990 amendments, providing for and clarifying the scope of writ review, related only to orders concerning disclosure of public records. Given that context, it is difficult to reach any conclusion except that the Legislature intended "any order" to mean any order relating to disclosure of public records. ***1388**

In summary, both case precedent and legislative history confirm that, while disclosure orders are reviewable only by extraordinary writ, the Legislature did not intend to eliminate review by appeal of orders involving only attorney fees and costs.

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B. *The order denying attorney fees is appealable as a final judgment under section 904.1, subdivision (a)(1) of the Code of Civil Procedure.*

The Authority also argues that the order denying attorney fees to the Times is not an appealable post-judgment order, because the underlying disclosure order was not appealable. [FN3] But case law is clear that an order denying attorney fees may be appealable as a final judgment, even when the underlying order or judgment is not appealable. That is exactly the case here.

FN3 Paragraph (1) of section 904.1, subdivision (a), of the Code of Civil Procedure permits an appeal to be taken from a final judgment, with certain exceptions, and paragraph (2) allows an appeal from "an order made after a judgment made appealable by paragraph (1)."

In *Joyce v. Black* (1990) 217 Cal.App.3d 318, 321 [266 Cal.Rptr. 8], the court held an appeal from an order striking costs was appealable as a final judgment, even though the underlying judgment on a judicial arbitration award was not appealable. It is the "substance and effect of the order, not its label or form, [that] determines whether it is appealable as a final judgment." (*Ibid.*) In *Joyce*, the order striking costs had "all the earmarks of a final judgment." (*Ibid.*) The order left nothing for future consideration; it was the only judicial ruling in the case, and no other opportunity existed for review by appeal. The court therefore concluded the order was appealable as the final judgment in the action. (*Id.* at pp. 321-322.)

The court reached a similar result in *Bank of California v. Thornton-Blue Pacific, Inc.* (1997) 53 Cal.App.4th 841 [62 Cal.Rptr.2d 90], finding that an order releasing certain funds to the bank was in legal effect a final judgment for purposes of appeal, even though no final judgment was entered in the action. (*Id.* at pp. 845-846.) [FN4]

FN4 See also *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 656 [25 Cal.Rptr.2d 109, 863 P.2d 179] (order denying award of attorney fees is appealable postjudgment order; it determines rights and liabilities of parties arising from judgment, is not preliminary to later proceedings, and will not become subject to appeal after some future judgment). In *Lakin*, fees were requested under Code of Civil Procedure section 2033, subdivision (o), which states the conditions under which attorney fees are to be awarded when a party refuses to admit the genuineness of a document or the truth of a matter subsequently proved to be genuine or true.

Here, the order denying the Times's attorney fees is appealable as a final judgment under Code of Civil Procedure section 904.1, subdivision (a)(1). As in *Joyce*, the underlying judgment is not appealable. However, the order ***1389** denying attorney fees itself has "all the earmarks of a final judgment." Nothing remains for future consideration, and no other opportunity exists for appellate review. It is therefore "properly viewed as a final judgment and hence appealable as such" under section 904.1, subdivision (a)(1). (*Joyce v. Black, supra*, 217 Cal.App.3d at p. 321.)

II. *The Merits of the Times's Appeal.*

The trial court denied the Times' motion for attorney fees on the grounds that (a) the motion was untimely, and (b) the Times was not the prevailing party within the meaning of the California Public Records Act. The court erred on both points.

A. *The Times's motion to the trial court for attorney fees was timely.*

(3a) The trial court ruled the motion for attorney fees was time-barred by rule 870.2(b)(1) of the California Rules of Court. Rule 870.2(b)(1) requires the filing and service of a motion for attorney fees "within the time for filing a notice of appeal under rules 2 and 3." [FN5] The Authority argues this language means a motion for fees must be filed within 60 days of the court's underlying disclosure order. But that is not what rule 2 says.

FN5 The full text of rule 870.2(b)(1) is: "(1) A notice of motion to claim attorney fees for services up to and including the rendition of judgment in the trial court-including attorney fees on an appeal before the rendition of judgment in the trial court-shall be served and filed within the time for filing a notice of appeal under rules 2 and 3."

Rule 3 has no application to this case.

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Under California Rules of Court, rule 2, the last day for filing a notice of appeal is the earliest of (1) 60 days after the clerk mails a document entitled "notice of entry" of judgment, (2) 60 days after service of a document entitled "notice of entry" of judgment by either party, or (3) 180 days after the date of entry of the judgment. [FN6]

FN6 Rule 2(d) of the California Rules of Court provides that "judgment" means "appealable order" if the appeal is from an appealable order.

In this case, the Times's motion for fees was filed 132 days after entry of the trial court's minute order on disclosure of the documents. (4)**(See fn. 7.)** The disclosure order was not mailed by the clerk or served by either party on the other. [FN7] (3b) Consequently, under California Rules of ***1390**Court, rule 870.2(b)(1), the Times was entitled to 180 days from entry of the order to file its motion for fees, and it did so well within that period. [FN8]

FN7 The Authority says that the absence of formal service of the January 5, 2000 order is not relevant to the timeliness of the Times's motion. Its argument seems to be aimed at whether a further written order was required by the terms of the minute order to begin the running of time to appeal under California Rules of Court, rule 2. (The Times argues that the minute order explicitly directed the Authority to prepare a proposed order, which the Authority never did, so that the appeal time, and hence the time for filing an attorney fee motion under rule 870.2, has *still* not begun to run. The Authority argues that at the hearing, the trial court clearly said, contrary to its minute order, that no proposed order was necessary.) We need not decide that question, because the absence of formal service of the order *does* mean that the longer 180-day period would apply, rendering the Times's motion timely in any event. If the Authority is trying to say that the Times waived the right to receive written notice of entry for purposes of starting the running of the 60-day period, the Authority is incorrect. Actual knowledge of the entry of judgment is not enough to waive the right to receive written notice of entry. (See *Henderson v. Drake* (1953) 42 Cal.2d 1, 5-6 [264 P.2d 921].) There may be circumstances in which the statutory requirement for written notice of entry of judgment may be waived (*id.* at p. 5), but there was no express waiver here. While the court's minute order says that "notice is waived," the transcript of the January 5 hearing shows no such waiver by the Times, nor does the Authority point to any other evidence of express waiver.

FN8 There is some doubt whether the time requirements of California Rules of Court, rule 870.2(b)(1) apply in circumstances where the underlying judgment or order (here, the disclosure order) is not a final judgment or order from which an appeal may be taken, and instead is reviewable only by extraordinary writ. (See *Exxess Electronixx v. Heger Realty Corp.* (1998) 64 Cal.App.4th 698, 706 [75 Cal.Rptr.2d 376] [rule 870.2 arguably did not establish *any* deadline for filing motion for attorney fees because cross-complaint was resolved by way of settlement and dismissal and there was no appealable order or judgment] [dicta].) We need not decide that point because, as explained in the text, even if rule 870.2(b) is applied, the time for filing a notice of appeal under rule 2 had not expired.

B. *The trial court erred in finding that the Times was not the prevailing party for purposes of an award of attorney fees.*

The trial court's second ground for denying attorney fees was that the Times was not the "prevailing party." The court gave two reasons for its conclusion: (1) the Times "prevailed only partially"; and (2) the California Public Records Act "contemplates a written request," the lack of which "causes much needless work for all." Both findings are erroneous as a matter of law.

1. *The California Public Records Act mandates an award of fees when a public agency discloses a document only when it is forced to do so by a lawsuit.*

(5) The principal issue is whether the trial court had the discretion to deny attorney fees because the Times "prevailed only partially," obtaining ***1391** only one of the two documents sought in its lawsuit.

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Both case law and the purpose of the California Public Records Act compel us to say the answer is no.

The act mandates a fee award to a plaintiff if it prevails, and to a defendant only if the plaintiff's case is "clearly frivolous." A plaintiff prevails within the meaning of the statute "when he or she files an action which results in defendant releasing a copy of a previously withheld document." (*Belth v. Garamendi* (1991) 232 Cal.App.3d 896, 898 [283 Cal.Rptr. 829].)

An action results in the release of previously withheld documents "if the lawsuit motivated the defendants to produce the documents." (*Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 482 [23 Cal.Rptr.2d 412].) Cases denying attorney fees to a plaintiff under the act have done so because substantial evidence supported a finding that the "litigation did *not* cause the [agency] to disclose any of the documents ultimately made available ...." (*Motorola Communication & Electronics, Inc. v. Department of General Services, supra*, 55 Cal.App.4th at p. 1351, italics added; *Rogers v. Superior Court, supra*, 19 Cal.App.4th at p. 483 [substantial evidence that documents were found as result of search instituted prior to filing of complaint and were not disclosed in response to suit].)

In short, if a public record is disclosed only because a plaintiff filed a suit to obtain it, the plaintiff has prevailed. It is undisputed that the document containing the KPMG narratives was disclosed only because the Times sued to obtain it. Nothing in any case decided under the act supports the contention that a plaintiff who obtains only one of two documents sought has not prevailed within the meaning of the act. Other cases, without discussion, have awarded fees where disclosure is ordered for fewer than all of the documents sought. (*Register Div. of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 910 [205 Cal.Rptr. 92].) [FN9]

FN9 The Authority argues that the court should look to several other statutes for an interpretation of "prevailing party," such as the costs statute (Code Civ. Proc. § 1032) and case law interpreting the federal Freedom of Information Act. These statutes do not assist the Authority. The premise that a party who prevails under the cost statute is necessarily the prevailing party for purposes of attorney fees has been "uniformly rejected" by California courts. (*Heather Farms Homeowners Assn., Inc. v. Robinson* (1994) 21 Cal.App.4th 1568, 1572 [26 Cal.Rptr.2d 758].) The standard for an award of attorney fees under the Freedom of Information Act is entirely different. The court has discretion to withhold fees; even a plaintiff who has "substantially prevailed" and is therefore eligible for fees will receive an award only after the court balances a number of factors, including among others the reasonableness of the agency's withholding and the benefit to the public. (*Weisberg v. U.S. Dept. of Justice* (D.C. Cir. 1984) 745 F.2d 1476, 1498.) That is not the standard under the California Public Records Act.

Circumstances could arise under which a plaintiff obtains documents, as a result of a lawsuit, that are so minimal or insignificant as to justify a finding ***1392** that the plaintiff did not prevail. But there is no support for such a finding in this case, where the court ordered disclosure of one of two contested documents, and where the claim for the other was not frivolous. Any other conclusion would be inconsistent with the express purpose of the California Public Records Act to broaden public access to public records. (*Times Mirror Co. v. Superior Court, supra*, 53 Cal.3d at p. 1335.) A plaintiff whose suit succeeds in obtaining public disclosure of withheld documents has furthered that purpose. We conclude that to withhold attorney fees when the party seeking disclosure is in error about the exempt status of one of the documents would chill efforts to enforce the public right to information.

2. *The California Public Records Act does not require a request for records to be in writing.*

(6) In support of its ruling that the Times was not the prevailing party, the trial court said that Government Code section 6253 contemplates a written request for records. The court apparently took the view that the Times's oral request caused "much needless work for all" and thus supported a denial of attorney fees. That likewise was error.

The act requires that records not exempt from disclosure be made available "upon a request for a copy of records that reasonably describes an identifiable record or records ...." (Gov. Code, § 6253, subd. (b).) It is clear from the requirements for writings in

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the same and other provisions of the act that when the Legislature intended to require a writing, it did so explicitly. (E.g., Gov. Code, §§ 6253, subd. (c), 6255, subd. (b).)

The California Public Records Act plainly does not require a written request. Moreover, from the time the Times filed its petition, it was clear to the Authority that two documents were in dispute: the KPMG narratives and the Long Beach audit report. The record is also clear that the Authority resisted disclosure of both documents throughout the litigation, on multiple grounds. Assuming that the act affords trial courts discretion to deny attorney fees on equitable grounds, it had no discretion to do so on the ground that the oral request caused "needless work." [FN10] Because the Times was compelled to file a lawsuit to disgorge a public record from a public agency, it is entitled to attorney fees for doing so. ***1393**

FN10 See *Hsu v. Abbara* (1995) 9 Cal.4th 863, 876-877 [39 Cal.Rptr.2d 824, 891 P.2d 804] (trial court may not invoke equitable considerations unrelated to litigation success, such as parties' behavior during settlement or discovery, in exercising discretion under § 1717 of the Civil Code to determine there is no prevailing party for purposes of attorney fees in a contract action; court has no such discretion where one party obtained all the relief requested on the single contract claim presented).

Conclusion

In summary, an order denying attorney fees under the California Public Records Act is reviewable on appeal. On the merits, we conclude that (1) the Times's motion in the trial court for an award of attorney fees was not untimely under rule 870.2(b) of the California Rules of Court, and (2) the Times "prevail [ed] in litigation filed pursuant to" Government Code section 6259 of the California Public Records Act, and was therefore entitled to its fees when, as a result of the lawsuit, it obtained one of the two documents it sought.

The Times has also requested and is entitled to its attorney fees and costs on appeal. (*San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 781 [192 Cal.Rptr. 415].)

Disposition

The judgment is reversed and the case remanded for an award to appellant of court costs and reasonable attorney fees, both in the proceedings below and on appeal, in amounts to be determined by the trial court.

Johnson, Acting P. J., and Woods, J., concurred.

Respondent's petition for review by the Supreme Court was denied September 12, 2001. ***1394**

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NORTHERN CALIFORNIA POLICE PRACTICES PROJECT et al., Plaintiffs and Appellants,
v.
GLENDON CRAIG, Individually and as Commissioner, etc., et al., Defendants and Respondents.

Civ. No. 16711.

Court of Appeal, Third District, California.
Mar. 6, 1979.

SUMMARY

A taxpayer and two associations brought an action under the Public Record Act (Gov. Code, § 6250*et. seq.*), to compel the disclosure of various documents utilized by the California Highway Patrol in training its officers. The trial court refused to order disclosure of those portions of the requested materials that dealt with security and safety procedures. The trial court also refused to order the segregation and disclosure of nonsensitive material of common knowledge that was contained in documents that were otherwise nondisclosable under Gov. Code, § 6254, subd. (f) (exemption for specified police records). (Superior Court of Sacramento County, No. 264194, B. Abbott Goldberg, Judge.)

The Court of Appeal reversed and remanded with directions to segregate and disclose nonexempt information located in otherwise exempt documents. The court held that records dealing with security and safety procedures utilized by the highway patrol in the performance of its police function are exempt from disclosure. However, the court held that an entire document cannot be withheld simply because it contains some exempt material. The court also held that findings of fact were not required since the propriety of the claim of exemption was a question of law, not fact. (Opinion by Evans, J., with Puglia, P. J., and Regan, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Records and Recording Laws § 21--Inspection of Public Records-- Exemption for Police Security and Safety Procedures.

In an action under the Public Records Act (Gov. Code, § 6250 et seq.), to compel the disclosure of various documents utilized by the California Highway Patrol in training its officers, the trial court properly exempted from disclosure matters dealing with security and safety procedures of the highway patrol in the performance of its police function. (Gov. Code, § 6254, subd. (f) (exemption for specified police records).)

[See **Cal.Jur.3d**, Records and Recording Law, § 7; **Am.Jur.2d**, Records and Recording Laws, § 27.]

(2) Records and Recording Laws § 12--Inspection of Public Records-- Statutory Construction--Legislative Intent.

In interpreting the Public Records Act (Gov. Code, § 6250*et. seq.*), a court is constrained only to carry out the stated and obvious intent of the Legislature and must consider all matters, including the restrictions, contained in the act.

(3) Trial § 132--Findings of Fact and Conclusions of Law--Necessity for Findings of Fact--When Question of Law at Issue.

Findings of fact are not required when the question presented at trial is one of law, not fact.

(4) Records and Recording Laws § 12--Inspection of Public Records-- Necessity for Findings of Fact in Action for Disclosure of Documents.

Findings of fact are not required in an action for disclosure of documents under the Public Records Act (Gov. Code, § 6250*et. seq.*)

(5) Records and Recording Laws § 12--Inspection of Public Records--Claim of Exemption for Police Security and Safety Procedures--Waiver of Confidentiality.

In an action under the Public Records Act (Gov. Code, § 6250*et. seq.*), to compel the disclosure of various documents utilized by the highway patrol in training its officers, the disclosure of documents under the Public Records Act. (Gov. Code, tions at issue to one of plaintiffs' agents was not a waiver of the confidential nature of the material, where the purpose of such disclosure was to aid the parties and the court at trial in more readily determining the relevancy of defendants' claim of exemption.

(6) Records and Recording Laws § 12--Inspection of

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Public Records-- Segregation of Exempt From Nonexempt Material.

In an action under the Public Records Act (Gov. Code, § 6250*et. seq.*), to compel the disclosure of various documents utilized by the California Highway Patrol in training its officers, the trial court's refusal to edit nonsensitive materials contained in the documents sought and order them disclosed constituted reversible error. Where nonexempt materials are not inextricably intertwined with exempt materials and are otherwise reasonably, segregable therefrom, segregation is required to serve the objective of the Public Records Act to make public records available for public inspection and copying unless a particular statute makes them exempt.

COUNSEL

Amitai Schwartz, Alan L. Schlosser, Margaret C. Crosby, Charles Marson, Vilma S. Martinez, Morris J. Baller, John H. Erickson, Alice Beasley, Lowell Johnston and Anthony G. Amsterdam for Plaintiffs and Appellants.

Evelle J. Younger, Attorney General, and Robert L. Mukai, Deputy Attorney General, for Defendants and Respondents.

EVANS, J.

Plaintiffs appeal from an order (judgment) directing defendants (California Highway Patrol [CHP] and certain of its officers) to disclose only limited portions of the California Highway Patrol manual and officer's guide pursuant to the Public Records Act (PRA) (Gov. Code, § 6250 et seq.). [FN1] Plaintiffs are a state taxpayer (see Code Civ. Proc., § 526a) David M. Fishlow, an unincorporated association, the Northern California Police Practices Project (Project), and the American Civil Liberties Union.

FN1 Unless otherwise noted, all subsequent references will be to the Government Code.

The material sought by plaintiffs is utilized by the patrol in training its officers and is compiled in four separate documents: (1) "Enforcement Tactics" (HPG 70.6) explaining the general objectives of the patrol, officer investigative use of senses, enforcement procedures including ***119** officer-violator contact, search and handcuffing techniques, the use of firearms, patrol vehicle operations, and hostage incidents; (2) "Weapons Training Manual" (HPM 70.8) describing weapon utilization policies, weapon training and practice, maintenance, chemical agent transportation and use; (3) "Personal Weapons and Physical Methods of Arrest Guide" (HPG 70.13) depicting methods of unarmed combat, and detailing methods of arrest, search, and handcuffing techniques; and (4) "Enforcement Policy" contained in General Order 100.68. That order is merely a cover document describing speed law enforcement guidelines, Vehicle Code enforcement, and assistance to motorists. To that order there are 18 annexes which detail CHP responsibilities (Annex A), excessive speed enforcement guidelines (Annex B), minimum speed enforcement guidelines (Annex C), off-road vehicle enforcement policy (Annex D), freeway stopping of patrol vehicle (Annex E), transport of ill and injured persons (Annex F), arrest policy and procedures (Annex G), release from arrest procedures (Annex H), arrest, handcuffing, and search techniques (Annex I), chain and snow tire enforcement policy (Annex J), illegal alien entry arrests (Annex K), county ordinance enforcement policy (Annex L), response to private citizen arrests (Annex N), United States mail carrier enforcement policy (Annex O), controlled substance arrest (Annex P), pursuit policies (Annex Q), bicycle racing (Annex S), and blocking railroad crossings (Annex T).

The CHP rejected plaintiffs' request for access to the material, asserting that it dealt with officers' safety and internal security, and as such, was exempt from disclosure pursuant to the terms of section 6254, subdivision (f), and this action ensued.

During trial, an adversarial *in camera* proceeding was held; at that hearing the commander of internal affairs for the CHP described the nature of the materials and explained the basis for the claimed exemption to be that the material described vehicle stop techniques, specific methods of arrests, handcuffing and search procedures, when the patrol would stop speed violators, when it would institute and continue pursuits, and described officer positions and weapon use during attempted arrests. The CHP asserted that disclosures of the materials would increase the tendency for highway users to violate the speed laws, increase attempted escapes from arrest situations necessitating pursuits, and would enable miscreants to counter law enforcement methods used in search, arrest, and handcuffing, thus endangering both the officers involved and the public. Following the *in*

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camera hearing, the trial court ordered the ***120** disclosure of General Order 100.68, Annexes A, E, F, H, J, K, L, N, O, P, S, and T, and found all remaining materials to be matters related to security procedures, and sustained the CHP claim of exemption. Although noting that some portions of the nondisclosed material did not deal with security procedures, and are matters of common sense, [FN2] "the gravamen of the document" was found to deal with the protection and security of the officers and others, and the trial court refused to order disclosure of the documents or the segregation and disclosure of any nonsensitive material of common knowledge.

> FN2 The trial court, in commenting on the nonsensitive material, stated, "[t]here may be some things in there that are really of no consequence such as you should keep your gun oiled, free of rust, that considering ... the ... context ... it would seem ... no more than catering to officiousness to require disclosure."

With the provisions of section 6254, subdivision (f), in mind, our independent review of the documents reveals the trial court order to be correct and a proper exercise of its discretion.

The PRA contains a broad statement of its purpose and intent and briefly summarized is that an individual's right to privacy requires that access to public information concerning the conduct of the "people's" business is a fundamental and necessary right of the citizens of this state.

The PRA, like the federal Freedom of Information Act upon which it is patterned (see *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 652 [117 Cal.Rptr. 106]), states its general policy to be to favor disclosure of public records, and support for refusal to disclose information "must be found, if at all, among the specific exceptions to the general policy that are enumerated in the Act." (*State of California* ex rel. *Division of Industrial Safety v. Superior Court* (1974) 43 Cal.App.3d 778, 783 [117 Cal.Rptr. 726].)

Plaintiffs assert that the public has a legitimate interest in obtaining information regarding the CHP procedures described in the documents in order that members of the public may properly assess the overall reasonableness of those procedures thereby enabling those persons interested to determine whether to file complaints for claimed officer misconduct. The argument asserted by plaintiffs is virtually identical to that previously made and partially rejected in *Cook v. Craig* (1976) 55 Cal.App.3d 773 [127 Cal.Rptr. 712]. In that case this court acknowledged that section 6254, subdivision (f), does exempt from disclosure certain internal investigative or security material and refused to order the CHP to ***121** disclose for inspection specified documents found to deal with security matters, but did order the disclosure of regulations which established procedures to be utilized in the investigation of citizen complaints. The court recognized that investigatory files and records of complaints are clearly exempt from disclosure under subdivision (f) of section 6254. By the terms of the statute the same is true of material dealing with security procedures of any police agency. The court affirmed that exemption when it stated at page 784: "Accordingly, we hold that the CHP is required by the PRA to make available for public inspection and copying its *procedural regulations* governing the investigation of citizen complaints about the conduct of CHP personnel; ..." (Italics added.) The matters ordered disclosed were not matters dealing with security. They were internal procedures to be followed after receipt of a citizen's complaint.

I

(1a)Plaintiffs contend that the CHP regulations should be disclosed because the public, including plaintiffs, "without knowing what benchmarks the CHP uses in substantively determining whether officer conduct is right or wrong, ... lack the effective means of addressing complaints to the operational directives which bear upon particular conduct in question. In short, potential complainants are deprived of knowing the secret law of the CHP." Plaintiffs suggest that disclosure of *all* rules regulating conduct of highway patrol officers would permit the public to express their needs and concerns in a meaningful way; that it would inspire trust and confidence and benefit, not hurt law enforcement.

That suggestion must be rejected for its total lack of statutory support. Plaintiffs would have this court judicially repeal, under the guise of statutory interpretation, the exemptions provided by the PRA. (§ 6254, subd. (f).) We decline to do so. (2)We are constrained only to carry out the stated and obvious intent of the Legislature (see *People v. Caudillo* (1978) 21

Cal.3d 562, 576 [146 Cal.Rptr. 859, 580 P.2d 274]), and must consider all matters including the restrictions contained in the act.

(1b)During the *in camera* proceeding, the trial court reviewed and analyzed all of the material requested by plaintiffs and found the materials not ordered disclosed to be exempt as matters dealing with security procedures of the CHP, a state police agency. The assertion that the trial court order exempting the material is overbroad does not find support in the record. Our review of the requested records reveals them ***122** to deal with security and safety procedures utilized by the CHP in the performance of its police function. Such material is clearly exempt from disclosure by the terms of section 6254, subdivision (f).

Plaintiffs' argument is essentially one of insufficiency of the evidence to justify the order denying disclosure of exempt information unaccompanied by a fair statement of legal reasons compelling disclosure of the exempt materials. As such, the argument is entitled to no consideration when it is apparent as it is here that overwhelming evidence supports the order of the trial court. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881 [92 Cal.Rptr. 162, 479 P.2d 362]; *Haynes v. Gwynn* (1967) 248 Cal.App.2d 149, 151 [56 Cal.Rptr. 82].)

We conclude that if plaintiffs wish to question the propriety of law enforcement conduct, they may do so, and their right to proceed with such evaluation is not dependent upon revelation of the content of the security regulations adopted by the CHP.

II

Following the trial court's order of disclosure, plaintiffs asked that the court set forth in findings of fact its reasons for refusing to order disclosure of all requested materials. The trial court properly refused the request.

The fundamental question presented at trial was the propriety of the claim of exemption. (3)As resolution of the question was dependent on the content of the material, viewed in the light of statutory provision (§ 6254, subd. (f)), the question was one of law, not fact. As such, findings are not required. (*City of Alameda v. City of Oakland* (1926) 198 Cal. 566, 578 [246 P. 69]; *Martin v. Smith* (1960) 184 Cal.App.2d 571, 579 [7 Cal.Rptr. 725]; *Jenner v. City Council* (1958) 164 Cal.App.2d 490, 501 [331 P.2d 176]; *Wadler v. Justice Court* (1956) 144 Cal.App.2d 739, 744 [301 P.2d 907].) (4)Moreover, as a special proceeding authorized by a specific statute (§ 6258), findings are not required as the authorizing statute fails so to provide. (*Carpenter v. Pacific Mut. Life Ins. Co.* (1937) 10 Cal.2d 307, 327-328 [74 P.2d 761]; *Taliaferro v. Hoogs* (1965) 236 Cal.App.2d 521, 530 [46 Cal.Rptr. 147]; *Adoption of Hertz* (1964) 227 Cal.App.2d 269, 272 [38 Cal.Rptr. 618]; *Adoption of Pitcher* (1951) 103 Cal.App.2d 859, 864 [230 P.2d 449].) ***123**

Black Panther v. Kehoe, supra., 42 Cal.App.3d 645 relied upon by Project in its demand for findings is inapposite. In *Black Panther Party*, it could not be determined from the record on appeal whether the trial court had considered a material factual issue relating to a possible waiver of the claim of confidential investigative records through disclosure of portions of the records to the public. (*Id.*, at p. 656.) In contra-distinction, the present record demonstrates that the trial court fully considered all relevant issues and determined them to be legal, not factual. (5)Plaintiffs' only claim of waiver of confidentiality related to disclosure of indexes to the regulations to one of Project's agents during discovery. This access is conceded to have occurred so that the parties and the court at trial could more readily determine the relevancy of the claim of exemption. The limited discovery was not a waiver of the confidential nature of the material. The only disputed issue at trial was whether the documents were, in fact, within the exemption provided by Government Code section 6254, subdivision (f). The issue was one of law, not fact, obviating any requirement of findings of fact.

III

(6)Plaintiffs contend that the trial court's refusal to edit nonsensitive materials contained in the documents and order them disclosed constitutes reversible error. We agree. The PRA is suffused with indications of a contrary legislative intent. "[A]ccess to *information* concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (Italics added; Gov. Code, § 6250.) "'Public records' includes 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." (Italics added; Gov. Code, § 6252,

subd. (d).) "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 making the record public clearly outweighs the public interest served by disclosure of the record." (Gov. Code, § 6255.)

The PRA is modeled upon the federal Freedom of Information Act (FOIA) (*Cook v. Craig, supra.*, 55 Cal.App.3d at p. 781). Like the PRA, "The focus of the FOIA is information, not documents, and an agency cannot justify withholding an entire document simply by showing that it contains some exempt material." (***124***Mead Data Cent., Inc. v. U. S. Dept. of Air Force* (D.C.Cir 1977) 566 F.2d 242, 260.) While it is true that Congress amended the FOIA in 1974 expressly to require disclosure of "[a]ny reasonably segregable portion of a [public] record" (5 U.S.C. § 552(b)), the amendment only codified the interpretation theretofore accorded the act by the federal courts (see, e.g., *EPA v. Mink* (1973) 410 U.S. 73, 93 [35 L.Ed.2d 119, 135, 93 S.Ct. 827]; *Mead Data Cent., Inc. v. U. S. Dept. of Air Force, supra.*, 566 F.2d at p. 260, fn. 51). Similarly, the PRA has been judicially interpreted to require segregation of exempt from nonexempt materials contained in a single document (*American Federation of State etc. Employees v. Regents of University of California* (1978) 80 Cal.App.3d 913, 919 [146 Cal.Rptr. 42]).

We conclude that where nonexempt materials are not inextricably intertwined with exempt materials and are otherwise reasonably segregable therefrom, segregation is required to serve the objective of the PRA to make public records available for public inspection and copying unless a particular statute makes them exempt. (*Cook v. Craig, supra.*, 55 Cal.App.3d at p. 783.)

Undoubtedly, the requirement of segregation casts a tangible burden on governmental agencies and the judiciary. Nothing less will suffice, however, if the underlying legislative policy of the PRA favoring disclosure is to be implemented faithfully. If the burden becomes too onerous, relief must be sought from the Legislature.

The order (judgment) is reversed and the cause remanded to the trial court for segregation and disclosure of nonexempt information located in otherwise exempt documents.

Puglia, P. J., and Regan J., concurred.

A petition for a rehearing was denied March 30, 1979, and appellants' petition for a hearing by the Supreme Court was denied May 3, 1979. ***125**

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END OF DOCUMENT

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(Cite as: 23 Cal.App.4th 144)

NORTH COUNTY PARENTS ORGANIZATION FOR CHILDREN WITH SPECIAL NEEDS, Plaintiff and Appellant,
v.
DEPARTMENT OF EDUCATION, Defendant and Respondent.

No. D016698.

Court of Appeal, Fourth District, Division 1, California.
Mar 10, 1994.

SUMMARY

In an action by a nonprofit organization against the California Department of Education, the trial court entered a judgment that the department properly charged the organization 25 cents per page for furnishing copies of requested documents, and that Gov. Code, § 6257, permitted the department to charge the full direct cost of duplication. (Superior Court of San Diego County, No. 628246, J. Richard Haden, Judge.)

The Court of Appeal reversed and remanded for further proceedings. Noting that the charge not only covered the cost of duplication of the documents, but also reimbursed the department for staff time involved in searching and reviewing records for exempt information and deleting it, the court held that under the plain language of the statute, which authorizes a fee "covering direct costs of duplication," the amount chargeable by the department for furnishing the copies was the cost of copying them, and such "indirect" costs charged by the department were excluded. The statutory history indicates that "direct cost" does not include the ancillary tasks necessarily associated with the retrieval, inspection, and handling of the file from which the copy is extracted. The court also held that the trial court properly determined that the department had the power to waive fees under Gov. Code, § 6253.1, which gives an agency power to "adopt requirements for itself that allow greater access to records than prescribed by the minimum standards set forth in this chapter." However, the court held that the trial court erred in finding no obligation on the part of the department to reduce the fee; the trial court's ruling ignored the fact that the department declined to exercise discretion, contending that it had none. Had the department been aware that it was vested with discretion to reduce the fee, it might have done so. (Opinion by Froehlich, J., with Work, Acting P. J., concurring. Separate concurring and dissenting opinion by Huffman, J.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Records and Recording Laws § 15.2--Inspection of Public Records-- Procedure--Requests for Disclosure--What Constitutes Costs of Duplication.

In an action by a nonprofit organization against the California Department of Education, the trial court erred in ruling that the department properly charged the organization 25 cents per page for furnishing copies of requested documents, and that Gov. Code, § 6257, permitted the department to charge the full direct cost of duplication. The department's charge not only covered the cost of duplication of the documents, but also reimbursed the department for staff time involved in searching and reviewing records for exempt information and deleting it. Under the plain language of the statute, which authorizes a fee "covering direct costs of duplication," the amount chargeable by the department for furnishing the copies was the cost of copying them, and such "indirect" costs charged by the department were excluded. The statutory history indicates that "direct cost" does not include the ancillary tasks necessarily associated with the retrieval, inspection, and handling of the file from which the copy is extracted.

[See 2 **Witkin,** Cal. Evidence (3d ed. 1986) § 1252.]

(2) Records and Recording Laws § 15.2--Inspection of Public Records-- Procedure--Requests for Disclosure--Costs of Duplication--Waiver by Public Agency.

In an action by a nonprofit organization against the California Department of Education, arising out of the department's charging the organization 25 cents per page for furnishing copies of requested documents, the trial court properly determined that the department had the power to waive fees under Gov. Code, § 6253.1, which gives an agency power to "adopt requirements for itself which allow greater access to records than prescribed by the minimum standards set forth in this chapter." However, the trial court erred in finding no obligation on the part of the department to reduce the fee, since the trial court's

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ruling ignored the fact that the department declined to exercise discretion, contending that it had none. Had the department been aware that it was vested with discretion to reduce the fee, it might have done so.

COUNSEL

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Joseph R. Symkowick, Roger D. Wolfertz and Carolyn Pirillo for Defendant and Respondent.

FROEHLICH, J.

The issue in this case is whether the California Department of Education (Department) is entitled to charge its full cost of providing copies of public documents which are requested in accordance with the California Public Records Act. (Gov. Code, [FN1] § 6250 et seq.)

FN1 All statutory references are to the Government Code unless otherwise specified.

North County Parents Organization for Children With Special Needs (appellant) is a nonprofit tax-exempt corporation which provides advisory services to parents of children with disabilities. Appellant assists such parents in enforcing their rights to special educational services provided by state and federal laws. Parents seeking review of local school district action respecting such services may take advantage of an appellate hearing process. The decisions resulting from this process are public records maintained by the Department.

Appellant requested copies of all decisions rendered in the last two years. Department charged $.25 per page for furnishing the copies, rendering a total bill of $126.50. This charge not only covered the cost of duplication of the documents, but also reimbursed Department for staff time involved in searching the records, reviewing records for information exempt from disclosure under law, and deleting such exempt information. Department refused to reduce this charge, and also refused to waive the charge upon the ground that "there is no legal authority to waive such charges." Appellant paid the charge and then brought this action seeking miscellaneous relief.

The trial court ruled for the Department, finding that section 6257 permits the Department to charge "the full direct costs of duplication," and that the Department's charge of $.25 per copy "was not in contravention of section 6257." The court made a second ruling pertaining to the potential of waiver of fees. It ruled that the Department had discretion to waive fees pursuant to section 6253.1, but that it was not required to waive fees and did not err in this case by refusing to consider waiver. Appellant contends both rulings are in error.

(1) We agree with appellant. Section 6257 provides that one who requests copies of public documents must pay the statutory fee for same, if ***147** there is one. The parties agree there is none prescribed in this case. Lacking a statutory fee the cost chargeable is a "fee[ ] covering direct costs of duplication." There seems to be little dispute as to what "duplicate" means. It means just what we thought it did, before looking it up: to make a copy. (See Black's Law Dict. (4th ed. 1968) p. 593 ["to ... reproduce exactly"]; Webster's Third New Internat. Dict. (1981) p. 702 ["to be or make a duplicate, copy or transcript ..."].) Since words of a statute are to be interpreted "according to the usual, ordinary import of the language employed in framing them" (*In re Alpine* (1928) 203 Cal. 731, 737 [265 P. 947, 58 A.L.R. 1500]), we conclude that the cost chargeable by the Department for furnishing these copies is the cost of copying them.

There is no disagreement with the proposition that the Department was put to a great amount of trouble responding to appellant's request, much of which had nothing to do with copying. Records were searched, documents were read for any material to be excised, such material was removed, files were refiled, etc.

We sometimes presume too much of the Legislature, but this is assuredly not the case when we presume that the statute writers, themselves bureaucrats of a sort, knew the ancillary costs of everything government does. They specified, however, that the sole charge should be that for duplication. In order to clarify this limitation the Legislature added that the fee should be the "direct cost" of duplication. Obviously to be excluded from this definition would be "indirect" costs of duplication, which presumably would cover the types of costs the Department would like to fold into the charge.

The parties to this appeal argue earnestly about

the policy considerations which should go into this momentous decision (whether to charge $.10 or $.25 per copy). We do not reach these arguments. Clearly the Legislature could have provided a different charge for copying. It simply did not, and the reason it did not is of no moment to the Court of Appeal, a body which simply interprets statutes and does not ordinarily seek their rationale.

However, if our quick conclusion needs any bolstering it is easy to find in the statutory history of this fee-setting provision. The original wording, adopted in 1968 (Stats. 1968, ch. 1473, § 39, p. 2948), was that "a reasonable fee" could be charged. In 1975 an amendment limited the "reasonable fee" to not more than $.10 per page. (Stats. 1975, ch. 1246, § 8, p. 3212.) An amendment in 1976 deleted "reasonable fee" and inserted instead "the actual cost of providing the copy." (Stats. 1976, ch. 822, § 1, p. 1890.) Finally, the present version of the statute was adopted in 1981 limiting the fee to the "direct costs of duplication." (§ 6257.) Thus it can be seen that the trend has ***148** been to limit, rather than to broaden, the base upon which the fee may be calculated. A "reasonable fee" or the "actual cost of providing the copy" could be interpreted to include the cost of all the various tasks associated with locating and pulling the file, excising material, etc. When these phrases are replaced by the more restrictive phrase "direct costs of duplication," only one conclusion seems possible. The direct cost of duplication is the cost of running the copy machine, and conceivably also the expense of the person operating it. "Direct cost" does not include the ancillary tasks necessarily associated with the retrieval, inspection and handling of the file from which the copy is extracted.

(2) We apprehend that the court's second ruling was also in error. It may be thought that the error was either inadvertent or insignificant. However, being called upon herein to right wrongs which might seem inconsequential to most, we complete our task by identifying this one. As stipulated by the parties, the Department refused to waive fees because it determined there was no legal authority to do so. The trial court, to the contrary, concluded that the Department *did* have the power to waive fees, citing section 6253.1. This section gives an agency power to "adopt requirements for itself which allow greater access to records than prescribed by the minimum standards set forth in this chapter." The trial court apparently concluded that this provision permits an agency to waive or reduce its fees. We agree. A reduction in copy fee permits "greater access" to records.

The trial court then, however, found no obligation to reduce the fee and hence no actionable wrong by the Department. Our difficulty with this ruling is that it ignores the fact that the Department declined to exercise discretion, contending it had none. Had the Department been aware that it was vested with discretion to reduce the fee, it might have done so. We believe, therefore, that the case should be returned to the Department with instructions to consider (but not necessarily to grant) the request for fee waiver.

Section 6258 provides: "Any person may institute proceedings for injunctive or declarative relief or writ of mandate ... to enforce his or her right to inspect or to receive a copy of any public record ...." This lawsuit clearly comes within this provision, and hence appellant's requests for writs, orders and declarations are proper. We decline, however, to grant such specific relief. As indicated by the general counsel, the Department will surely follow the law once it is advised of it. Appellant is entitled to a declaration of its right to obtain copies at a cost of only the expense of copying, and it is also entitled to our advice that the Department could waive this fee if it chose to do so. By this opinion we have granted these declarations. Appellant is also entitled to a refund of some portion of the fee it has already paid, ***149** and also to costs both at trial and appellate level. The statute (§ 6259, subd. (d)) contains authority for an award of attorney fees to appellant. All these matters are best determined by the trial court, assuming (which we would expect is a false assumption) that the parties cannot now resolve their dispute by stipulation.

Disposition

We reverse the judgment of the trial court and remand the case for further proceedings in accord with this opinion.

Work, Acting P. J., concurred.

HUFFMAN, J.,

Concurring and Dissenting.-Although I agree with the majority that Government Code section 6253.1 [FN1] provides a public agency with the discretion to make fee waivers in appropriate cases, I respectfully dissent from the conclusion of the majority

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regarding the scope of the statutory term "direct costs of duplication." (§ 6257.) Although the monetary amount involved in this appeal is small, the question presented as to allocation of the direct costs of duplication of public records between requestors of such records or the taxpayers is of material importance in this era of straitened public finances. Interpreting section 6257 de novo within the context of the Public Records Act (§ 6250 et seq.) (the Act) and on the record presented, I would conclude that the statutory term "direct costs of duplication" was intended by the Legislature to include not only the actual per page copying cost, but also the costs directly resulting from the acts necessary to prepare the public record material to make it available to the requesting party in an appropriate form. Such preparation may, in my view, include the tasks directly related to duplication, such as searching for appropriate records, "sanitizing" or redacting the material to segregate out statutorily exempt information, and then providing the public records in a prepared form.

FN1 All statutory references are to the Government Code unless otherwise specified.

A few more facts than those set forth by the majority are helpful to an understanding of my position on this issue. Respondent California Department of Education (the Department) is the state agency responsible for ensuring that local school districts provide appropriate special education services. As part of its duties, the Department conducts administrative hearings on appeals by parents contesting local school district decisions about their children's rights to special education services. North County Parents Organization for Children with Special Needs (Appellant), a nonprofit corporation and association of parent volunteers, requested copies of ***150** all decisions issued in such administrative hearings during 1987 and 1988, a two-year period. [FN2]

FN2 Appellant had made a similar request for a one-and-one-half-year period earlier, and had been provided a copy of four decisions (twenty pages in total), for which the Department charged no fee. Appellant then requested copies of all hearing decisions from other nearby school districts for a three-year period, and was told a representative should come to Sacramento to inspect and select the decisions needed, copies of which would then be provided at the rate of ten cents a page. Appellant declined to take this route, based on the cost of travel and because the 10-cent-per-page charge was excessive in its view.

In response to Appellant's request, the Department assigned a staff analyst to reply to the request by searching individual case files for the hearing decisions, reviewing them for information exempt from disclosure under the Act (names of students and parents), deleting the names and copying decisions, and then refiling the original decisions. The Department then sent Appellant the requested copies of decisions with a bill for $126.50, based on the rate of 25 cents per page for 506 pages. Appellant paid the charge under protest, asking the Department either to reduce the charges to 10 cents per page or to waive them altogether because Appellant is a nonprofit group using the decisions to provide free advice to parents about their rights under applicable special education laws. The Department responded that the charges covered staff costs for locating the records (two hours), reviewing the records for exempt information and then deleting it (one and one-half hours), and then copying the five hundred six pages twice, once from the original and once with the whited-out or "sanitized" copy (three hours). Costs for operating the copy machines and for postage were also incurred.

Section 6257 provides as follows: "Except with respect to public records exempt by express provisions of law from disclosure, each state or local agency, upon any request for a copy of records, which reasonably describes an identifiable record, or information produced therefrom, shall make the records promptly available to any person, *upon payment of fees covering direct costs of duplication, or a statutory fee, if applicable.* Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt by law." (Italics added.) [FN3] The trial court gave broad scope to the fees provision of this section by ruling the Department was permitted to charge parties requesting records "the full direct costs of duplication." Review of this determination, according to rules of statutory interpretation, involves the resolution of a question of law de novo on appeal. (*Shippen v. Department of Motor Vehicles* (hereafter *DMV*) (1984) 161 Cal.App.3d 1119, 1124 [208 Cal.Rptr. 13]; *Los Angeles County Safety Police Assn.*

v. County of Los Angeles (1987) 192 Cal.App.3d 1378, 1384 [237 Cal.Rptr. 920].) Although construction of ***151** statutory language is unnecessary where the language is clear and unambiguous, rules of statutory interpretation must be applied where there is ambiguity or conflict in the statutory language, or where a literal construction would lead to absurd results. (*DMV*, *supra*, at p. 1124.) The statutory term "direct costs of duplication" is subject to more than one interpretation and must be considered ambiguous.

> FN3 It is agreed that no statutory fee applies to this case.

"Accordingly, we are compelled to engage in statutory construction, giving words their usual, ordinary, and common sense meaning based on the language the Legislature used and the apparent purpose for which the statute was enacted. [Citation.] We '... ascertain the intent of the Legislature so as to effectuate the purpose of the law.' [Citation.]" (*DMV*, *supra*, 161 Cal.App.3d at p. 1124.)

Stated differently, statutory language must be construed in context, keeping in mind the statutory purpose, and statutory enactments relating to the same subject must be harmonized to the extent possible. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387 [241 Cal.Rptr. 67, 743 P.2d 1323].) "Where uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation. [Citation.] Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent. [Citations.]" (*Ibid.*) Further, " ' "... the meaning of a word may be enlarged or restrained by reference to the object of the whole clause in which it is used." ' [Citations.]" (*Id.* at p. 1391, fn. 14.)

The majority reads section 6257 according to the "usual, ordinary import" of its language (*In re Alpine* (1928) 203 Cal. 731, 737 [265 P. 947, 58 A.L.R. 1500]), without benefit of citation of authority or much in the way of explanation. I believe some background of interpretation of the Act is of assistance in this statutory interpretation question. Appellant relies on *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 451-453 [186 Cal.Rptr. 235, 651 P.2d 822] (hereafter *ACLU*), in which the Supreme Court recognized that under section 6255 of the Act, an agency's costs for reviewing and deleting exempt information from records are a burden which may be taken into account in requiring disclosure of records. Section 6255 creates a balancing test by which an agency can justify nondisclosure of requested records by showing "that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record."

Although neither party in the case before us has presented the issue as requiring a section 6255 balancing test, the general principles of ***152***ACLU*, *supra*, 32 Cal.3d 440 may be applied here; we are required to read related statutory enactments as a whole. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.*, *supra*, 43 Cal.3d at p. 1387.) Section 6255 "imposes on the California courts a duty ... to weigh the benefits and costs of disclosure in each particular case." (*ACLU*, *supra*, at p. 452.) A court performing this balancing test is authorized to take into account any expense and inconvenience involved in segregating nonexempt from exempt information, because the statutory term "public interest" "encompasses public concern with the cost and efficiency of government." (*Id.* at p. 453, also see fn. 13, p. 453.) We may thus take it as established that the Act includes a policy favoring the efficiency of government and limitation of its costs.

Moreover, although the evident purpose of the Act is to increase freedom of information by giving the public maximum access to information in the possession of public agencies (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651-652 [230 Cal.Rptr. 362, 725 P.2d 470]), such access to information is not unlimited under the Act. For example, section 6254 et seq. defines a number of categories of information that are exempt from disclosure; requests for records are subject to those constraints. The Act thus places both substantive and some financial constraints upon disclosure of public records. (See *ACLU*, *supra*, 43 Cal.3d at p. 451; *State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1191 [13 Cal.Rptr.2d 342].)

I would read the language of section 6257 referring to the "direct costs of duplication" with this background in mind. To effectuate the purpose of the statute, according to the intent of the Legislature, a court is required to look first "to the words of the

statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided." (*Dyna-Med, Inc. v. Fair Employment & Housing Com., supra,* 43 Cal.3d at pp. 1386-1387.) The fee provisions of section 6257 are activated by "any request for a copy of records, which reasonably describes an identifiable record, or information produced therefrom, ..." (§ 6257.) Upon such a request, the agency must make the records promptly available to any person, with the proviso that "[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt by law." Thus, there are two clauses in this statute suggesting that public records must in some cases be edited or otherwise prepared before being made available to the requestor: (1) The records may consist of information produced from an identifiable record, and (2) nonexempt information may be provided in the form of any reasonably segregable portion of ***153** the records. The Legislature thus showed it was aware that there might be a need for preparation of records (search, review, and deletion) before they could be made appropriately available to the requestor, and that accompanying costs would be incurred. Such costs might be considerable, for example, if the requested material contained privileged personnel matters or litigation-related documents. (See § 6254, subds. (b), (c), (k).) I see no reason to assume that the Legislature intended that in all nonwaiver (§ 6253.1) cases, taxpayers, rather than requesting parties, should bear the full direct costs of duplicating copies of public records under the Act.

Where statutory language is uncertain or ambiguous, "consideration should be given to the consequences that will flow from a particular interpretation. [Citation.]" (*Dyna-Med, Inc. v. Fair Employment & Housing Com., supra,* 43 Cal.3d at p. 1387.) The financial consequences of Appellant's position are potentially considerable in this era of public agency budget deficits. I believe that the Legislature's references to the "information produced" from a record and the "reasonably segregable portion" of records which may be produced show that in this context, the Legislature intended that the meaning of the word "duplication" should be enlarged by reference to the object of the whole clause in which it is used. (*Id.* at p. 1391, fn. 14.) It thus should include the tasks directly related to duplicating the material as prepared for release, in accordance with the limitations imposed by the Act.

Dicta in a recent opinion by the Second District, Division Three, in *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588, 600-601 [22 Cal.Rptr.2d 409], suggest that in section 6257, the Legislature "has provided only for recovery of *duplication costs* by the ... agency involved. This is a restriction which is both reasonable and appropriate where the mandatory disclosure is limited to current records of contemporaneous activity, but totally unreasonable and inappropriate where both generation and compilation of information from historical archives is required." (18 Cal.App.4th at p. 601.) I find support for my position on section 6257 in this quoted language, since selecting and preparing the records requested by Appellant for disclosure required someone to compile those records and then edit them for disclosure. Such preparation was directly related to duplicating and making the copies available and was not free of agency expense.

Moreover, for purposes of interpreting the fee provision in section 6257, it is not proper to place too much weight upon the identity of the requestor of the documents. The Act does not differentiate among those who seek access to public information (e.g., a requestor who is a commercial entity, intending to use the material obtained for commercial purposes, and a private party ***154** who seeks public information). (*State Bd. of Equalization v. Superior Court, supra,* 10 Cal.App.4th at p. 1190.) In *State Bd. of Equalization,* the court refuted any interpretation of the Act which would give less deference to commercial users, as opposed to private parties, and adhered to its previous statement in *DMV, supra,* 161 Cal.App.3d at pages 1126-1127 that access to bulk records by commercial users may be circumscribed by reasonable conditions regarding format and price. (*State Bd. of Equalization, supra,* 10 Cal.App.4th at p. 1191.) I believe that an interpretation of "direct costs of duplication" as including directly related search, compilation, review, and deletion expenses is consistent with the principles of *State Bd. of Equalization,* as allowing access to public records to be circumscribed in appropriate instances by reasonable conditions regarding format and price. I therefore dissent from the majority opinion on this point.

A petition for a rehearing was denied March 31, 1994, and respondent's petition for review by the

23 Cal.App.4th 144, 28 Cal.Rptr.2d 359, 89 Ed. Law Rep. 542
(Cite as: 23 Cal.App.4th 144)

Supreme Court was denied May 19, 1994. ***155**

Cal.App.4.Dist.
North County Parents Organization v. Department of Education
23 Cal.App.4th 144, 28 Cal.Rptr.2d 359, 89 Ed. Law Rep. 542

END OF DOCUMENT

143 Cal.App.3d 762, 192 Cal.Rptr. 415
(Cite as: 143 Cal.App.3d 762)

SAN GABRIEL TRIBUNE, Petitioner,
v.
THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; CITY OF WEST COVINA et al., Real Parties in Interest.

Civ. No. 67290.

Court of Appeal, Second District, Division 1, California.
Jun 9, 1983.

SUMMARY

A city and a waste disposal company entered into a long term contract under which the waste disposal company had the exclusive right to collect waste and garbage within the city limits. Under the terms of the agreement, the waste disposal company sought a rate increase. Relying on financial data supplied by the waste disposal company, the city approved a proposed rate increase of 15 to 25 percent over a two-year period. A newspaper sought disclosure of the financial data submitted by the disposal company and relied upon in granting the rate increase. The city refused, and the newspaper brought a petition in the superior court for a writ of mandate to compel disclosure of the records pursuant to the Public Records Act (Gov. Code, § 6250 et seq.). The superior court denied the writ on the basis that the financial data was exempted from disclosure under Gov. Code, § 6254, subds. (k) and (m). The newspaper filed a petition for a writ of mandate in the Court of Appeal.

The Court of Appeal issued a writ of mandate directing the superior court to vacate its denial of the newspaper's petition and to grant the petition. The superior court was further directed to award the newspaper costs and reasonable attorney fees in pursuing relief in both the superior court and the Court of Appeal, pursuant to Gov. Code, § 6259. The court held that the financial data in question was a public record within the meaning of Gov. Code, § 6250. The court also held that the exemption provided under Gov. Code, § 6254, subd. (k), was inapposite because the data was not confidential information protected under either Evid. Code, §§ 1060 or 1040, both of which were incorporated in this exemption, and that the exemption provided under Gov. Code, § 6254, subd. (n) was also inapposite because this exemption protected applicants for licenses and not contractors of the city. The court further held that the balancing test provided under Gov. Code, § 6255, weighed in favor of public disclosure as opposed to the disposal company's privacy interests; and that the city and the disposal company's pursuit of a rate increase was tantamount to a waiver of any privacy interests that they may have had in the data. The court finally held that the newspaper was entitled to attorney fees pursuant to Gov. Code, § 6259. (Opinion by Hanson (Thaxton), J., with Lillie, Acting P. J., and Dalsimer, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Mandamus and Prohibition § 15--Mandaimus--Conditions Affecting Issuance--Existence and Adequacy of Other Remedy--Remedy by Appeal--Review of Denial by Superior Court of Writ of Mandate.

Although an appeal does lie from the denial by the superior court of a writ of mandate (Code Civ. Proc., § 1110), and is ordinarily considered an adequate remedy, the adequacy of remedy such as appeal depends upon the circumstances of the particular case, and thus a large measure of discretion to grant or deny the writ rests in the court. Accordingly, in a proceeding in which a newspaper sought a writ of mandate to compel a city to disclose certain public records and the superior court denied the writ, the Court of Appeal's decision to issue an alternative writ of mandate was predicated on the need for speedy resolution of issues in which the public, particularly the citizens of the city, had a very genuine interest.

(2a, 2b) Mandamus and Prohibition § 6--Mandamus--Conditions Affecting Issuance--Acts and Duties Enforceable.

Under Code Civ. Proc., § 1085, which provides " [a] writ of mandate will lie to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station ...," a petitioner for a writ of mandate must not only show that the respondent has a duty to perform but that the petitioner has a substantial right to the performance of this duty. However, where the petitioner acts in the public interest to procure the enforcement of a public duty, he need not show any legal or special interest in the result.

(3) Mandamus and Prohibition § 28--Mandamus--To Courts and Court Officers-- Control of Judicial Discretion.

Mandamus will not be granted to control the proper

exercise of a court's discretion unless that discretion can be exercised in only one way. It is unusual that a court is bound to exercise its discretion in one "right" way.

(4) Records and Recording Laws § 12--Inspection of Public Records--Public Records Act--Purpose.

The California Public Records Act (Gov. Code, § 6250 et seq.) was enacted in 1968 to safeguard the accountability of government to the public, for secrecy is antithetical to a democratic system of "government of the people, by the people [and] for the people."

(5) Records and Recording Laws § 12--Inspection of Public Records--Public Records Act--Construction.

The California Public Records Act (Gov. Code, § 6250 et seq.), modeled after the 1967 federal Freedom of Information Act (FOIA), can draw on its federal counterpart for judicial construction and legislative history. Moreover, the act, like the FOIA, reflects a general policy of disclosure that can only be accomplished by narrow construction of the statutory exemptions.
[See **Cal.Jur.3d,** Records and Recording Laws, § 6 et seq.; **Am. Jur.2d,** Records and Recording Laws, § 12 et seq.]

(6) Records and Recording Laws § 12--Inspection of Public Records--What Constitutes Public Records--Financial Data Supplied by Private Waste Disposal Company to City.

Financial data, supplied by a private waste disposal company to a city which the city relied on in granting a rate increase to the waste disposal company under the city's contract with the waste disposal company for the collection of waste and garbage within the city limits, constituted "public records" within the meaning of Gov. Code, § 6252, subd. (d), defining public records, and was therefore subject to public inspection under Gov. Code, § 6253, unless otherwise exempted from disclosure. The city had a contractual relationship with the disposal company. The city delegated its duty of trash collection to the disposal company, but still retained the power and duty to monitor the disposal company's performance of its delegated duties, under the express terms of the contract. There was no question that the disposal company was providing a service to the residents of the city, by way of a contract made between it and the city. Assurance of confidentiality by the city to the disposal company that the data would remain private was not sufficient to convert what was a public record into a private record.

(7) Records and Recording Laws § 12--Inspection of Public Records-- Records Exempt From Disclosure--Records Exempted Pursuant to Federal or State Law.

Financial data, supplied by a waste disposal company to a city which the city relied on in granting a rate increase to the disposal company pursuant to an exclusive contract between the city and the waste disposal company for the collection of waste and garbage within the city limits, was not exempt from disclosure as a public record by Gov. Code, § 6254, subd. (k), which exempts from disclosure records exempted from disclosure under federal or state law, including Evid. Code, §§ 1040 (privilege for official information) and 1060 (privilege to protect trade secret). There was no showing that the city would be injured by revealing the data. Moreover, under Evid. Code, § 1040, there was no showing that disclosure of the information was against the public interest; disclosure was shown to weigh in favor of the public's interest in view of the fact that the rate increase amounted to a 15 to 25 percent increase in just two years that the public-not the city-would have to pay. Further, assurances of confidentiality were insufficient in themselves to justify withholding pertinent public information from the public. Nor was a showing of egregious conduct necessary to gain access to relevant data, since in many cases knowledge of such could only be gained by access.

(8) Records and Recording Laws § 12--Inspection of Public Records-- Records Exempt From Disclosure--Personnel, Medical, or Similar Files.

Financial data, supplied by a waste disposal company to a city which the city relied on in granting a rate increase to the company pursuant to an exclusive contract between the city and company for the collection of waste and garbage within the city limits, was not exempt from disclosure as a public record by Gov. Code, § 6254, subd. (c), which exempts from disclosure "[p]ersonal, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." When the city publicly based its decision to permit the company to increase waste and garbage collection rates on the financial data supplied by the disposal company, the data lost its exempt status.

(9) Business and Occupational Licenses § 1--License Distinguished From Contract and Franchise.

A license is not a contract; it has none of the elements of a contract and does not confer an absolute right but a personal privilege. A license, defined as a permission or privilege to do what otherwise would be unlawful, is most typically employed to designate official municipal authorization of a continuing business or activity. Since franchises have been defined to include privileges, they have been compared to licenses. However, franchises are com-

ing to be regarded as functions delegated to private individuals to be performed for the furtherance of the public welfare and subject to public control. Under this usage, franchise is closely akin to a contractual relationship which creates a right-duty relationship.

(10) Records and Recording Laws § 12--Inspection of Public Records-- Records Exempt From Disclosure--Financial Data Filed by Applicant for License.

Financial data, supplied by a waste disposal company to a city which the city relied on in granting a rate increase to the company pursuant to an exclusive contract between the city and the company for the collection of waste and garbage within the city limits, was not exempt from disclosure under Gov. Code, § 6254, subd. (n), which exempts from disclosure " [s]tatements of personal worth or financial data required by a licensing agency and filed by an applicant with such licensing agency to establish his personal qualifications for the license, certificate, or permit applied for." The term license within the meaning of § 6254, subd. (n), must be construed narrowly to give effect to the legislative intent that favors disclosure over secrecy in government. If the Legislature had intended a broad exemption to apply to any financial statements then it need not have hinged the exemption to those filing applications with licensing agencies. Although it makes good sense to exempt license applicants, that situation was distinct from the type of contractual relationship that existed between the city and the disposal company.

(11) Records and Recording Laws § 12--Inspection of Public Records-- Records Exempt From Disclosure--Nondisclosure Justified by Public Interest.

Financial data, supplied by a waste disposal company to a city which the city relied on in granting a rate increase to the disposal company pursuant to an exclusive contract between the city and waste disposal company for the collection of waste and garbage within the city limits, was not exempt from disclosure as a public record by Gov. Code, § 6255, which places a burden on a public agency to justify withholding a public record on the basis of a showing that the public interest served in nondisclosure outweighs the public interest in disclosure. Although the city and the disposal company might have legitimate privacy interests to protect, yet the interests on the part of the city in not killing future information-gathering abilities in business transactions, and on the part of the disposal company in jeopardizing competitive advantages, did not outweigh the public's need to be informed of the provision of governmental services contracted on behalf of the residents.

(12) Records and Recording Laws § 12--Inspection of Public Records-- Disclosure of Financial Data Submitted to Government by Private Party.

In proceedings to compel public disclosure of financial data supplied by a waste disposal company to a city which the city relied on in granting a rate increase to the disposal company pursuant to an exclusive contract between the city and the waste disposal company for the collection of waste and garbage within the city limits, the disposal company waived any privacy interests it may have had by voluntarily injecting itself into the public arena by seeking a rate increase and submitting financial data in support of it. Moreover, the city publicly based its decision to grant the rate increase on financial data voluntarily submitted by the disposal company. Any privacy interest that may have existed in the data was converted once it was used not only to support but to justify the rate increase.

(13) Records and Recording Laws § 12--Inspection of Public Records-- Public Records Act--Proceedings to Compel Disclosure of Public Records-- Attorney Fees and Costs.

Where a city violated the Public Records Act (Gov. Code, § 6250 et seq.), requiring it to disclose certain financial data, a newspaper that instituted mandamus proceedings both in the superior court and the Court of Appeal to compel the disclosure of such records was entitled to the costs and reasonable attorney fees incurred in bringing the writ below, as well as in petitioning the Court of Appeal for review.

COUNSEL

Flint & MacKay, Philip M. Battaglia, Paul L. Giannini and Stephen G. Contopulos for Petitioner.

No appearance for Respondent.

Kadison, Pfaelzer, Woodard, Quinn & Rossi, Richard T. Williams, John C. Funk, Lawrence A. Cox, Polly Horn, Colin Lennard, City Attorney, Burke, Williams & Sorensen, Cheryl J. Kane and Scott F. Field for Real Parties in Interest.

HANSON (Thaxton), J.

San Gabriel Tribune filed petition for writ of mandamus pursuant to Government Code section 6258, providing for injunctive relief to obtain disclosure of a public record. At issue is the propriety of the refusal by the City of West Covina, real party in interest (hereafter respondent City or City), to disclose financial statements to the peti-

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tioner, San Gabriel Valley Tribune (Newspaper). Petitioner Newspaper seeks access to financial statements used to evaluate a rate increase that the City granted to real party in interest, West Covina Disposal Company (hereafter respondent or Disposal Company).

Factual and Procedural History

On August 23, 1982, the City of West Covina met publicly to discuss a proposed rate increase under an existing and exclusive contract for waste disposal with the Disposal Company. The City contracted with the Disposal Company in July 1975 to collect garbage and rubbish within the city boundaries. The City and Disposal Company had contracted with one another for this service since 1961. The duration of the contract was from July 1976 to December 31, 1985. The terms expressly provided that "the contractor shall act as an independent contractor in the performance of the within agreement and shall not be subject to the direction of the City as to the manner in which said work is to be performed, other than inspection by the City to insure that the terms hereof are performed by the Contractor." *768

Additionally, the contract provided that either party could request a complete review of the terms of the agreement at the end of each two-year period. In the event that a proposed revision to the terms of the contract was not reached, either party could terminate the contract with six months notice. The contractor agreed to pay the City five percent of the sums it collected, in addition to any other licenses or taxes charged by the City. The contractor was charged with submitting annually on or before August 31 a certified statement of the contractor's total collections for the preceding fiscal year. A rate schedule was attached and incorporated as part of the contract. [FN1]

FN1 The contract also provided that the contractor was to bill the customers directly. The original rate schedule contained in the contract reads in relevant part as follows:

		Monthly Rate
Single Family Residence	Once weekly pick-up of Rubbish	$2.40
Apts or multiple units containing 4 or more dwlg. units	Twice wkly pick-up of rubbish at central location on premises	$1.45 per dwlg. unit or be billed monthly and the total amt. of mthly billing to be paid by owner

. . . . .

Commercial and Industrial Establishments Rubbish:

80 pounds or 2 cubic yards per pick-up	1 pick-up per week $1.50 wk.	2 pick-ups per week $3.00 wk.	3 pick-ups per week $4.50 wk.	6 pick-ups per week $6.00 wk.

Commercial Wet Garbage

Boarding house, hotel or place of business

Wet Garbage	2 collections per week	3 collections per week	6 collections per week

10 gallons or less	$1.50	$2.35	$4.50
11 gallons to 20 gal.	1.80	2.70	5.40
21 gallons to 30 gal.	2.10	3.15	6.30
31 gallons to 40 gal.	2.40	3.60	7.20
41 gallons to 50 gal.	2.70	4.05	8.10
51 gallons to 60 gal.	3.00	4.50	9.00

Excess of 60 gallons, the rate of 10 cents. for each additional five gallons or fraction thereof per collection.

The result of the August 23, 1982, meeting was that the City approved the Disposal Company's proposed rate increase that amounted to about a 15 percent ***769** increase for residential customers and a 25 percent increase for commercial customers over a two-year period. [FN2]

FN2 On the same day as the City's public action, it signed an amendment to the contract effective September 1, 1982, in relevant part as follows:

	Monthly Rate
For a regularly scheduled Single Family Resident once weekly pick-up from street ...	On and after 9/1/82 $4.90
Apartments or multiple units containing 4 or more dwelling units twice weekly pick-up of rubbish at central location on premises ...	On and after 9/1/82 $3.45

Commercial and Industrial Establishments Rubbish:

Times per week pick-up:	1/$33.00	2/$50.00	3/$65.00	4/$76.00	5/$88.00	6/$102.00
1 1/2 Yard Bin	$28.00	$42.00	$54.00			

The amendment also provided that the contractor would furnish and service at no cost 30 litter disposal localities at designated sites. The duration of the contract was extended to December 31, 1992.

The Newspaper sent a reporter, Karen Zappe, to cover the city council meeting. According to Zappe's declaration, a packet of information containing a two-page memorandum prepared by Leonard Eliot, Assistant City Manager, was given to each council member. The memorandum recommended approval of the rate increase. The information contained in the memorandum was utilized by the council to decide on whether to grant the proposed rate

increase. The memorandum referred to financial reports submitted by the Company concerning their current year of operations in support of a rate increase. [FN3] Zappe requested the financial information following the meeting and again on August 21, 1982. Her requests were denied.

> FN3 Petitioners seek access to financial statements for 1980 and 1981, while respondents insist only one statement was given to the City to evaluate the rate increase-for the fiscal year ending March 31, 1982. Petitioners may have based their request on City Manager Herbert Fast's letter of September 3, 1982, in which he refused disclosure of these statements. In its reply brief, petitioner states that it wants access to all financial data relied on by respondent to justify granting the rate increase.

On August 27, 1982, the Newspaper made a written request to the City requesting access to the Disposal Company's 1980 and 1981 financial statements. ***770** The request was denied by City Manager Herbert Fast in a letter of September 3, 1981. In his letter, Fast said the denial was premised on the City's policy of reviewing rate increases on the basis of "rate of return on investment of the corporation" to determine what would be reasonable. This policy, said Fast, was adopted by the City six years past, due to his dissatisfaction with the former evaluation process of reviewing market rates charged in comparable cities. Fast referred to information that Eliot provided to the reporter-total salaries, total operating costs, significant operating centers, profit after taxes and existing and predicted rate of return. Fast said it was the City's view that the financial information was a private corporation's confidential documents obtained in confidence and therefore unavailable to the public.

On October 5, 1982, petitioner brought a petition in the superior court for an alternative writ of mandate to compel disclosure or, in the alternative, a complaint for declaratory relief. Petitioner premised its petition for disclosure of public records on both the Public Records Act and the Brown Act. The proceedings were delayed until October 28, 1982, to enable respondent Disposal Company to intervene in the action. On December 2, 1982, the matter was heard and the writ was denied. The basis of the lower court's denial was that the statements were exempted from disclosure under Government Code sections 6254, subdivision (k) and 6254, subdivision (n). [FN4]

> FN4 Statutes hereinafter cited will refer to the Public Records Act (Act), Government Code section 6250 et seq., unless otherwise indicated. The court below rejected respondents' contention that 6254, subdivision (c) exemption applied, which provided for nondisclosure of "personnel, medical, or similar files ...."

On February 28, 1983, this court granted an alternative writ of mandate, directing that respondent superior court either vacate its denial of the writ or show cause why a peremptory writ should not issue ordering the court to so vacate its denial.

We note that the petition for mandate filed in this court was an original proceeding, undertaken on the assumption that petitioner had no adequate remedy at law (Code Civ. Proc., § 1085). (1)An appeal does lie from the denial by the superior court of a writ of mandate (see Code Civ. Proc., § 1110; and 5 Witkin, Cal. Procedure (2d ed. 1971), § 178, p. 3938 and 1983 Supp. at p. 347), and is ordinarily considered an adequate remedy (5 Witkin, *supra.*, § 101, p. 3875); however, "the adequacy of another remedy, such as appeal, depends on the circumstances of the particular case, and thus a large measure of discretion to grant or deny the writ rests in the court." (5 Witkin, *supra.*, § 92, p. 3867.) In the case at bench, the court's decision to issue the alternative writ was predicated on the need for speedy resolution of issues in which the public, particularly the citizens of the City of West Covina, have a very genuine interest (see 5 Witkin, *supra.*, § 106, p. 3880). ***771**

(2a)A writ of mandate will lie "to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station...." (Code Civ. Proc., § 1085.) Petitioner must not only show that respondent City has a duty to perform but that petitioner has a substantial right to the performance of this duty. (*Payne v. Superior Court* (1976) 17 Cal.3d 908, 925 [132 Cal.Rptr. 405, 553 P.2d 565]; 5 Witkin, Cal. Procedure (2d ed. 1971), Extraordinary Writs, § 61, p. 3838.)

(3)Mandamus will not be granted to control the proper exercise of discretion unless the court's discretion can be exercised in only one way. (*Hurtado v. Superior Court* (1974) 11 Cal.3d 574 [114 Cal.Rptr. 106, 522 P.2d 666]; 5 Witkin, *supra.*, § 80, p. 3857.) It is unusual that a court is bound to exercise its discretion in one "right" way. (*Nathanson v. Superior Court* (1974) 12 Cal.3d 355, 361 [115 Cal.Rptr. 783, 525 P.2d 687].)

(2b)When, as here, petitioner acts in the public interest

"to procure the enforcement of a public duty" he may not show any legal or special interest in the result. (*Green v. Obledo* (1981) 29 Cal.3d 126, 144 [172 Cal.Rptr. 206, 624 P.2d 256]; *Hollman v. Warren* (1948) 32 Cal.2d 351, 357 [196 P.2d 562].) Consequently, we review the matter presented on the merits.

Issues

In support of a writ of mandate, petitioner contends: (1) that the financial data in question is a public record within the meaning of section 6250; (2) that the exemption provided under section 6254, subdivision (k) is inapposite because the data is not confidential information protected under either Evidence Code sections 1060 or 1040, both of which are incorporated in this exemption, and that the exemption provided under section 6254, subdivision (n) is also inapposite because this exemption protects applicants for licenses and not contractors of the City; (3) that the balancing test provided under section 6255 weighs in favor of public disclosure as opposed to the Disposal Company's privacy interests; (4) that the City and Disposal Company's pursuit of a rate increase is tantamount to a waiver of any privacy interests that they may have had in the data; and (5) that petitioner is entitled to attorney's fees pursuant to Government Code section 54960.5. We agree with petitioner's position, as our discussion indicates.

Discussion

I

A. *Introduction*

(4)The California Public Records Act [FN5] was enacted in 1968 to safeguard the accountability of government to the public, for secrecy is antithetical to a ***772** democratic system of "government of the people, by the people [and] for the people." The Act "was enacted against a 'background of legislative impatience with secrecy in government ....' (53 Ops.Cal.Atty.Gen. 136, 143 (1970).) The Legislature had long been attempting to 'formulate a workable means of minimizing secrecy in government.' (*Id.*, at p. 140, fn. omitted.)" (*American Civil Liberties Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 457 [186 Cal.Rptr. 235, 651 P.2d 822].) The Act replaced a number of statutes that were cumbersome to apply. This statutory disarray was not cured by the Brown Act of 1953. [FN6] (See Schaffer et al., *A Look at the California Records Act and Its Exemptions* (1974) 4 Golden Gate L.Rev. 203, 212.)

FN5 Statutes 1968, chapter 1473, section 39, page 2945.

FN6 Statutes 1953, chapter 1588, p. 3269. The Brown Act, Government Code sections 54950 et seq. declares that "[t]he public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly." Petitioners also base their right to disclosure on the Brown Act.

The legislative imprimatur of the Act is contained in section 6250 declaring that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." The concept that access to information is a fundamental right is not foreign to our jurisprudence: "Nearly two hundred years ago, James Madison stated, '[k]nowledge will forever govern ignorance and a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both.'" (Schaffer, *supra.*, pp. 203, 204 quoting from S. Rep. No. 813, 89th Cong., 1st Sess., p. 1 (1965).)

In the case at bench, "popular information" concerns a very substantial rate increase which will not only net additional revenue for both City and Disposal Company, but the revenue will be obtained at the expense of the public, the consumers in the City who will be subjected to the increased cost of garbage disposal. Viewed in this light, the action of the City and Disposal Company, taken on the basis of information withheld from the citizens who are to pay the bill, would result in what is in essence a "hidden" tax on the city taxpayers, the type of financial maneuvers such popular measures as Proposition 13 attempted to preclude.

(5)The Act, modeled after the 1967 federal Freedom of Information Act (FOIA), can draw on its federal counterpart for judicial construction and legislative history. (*American Civil Liberties Union Foundation, supra.*, 32 Cal.3d 440, 447, mod. 32 Cal.3d 866a; *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 652 [117 Cal.Rptr. 106].) This resource becomes a useful tool, in view of the lack of California cases construing the Act. Moreover, the ***773** Act, like the FOIA, reflects a general policy of disclosure that can only be accomplished by narrow construction of the statutory exemptions. (See *Black Panther Party v. Kehoe, supra.*, 42 Cal.App.3d 645, 653, fn. 7.)

The basic rule providing access to public records is contained in section 6253. [FN7] A series of 17 exemptions to this general rule are contained in section 6254. [FN8] "[T]hese exemptions are designed to protect the privacy of persons whose data or documents come into governmental possession." (*Black Panther Party v. Kehoe, supra.*, at p. 652.). In footnote 8, we have set forth the three exemptions, subdivisions (c), (k), and (n), which are the subject of contentions and discussion in this opinion; particularly, subdivisions (k) and (n). A waiver of an exemption exists under section 6254.5 "whenever a state or local agency discloses a public record which is otherwise exempt ...." Moreover, the burden of showing that nondisclosure is justified is on the agency seeking to withhold the requested record under section 6255. [FN9] The statutory scheme encourages openness by government by providing that a governmental agency may adopt a policy of greater access to the public than is provided by the Act. (See § 6253.1.) *774

FN7 The relevant part reads as follows:

Section 6253. "(a) Public records are open to inspection at all times during the office hours of the state or local agency and every citizen has a right to inspect any public record, except as hereafter provided. Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section."

FN8 The relevant part reads as follows:

Section 6254. "Except as provided in Section 6254.7,*

*6254.7, amended by Statutes 1981, chapter 729, section 2, page 2882, provides inter alia that air pollution data, and notices and orders to building owners are public records.

nothing in this chapter shall be construed to require disclosure of records that are any of the following:

"

. . . . .

"(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

"

. . . . .

"(k) Records the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

"

. . . . .

"(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with such licensing agency to establish his personal qualification for the license, certificate, or permit applied for.

"

. . . . .

"Nothing in this section is to be construed as preventing any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law."

FN9 Section 6255. "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 making the record public clearly outweighs the public interest served by disclosure of the record."

B. *Public Records*

A local agency is required under section 6253 to make its public records accessible to the public. The City is a local agency by definition under section 6252, subdivision (b) and therefore has a statutory duty to provide access to public records. Newspaper seeks access to the data in order

that it may apprise the public of the propriety of the rate increase. In this way, Newspaper is acting as a guardian for the public. No special right of access has thus far been accorded to the press either federally or in California. (*Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs.* (1968) 263 Cal.App.2d 41, 46 [69 Cal.Rptr. 480]; *Pell v. Procunier* (1974) 417 U.S. 817 [41 L.Ed.2d 495, 94 S.Ct. 2800].) The press occupies virtually the same position with respect to the City that any citizen would who seeks access to information, elucidating machinations of local government. A fortiori, the newspaper has access to the data if the data is a public record: "'Any record required by law to be kept by an officer, or which he keeps as necessary or convenient to the discharge of his official duty, is a public record.' [Citations omitted.] On the other hand, the mere fact that a writing is in the custody of a public agency does not make it a public record." (*City Council v. Superior Court* (1962) 204 Cal.App.2d 68, 73 [21 Cal.Rptr. 896].) The Attorney General defines a public record more broadly: "Public records, as defined by Government Code section 6252 subdivision (d), 'includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state ... agency regardless of physical form or characteristics.' 'Writing' is further defined by said section 6252 subdivision (e) as: "... handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.'

"

. . . . . .

"'This definition is intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record-keeping instrument as it is developed. Only purely personal information unrelated to "the conduct of the public's business" could be considered exempt from this definition, i.e., the shopping list phoned from home, the letter to a public officer from a friend which is totally void of reference to governmental activities.' Assembly Committee on Statewide Information Policy California Public Records Act of 1968. 1 Appendix to Journal of Assembly 7, Reg. Sess. (1970), see also 53 Ops. Cal. Atty. Gen. 136, 140-143 (1970)." (58 Ops. Cal. Atty. Gen. 629, 633-634 (1975).) ***775**

(6)We conclude that the financial data that the City relied on in granting the rate increase constitutes a public record subject to public disclosure. The City has a contractual relationship with the Disposal Company. The City delegated its duty of trash collection to the Disposal Company but still retained the power and duty to monitor the Disposal Company's performance of its delegated duties, under the express terms of the contract. There is no question that the Disposal Company is providing a service to the residents of the City, by way of a contract made between it and the City. Assurances of confidentiality by the City to the Disposal Company that the date would remain private was not sufficient to convert what was a public record into a private record. (*Johnson v. Winter* (1982) 127 Cal.App.3d 435, 439 [179 Cal.Rptr. 585].) Unless one of the exemptions applies to bar disclosure then the City must yield to its statutory duty that compels disclosure of the data.

II

A. *Section 6254, subdivision (k) Exemption*

(7)Subdivision (k) exempts records which are exempted pursuant to federal or state law, including Evidence Code sections 1040 and 1060. [FN10] In *Cook v. Craig* (1976) 55 Cal.App.3d 773 [127 Cal.Rptr. 712], the court rejected the claim that disclosure was exempted, under subdivision (k), of the California Highway Patrol's procedural regulations governing the investigation of citizen complaints. Plaintiffs had sought access to these records in order to evaluate whether to pursue administrative remedies against the California Highway Patrol. The court declared that subdivision (k) is not an independent ***776** exemption because it incorporates other existing legal exemptions and prohibitions. Petitioner claims the exemption does not bar disclosure because disclosure is *not* forbidden by an act of Congress or a statute of the state. Conversely, respondent City argues that disclosure is not mandated under the trade section exemption in subdivision (k), where fraud or injustice will not be concealed. Similarly, the court below found there was no showing that the rate increases were "egregious," thus warranting disclosure of the data. The court below also recognized the need for keeping financial information secret to protect private corporations from being forced to disclose trade secrets to competitors.

FN10 Evidence Code section 1040 is asserted by the City to shield it from the duty of disclosure, while Evidence Code section 1060 is asserted by the Disposal Company to justify nondisclosure.

The statutes read as follows:

Section 1040. "(a) As used in this section, 'official information' means information acquired in confidence by a public employee in the course of his duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made.

"(b) A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing such information, if the privilege is claimed by a person authorized by the public entity to do so and:

"(1) Disclosure is forbidden by an act of the Congress of the United States or a statute of this state; or

"(2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding. In determining whether disclosure of the information is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered." (Stats. 1965, ch. 299, § 2.)

Section 1060. "Privilege to protect trade secret. 'If he or his agent or employee claims the privilege, the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.'" (Stats. 1965, ch. 299, § 2, p. 1297.)

While we are mindful of the legitimate privacy interests that subdivision (k) was designed to protect, we agree with petitioner that there was no showing below that respondent Disposal Company would be so injured by revealing the data. Moreover, under Evidence Code section 1040, there was no showing that disclosure of the information was against the public interest. Disclosure was shown to weigh in favor of the public's interest in view of the fact that the rate increase amounted to a 15 to 25 percent increase in just two years that the public-not the City-would have to pay. Further, assurances of confidentiality are insufficient in themselves to justify withholding pertinent public information from the public. (*Johnson v. Winter* (1982) 127 Cal.App.3d 435, 439 [179 Cal.Rptr. 585].) Nor is a showing of egregious conduct necessary to gain access to relevant data, since in many cases knowledge of such could only be gained by access.

Respondent Disposal Company analogizes the instant case to an issue faced by the Attorney General on whether details of proposed health plans were confidential and protected from disclosure by the State Department of Health. (See 58 Ops.Cal.Atty.Gen. 371 (1975).) The opinion concluded that the details of the organization, operations, and financial status of the reorganization, with whom the department was negotiating a contract, were exempted under section 6254, subdivision (k), as well as under the balancing test in section 6255. The opinion based its finding on: (1) the commercial nature of the information that would be vulnerable to appropriation by a competitor; and (2) the chilling effect revealing details of proposed health plans could have on the future development of such plans. However, the opinion confirmed that subdivision (k) was *conditional and not absolute*: "[T]he very fact that a balancing process is contemplated requires that the privilege be considered conditional rather than absolute. As was stated by the court in *People v. Superior Court*, 19 Cal.App.3d 522 (1971), 'Evidence Code section 1040 establishes a governmental privilege barring evidence of official information whose disclosure is against the public interest. The privilege is conditional in the sense that the court must weigh the necessity for preserving the confidentiality of the information against the necessity for disclosure in the interest of justice.'" (*Id.*, at p. 375.) *777

The disclosure of confidential information regarding proposed prepaid health plans is distinguishable from the facts at hand, where the City was enlisting financial data from a company with whom it had a contractual relationship for more than 20 years. No proposed contract was before the City, only revisions to the contract were submitted to the City concerning a substantial rate increase that the city residents would absorb, and from which the City stood to profit, as well as a longterm extension to 1991.

Further, the privilege that section 6254, subdivision (k) incorporates should be applied conditionally on a clear showing that disclosure is against the public's interest. No such showing is evident under the facts of this case. Res-

pondent City argues that disclosure will both invade a private company's privacy interests, as well as having a chilling effect on obtaining information in similar future transactions. It is said that such a threat to future dealings constitutes a sufficient reason to withhold disclosure in the name of the public's interest. This argument, however, misstates what the public's interest is as serving the privacy interests of a private contractor, rather than in serving the public's interest in participating in local government. For these reasons, the withholding of information cannot be justified under section 6254, subdivision (k).

(8)Respondent City likens 5 United States Code, section 552(b)4 of the FOIA, exempting "trade secrets and commercial or financial information obtained from a person and privileged or confidential," to section 6254, subdivision (c) of the Act. The court below did not find subdivision (c) exempted the City from disclosure. The purpose of the exemption is to "protect information of a highly personal nature which is on file with a public agency ... [to] typically apply to public employee's personnel folders or sensitive personal information which individuals must submit to government." (Final Rep. of Cal. Statewide Information Policy Com. (Mar., 1970), pp. 9-10, 1 Appen. to Assem. J. (1970 Reg. Sess.).) According to Professor Davis, the most important decision concerning this exemption is *American Mail Line, Ltd. v. Gulick* (D.C.Cir. 1969) 411 F.2d 696, 703 [7 A.L.R.Fed. 840], "holding that a memorandum which would qualify for the exemption lost its exempt status when the agency stated that the basis for its order requiring a payment of money was stated in the memorandum." (Davis, Administrative Law Treatise (1970 Supp.) § 3A.21, pp. 155-156.) Since the Act was modeled after the FOIA and California courts have utilized federal law to construe the Act, this precedent applies to the instant case. (See *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 212-213 [96 Cal.Rptr. 493], where the court followed federal law in construing section 6254, subdivision (f).) In *American Mail Line*, nine shipowners who had been receiving government subsidies sought access to a memorandum which formed the basis of a ruling issued by the Maritime Subsidy Board of the Department of Commerce. The board decided that crews of 50 men were fair and reasonable, although the cost of eight additional ***778** crew members was unreasonable. Access to the full memorandum, part of which was attached to the finding, was sought to make a meaningful petition for reconsideration of the decision that required a refund of $3.3 million in past subsidy payments. The court held that the memorandum was not properly exempted from disclosure because "the Board by stating in unqualified terms that its action was based upon a certain specified memorandum, thereby incorporated that memorandum into its administrative decision ...." (*Id.*, at p. 702.) The court noted that the burden was on the government to show that the memorandum was not incorporated in its action and if the "Board did not want to expose its staff's memorandum to public scrutiny it should not have stated publicly ... that its action was based upon that memorandum, giving no other reasons or basis for its action." (*Id.*, at p. 703.)

Similarly, in the case at bench, the City publicly based its decision on financial data supplied to it by the Disposal Company. It cannot now be heard to call for concealment after it voluntarily injected the data into the decision-making process of government. This was precisely the type of governmental action that the Brown Act and the Public Disclosure Act were designed to keep open to public scrutiny.

National Parks and Conservation Ass'n. v. Kleppe (D.C. 1976) 547 F.2d 673, was written by Justice Tamm, the same author of *American Mail Line*. It is relevant here because it discussed the need for compelling *proof* of economic damage brought by disclosure and declared that exemptions to the FOIA were subject to narrow construction. The question in *Kleppe* concerned whether 5 United States Code, section 552(b)4 (1970), providing for the exemption from disclosure of "trade secrets and commercial or financial information obtained from a person and privileged or confidential ...," exempted governmental defendants from withholding financial records filed by national park concessionaires. The plaintiff, the National Parks and Conservation Association, sought to analyze the effectiveness of the services' concessions by reviewing records that included financial data. The court held that the evidence was sufficient to support the conclusion that disclosure would probably cause substantial harm to the five concessionaires' competitive positions. In so holding, the court referred to its general policy of narrowly construing the exemptions to give effect to FOIA's intent to insure comprehensive public access to government records. In balancing the interests of the public in disclosure and the concessionaires' interest in privacy, the court acknowledged that disclosure was sought of "very detailed and extensive financial information ...." (*Id.*, at p. 687.) It should be noted that the court remanded the case to determine if the exemption in section 552(b)4 prevented disclosure on privacy grounds as to two of the concessioners. We adhere to the federal court's policy of narrowly construing the disclosure exemptions and agree with the court below that section 6254, subdivision (c) does not apply. ***779**

B. *Section 6254, subdivision (n) Exemption*

6254, subdivision (n) exempts "[s]tatements of personal worth or financial data required by a licensing agency and filed by an applicant with such licensing agency to establish his personal qualifications for the license, certificate, or permit applied for." This exemption is similar to the FOIA exemption in section 522(b)4, though the FOIA is said to be broader because it is not limited to licensing. (See *Schaffer et al., supra.*, pp. 231-232.) Section 6254, subdivision (n) was added by amendment in 1970 [FN11] in conjunction with the rewriting of 6254, subdivision (d) aimed at exempting regulatory agencies of financial institutions from disclosing financial records. (*Ibid.*)

FN11 Statutes 1970, chapter 1231, section 11.5, page 2157.

(9)A license is not a contract, according to *Rosenblatt v. Cal. St. Bd. of Pharmacy* (1945) 69 Cal.App.2d 69, 74 [158 P.2d 199] which stated that, "A license has none of the elements of a contract and does not confer an absolute right but a personal privilege ...." (*Ibid.*) There is a clear distinction between a license and a contract, although respondent City correctly states the frequent misuse of words such as "license," "permit," and "franchise." Nevertheless, a license, defined "as a permission or privilege to do what otherwise would be unlawful ...," is most typically "... employed to designate official municipal authorization of a continuing business or activity ...." (9 McQuillan, Municipal Corporations (3d ed.) § 26.01a, pp. 6-7.) In the past, since franchises have been defined to include privileges, they have been compared to licenses. However, franchises "are coming to be regarded ... as functions delegated to private individuals to be performed for the furtherance of the public welfare and subject to public control." (See 12 McQuillan, Municipal Corporations (1970) § 34.01, p. 7.) Under this usage, franchise is closely akin to a contractual relationship which creates a right-duty relationship. [FN12]

FN12 Black's Law Dictionary (5th ed. 1979) at pages 291-292 defines contract as: "An agreement between two or more persons which creates an obligation to do or not to do a particular thing." A license is defined as, "The permission by competent authority to do an act which, without such permission, would be illegal, a trespass or a tort." Franchise is defined as, "A special privilege conferred by government on individual or corporation, and which does not belong to citizens of country generally of common right."

(10)The term license within the meaning of section 6254, subdivision (n) must be construed narrowly in order to give effect to the legislative intent that favors disclosure over secrecy in government. If the Legislature had intended a broad exemption to apply to *any* financial statements then it need not have hinged the exemption to those filing applications with licensing agencies. It makes good sense to exempt such applicants whose business with the agency is only public to the extent that they must comply with the licensing requirements and regulations. That situation is distinct from the type of contractual relationship ***780** that exists between the City and the Disposal Company. The latter is not just applying to the City for a license or permit to operate, but is assuming a City function that continues to be monitored and reviewed at regular two-year intervals. The exemption under section 6254, subdivision (n) was not designed to unconditionally protect such a symbiotic relationship.

III

Section 6255-Burden of Proof and Balancing Test

(11)Section 6255 places the burden on the agency to justify withholding the record on the basis of an express exemption or on a showing that public interest served in nondisclosure outweighs the public interest in disclosure. The section serves as a residuary statutory exemption for balancing privacy interests with the public's interest in access. (*Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 657 [117 Cal.Rptr. 106].) In *Uribe v. Howie* (1971) 19 Cal.App.3d 194 [96 Cal.Rptr. 493], the court held the public interest in disclosure of pesticide spray reports exceeded the governmental interest in confidentiality. The balancing of the public's right to access against the government's need to protect privacy was recently recognized in *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440 [186 Cal.Rptr. 235, 651 P.2d 822], where the court held written complaints against collection agencies were exempt from disclosure under section 6254, subdivision (f). However, the court also held that section 6255 did not authorize selective disclosure to collection agencies: "Neither [section 6254 or section 6255] permits the public custodian to balance 'the interest of one private party against the interest of another.'" (*Id.*, at p. 658.) The court not only acknowledged reliance on the FOIA for judicial construction and legislative history, but expressly declined to construe section 6254, subdivision (f) broadly. (*Id.*, at pp. 447, 449.)

We are mindful that respondents may have legitimate privacy interests to protect, yet, the interests on the part of the City in not chilling future information-gathering abilities in business transactions, and on the part of the Disposal Company in jeopardizing competitive advantages, does not outweigh the public's need to be informed of the provision of governmental services contracted on behalf of the residents.

IV

Waiver of Privacy Interest

(12)Petitioners argue that respondent Disposal Company waived any privacy interests it may have had by voluntarily injecting itself into the public ***781** arena by seeking a rate increase and submitting financial data in support of same. Petitioners rely on *Kapellas v. Kofman* (1969) 1 Cal.3d 20, 36 [81 Cal.Rptr. 360, 459 P.2d 912], for the proposition that voluntary entry into the public sphere diminishes one's privacy interests. We agree. Moreover, as in *American Mail Line, Ltd. v. Gulick* (D.C. Cir. 1969) 411 F.2d 696, 703 [7 A.L.R.Fed. 840], respondent City publicly based its decision to grant the rate increase on financial data voluntarily submitted by the Disposal Company. Any privacy interest that may have existed in this data was converted once it was used not only to support but to justify the rate increase.

V

Attorney Fees

(13)Petitioner seeks attorney fees pursuant to Government Code section 54960.5, which provides for the award for costs and reasonable attorney fees pursuant to section 54960, when a violation under the Brown Act has been found. In addition, costs and reasonable attorney fees may be awarded pursuant to section 6259 [FN13] of the Act, where a violation by an agency has been found. Because we find the City has violated the Act requiring it to disclose the financial data, we conclude that petitioner is entitled to the costs and reasonable attorney fees incurred in bringing the writ of mandate below, as well as in petitioning this court for review.

FN13 That section provides, in pertinent part, that "The court *shall* award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section." (Italics added.)

Conclusion

Under the particular situation presented here the real party in interest City had a clear duty to disclose the financial data sought by petitioner, data which constituted a public record pursuant to section 6250 et seq. of the Government Code, and data utilized by the City to grant the rate increase to real party in interest Disposal Company. None of the exemptions contained in Government Code section 6254 applied to the information sought.

Disposition

Let a peremptory writ of mandate issue, directing respondent Superior Court to vacate its denial of petitioner's petition for a writ of mandate and to grant petitioner's petition. Since Government Code section 6259 mandates an award of costs and fees to a prevailing plaintiff in litigation pursuant to the Public Records Act (§ 6250 et seq.), the respondent court is further directed to award ***782** to petitioner costs and reasonable attorney fees in pursuing relief in both the respondent court and this court.

Lillie, Acting P. J., and Dalsimer, J., concurred.

A petition for a rehearing was denied June 30, 1983, and the petition of real party in interest West Covina Disposal Company for a hearing by the Supreme Court was denied August 17, 1983. ***783**

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END OF DOCUMENT

SEC. 2. Section 6252 of the Government Code is amended to read:

6252. As used in this chapter:

(a) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; or other local public agency.

(c) "Person" includes any natural person, corporation, partnership, firm, or association.

(d) "Public records" includes 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.

(e) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

SEC. 3. Section 6256 of the Government Code is amended to read:

6256. Any person may receive a copy of any identifiable public record or copy thereof. Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency.

SEC. 4. Section 6258 of the Government Code is amended to read:

6258. Any person may institute proceedings for injunctive or declarative relief in any court of competent jurisdiction to enforce his right to inspect or to receive a copy of any public record or class of public records under this chapter. The times for responsive pleadings and for hearings in such proceedings shall be set by the judge of the court with the object of securing a decision as to such matters at the earliest possible time.

SEC. 5. Section 6319 of the Labor Code is amended to read:

6319. No officer or employee of the division shall divulge to any person not connected with the administration of this part any information that is confidential pursuant to the provisions of Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code concerning the failure to keep any place of employment safe or concerning the violation of any order, rule, or regulation issued by the board or division. Violation of this section is a misdemeanor.

CHAPTER 3.5. INSPECTION OF PUBLIC RECORDS

6250. In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every citizen of this state.

6251. This chapter shall be known and may be cited as the California Public Records Act.

6252. As used in this chapter:

(a) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; or other local public agency.

(c) "Person" includes any natural person, corporation, partnership, firm, or association.

(d) "Public records" includes all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents 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.

6253. Public records are open to inspection at all times during the office hours of the state or local agency and every citizen has a right to inspect any public record, except as hereafter provided. Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section.

6254. Nothing in this chapter shall be construed to require disclosure of records that are:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding such records clearly outweighs the public interest in disclosure;

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, until such litigation or claim has been finally adjudicated or otherwise settled;

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy;

(d) Trade secrets;

(e) Geological and geophysical data, plant production data and similar information relating to utility systems develop-

ment, or market or crop reports, which are obtained in confidence from any person;

(f) Records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any such investigatory or security files compiled by any other state or local agency for correctional, law enforcement or licensing purposes;

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination;

(h) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all of the contract agreement obtained, provided, however, the law of eminent domain shall not be affected by this provision;

(i) Information required from any taxpayer in connection with the collection of local taxes which is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying such information;

(j) Library and museum materials made or acquired and presented solely for reference or exhibition purposes; and

(k) Records the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(*l*) In the custody of or maintained by the Governor or employees of the Governor's office employed directly in his office, provided that public records shall not be transferred to the custody of the Governor's office to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel.

Nothing in this section is to be construed as preventing any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

6255. 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 making the record public clearly outweighs the public interest served by disclosure of the record.

6256. Any person may receive a copy of any identifiable public record or shall be provided with a copy of all information contained therein. Computer data shall be provided in a form determined by the agency.

6257. A request for a copy of an identifiable public record or information produced therefrom, or a certified copy of such

record, shall be accompanied by payment of a reasonable fee or deposit established by the state or local agency, or the prescribed statutory fee, where applicable.

6258. Any person may institute proceedings in any court of competent jurisdiction to enforce his right to inspect or to receive a copy of any public record under this chapter. The times for responsive pleadings and for hearings in such proceedings shall be set by the judge of the court with the object of securing a decision as to such matters at the earliest possible time.

6259. Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and such oral argument and additional evidence as the court may allow.

If the court finds that the public official's decision to refuse disclosure is not justified under the provisions of Section 6254 or 6255, he shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure. Any person who fails to obey the order of the court shall be cited to show cause why he is not in contempt of court.

6260. The provisions of this chapter shall not be deemed in any manner to affect the status of judicial records as it existed immediately prior to the effective date of this section, nor to affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state.

SEC. 40. Section 8013 of the Government Code is repealed.

SEC. 41. Section 8340.8 of the Government Code is repealed.

SEC. 42. Section 8440.8 of the Government Code is repealed.

SEC. 42.3. Section 10207 of the Government Code is repealed.

SEC. 42.5. Section 10207 is added to the Government Code, to read:

10207. The Legislative Counsel shall maintain the attorney-client relationship with each Member of the Legislature with respect to communications between the member and the Legislative Counsel except as otherwise provided by the rules of the Legislature. All materials arising out of this relationship, including but not limited to proposed bills and amendments, analyses, opinions and memoranda prepared by the Legislative Counsel, are not public records, except as otherwise provided

CONCURRENCE IN SENATE AMENDMENTS
AB 2799 (Shelley)
As Amended July 6, 2000
Majority vote

ASSEMBLY:	70-4	(May 25, 2000)	SENATE:	34-0	(August 25, 2000)

Original Committee Reference: G.O.

SUMMARY : Revises various provisions in the Public Records Act (PRA) in order to make available public records, not otherwise exempt from disclosure, in an electronic format, if the information or record is kept in electronic format by a public agency. Requires that a response to a request for public records that includes a denial, in whole or in part, shall be in writing, and provides that PRA may not be construed to permit an agency to delay or obstruct inspection or copying of public records.

The Senate amendments provide that the cost of duplicating an electronic public record must be limited to the direct cost of producing a copy of a record in electronic format, except that the requestor must bear the cost of production if the public agency would have to produce the record at time when the record is not regularly scheduled to be available, or if the request would require data compilation or programming to produce the record.

EXISTING LAW :

1) Defines "public record" to 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.

2) Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to inspect any public record, except as specifically provided.

3) Requires state and local agencies to make an exact copy of a public record available to any person upon payment of fees

covering direct costs of duplication.

4) Requires that computer data be provided in a form determined by the agency.

AS PASSED THE ASSEMBLY , this bill deleted the requirement that public records kept on computer be disclosed in a form determined by the public agency. This bill required a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to specified guidelines. This bill additionally required an agency that denies a request for inspection or copies of public records to justify its withholding in writing when the request for public records was in writing.

FISCAL EFFECT :

1) Assuming that agencies generally respond in writing when denying a public records request, there should be negligible fiscal impact.

2) Potential costs to various agencies that currently make and sell copies of public records documents for workload in redacting nondisclosable electronic records from disclosable electronic records.

COMMENTS : PRA permits a state or local agency to provide computer records in any format determined by the agency. This bill would require public agencies to provide computer records in any format that the agency currently uses. This bill would also prohibit an agency from delaying access to the inspection or copying of public records. This bill is an attempt to provide reasonable guidelines for public access to electronically held records and the author believes that this bill will substantially increase the availability of public records and reduce the cost and inconvenience associated with large volumes of paper records.

Analysis Prepared by : George Wiley / G. O. / (916) 319-2531

Full Text

Record: 1146

Proposition # **59**

Title **Public Records, Open Meetings. Legislative Constitutional Amendment.**

Year/Election **2004** general

Proposition type Legislative Constitutional Amendment

Summary OFFICIAL TITLE AND SUMMARY Prepared by the Attorney General.

Public Records, Open Meetings.

Legislative Constitutional Amendment.

Measure amends Constitution to:

* Provide right of public access to meetings of government bodies and writings of government officials.

* Provide that statutes and rules furthering public access shall be broadly construed, or narrowly construed if limiting access.

* Require future statutes and rules limiting access to contain findings justifying necessity of those limitations.

* Preserve constitutional rights including rights of privacy, due process, equal protection; expressly preserves existing constitutional and statutory limitations restricting access to certain meetings and records of government bodies and officials, including law enforcement and prosecution records.

Exempts Legislature's records and meetings.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

Analysis

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

The State Constitution generally does not address the public's access to government information. California, however, has a number of state statutes that provide for the public's access to government information, including documents and meetings.

Access to Government Documents. There are two basic laws that provide for the public's access to government documents:

* ***The California Public Records Act*** establishes the right of every person to inspect and obtain copies of state and local government documents. The act requires state and local agencies to establish written guidelines for public access to documents and to post these guidelines at their offices.

* ***The Legislative Open Records Act*** provides that the public may inspect legislative records. The act also requires legislative committees to maintain documents related to the history of legislation.

Access to Government Meetings. There are several laws that provide for the public's access to government meetings:

* ***The Ralph M. Brown Act*** governs meetings of legislative bodies of local agencies. The act requires local legislative bodies to provide public notice of agenda items and to hold meetings in an open forum.

* ***The Bagley-Keene Open Meeting Act*** requires that meetings of state bodies be conducted openly and that documents related to a subject of discussion at a public meeting be made available for inspection.

* ***The Grunsky-Burton Open Meeting Act*** requires that meetings of the Legislature be open to the public and that all persons be allowed to attend the meetings.

Some Information Exempt From Disclosure. While these laws provide for public access to a significant amount of information, they

also allow some information to be kept private. Many of the exclusions are provided in the interest of protecting the privacy of members of the public. For instance, medical testing records are exempt from disclosure. Other exemptions are provided for legal and confidential matters. For instance, governments are allowed to hold closed meetings when considering personnel matters or conferring with legal counsel.

PROPOSAL

This measure adds to the State Constitution the requirement that meetings of public bodies and writings of public officials and agencies be open to public scrutiny. The measure also requires that statutes or other types of governmental decisions, including those already in effect, be broadly interpreted to further the people's right to access government information. The measure, however, still exempts some information from disclosure, such as law enforcement records. Under the measure, future governmental actions that limit the right of access would have to demonstrate the need for that restriction.

The measure does not directly require any specific information to be made available to the public. It does, however, create a constitutional right for the public to access government information. As a result, a government entity would have to demonstrate to a somewhat greater extent than under current law why information requested by the public should be kept private. Over time, this change could result in additional government documents being available to the public.

FISCAL EFFECT

Government entities incur some costs in complying with the public's request for documents. Entities can charge individuals requesting this information a fee for the cost of photocopying documents. These fees, however, do not cover all costs, such as staff time to retrieve the documents. By potentially increasing the amount of government information required to be made public, the measure could result in some minor annual costs to state and local governments.

For

ARGUMENT in Favor of Proposition 59

Proposition 59 is about open and responsible government. A

government that can hide what it does will never be accountable to the public it is supposed to serve. We need to know what the government is doing and how decisions are made in order to make the government work for us.

Everyone needs access to information from the government. Why was a building permit granted, or denied? Who is the Governor considering for appointment to a vacancy on the County Board of Supervisors? Why was the superintendent of the school district fired, and who is being considered as a replacement? Who did the City Council talk to before awarding a no-bid contract?

People all across the State ask these questions -- and dozens of others -- every day. And what they find out is that answers are hard to get.

California has laws that are supposed to help you get answers. But over the years they have been eroded by special interest legislation, by courts putting the burden on the public to justify disclosure, and by government officials who want to avoid scrutiny and keep secrets. Proposition 59 will help reverse that trend.

What will Proposition 59 do? It will create a new civil right: a constitutional right to know what the government is doing, why it is doing it, and how. It will ensure that public agencies, officials, and courts broadly apply laws that promote public knowledge. It will compel them to narrowly apply laws that limit openness in government -- including discretionary privileges and exemptions that are routinely invoked even when there is no need for secrecy. It will create a high hurdle for restrictions on your right to information, requiring a clear demonstration of the need for any new limitation. It will permit the courts to limit or eliminate laws that don't clear that hurdle. It will allow the public to see and understand the deliberative process through which decisions are made. It will put the burden on the government to show there is a real and legitimate need for secrecy before it denies you information.

At the same time, Proposition 59 ensures that private information about ordinary citizens will remain just that -- private. It specifically says that your constitutional right to privacy won't be affected.

You have the right to decide how open your government should be. That's why Proposition 59 was unanimously passed by the Legislature and it is the reason widely diverse organizations support the Sunshine Amendment, including the American Federation of State, County and Municipal Employees and the League of California Cities.

As James Madison, a founding father and America's fourth President, said: "Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power which knowledge gives." Tell the government that it's ordinary citizens -- not bureaucrats -- who ought to decide what we need to know. Vote yes on Proposition 59.

FOR(au) **MIKE MACHADO<>** |t *State Senator<>*

FOR(au) **JACQUELINE JACOBBERGER<>** |t *President, League of Women Voters of California<>*

FOR(au) **PETER SCHEER<>** |t *Executive Director, California First Amendment Coalition<>*

Rebuttal **REBUTTAL to Argument in Favor of Proposition 59**

As an attorney who has attempted for many years to use California laws to identify and weed out waste and corruption in local government, I am quite sympathetic to Proposition 59.

It is important, however, for voters to know what Proposition 59 would NOT do.

As written (by the State Legislature), Proposition 59 would continue to exempt from disclosure government records deemed "private" by the courts and would not apply at all to the *"confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses . . .".*

Voters should also consider that insofar as electing some top persons in government (i.e., having a representative democracy) is key to making career government bureaucrats more accountable, elections (especially for State Assembly, State Senate, and Congress) have been

undermined by:

(1) the dependence on private, special interest campaign money (sometimes called "legalized bribes"); and

(2) the self-serving creation (every 10 years) of gerrymandered legislative districts that protect incumbents from competition.

Moreover, anyone who blindly trusts a computer program to count votes (without any "paper trail" for potential verification) is foolish.

Sadly, we are a long way from having true representative democracy in California -- and across America.

Government is getting bigger and becoming more wasteful, insular, and abusive. Proposition 59 would not do much to reverse that alarming trend.

Rebuttal(au) Against

GARY B. WESLEY<> |t *Attorney at Law<>*

ARGUMENT Against Proposition 59

This measure does not go far enough in guaranteeing the people access to information and documents possessed by state and local government agencies.

In fact, this measure only provides for a general *"right of access to information concerning the conduct of the people's business"* and that laws in California *"shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access."*

Laws are construed (i.e., interpreted) by officials charged with following them -- and by courts when asked. The rule of interpretation contained in this measure would probably have a very limited effect.

Indeed, this measure explicitly states that it does not supersede or modify any *"right to privacy guaranteed by Section 1"* of Article I of the California Constitution.

While a right to privacy -- especially against government intrusion

-- is critical in today's society -- government employee groups are using the state constitution's "right to privacy" to hide the amount of money, benefits, and perks they receive at public expense!

Proposition 59 may be better than nothing, but it does not go far enough. The question is whether to vote "yes" and hope for more or vote "no" and demand more.

Against(au) **GARY B. WESLEY<>** |t *Attorney at Law<>*

Rebut Against **REBUTTAL to Argument Against Proposition 59**

Mr. Wesley's skepticism of open government laws is understandable. Several years ago, when he sued his city council under the open meeting law alleging it had illegally used a closed session to discuss a topic not mentioned on the agenda, the court would not let him question the council members about what they had discussed behind closed doors.

The court concluded that because the law did not expressly authorize such questioning and because it contained other provisions protecting closed session discussions, government officials could not be asked about what they discussed even to obtain evidence for trial, and even if there was no other way of proving a violation of the law.

In other words, he lost because the court applied the general rule of access narrowly, and the exception allowing secrecy broadly -- precisely what Proposition 59 would reverse.

As for privacy, the constitution has never been interpreted to protect the abuse of official authority or the wasting of public resources by anyone, and Proposition 59 will not create a screen for anyone to use in hiding fraud, waste, or other serious misconduct.

On the contrary, Proposition 59 will add independent force to the state's laws requiring government transparency. It will create a window on how all public bodies and officials conduct the public's business, for well or ill, while sparing the dignity and reputations of ordinary people, public employees, and even high officials who have done nothing to merit public censure or concern.

Rebut Against-au **MIKE MACHADO<>** |t *State Senator<>*

Rebut Against-au **THOMAS W. NEWTON<>** |t *General Counsel, California Newspaper Publishers Association<>*

Rebut Against-au **JOHN RUSSO<>** |t *City Attorney, City of Oakland<>*

Text of Prop. **Proposition 59**

This amendment proposed by Senate Constitutional Amendment 1 of the 2003-2004 Regular Session (Resolution Chapter 1, Statutes of 2004) expressly amends the California Constitution by amending a section thereof; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO SECTION 3 OF ARTICLE I

SEC. 3. *(a)* The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b) (1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

(3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official

performance or professional qualifications of a peace officer.

(4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.

(5)This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

(6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions; nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

copia libelli deliberanda. See DE COPIA LIBELLI DELIBERANDA.

coplaintiff. One of two or more plaintiffs in the same litigation. Cf. CODEFENDANT.

coprincipal. 1. One of two or more participants in a criminal offense who either perpetrate the crime or aid a person who does so. **2.** One of two or more persons who have appointed an agent whom they both have the right to control.

copulative condition. See CONDITION (2).

copy, *n.* An imitation or reproduction of an original. • In the law of evidence, a copy is generally admissible to prove the contents of a writing. Fed. R. Evid. 1003. See BEST-EVIDENCE RULE.

> "The noun 'copy' ordinarily connotes a tangible object that is a reproduction of the original work; the courts have generally found no reason to depart from this usage in the law of copyright." 1 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 4.08[B], at 4–47 (Supp. 1995).

certified copy. A duplicate of an original (usu. official) document, certified as an exact reproduction usu. by the officer responsible for issuing or keeping the original. — Also termed *attested copy*; *exemplified copy*; *verified copy*; *verification*.

conformed copy. An exact copy of a document bearing written explanations of things that were not or could not be copied, such as a note on the document indicating that it was signed by a person whose signature appears on the original.

examined copy. A copy (usu. of a record, public book, or register) that has been compared with the original or with an official record of an original.

exemplified copy. See *certified copy*.

true copy. A copy that, while not necessarily exact, is sufficiently close to the original that anyone can understand it.

verified copy. See *certified copy*.

copycat drug. See *generic drug* under DRUG.

copyhold. *Hist.* A base tenure requiring the tenant to provide the customary services of the manor, as reflected in the manor's court rolls. • Copyhold tenure descended from pure villeinage; over time, the customs of the manor, as reflected on the manor's rolls, dictated what services a lord could demand from a copyholder. This type of tenure was abolished by the Law of Property Act of 1922, which converted copyhold land into freehold or leasehold land. — Also termed *copyhold tenure*; *customary estate*; *customary freehold*; *tenancy by the verge*; *tenancy par la verge*; *tenancy by the rod*. See *base tenure* under TENURE; VILLEINAGE.

> "Out of the tenure by villeinage, copyhold tenure developed.... By the end of the fifteenth century, to hold by copy of the court roll, to be a 'copyholder,' was a definite advantage, and, in most cases the holders had for many generations been personally free. The fusing of several different types of payment had also gone on, so that there was little difference between a holder in socage who had commuted the services for a sum of money and a copyholder who had done the same, except the specific dues of *heriot* and *merchet*. In Coke's time, a very large part of the land of England was still held by copyhold." Max Radin, *Handbook of Anglo-American Legal History* 371 (1936).

copyholder. *Hist.* A tenant by copyhold tenure. — Also termed *tenant by the verge*; *tenant par la verge*.

copyright, *n.* **1.** A property right in an original work of authorship (such as a literary, musical, artistic, photographic, or film work) fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform, and display the work. **2.** The body of law relating to such works. • Federal copyright law is governed by the Copyright Act of 1976. 17 USCA §§ 101–1332. — Abbr. c. — **copyright,** *vb.* — **copyrighted,** *adj*.

> "The development of copyright law in England was shaped by the efforts of mercantile interests to obtain monopoly control of the publishing industry — similar to those of the guilds that were instrumental in shaping patent and trademark law.... American copyright law came to distinguish between the 'common law' right of an author to his unpublished creations, and the statutory copyright that might be secured upon publication. Until recently, therefore, an author had perpetual rights to his creation, which included the right to decide when, if, and how to publish the work, but that common law right terminated upon publication at which time statutory rights become the sole rights, if any, to which the author was entitled. This distinction was altered by the Copyright Act of 1976, which shifts the line of demarcation between common law and statutory copyright from the moment of publication to the moment of fixation of the work into tangible form." Arthur R. Miller & Michael H. Davis, *Intellectual Property in a Nutshell* 280–82 (2d ed. 1990).

> "What is copyright? From copyright law's beginnings close to three centuries ago, the term has meant just what it says: the right to make copies of a given work — at first it meant simply written work — and to stop others from making copies without one's permission." Paul Goldstein, *Copyright's Highway* 3 (1994).

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
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AB 2799

THIRD READING

Bill No: AB 2799
Author: Shelley (D), et al
Amended: 7/6/00 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE : 5-0, 6/29/00
AYES: Escutia, Morrow, O'Connell, Peace, Schiff

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

ASSEMBLY FLOOR : 70-4, 5/25/00 - See last page for vote

SUBJECT : Public records: disclosure

SOURCE : California Newspaper Publishers Association

DIGEST : This bill revises various provisions in the Public Records Act (PRA) in order to make available public records, not otherwise exempt from disclosure, in an electronic format, if the information or record is kept in electronic format by a public agency. It specifies what costs the requester would bear for obtaining copies of records in an electronic format.

The bill adds, to the unusual circumstances that would permit an extension of time to respond to a request for public records, the need of the agency to compile data,

write programming language, or construct a computer report to extract data. The bill requires that a response to a request for public records that includes a denial, in whole or in part, shall be in writing, and provides that the

CONTINUED

Public Records Act shall not be construed to permit an agency to delay or obstruct inspection or copying of public records.

ANALYSIS : The Public Records Act allows an agency to provide computer data in any form determined by the agency. The Act directs a public agency, upon request for inspection or for a copy of the records, to respond to a request within 10 days after receipt of the request. In unusual circumstances, which are specified in the Act, this timeline for responding may be extended in writing for 14 days. [Government Code Section 6253.]

This bill would:

1. Require a public agency to make disclosable information available in any electronic format in which it holds the information, unless release of the information would compromise the integrity of the record or any proprietary software in which it is maintained;

2. Add, in the definition of "unusual circumstances" for which the time limit for responding to a request for a copy of records may be extended up to 14 days after the initial 10 days, the need for the agency to compile data, to write programming language or a computer program, or to construct a computer report to extract data;

3. Require a public agency to respond in writing to a written request for public records, including a denial of the request in whole or in part, and requiring that the names and titles of the persons responsible for the denial be stated therein;

4. Provide that nothing in the Act shall be construed to

permit the agency to delay or obstruct the inspection or copying of public records;

5. Provide that a requester bear the costs of programming and computer services necessary to produce a record not otherwise readily produced, as specified;

6. Delete the provision in current law that computer data

that is a public record shall be provided in a form determined by the agency.

This bill is a blend of two bills that were passed by the Legislature last year, AB 1099 (Shelley), and SB 1065 (Bowen).

AB 1099 passed the Senate (and was chaptered) but contained provisions unrelated to electronic records. SB 1065 was vetoed by the Governor, who stated in his veto message that he believes the bill to be well-intentioned, but "the State's information technology resources should be directed towards making sure that its computer systems are year 2000 compliant. The author was unwilling to add language which would ensure the completion of this task before the implementation of the provisions of this bill." Most of SB 1065 was incorporated into AB 2799.

AB 2799 contains those provisions of both bills that were received without much opposition. It is sponsored by the California Newspaper Publishers Association, and is one of several bills moving through both houses that relate to public records or to the use of electronic records by public agencies.

Information in electronic form to be provided in same form

This bill would require a public agency that has information constituting a public record in an electronic format to make that information available in an electronic format upon request. Additionally,

1. the agency is required to provide information in any electronic format in which it holds the information; and

2. the agency is required to provide a copy of an electronic record in the format requested if it is the format that had been used by the agency to create copies for its own use or for other agencies.

Conditions on providing records in electronic format

The bill would make conditional the requirement that a public agency comply with a request for public records held

in an electronic format. These conditions are:

1. An agency would not be required to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

2. An agency would not be permitted to make information available only in an electronic format.

Even though this bill is intended to make records available to the public in electronic format if kept by an agency in that form, an agency may not, under this bill, frustrate the public's access to information by then converting the non-electronically formatted records into electronic format. As prevalent as electronic data processing is now, there are still those who may not have access to computer equipment to read computer disks or CDs. Thus, if public information is requested in a form other than in an electronic format, a public agency must provide such record in the non-electronic format.

This bill requires a public agency to provide information in electronic format only if requested by a member of the public. If the record is available in electronic format as well as in printed form, the public agency is required to tell the requester that the information is available

in electronic format.

3. An agency would not be required to release an electronic record in electronic form if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

This limitation was added to the bill in order to alleviate concerns that electronic records, though created with taxpayer money, may have been produced using software designed specifically for the agency. This bill would give the agency the flexibility to refuse to release a requested record in electronic format, if such a release would mean that the software would also have to be released. Even without the software problem, though, an electronic record containing the data may be deciphered and the software program reconstructed (see

below).

The agency also may refuse to provide the information in electronic format if the electronic record, when transmitted or provided to a requester, could be altered and then retransmitted, thus rendering the original record vulnerable.

These two concerns were registered by opponents of SB 1065 last year. Thus, AB 2799 includes a provision that gives the public agency the option not to provide the information if disclosing it would jeopardize the integrity or security of the system.

4. Any agency would not be required to provide public access to its records where access is otherwise restricted by statute.

These records would be, among others, personal information on holders of driver's licenses, and other information protected by federal and state privacy

statutes.

The Governor's veto message of SB 1065 stated that many of the state's computer systems do not yet have the capacity to implement the provisions of the bill, and that he is concerned that SB 1065 would not be able to protect "the confidentiality of citizens whose personal information is maintained by the state departments including the Employment Development Department, the Department of Motor Vehicles, the Department of Health Services, and the California Highway Patrol."

Costs of reproduction of records: what requester pays for

This bill would specify the copying costs that a requester would pay:

1. If the record duplicated is an electronic record in a format used by the agency to make its own copies or copies for other agencies, the cost of duplication would be the cost of producing a copy in an electronic format.

2. If the public agency would be required to produce a copy

of an electronic record and the record is one that is produced by the public agency at otherwise regularly scheduled intervals, or if the request would require data compilation, extraction, or programming to produce the record, the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce the record.

Target records to be duplicated

This bill would target voluminous documents as those public records to which the public should have access in the electronic format, and those public records such as the city budget, environmental impact reports, or minutes from a Board of Supervisors' meeting as documents that should be

available on disk or the Internet. Especially because these documents were created a taxpayer expense in the first place, it is argued, a person seeking copies should not be gouged by the public agency for the cost of a person standing in front of a copy machine to duplicate the record when the record could quickly be copied onto a disk or accessed on the Internet. Thus, the bill provides that the cost of duplicating a record in electronic format would be the direct cost of producing that record in electronic format, i.e., the cost of copying the CD or copying records stored in a computer into disks.

Where the records do not lend themselves to electronic format, this bill would not impose a duty on the public agency to convert the records into electronic format (just as the agency would not be permitted to make records available only in electronic format). For example, environmental impact reports, which are voluminous, normally contain maps and other fold-out attachments. Until these documents are actually produced by the public agency or their contractors in electronic format, there would be no obligation for the agency to provide the reports in disk or CD form.

However, if at some point in time these voluminous records do become available in electronic form, it is possible that public agencies will just have to create websites for posting all disclosable records accessible to the public.

Public agency may not delay or obstruct access to public records

This bill would provide that "Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records?" [Government Code Section 6253(d).]

Thus, any delay experienced by an agency in responding to a request could be interpreted as a violation of the Public

Records Act. Under existing law, the court is required to award reasonable attorney's fees and court costs to a person who prevails in litigation filed under the PRA. But this award would be available only if the requester can prove that the agency "obstructed" the availability of the requested records for inspection or copying. Because of the change this bill would make to the referenced provision, it may invite litigation at every delay in production of records requested.

Proponents of this change, however, point to the fact that when this section was last amended, the word "delay" was replaced with the word "obstruct." The return of the word "delay" to this section, they say, would remove any doubt that the prior substitution of "obstruct" for "delay" in subdivision (d) of Section 6253 was not intended to weaken the PRA's mandate that agencies act in good faith to promptly disclose public records requested under the Act.

An example used by proponent, counsel to The Orange County Register, is the requested records from the University of California, Irvine, for the Register's investigation and report on the abuses at the University's fertility clinic (for which the Register earned a Pulitzer Prize). The Register apparently utilized the PRA to obtain public records that were critical to the reporting. Repeated requests met with repeated months of delay, "even where the University readily conceded that the records are not exempt from disclosure." Proponent indicated, however, that the Register "is not so na?ve as to believe that this amendment will solve the serious problem of administrative delay in responding to CPRA requests?"

"Unusual circumstance" would extend time to respond

Existing law provides for an extension of the public agency's deadline for responding to a request from 10 days to no more than 14 days more, if certain "unusual circumstances exist, such as the need to search for and

collect data from field facilities separate from the office processing the request or the need for consultation with another agency that has a substantial interest in the determination of the request.

This bill would add to these "unusual circumstances," the need to compile data, write programming language or a computer program, or to construct a computer report to extract data. This provision recognizes that sometimes the information or data requested is not in a central location nor easily accessible to the agency itself, and thus would take time to produce or copy.

Denial of request must be in writing

Existing law requires an agency to justify the withholding of its record by demonstrating that the record requested is exempt under the PRA, or that on the facts of the particular case, the public interest served by not disclosing the information outweighs the public interest served by disclosure of the record. The PRA provision does not require this justification or denial of the request to be in writing.

This bill would expressly state that a response to a written request for inspection or copying of public records that includes a determination that the request is denied, in whole or in part, must be in writing.

Related Pending Legislation :

SB 2027 (Sher) would also amend the Public Records Act as it relates to a person's right to litigate in the event of a denial of the person's request. The bill is now in the Assembly Judiciary Committee.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT : (Verified 8/14/00)

California Newspaper Publishers Associaiton (source)
Orange County Register
State Franchise Tax Board
1st Amendment Coalition

OPPOSITION : (Verified 8/14/00)

County of Orange

ARGUMENTS IN SUPPORT : According to the author's office, with the advent of the electronic age, more and more people want to be able to access information in an electronic format. Apparently, there is not current authority under which a person seeking electronically available records could obtain such records in that format. This means that if an agency makes a CD or disk copies of the records, a member of the public could not obtain records in that format-the public would have to buy copies made out of the printouts from the records. The expense of copying these records in paper format, especially when the records are voluminous, makes those public records practically inaccessible to the public, according to the author and the proponents.

The author also states that the current provision in the PRA that gives a public agency the discretion to determine in which form the information requested should be provided works so that the agency can effectively frustrate the request by providing a copy of the requested record in a form different from the request, which could sometimes render the information useless.

The sponsor of this bill, the California Newspaper Publishers Association (CNPA) also contends that the 10-day period that a public agency has to respond to a request for inspection or copying of public records is not intended to delay access to records. It is intended instead, when there is a legitimate dispute over whether the records requested are covered by an exemption, to provide time for the agency to provide the information or provide the written grounds for a denial. What many state agencies do,

the sponsor says, is to use the 10 days as a "grace period" for providing the information, during which time many a requester (members of the public) often gives up and never acquires the record.

ARGUMENTS IN OPPOSITION : The County of Orange, contends that the county, like many others, already provide information to the public on public records and how to access them, 24 hours a day through the Internet. "Without reasonable regulations," the county argues, "County staff could be required to spend considerable time copying and editing records, determining if they are appropriate for public disclosure and responding with written justifications if the requests are denied."

ASSEMBLY FLOOR :
AYES: Aanestad, Alquist, Aroner, Baldwin, Bates, Battin, Bock, Briggs, Calderon, Campbell, Cardenas, Cardoza, Cedillo, Corbett, Correa, Cox, Cunneen, Davis, Dickerson, Ducheny, Dutra, Firebaugh, Florez, Floyd, Gallegos, Granlund, Havice, Honda, House, Jackson, Keeley, Knox, Kuehl, Leach, Lempert, Leonard, Longville, Lowenthal, Machado, Maddox, Maldonado, Mazzoni, McClintock, Migden, Nakano, Olberg, Robert Pacheco, Rod Pacheco, Papan, Pescetti, Reyes, Romero, Runner, Scott, Shelley, Steinberg, Strickland, Strom-Martin, Thompson, Thomson, Torlakson, Vincent, Washington, Wayne, Wesson, Wiggins, Wildman, Wright, Zettel, Hertzberg
NOES: Ackerman, Ashburn, Brewer, Kaloogian

RJG:jk 8/16/00 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****