



**City of
Santa Clara**
The Center of What's Possible

Mayor

Lisa M. Gillmor

Councilmembers

Raj Chahal
Debi Davis
Karen Hardy
Patricia M. Mahan
Teresa O'Neill
Kathy Watanabe

September 10, 2019

The Honorable Deborah A. Ryan
Presiding Judge
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113



Dear Judge Ryan,

Please see the attached Report to Council. This report was unanimously approved at the September 4, 2019 meeting of the City Council of the City of Santa Clara.

Per California Penal Code sections 933(c) and 933.05, this report is the City of Santa Clara's response to the findings and recommendations found in the 2018-2019 Santa Clara County Civil Grand Jury Report, "City of Santa Clara Public Records Access: The Paper Chase."

In addition to the attached report I would also like to emphasize some serious concerns the City Council conveyed at the September 4, 2019 City Council meeting. Specifically, it was emphasized that:

- The lack of benchmarking that should have taken place during the investigation;
- Why has the City of Santa Clara been targeted?

Thank you for your time and consideration.

Sincerely,

Lisa M. Gillmor
City of Santa Clara

Enclosure

Cc: City Manager
City Attorney



Agenda Report

19-981

Agenda Date: 9/4/2019

REPORT TO COUNCIL

SUBJECT

Action on the City's Response to the 2018-2019 Santa Clara County Civil Grand Jury Report: "City of Santa Clara Public Records Access: The Paper Chase"

BACKGROUND

Based on a resident complaint, the Santa Clara County Civil Grand Jury ("Grand Jury") initiated an investigation of the City's and Santa Clara Stadium Authority's contracting procedures (Attachment1). It is important to note that the Complainant Form asks the complainant to "Please describe any previous attempts to resolve this complaint, including the agencies you contacted, and the action taken by the agencies. You may attach additional pages as necessary" (Attachment 2). Unfortunately, the Complainant made no attempt to resolve the serious allegations against the City of Santa Clara, nor did he seek any information about public sector procurement requirements from professional staff, which are complex in nature. City staff learned about the complaint from the media articles.

Although the Grand Jury did not find any wrong doing with the contracts that were the subject of the complaint, the investigating Grand Jurors began a review of the City's procurement processes in general. The Grand Jury stated that in the course of its investigation, they changed the focus of the investigation to the City's handling of requests for records under the California Public Records Act (CPRA). Given the Complainant's inflammatory communications with media about the City's handling of public records, this report will contain a full discussion of the City's practices and how they comply with the law.

On June 18, 2019, the Grand Jury published a report entitled "City of Santa Clara Public Records Access: The Paper Chase" (Attachment 3). The report contained four Findings and six Recommendations that require City response by September 16, 2019. Specifically, California Penal Code § 933(c) requires that a governing body of the public agency, or department which has been the subject of a Grand Jury final report, respond within 90 days to the presiding judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. California Penal Code § 933.05 contains guidelines for responses to Grand Jury findings and recommendations. As stated in Penal Code § 933.05(a), public agencies are required to "Agree" or "Disagree," in whole or in part, with each applicable Finding. To be clear, the options for response to Findings are: 1. Agree in Whole; 2. Partially Agree; 3. Disagree in Whole; and, 4. Partially Disagree. Further, as stated in Penal Code § 933.05(b), the City of Santa Clara is required to respond to each applicable Recommendation with one of four possible actions:

1. **Recommendation has been implemented**, with a summary regarding the implemented action;

2. **Recommendation has not yet been implemented**, but will be implemented in the future, with a timeframe for implementation;
3. **Recommendation requires further analysis**, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report; or,
4. **Recommendation will not be implemented** because it is not warranted or is not reasonable, with an explanation therefor.

Approval of this report satisfies the requirements of Penal Code 933(c), which requires the City Council to respond to the Civil Grand Jury report no later than 90 days after the Grand Jury submits its final report to the presiding judge of the Superior Court.

DISCUSSION

This section of the report provides discussion of two key categories: (1) response to the Grand Jury's Findings and Recommendations as required by Penal Code § 933(c) and (2) pertinent facts omitted from the Grand Jury report that would have resulted in a more balanced and factual report and clarification or commentary about the Grand Jury's approach to investigate the City's records management.

Section 1: Response to Findings and Recommendations [Penal Code § 933(c)]

Finding 1

The City does not properly respond to CPRA requests because it: (a) does not indicate if it will respond; (b) does not respond within 10 days; (c) overutilizes the 14-day extension; (d) invokes the need for a 14-day extension for reasons beyond those permitted in the statute; and (e) fails to provide all documentation responsive to the request.

Response to Finding 1:

The City of Santa Clara "**Disagrees in Whole**" with Finding #1. Below are responses to the Findings sub-parts:

Response to Finding 1(a):

Guideline/Law -- The CPRA does not require that a public agency "indicate if it will respond," Government Code 6253 (c) requires that the public agency **determine whether there is responsive records to the request and to notify if there will be records to produce**. Specifically, the CPRA only requires written response to extend beyond the ten-day period, it must do so in writing stating the reason or reasons for the extension and the anticipated date of the response within the 14-day extension period.

Pursuant to the California Government Code 6253 (c) "... *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." The agency does not need the consent of the requester to extend time for response.

City Practice - Consistent with the law, and as an enhanced practice, the City recently began to use a standard response when acknowledging a public records request, which is a best practice and serves as an indication that the City will respond to the requestor within the 10-day period. This standard response to the requestor is not a requirement of the CPRA; however, the City provides it as a courtesy to a requestor to immediately let them know that we are in receipt of their request for records. Specifically, the standard response states:

"Thank you for your public records request received on [insert receipt date]. The City of Santa Clara acknowledges receipt and pursuant to the California Public Records Act provides this response to your request.

The City will provide a further response to your request on or before [insert 10 day date].

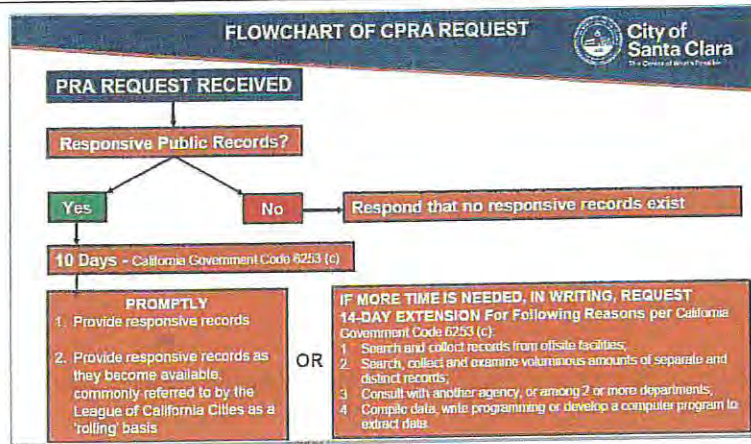
Should you have any questions or concerns, during this process, please do not hesitate to contact me at Publicrecords@santaclaraca.gov"

Response to Finding 1(b):

Guideline/Law -- The City responds to public record requests within the 10-day period in compliance with Government Code 6253 (c): "Each Agency, upon a request for a copy of records shall, with 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."

City Practice -- In cases where responsive records are readily available within the 10-day period, the City provides those responsive records. In voluminous and/or more complex requests, the City provides responses on a "rolling basis." *The League of California's Cities: California Public Records Act publication entitled The People's Business, A Guide to the California Public Records Act [Revised April 2017] states (Attachment 4):*

When faced with a voluminous public records request, a local agency has numerous options - for example, asking the requestor to narrow the request, asking the requestor to consent to a later deadline for responding to the request, and providing responsive records (whether redacted or not) on a "rolling" basis, rather than in one complete package. [Page 22]



As stated above, if records are available within 10 days they are released; however, if there is the need to determine if more records exist, in those specific responses the City provides an estimated date of when additional records may be available. California Government Code 6253 (b), (c) states "...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..."; "...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..."

The League of California's Cities: California Public Records Act publication entitled The People's Business, A Guide to the California Public Records Act [Revised April 2017] also states:

The right to access public records is not without limits. A local agency is not required to perform a "needle in the haystack" search to locate the record or records to the request... Nevertheless, if the request imposes a substantial enough burden, an agency may decide to withhold the requested records on the basis that the public interest in nondisclosure clearly outweighs the public interest in disclosure. [Page 23]

PRA Request -- Ms. Georgine Scott-Codiga submitted a CPRA on December 3, 2018. At the time of submission of the request, it was easily determined that the records request was broad and voluminous (Attachment 5) and the Assistant City Clerk sought the interest of Ms. Georgine Scott-Codiga to narrow down the request during several telephone conversations between December 6 - 14, 2018. The Assistant City Clerk reported to the City Manager's Office that Ms. Scott-Codiga declined to narrow down the below request. Thus, on December 14, 2018, when it was clear that the requestor would not be narrowing the result, staff invoked the 14-day extension to compile the high volume of records. Within days the records were available for inspection, on December 19, 2019. The requestor made an appointment at her convenience to inspect the records on December 24, 2018. Responsive to the request and in compliance with the law, albeit it appears to have been "a needle in the haystack" request, the City appropriately presented the responsive records to inspect by presenting all boxes of responsive documents.

1. All "General Services" Bids, RFPs, RFQs, for the City of Santa Clara and Santa Clara Stadium Authority within the last five years in the amount of \$40,000.00 or more.
2. All "General Services" contracts (excluding utility contracts) for the city of Santa Clara and Santa Clara Stadium Authority awarded within the last five years.

3. All invoices for "General Services" contracts (excluding utility contract invoices) awarded in 2017 and 2018 for the City of Santa Clara and Santa Clara Stadium Authority.

It is worth noting that *The People's Business, A Guide to the California Public Records Act* states, "Although the law precisely defines the time for responding to a public records request for copies of records, it is less precise in the defining the deadline for disclosing the records. Because the CPRA does not state how soon a requestor seeking to inspect records must be provided access to them, it is generally assumed that the standard of promptness set forth for copies of records." Govt Code Section 6253(b) states, "each state or local agency, upon request for a copy of records that reasonably describes an identifiable record or records, shall makes them promptly available." In this case, given the voluminous amount of records requested, making them available within six business days is prompt and reasonable. While the Requestor states that she reviewed the boxes for over two hours and finally gave up, it is important to keep in mind that the City's response was completely compliant with the law and that we did seek to narrow down the request. The customer experience is not an element of complying with the law, the standard is producing the requested records as required.

Lastly, during the course of this Grand Jury review, there were three distinct public records requests. Table 2 below, shows the dates that the records requests were submitted to the City and the timely dates of our response:

Table 2: Summary of Grand Jury PRA Requests and City's Date of Response

Public Records Request	City Date of Response	Notes
CPRA #1 by the Civil Grand Jury December 3, 2018 (Attachment 5a) Note: A standard 10 response that the City uses was not issued because the Requestor was in constant communication, within two days of submitting the request, and therefore there was no need to acknowledge it since that was already happening.	December 19, 2018	Staff was in communication within 10 days with the Grand Jury between December 6 - 14, 2018 to clarify and narrow request, with no success. As a result, the City appropriately invoked a 14-day extension to compile and gather all responsive records and had them available by December 19, 2018. An appointment was scheduled for the Grand Jury to review the documents on December 24, 2018, at a time appropriate for the Requestor. This request was very voluminous and could have fallen under "the needle in the haystack" reference.
CPRA #2 by the Civil Grand Jury February 6, 2019 (Attachment 5b)	February 19, 2019 (This was a 10-day Courtesy response-the 10 th day fell on a weekend and the next working day following a recognized holiday was Tuesday, February 19)	The Grand Jury visited City Hall a few days after submitting their 2 nd CPRA to check on the status. On February 19, staff provided a response that records would be released on February 20, 2019. On February 21, 2019 staff responded by "producing 10 out of 15 unique requests to the Grand Jury and continued to produce records thereafter. Staff informed the Grand Jury that additional records were identified and would anticipate releasing the last five requests on March 1, 2019.

CPRA #3 by the Civil Grand Jury April 3, 2019 (Attachment 5c)	April 10, 2019 and April 22, 2019	The Grand Jury submitted a third CPRA. Staff acknowledged receipt on April 10, 2019 and communicated that responsive records would be available on April 22, 2019. Staff appropriately provided the CPRA citation for a 14-day extension with the reason that the timeframe needed to be extended.
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Response to Finding 1(c-d):

Guideline/Law -- The Government Code 6253 (c), which states:

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.*

City Practice -- The City utilizes the 14-day extension only as allowed by the California Public Records Act (CPRA) and responses explicitly state the reason for the extension for each request. The City's process in invoking the 14-day extension is in compliance with the Government Code 6253 (c).

PRA Request -- The Grand Jury's use of the word "overutilizes" the 14-day extension is subjective. As noted in Table 2, the City used the 14-day extension, with the proper citation, for CPRA #1 and #3 was used. The Grand Jury Report contains no analysis of the City's overall responses to records requests and draws conclusions based on their limited three requests, ignoring the hundreds of other requests that are administered. The 14-day extension is relative to the statutory requirement to respond to the request. The legal standard for actually providing records is "promptness". How promptly the City provides records depends on many factors including: the broadness and complexity of the request itself, how the City keeps and indexes the records being sought, the physical nature of

the records and their location, and the human resources that the City has available when the request is received relative to the other public records requests that are being made at the same time. The City can only do what it can do with the resources that it has available to perform the request/tasks. In instances where there are a large number of requests seeking a large number of records under circumstances where the records are not easily located or retrievable, the City will respond with "rolling" batches of records (which is compliant with the law and referred to as an acceptable practice by the League of California Cities: The People's Business, A Guide to the California Public Records Act). In other words, the City provides responsive records when they become available. Other jurisdictions also take this approach when faced with similar situations and believe it to be in compliance with the CPRA. As a reference, staff is providing another example of when the 14-day extension was invoked and how the City documents the CPRA exemption (Attachment 6).

Response to Finding 1(e): The City complies with its legal duty to provide all records responsive to the requests that are made, as noted in the City's responses to Findings 1(a-d). Although the current process is manually driven and is staff resource intensive, the City does in fact go through an extensive, coordinated and often cross-departmental search process for responsive records and releases records as they become available and deemed responsive. It is not unusual for the City to release records in multiple batches and the City advises a requestor if more records may be available and whether more time is needed. This is an action permissible within the CPRA and legally compliant. The CPRA does not require a public agency to produce all records at once or within 10 days. In those cases where the City does not possess responsive records, it is communicated with the requestor promptly that the City has no responsive records, per Government Code Section 6253 (c).

Note: Over the past weeks, the City has been inundated with hundreds of new unique records requests. During this time, both the Public Records Manager and the primary legal staff person have departed City employment and two voluminous records requests were addressed outside of the 10-day requirement, albeit we responded to both.

Recommendation 1

The City should train staff responsible for responding to CPRA requests to timely indicate if the City will respond to the request and, further, only invoke the 14-day extension where permissible.

Response to Recommendation 1: The **Recommendation has been implemented.** Well before the Grand Jury report was issued, the City had established a set of actions to achieve a modern and less decentralized service model, detailed later in this report. For example, on March 8, 2019, a joint workshop was held for Agenda Coordinators and Public Records Liaisons from each department to review the agenda management process and public records process. In addition, there were trainings offered on August 5 and 7, 2019 to review the public records process prior to the August 13, 2019 user training for the new NextRequest software, which is anticipated to launch in mid to late October 2019. At these trainings, the California Public Records Act was reviewed in detail, including the 10-day requirements, as well as the 14-day permissible extension parameters.

Finding 2

The City lacks a written policy to guide staff in responding to CPRA requests in a manner that complies with the law.

In Response to Finding 2: The City of Santa Clara **"Disagrees in Whole."** The City has had a

written policy for staff to respond to CPRA requests, compliant with the law, since June 1999. The City of Santa Clara's practices are supported by key actions taken at the policy, administrative/operational, and legal level:

- (1) **City Council Policy Manual** - This document has been updated significantly over the past 18 months, and frequently reviewed by the Governance Committee for full City Council action. In fact, in 2017 the City Council approved a *City Council Policy #046 titled "MAYOR AND COUNCIL PUBLIC RECORDS POLICY"* (Attachment 7) to manage its compliance with recent court actions and best practices with public records management.
- (2) **City Manager Directives** - The administrative policies for the City of Santa Clara are managed through the City Manager Directive-Procedures (CMD) process which provide instructions to the organization to direct procedures, practices and policies. The Grand Jury report fails to acknowledge *CMD #13, dated July 23, 2003, and titled "PUBLIC RECORDS REQUESTS,"* (Attachment 8) which specifically provides instructions to the organization on how to respond to public records act requests.
- (3) **City Attorney Advice** - Following court rulings relative to public records, the City Attorney regularly provides advice with respect to developments and changes in responding to public records requests.

As mentioned above, former Administrations failed to keep current the CMD administrative policies. CMD #13 will be updated to reflect new practices and procedures once NextRequest is implemented and observed for six months and further updates will be done or as needed based on other changes. *Note: For FY 2019/20, as part of its reforms, the Council approved funds for the City Manager to hire a consultant to review the CMD policies and advise on which CMDs required updating. With focus on updating the Council Policy Manual, staff decided to outsource this work to accelerate modernizing CMDs that require amendment.*

Recommendation 2

The City should create and implement a written policy, by October 31, 2019, to guide City staff in complying with the CPRA.

In Response to Recommendation 2: The **Recommendation has been implemented** and the City has been compliance since June 1999. As noted above, the City of Santa Clara has two policies related to public records:

1. CMD-Procedure #13 entitled "Public Records Requests", which has been in place since June 1999. This policy is being updated to reflect new practices and procedures; and
2. City Council Policy #046 entitled "Mayor and Council Public Records Policy", effective since 2017.

Finding 3

The City's disorganized recordkeeping and lack of a functional records management system hinders its ability to timely and accurately comply with CPRA requests. Although the City purchased records and CPRA management systems 18 months ago, it has yet to implement those systems.

Response to Finding 3: The City of Santa Clara "**Disagrees in Whole.**" Again, the Grand Jury

uses a subjective term to characterize the City's records management.

In fact, this characterization was the source of a lengthy discussion during the "Exit Interview" when staff expressed several times that the records management is more accurately characterized as manual (with some records digitized), decentralized, and, as a result, inefficient. The Grand Jury emphasized, during that conversation, that unilaterally focusing on Santa Clara's practices would serve as an example to encourage other cities to change because they would not want a similar Grand Jury report issued about them.

A simple benchmarking exercise would have yielded important contextual information about how other cities manage their records. The City requested that the Grand Jury benchmark to better inform how the City of Santa Clara compares to other regional cities. They declined to add that information to their investigation. City staff completed said benchmarking and, in Section 2, Figure 1: Volume Benchmarking of Public Records Requests, illustrates that the City of Santa Clara is like other regional local governments with both a combination of manual and digitized records maintenance, such as: Cupertino, Fremont, Milpitas, Mountain View, and Sunnyvale. Unfortunately, the Grand Jury did not think that it was important to benchmark our records management practices to understand whether they are common or not, which would have informed a more accurate Finding because each is similar to Santa Clara (except for volume of requests).

It is important to note that the manual method of records management does not mean that the City cannot locate records or is disorganized; however, it does mean that it takes longer and requires much more staff resources. However, new technologies offer and allow for more efficient uses to better the public, which the City is fully engaged in implementing but, as it is well known, new software systems cannot be implemented without first preparing an organization for the change.

City staff's work has been very focused on modernizing systems that better serve the public, promote transparency, and advance modern administrative practices. Within the context of much change in these areas, the City has been able to timely and accurately respond to CPRA requests and has been working on various process improvements over the course of the last 18 months that directly prepare for the NextRequest implementation. It is a well-known practice in information technology software implementation, that organizational readiness and business processes need to be stabilized to accept new technology. Below is a summary of some of the major efforts taken over the past 18-months to advance the organization in a more efficient public records management process and prepare it for greater use of digitized records systems (Attachment 9):

- 1) **Resolved Financial Deficit** -- Achieving financial stability for the City enabled the addition of a Procurement Manager, Contracts Manager, and Public Records Manager which are all core to improved records management. In January 2018, when the City Manager first surfaced this matter before the Council, **had the budget deficit not been resolved, there would have been no opportunity to add resources needed to resolve service areas.** In fact, faced with a \$46 million deficit, the City would have been facing the preservation of other core services, beyond records process improvements. (Timeframe = October 2017 - June 2018 for FY 2018/19 and July 2018 - July 2019 for FY 2019/21)
- 2) **Implemented a Council Agenda Management System (Granicus)** -- Within the City Manager's first 90 days, action was taken to prepare the organization for the implementation of Granicus because it was deemed the software system that would achieve the most significant

impact of advancing the City's records management (i.e., establish a workplan, communicate workplan, establish and schedule user training for many departmental report writers, establishing new report writing formats and requirements, Council approval of a new agenda format, Council approval of action minutes, implementation of software, testing of software while concurrently maintaining both agenda production systems, and resolving glitches that naturally surface during this process). Granicus is a system that supports City Council (and Boards and Commissions) agenda management, from agenda development phase to minute production. With the implementation of this software system, the City made a significant leap with archiving reports, resolutions, ordinances, minutes, agendas, and attachments to reports for transparency and quick public access to these records. (Timeframe = October 2017 - March/April 2018)

- 3) **Implemented a Log to Track CPRA Requests-** Given the high volume of records requests, to support the Council and organization with informed decision making and workload management, the City began collecting data of CPRA requests and has observed the upward trend of more frequent and complex records requests. This data helps with understanding the CPRA request activity. Data analytics in this area of public service was not previously performed in prior years/decades, January 2019 was the first time that CPRA data was reported. (Timeline = ongoing)
- 4) **Council Policy Manual** - At the Governance Committee meeting of April 10, 2017, the Committee unanimously recommended the approval of a Mayor and City Council Public Records Policy, particularly with the recent court case *Smith v. San Jose* relating to public records on both private and public accounts pertaining to the conduct of public business. The Council adopted a resolution to approve the Mayor and City Council Public Records Policy #046 on May 16, 2017. (Timeframe = April - May 2017)
- 5) **Relocate Significant Amount of Public Records for Proper Storage** - The Council acknowledges that we are short on workspace for employees. With the addition of the above referenced staff, space was needed for them to work. Additionally, the former City Clerk stored the City's archives in a room in City Hall that did not support the proper storage requirements for City archives, and they were at risk of water, or other forms of, damage. This put the City's records at risk of rotting and destruction. Recognizing that this was not a best practice, the Administration acted to properly store the records at a facility that provides the proper storage conditions for our valuable City archives. This action opened space for the new employees and this action alone was a tremendous effort and advancement for records management. (Timeframe = September - October 2018)
- 6) **Establish Funding, Job Description, Recruit, and Hire a Public Records Manager** - Public sector employment requires that a new job description/classification be coordinated with the relevant bargaining unit and approved by the City Council. The City Council approved the Public Records Manager job description on June 26, 2018. Through resolving the financial deficit, the City was able to fund this position in July 2018. Upon approval of the classification, the City posted the position on September 6, 2018, after completing "meet and confer" labor requirements for the proposed job descriptions, and a job offer was made upon finalizing the interviews in early November 2018. The Public Records Manager began work on January 14, 2019. It should be noted that it can take six to nine months to recruit and place employees. (Timeframe = February 2018 - January 2019)
- 7) **State Law Change re Police Records (AB1421 and AB748)** - Assembly Bill 1421 went into effect in January 2019, which requires Police Departments to release certain records and videos. Assembly Bill 748 went into effect on July 1, 2019, which will now require the Police Department to release body camera video of shootings within 45 days.

Police Departments from throughout California received CPRA requests shortly after the law went into effect. The process to respond to these requests is very staff intensive and requires a coordinated effort between with the City Attorney's Office and the Police Department. The Police Department reclassified one Staff Aide position to a Records Specialist for Fiscal Year 2019/20. The process to review one shooting case may take approximately 30 days. Given the research needed and specialty in this area, two audio/video companies have been contacted and identified to conduct the redaction function. (Timeframe: September 2018 - present)

- 8) **Assess Department CPRA Response Processes & Establish New Practices** - In order for the City to understand the needed improvements and City practices, the Public Records Manager met with Department Directors to learn about processes and areas of opportunity for improvement beginning in February. She developed a process that began establishing a less decentralized model and log system to track the City's many requests, on March 12, 2019 she joined the Assistant City Clerk in a workshop providing educational training on the agenda management process and public records process to agenda coordinators and public records liaisons for each department. (Timeframe February - April 2019)
- 9) **CPRA Training Development and User Training** - In March 2019, upon completion of #7, City staff provided an educational training workshop and provided basic training related to the CPRA that was tailored based on learning the needs of the organization.
- 10) **Basic Public Records Management Training & Pre-NextRequest Training** -- In preparation for the NextRequest launch, staff also provided basic public records management training as well as NextRequest user trainings for all public records liaisons from all departments on August 5, 7 and 13, 2019.
(Timeframe January- August 2019)
- 11) **LaserFiche Department Director Workplan Prep** - On April 8, 2019, the City Manager's Office and IT Director presented a PowerPoint presentation that contained key information about the planned implementation of Laserfiche software with key milestones outlined. The purpose of this meeting was to review the organizational needs to prepare for the implementation of this software and to hold a discussion about preparedness and workload, to anticipate how to advance this effort. This PowerPoint presentation was provided to the Grand Jury on April 5, 2019, in advance of presenting it to the Department Directors (Attachment 10), which the Grand Jury failed to mention. Absent acknowledgement of our workplan for LaserFiche implementation, with target dates, misleads the public about our efforts.
- 12) **Laserfiche Soft Launch**-- At the above referenced meeting, it was suggested that the timeline be adjusted and that Laserfiche be prioritized. A soft launch of Laserfiche has been implemented with the City Attorney's Office to assist with work process and anticipate any implementation changes in the workplan created. It is anticipated for a broader implementation in fall 2019, which will largely begin with scanning documents, establishing user rules, and other organizational preparations that will go past December 31, 2019 (an arbitrary deadline set by the Grand Jury). Once completed, Laserfiche will allow City Departments to scan vital records to a "central repository" for enterprise records management of vital records.
(Timeframe = April 2019 - Present).
- 13) **Records Query Improvement** - Given the volume of public record requests, staff has worked to provide focused and relevant search terms to the Department of Information Technology (IT) to yield more focused responsive records and to create a more efficient search of records. IT staff collaborated with the Microsoft exchange engineers to review opportunities to streamline the search results. As a result of this, the search now eliminates duplicate emails and can be provided to staff in a pdf format upon request. Prior to this effort, it was not uncommon for any

email sweep to produce a large volume of duplicative records for review by staff.

The former City Clerk procured both Granicus and Laserfiche through a combined RFP process in FY 2016/17 and an informal process for the NextRequest software. While the Grand Jury's recommendation is solely focused on just implementing the software systems, the Grand Jury failed to recognize the resignations of key staff that occurred during that same time and its impact to implementation, coupled with the organizational needs required to be "digitized" ready (as outlined above). It is worth noting that during the past 18 months:

- Former Assistant City Clerk resigned in December 2017 (interim staff backfilled this position)
- Elected-City Clerk resigned in February 2018 (interim staff backfilled this position)
- Current Assistant City Clerk started in September 2018
- Deputy City Clerk was appointed in December 2018
- Public Records Manager began in January 2019 and departed the City in August 2019
- As-needed employee began in June 2019 to support response to public records requests
- Funding for a Police Records staff position to comply with new laws

Based on the significant staff transitions, the Administration needed to assess and ensure that the software systems were best matched for the goals of the organization while stabilizing staff resources and responding to the growing number of requests. The Administration quickly identified the need to implement the Agenda Management System (Granicus), which enhanced transparency and made it easier for the public to access public records. It also allowed for video streaming of Council meetings and provided the closed caption feature along with the visual display of the live vote during a meeting. Following implementation of Granicus, NextRequest was temporarily put on hold to focus on the smooth transition to Granicus, which enables greater levels of transparency with City records and data and strengthen staff resources. NextRequest preparation and implementation was re-instituted in Spring 2019 and is scheduled to launch in Fall 2019. Now, the City is working towards milestones for achieving the implementation of Laserfiche which will eventually modernize document repository and production processes along with records management, work flow processes, and transparency. As with Granicus, the Administration must prepare for the system implementation with training and all the change management to completely implement citywide.

The above detailed outline shows that the City has not wasted the past 18 months, rather completed significant baseline processes that needed to complete to prepare the organization for increased "digitized" system implementation. It appears that the Grand Jury members based their Findings and Recommendations on a series of actions related to their three CPRAs (ignoring the 100+ records requests that we compliantly address at once), including appropriately providing a volume of contracts in storage boxes in response to the first public records request. As a reminder, for example, the Grand Jury's first CPRA requests were voluminous and likely a "needle in the haystack" request, and were as follows:

- 1) All "General Services" Bids, RFP's, RFQ's for the City of Santa Clara and Santa Clara Stadium Authority within the last five years in the amount of 40,000.00 or more;
- 2) All "General Services" contracts (excluding utility contracts) for the City of Santa Clara and Santa Clara Stadium Authority awarded within the last five years;
- 3) All invoices for "General Services" contract (excluding utility contract invoices) awarded in 2017 and 2018 for the City of Santa Clara and Santa Clara Stadium Authority.

While a computerized system would provide a quicker and faster response and would have the ability to drill down to search for a specific type of contract, the production of said storage boxes was entirely responsive and compliant with the law. As mentioned, the City coordinated this response based on the City Attorney's recommendation to provide expedited documents to the Grand Jury for their inspection.

Like other municipalities that do not have a computerized system or digitized records, the process is more staff resource intensive and manual. At the time, staff attempted to work with the Grand Jury to narrow the request in order to provide the exact documents sought. Because the City does not index or file contracts based upon contract amount it did not have records responsive to the Grand Jury's request, so it produced all contracts from the relevant time period for the Grand Jurors to examine. This is completely responsive and compliant with the law; however, recognizing the magnitude of produced documents, staff continued to offer assistance to the Grand Jury and seek clarification about their request.

Last, the Grand Jury's Finding does not recognize that the organization cannot just implement two software systems on top of an inefficient business process and without first improving them. For software systems to be successfully implemented in a large organization, with staff distributed in various locations throughout the City, it is important to establish workplans and sequencing of milestones to advance the overall goal. Had the Grand Jury inquired about how the past 18 months were utilized, they would have been able to acknowledge the above required milestones that were needed to launch the NextRequest system this Fall 2019, and the steps being implemented for Laserfiche.

The City disagrees in whole because as explained in the "Exit Interview," the context of their investigation matters and, by the above information, it is easily to observe that the City compares equally to other cities and that the required work to implement these new systems has been well underway.

Recommendation 3a

The City of Santa Clara should implement its records management and CPRA management systems by December 31, 2019.

Response to Recommendation 3a: The recommendation has not been implemented; but is anticipated to be implemented by mid to late-October 2019. The CPRA management system, NextRequest, will be a public portal where requestors can make online records requests. Requests will either be received directly from the system or entered by staff and each request will be assigned a tracking number and will be facilitated electronically. Any and all responsive records will be uploaded, and the system will notify the requestor that their records are ready for review.

Additionally, the City is in the process of implementing Laserfiche, which is a full records management program, and far more complex than NextRequest. The recommended timeline of implementation by the Civil Grand Jury for the Laserfiche records management system by December 31, 2019 is not reasonable and that was explained to them during the close out interview. This recommendation does not consider the other city reforms, daily workload of staff to remain compliant with the CPRA, and the other 33 software system upgrades and/or replacements that are

concurrently being implemented.

Recommendation 3b

In the absence of an operational CPRA and records management system, the City of Santa Clara should create and immediately implement interim procedures to comply with the CPRA.

Response to Recommendation 3b: The recommendation has been implemented. The City is currently using a manual logging system to keep track of its incoming public record requests and is transitioning to NextRequest by mid to late-October 2019.

Finding 4

The City's Public Records Manager is the only staff member trained to respond to CPRA requests, yet the records are decentralized requiring the Records Manager to rely on other staff within multiple departments to search for and obtain the documents responsive to the CPRA requests.

Response to Finding 4: The City of Santa Clara "**Disagrees in Whole.**" While the Public Records Manager is a sole job classification, each department has one or more departmental staff assigned to coordinate the City's responses to CPRA requests. Staff relies on subject matter experts to respond accurately to requests. As shared with the Grand Jury members, the City has several staff members who are trained, equipped and have the professional experience and ability to assist and support the City's public records response process. To serve in the best way possible, the City recognizes that having staff in various areas and expertise levels, who are involved in the process for public records, increases its ability to fully respond to public records requests.

The position of Public Records Manager cannot serve as a subject matter expert in every department to identify all responsive records to a request and, accordingly, as a long-standing practice, the City has had multiple staff within its departments trained on responding to CPRA's. The Public Records Manager's work is to ensure consistency with response methodologies, support the system development, prepare for the various required trainings with this change management of the entire organization, and track requests that do not fall into one department or are more complex in nature.

Recommendation 4

The City should identify and train necessary staff on compliance with the CPRA by October 31, 2019.

Response to Recommendation 4: The recommendation has been implemented. The City of Santa Clara has trained staff. The Assistant City Clerk and the Deputy Clerk as well as key staff people in the City Manager's Office are fully trained on the CPRA and provide guidance and assist in fulfilling public records requests. In addition, the City Attorney's office provides legal support when necessary in responding to public records requests. In 2019, trainings with front-line staff have been held on March 12, August 5, August 7, and August 13. Additional discussions about these efforts have been held with executive staff throughout the year. Trainings are going to also be scheduled on a quarterly basis moving forward.

DISCUSSION

SECTION 2: Contextual Background, Benchmarking, and Commentary of the Grand Jury's Report and Method

The following section provides more contextual information regarding the public records management process and the engagement with the Grand Jury from December - June 2019 which led to the Grand Jury Report. This section is organized as follows:

1. Context of Driving Overall City and Public Records Reforms
2. Benchmarking Data that the Grand Jury Failed to Provide
3. Characterizations and City's Response

1. Context of Driving Overall City and Public Records Reforms

During the period of January through June 2018, against the backdrop of a looming \$46M+ three fiscal year deficit (for the period underway to plan for a two-year budget process), the City Manager and City Council agreed that the highest order of priority was to stabilize the City's unfavorable fiscal outlook, preserve service levels and avoid hundreds of lay-offs, and develop a revenue strategy to raise funds needed for critical high risk administrative processes. The City Council agreed with this strategy and embarked on a period of reforms. It should be noted that many Councilmembers at the January 2018 Goal and Priority Setting session made comments about how this was the first time that they had heard these details about the state of the organization and high-risk administrative practices. It is unknown why past City Managers failed to make public these high-risk conditions or work to mitigate/resolve the projected deficit, as they pose significant adverse impacts to the City's functioning and financial future.

The Grand Jury's observations of public records management are not new, nor has this topic been ignored by the City. In fact, within her first 90 days on the job, City Manager Deanna Santana presented at the City Council Priority Setting Session in January 2018, her assessment of the state of the organization and reported publicly to the City Council on her findings of the high-risk administrative processes that require attention. Unfortunately, because other high-risk administrative processes existed, staff was strategic in its ability to drive change in many high-risk areas of service.

Within many high-risk areas of service, three relevant areas were: procurement practices, contracts management, and public records management. One of the City Manager's recommendations was that the City needed to improve its management of the City's public records process, as well as the need to add resources to this decentralized system that was found to be inefficient. In fact, as reported earlier in this report, the City began to implement reforms immediately related to the public records process. As previously noted, Attachment 9 is a visual of the many efforts taken over the last 18-months related to public records and transparency measures, specifically.

Additionally, at that January 2018 meeting, the City Manager commented that the Administration was making significant advancements with implementing Granicus, the City's agenda management solution, which would catapult the City's records management and improve transparency at once. Use of the Granicus software was strategically selected as the first milestone for advancing public records management because it would immediately modernize the extremely manual process used

to produce all legislative documents related to a City Council agenda (along with Boards and Commissions). Indeed, the Administration was successful with moving on the implementation of Granicus during the first half of 2018.

Concurrently, staff began aggressively reviewing each fund and line item expenditures of the City budget. By June 2018, City staff was able to balance the budget, reducing the deficit from \$8.6 million to \$1 million, and propose the addition of three key positions relevant to the Grand Jury's investigation: Procurement Manager, Contracts Manager, and Public Records Manager. For Fiscal Year 2018-19, the City Council added a Public Records Manager position to assist with improving our public records management and improve coordination in a decentralized model. The position was filled in January 2019. Had staff not prioritized this effort, there would have been layoffs and no possibility of bringing in the required resources to support the reforms required to correct high-risk administrative processes. This action cannot be ignored in the context of the City's ability to implement new software and other accomplishments.

In January 2019, at the annual Goal and Priority Setting Session, the City Manager expressed that Granicus was now the new norm, while also providing data on the growing number of public records requests and how the lack of resources made it difficult to concurrently respond to public records requests while leading the effort to implement vital software to modernize the practices, such as NextRequest and Laserfiche.

Thus, the context for understanding the state of public records management within the City of Santa Clara must be factored into the City's response to the Civil Grand Jury report. These include:

- Significant projected deficits (est. \$46+ million) that, under this scenario, must focus on is financial security;
- Plagued with several high-risk administrative processes due to failure to correct or modernize in the past;
- Workload overwhelmingly exceeds the staffing resources and where new initiatives continue due to need or opportunity;
- Staff resignations or recent hires within this service area that cause for disruption in stabilizing workplans;
- Failure to modernize its informational technology systems and is now faced with needing to implement 34 systems to continue service delivery and modernize systems; and,
- Like all Silicon Valley cities where unemployment is 1.9%, that is challenged with recruitment and retainment due to competing with private sector compensation and the high cost of living, rendering cities to commonly recruit from other cities and delayed recruitment processes due to the precedent setting low unemployment rate.

In summary, the City has continuously acknowledged that the manual, inefficient, decentralized state of the City's records management presents some challenges. However, a decentralized and inefficient manual system does not render it out of compliance with the law, as concluded in the Grand Jury report. Indeed, the facts and context in this report demonstrate that the City has been well-aware of administrative processes that past Administrations failed to address: unfortunately, resources do not exist sufficiently to address all of them at once and, as a result, the City continues to deliver high quality service, take on strategic efforts, and drive reforms within our very limited set of resources.

2. Benchmarking Data on Public Records

At the January 2019 session mentioned above, the City Manager also provided, for the first time, data that revealed the volume and quantity of CPRA requests during the 2018 calendar year which estimated approximately 1300+ public records requests received (including public safety request for information). As with many California municipalities, the City also experienced a significant increase in CPRA requests.

This trend did not stop in early 2019. In the first 90 days of 2019, the City received CPRA requests at the rate of more than 25 per month (this does not include the sub-record requests, nor does it include some departments that are still handling their own requests such as Police and Fire). The majority of these public record requests are not just a single record request, rather multiple records requested and complex in nature, which requires a large workload to assemble and review (100s - 1,000s of documents to review prior to releasing).

The professional observations of staff are that the City of Santa Clara receives more records requests than other surrounding cities were validated by the City efforts to benchmark this activity. It is worth noting that the City of Santa Clara has multiple professional staff in this field of professional work that have served these cities and, in some cases, as City Clerks with extensive public records training. For example, the Assistant City Manager charged with oversight facilitated records requests in San Jose and served as Fremont's City Clerk. The Assistant City Clerk served as Deputy City Clerk in San Jose, and East Palo Alto and as City Clerk in Tracy, and Saratoga (which were not benchmarked). The City Manager served as Interim City Clerk in San Jose and has participated in development of Public Records Request policy development for bay area cities (both small and large).

Lastly, despite the City staff's request to the Grand Jury to benchmark Santa Clara against other cities and its failure to include this informative data, the City took the time to conduct that work so that the City could understand how Santa Clara compares to our regional neighbors. Table 2 provides a summary of the results.

Table 3: Benchmarking of Pubic Records Requests

CITY	POPULATION	RECORDS DIGITIZED	# of MONTHLY REQUESTS	# of ANNUAL REQUESTS
Cupertino	58,302	Many records but not all are digitized	10-12	Over 100
Fremont	234,962	Some records, not all are digitized	25-30	300 +
Milpitas	78,106	No records are digitized	+/-5	+/-55-60
Mountain View	76,260	Some records, not all records are digitized	Varies, average of 34	Approx. 407
Sunnyvale	153,655	Some records, not all; Implementation of an Electronic Management System in 2020 planned	5	Approx. 60
Santa Clara	127,134	Some records, but not all are digitized	~100/month	1300 (2018 numbers including public safety)

Note: During the course of the writing this report, the City was responding to 282 unique records requests. Within four days, the City brought down the open unique records requests to 168. The data demonstrate how quickly the City responds to its high volume of records requests.

This benchmarking data shows that Santa Clara is:

- An outlier with respect to its high volume of public records requests, when compared to like-regional cities, and not by a small amount; and,
- We are very much like other cities in that some records are digitized, but not all records are digitized.

3. City's Engagement with the Grand Jury

Table 4: Characterizations and City's Response

#	Characterization	Report Page #	Response
1	"However, the 1018-2019 Santa Clara County Civil Grand Jury found the City's recordkeeping to be disorganized and its staffing levels inadequate to process CPRA requests in compliance with the requirements of the law."	3	Staff has acknowledged that the public records system is manual, inefficient and requires less decentralization, but this does not render it disorganized. As noted throughout this report, the manual (and in some cases digitized) records management does not impair the City's ability to be compliant with the CPRA, but it does require more staff intensive processes. The Benchmark data shows that Santa Clara is no different from surrounding cities.
2	"The Grand Jury found that obtaining public records from the City is a time-consuming and difficult chore."	3	The response time to provide responsive public records is compliant with the CPRA, as is noted in the above report. The time it takes to respond is often dependent on the manner in which files are stored and the magnitude of the request received. The City has not denied that the process is manual (with only some digitized documents), decentralized, and inefficient, but it is compliant with the law. Additionally, the City's practice is similar to surrounding cities, except for the higher volume, and there are opportunities to improve. It is worth noting that the City did ask the Requestor to narrow the request to better serve the Requestor. In fact, when presented with all of the responsive boxes full of documents for CPRA #1, the Assistant City Clerk offered again if she was looking for a specific set of records. City staff is in practice of working with Requestors to assist them with identifying records, when the CPRA is overly broad of the inquiry is unclear.
3	"The Grand Jury encountered non-compliance by the City in response to its CPRA requests. Noncompliance with CPRA included non-responsive replies to the requests, invalid excuses for extensions of time, and incomplete document production."	3	The Grand Jury made three records requests: one on December 3, one on February 6, and one on April 3. Regarding all three requests, the City provided responsive records in compliance with the CPRA. The City may not have provided records all at the same time, but they were always in communication with the Grand Jury and provided records on a "rolling" basis-which is entirely compliant with the law. This is a common practice to provide responsive records when handling a complex and voluminous records needed to be gathered, reviewed/assembled that is compliant to Government Code section 6253 (c).

4	<p>"The City acknowledged its recordkeeping system was disorganized and in need of improvement, but the City did not have an interim solution. The City's progress towards implementation of an existing recordkeeping software has been without a sense of urgency."</p>	3	<p>This City specifically stated that the system was manual, inefficient, and resource intensive. The report outlines in detail how City staff has used the past 18 months. The City Manager also released to a Grand Jury member, a PowerPoint that was presented to the Executive Team on April 8, 2019 the detailed timelines for both NextRequest and Laserfiche (see Attachment 10). It is unknown why the Grand Jury did not acknowledge the PowerPoint workplan in its report, which provides supporting information that the City does have a plan.</p>
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5	<p>"Closure of city offices other than for recognized holidays does not extend or excuse compliance with the time for response under the CPRA."</p>	6	<p>Government Code section 6253(a) of the CPRA makes it clear that inspection of records is available during the office hours of the state or local agency. Staff advised the Grand Jury of City Hall's closure because the 14-day deadline fell within that time (December 28, 2018), but provided the Grand Jury with a response well before the 14-day extension deadline. The Grand Jury visited City Hall on December 24 to inspect responsive records.</p>
6	<p>"After searching through the boxes for two hours, the Grand Jury was unable to find the documents it was seeking. This was surprising since the Grand Jury had previously obtained copies of several of the requested documents from other sources."</p>	7	<p>If the Grand Jury is referring to the Banner and Singer Contract, those two contracts were in fact in the boxes that were provided to the Grand Jury for inspection (as well as available on the City's website). At that time, the Grand Jury did not specifically ask for these two contracts or narrow the request to them when asked to if the voluminous request could be narrowed. Had the Grand Jury narrowed down their request for a specific contract, rather than for all contracts over many years, City staff could have easily and timely responded. The Grand Jury's broad request played a role in the way the City responded.</p>
7	<p>"City staff was unresponsive to multiple requests to meet, forcing the Grand Jury to seek legal assistance to facilitate the interviews."</p>	7	<p>This is misleading and in fact the attached emails serve as proof that the City Manager was responsive to meeting requests of the Grand Jury. As noted in the attached emails (Attachment 11), there were other large-scale priorities that had to be balanced on her calendar. Scheduling was completed accordingly to the workload requirements and their characterization is subjective and does not consider another City priorities. Their statement that they were "forced" to seek legal assistance is their own prerogative and improperly characterizes the City's efforts to properly schedule a meeting as if we were reluctant or resistant to meeting. That is absolutely not the case, as evidenced by the supporting emails. The Grand Jury also met individually with the Public Records Manager on March 26, 2019 and on May 28, 2019 met with the following staff: City Attorney Doyle, City Manager Deanna Santana, Purchasing Manager Giovannetti, Assistant City Manager Nader, and Public Records Manager Davis. In short, the City was very responsive to the Grand Jury's meeting requests.</p>

<p>8 "Due to the City's non-responsiveness to its CPRA requests after three months, the Grand Jury concluded that its investigation had become futile. Accordingly, the Grand Jury changed the focus of its investigation to the City's compliance with the CPRA."</p>	<p>8 As noted previously in this report, the City was responsive and provided all responsive records to the three different CPRA requests. It should also be noted, as it was quoted in the Mercury News published on October 3, 2018 "The Grand Jury indicates that people shouldn't file citizen complaints unless they have exhausted other attempts to resolve any issues. But Becker said he had been unable to get the city to review his concerns." (Attachment 1). Neither the City Manager nor the City Attorney were contacted by the Complainant.</p>
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<p>9 "The Grand Jury learned that the City had been trying for over 18 months to implement a records management system and had procured two software systems: Laserfiche, a records management system to track records; and NextRequest, a software system used to trace records requests. To date, these systems are not operational, and the City could not estimate when they would be."</p>	<p>9 Once again, as noted in the report, the City has advanced many efforts over the past 18-months (see Attachment 9). The City Manager also released to a Grand Jury member, an advanced PowerPoint that was presented to the Executive Team on April 8, 2019 that noted the goals and the timelines for the implementation of Laserfiche and NextRequest (see Attachment 10). Unfortunately, the Grand Jury chose to suppress acknowledgement of this information and workplan in its report that would have provided a more balanced conclusion.</p>
<p>10 "The Grand Jury learned that the City currently has no city-wide process or written procedures in place for complying with CPRA requests and that the Public Records Manager is the only CPRA trained City Employee."</p>	<p>9 As noted in the report, the Grand Jury report fails to acknowledge <i>CMD #13, dated July 23, 2003, and entitled "PUBLIC RECORDS REQUESTS"</i> which specifically provides instructions to the organization on how to respond to public records act requests and <i>City Council Policy #046 entitled "Mayor and Council Public Records Policy, effective since May 16, 2017 (see Attachment 7 and 8)</i>. As noted in the report, the City Attorney often provides Attorney communication to the Council on new and updated legal requirements regarding public record act requests and other pertinent laws.</p>
<p>11 "The City knew that the requestor was the Grand Jury. Given the Grand Jury's statutory ability to investigate and report on the City, it can be assumed that the City gave the Grand Jury heightened attention. The Grand Jury is concerned because it has greater access to public records than a private citizen does, yet it had significant trouble obtaining documents despite multiple requests."</p>	<p>11 Government Code Section 6253 states that "Any person" may make a CPRA request." Government Code Section 6253 states that "Any person" may make a CPRA request. No person has greater privilege to request records than any another person. The Grand Jury did not receive heightened attention, rather the City provided the Grand Jury with the same level of courtesy and customer service when responding to CPRA requests as it does with any other requestor.</p>

FISCAL IMPACT

There is no fiscal impact associated with this report.

COORDINATION

This reported was coordinated with the City Attorney's Office, the City Clerk's Office and The City Manager's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

It is recommended the City Council approve this response and authorize Mayor Gillmor to submit the City's Response to the Civil Grand Jury Report to the Honorable Deborah A. Ryan, Presiding Judge, Superior Court of California, County of Santa Clara, 191 North First Street, San José, California 95113, no later than **Monday, September 16, 2019**.

Reviewed by: Nora Pimentel, Assistant City Clerk

Reviewed by: Nadine Nader, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Mercury news Article Published on October 3, 2018
2. Santa Clara County Civil Grand Jury Citizen Complaint Form
3. June 18, 2019 Santa Clara County Civil Grand Jury Report
("City of Santa Clara Public Records Access: The Paper Chase.")
4. The League of California's Cities: California Public Records Act publication entitled The People's Business, A Guide to the California Public Records Act [Revised April 2017]
- 5a. December 3, 2018 Grand Jury CPRA Request
- 5b. February 6, 2019 Grand Jury CPRA Request
- 5c. April 3, 2019 Grand Jury CPRA Request
6. Example of City Response Invoking a 14-day Extension
7. Mayor and Council Policy #046
8. City Manager Directive Procedure #13
9. City Stacked workload Diagram
10. PowerPoint for ELT - re: Laserfiche and Public Records
11. Email Exchanges between City Managers Santana's Office and Grand Jury Member

Search

NewsPolitics

1

Santa Clara mayoral candidate accuses city of wrongdoing in civil grand jury complaint

Anthony Becker has asked for an investigation into contracts with PR consultant Sam Singer.

(David M. Barreda/Mercury News)

A complaint filed with the Santa Clara County Civil Grand Jury alleges that Santa Clara violated city ordinance and mishandled two contracts involving PR expert Sam Singer.

By **EMILY DERUY** | ederuy@bayareanewsgroup.com | Bay Area News Group
PUBLISHED: October 3, 2018 at 5:17 pm | UPDATED: October 4, 2018 at 5:22 am

Just a month before the November election, the sole challenger to Santa Clara Mayor Lisa Gillmor's re-election campaign is asking the Santa Clara County Civil Grand Jury to investigate whether the city violated laws surrounding how it awarded contracts.

Earlier this year, Santa Clara agreed to spend up to \$200,000 to hire spin doctor Sam Singer for help with public affairs and media relations under two contracts — one for up to \$100,000 with the Santa Clara Stadium Authority and another, also for up to \$100,000, with the city itself.

ADVERTISING

In a complaint filed Wednesday and obtained by this news organization, mayoral candidate Anthony Becker makes a number of allegations, including that Santa Clara deliberately set up two contracts with Singer to circumvent a rule that the City Council must approve contracts over \$100,000, and that the contract amounts were changed from \$50,000 each to \$100,000 each.

"I'm now hoping the grand jury will investigate these claims," Becker said when reached by phone Wednesday afternoon, "and shine some light on what is occurring at City Hall."

Asked whether the complaint was politically motivated, Becker said he decided to run for mayor to improve the way the city operates, in part by increasing transparency. The complaint, he said, was a step in that direction.

It is unclear whether the grand jury will investigate Becker's complaint. Complaints are typically kept confidential.

In the complaint, Becker accused the city of failing to secure other bids for the work.

"These contracts should have been open for public bidding but all indications point to there never being a bidding process," Becker wrote.

Becker argued that city ordinance required the city to get three competitive proposals for the work.

"In early 2018, staff conducted the process and Sam Singer was the single respondent to that procurement process," Santa Clara spokeswoman Lenka Wright wrote in an email. "As such, and well within the city's procurement rules and delegated authority, the city manager issued two contracts for up to \$100,000 each (one for the City and one for the Stadium Authority). The City Manager's contract authority for the City contract is \$100,000 and for the Stadium Authority, which is a separate entity from the City, the Executive Director's contract authority is \$250,000."

In the complaint, Becker also suggested that the timing of the contracts was dubious.

"The city has told the public that Sam Singer was hired to manage the fallout of disgraced Councilmember [Dominic] Caserta's resignation, however, Singer's contract was dated three months before the Caserta scandal went public," Becker wrote.

The blue routing sheet for the first contract is dated February 14 of this year, while the second, marked "rush," is dated February 15. Sexual harassment claims against Caserta surfaced in May.

"In late 2017, during a conversation surfaced by former Councilmember Caserta regarding a professional services contract with Banner Public Affairs, City Manager Deanna Santana stated publicly that she was going to solicit, via a competitive bid process, responses for communications support for both the City of Santa Clara and the Santa Clara Stadium Authority," Wright said.

The contracts were executed just after the resignation of Rod Diridon as city clerk, Wright said, and then-communications relations manager Jennifer Yamaguma assuming the role. Singer, Wright said, “provided continuity of services” at a critical time — after the departures of Diridon and a communications specialist from the city manager’s office.

“Of note, the blue sheet is an internal routing document and was originally filled out incorrectly by clerical staff,” Wright said. “Staff used White Out to correct the dollar amount.”

Finally, Becker questioned alleged inconsistencies in Singer’s invoices. Singer billed the Stadium Authority for mileage expenses on April 30, Becker said, but failed to charge any hours for that day. According to Wright, “the contract allows for mileage reimbursement for meetings and related contract activity.” “Singer Associates Public Relations responded to a public request and competition for qualifications/experience from the City of Santa Clara,” Singer wrote in an email to the Bay Area News Group. “Our agency followed all rules and procedures required — as did the City. We are honored to assist the City in providing public information and communications to the residents of Santa Clara.”

The grand jury indicates that people shouldn’t file citizen complaints unless they have exhausted other attempts to resolve any issues. But Becker said he had been unable to get the city to review his concerns. City Attorney Brian Doyle, however, said in an email, “He has certainly never attempted to resolve any of the issues discussed in his complaint with me...Nothing that he alleges appears to be a violation of the City Charter or of City Code.”

In his letter, Becker implored the grand jury to investigate the contracts.

“The above points shine light on the city of Santa Clara City Council’s practice of operating behind closed doors and disregard for law,” Becker wrote. “Further, their hubris has led them to believe that they cannot be held accountable, which is why I have taken the time to provide this information to you.”

Report an error

Policies and Standards

Contact Us

GRAND JURY
SANTA CLARA COUNTY



SANTA CLARA COUNTY CIVIL GRAND JURY
CONFIDENTIAL
CITIZEN COMPLAINT

To: Santa Clara County Civil Grand Jury
Superior Court of California,
County of Santa Clara
191 North First Street
San Jose, California 95113
408-882-2721
CGJ@scscourt.org

IMPORTANT: The Grand Jury does not have authority to investigate complaints involving State or Federal government agencies, non-governmental entities, or matters outside Santa Clara County. The Grand Jury does not investigate all complaints received.

From:

Your Name: _____

Mailing Address: _____ City: _____ Zip: _____

Day Phone: (____) _____ Evening Phone: (____) _____

This complaint is against:

Name, Title, Agency: _____

Mailing Address: _____ City: _____ Zip: _____

Phone: (____) _____

Complaint: Be specific; include names and dates. Describe the problem in your own words. All information is confidential. You may attach additional pages as necessary.

Please describe any previous attempts to resolve this complaint, including the agencies you contacted and the action taken by the agencies. You may attach additional pages as necessary.

How would you like to see this matter resolved? You may attach additional pages as necessary.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signed: _____ Date: _____

SUBMIT

CITY OF SANTA CLARA:
PUBLIC RECORDS ACCESS
THE PAPER CHASE



2018-2019 Civil Grand Jury
of Santa Clara County

June 18, 2019

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 APPENDIX 2: Third CPRA Request, 4/3/2019 16

GLOSSARY AND ABBREVIATIONS

Bid	A written offer/proposal made in response to an RFP or RFQ.
City	City of Santa Clara.
CPRA	California Public Records Act.
General Services	Contract for any work performed or services rendered by an independent contractor, with or without the furnishing of materials.
RFP	Request for Proposal: A solicitation seeking consultants/contractors to provide services or public works.
RFQ	Request for Qualifications: A solicitation seeking the qualifications of a consultant/contractor to carry out a service or project.
Stadium Authority	The Santa Clara Stadium Authority is a public body, separate and distinct from the City, established to provide for the development and operation of Levi's Stadium.

SUMMARY

The California Public Records Act (CPRA)¹, which provides the public with the right of access to public records, has been in effect for 50-plus years. The City of Santa Clara (City) is in the midst of Silicon Valley with all of the area's technical acumen and resources available. However, the 2018-19 Santa Clara County Civil Grand Jury (Grand Jury) found the City's recordkeeping to be disorganized and its staffing levels inadequate to process CPRA requests in compliance with the requirements of the law.

Through the CPRA, accessing public records from government agencies to monitor "the people's business" should be simple, responsive and without significant delays. However, the Grand Jury found that obtaining public records from the City is a time-consuming and difficult chore.

The Grand Jury encountered non-compliance by the City in response to its CPRA requests. Noncompliance with the CPRA included non-responsive replies to the requests, invalid excuses for extensions of time, and incomplete document production. The City acknowledged its recordkeeping system was disorganized and in need of improvement, but the City did not have an interim solution. However, the City's progress towards implementation of an existing recordkeeping software has been without a sense of urgency. The Grand Jury finds the City's non-compliance with CPRA unacceptable and recommends the City implement measures immediately that will ensure compliance with CPRA requests.

BACKGROUND

The Grand Jury initiated an investigation to review the contracting procedures of the City and the Santa Clara Stadium Authority (Stadium Authority). In furtherance of that investigation, specific contracts and supporting documentation were requested from the City under the CPRA. After encountering numerous obstacles, including inadequate responses from the City to its document requests and a lack of cooperation in scheduling Grand Jury interviews, the Grand Jury turned the focus of its investigation to the City's handling of requests under the CPRA.

THE CALIFORNIA PUBLIC RECORDS ACT

Access to Public Records

The CPRA is a state law enacted in 1968 giving individuals the right to inspect and obtain copies of records kept by state and local agencies. The law expressly provides that "access to information

¹ California Government Code § 6250, et seq.

concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."² This fundamental precept ensures the public access to information enabling them to monitor the operations of their government. Californians felt so strongly about the public having the right of access to information concerning the conduct of the people's business that in November 2004, the voters approved Proposition 59 (Sunshine Amendment), which amended the California Constitution to include the public's right to access public records.³

The CPRA in section 6253(e) defines "public records" as "any writing, containing information relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics." When a person requests access to public records under the CPRA, access must be provided, unless a specific exemption is available to the responding agency. Exemptions fall into two main categories: protection of individual privacy interests (e.g. personnel or medical records); and support of effective governmental operation (e.g. pending real estate negotiations or litigation).

The CPRA provides for two different rights of access. First is the right to inspect public records: "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."⁴ A person need not give notice to inspect public records at an agency's offices during normal working hours. Second, the CPRA provides the right to obtain copies of public records and requires the public entity to "make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable."⁵

Local Agency's Duty to Respond

The fundamental purpose of the CPRA is to provide access to information about the conduct of the people's business.⁶ This right of access to public information imposes a duty on local agencies to respond to CPRA requests and does not "permit an agency to delay or obstruct the inspection or copying of public records."⁷

Time is critical in responding to public records requests. A local agency must respond promptly, but no later than 10 calendar days from receipt of a request for copies of public records, to notify the requesting person whether records will be produced.⁸ The 10-day time limit may be extended

² Gov. Code § 6250

³ Cal. Const., Article 1, § 3(b)(1)

⁴ Gov. Code § 6253(a)

⁵ Gov. Code § 6253(b)

⁶ Gov. Code § 6250

⁷ Gov. Code § 6253(d)

⁸ Gov. Code § 6253(c)

for an additional 14 calendar days by written notice to the requesting person in one of four special circumstances, in which the agency is required:

- to search for and collect the requested records from field facilities or other establishments separate from the office processing the request;
- to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request;
- to consult with another agency having substantial interest in the request (such as a state agency), or among two or more components of the local agency (such as two city departments) with substantial interest in the request; or
- in the case of electronic records, to compile data, write programming language or a computer program, or to construct a computer report to extract data.⁹

No other reasons justify an extension of time to respond to a request for copies of public records.

The response to a request for copies of public records must either produce all of the records sought, seek a refinement of the request or suggest an agreeable timeframe for production. The agency may only charge the requesting person for the direct cost of duplicating the records or a statutory fee, if applicable.

METHODOLOGY

The Grand Jury reviewed public records obtained from the City and the Stadium Authority, received both in person and by email. Several visits to the City took place to inspect and obtain public records. The Grand Jury also interviewed previous and current City employees.

⁹ Gov. Code §6253(c)

DISCUSSION

First CPRA Request

The Grand Jury began an investigation of the City's contracting procedures by reviewing the City and Stadium Authority¹⁰ purchasing policies and by submitting a CPRA request on December 3, 2018, to view the following public records:

- All "General Services" Bids, RFPs, RFQs for the City of Santa Clara and Santa Clara Stadium Authority within the last five years in the amount of \$40,000.00 or more.
- All "General Services" contracts (excluding utility contracts) for the City of Santa Clara and Santa Clara Stadium Authority awarded within the last five years.
- All invoices for "General Services" contracts (excluding utility contract invoices) awarded in 2017 and 2018 for the City of Santa Clara and Santa Clara Stadium Authority.

The City responded in writing to the request on December 13, 2018. The response failed to state whether the records would be produced and invoked a 14-day extension to December 28, 2018, without citing a permissible reason as required by the CPRA. The response explained that City Hall would be closed for the holidays from December 25, 2018 to January 1, 2019, that City staff was working diligently on the request, and that it *hoped* to have documents available for review by December 21, 2018, or sooner.

Closure of city offices other than for recognized holidays does not extend or excuse compliance with the time for response under the CPRA.

The Grand Jury received a second response on December 17, 2018, containing a list of 377 documents that appeared to be all of the City's RFPs, RFQs, and bid postings for the last five years. In that response, the City asked the Grand Jury to narrow its request to a specific project, stating that each appropriate City department would need to retrieve the documents sought. The City explained that it had a decentralized recordkeeping system, which made the Grand Jury's request challenging, requiring many hours of staff time to fulfill. No actual documents were produced at this time nor did the City state whether any of the documents would be produced as required by the CPRA.

Working with the City Clerk's Office, the Grand Jury agreed to revise its original request and seek only General Services contracts entered into during the past 12 months. An appointment was made

¹⁰ City officials staff the Stadium Authority. The custodian of public records for the City is the custodian for the Stadium Authority.

for members of the Grand Jury to visit City Hall before it closed for the holidays to view the documents.

Prior to its visit, the Grand Jury received an email from City staff with an attachment entitled "City Clerk Contracts" listing 66 contracts. Again, the list did not identify documents that were responsive to the Grand Jury's initial CPRA request. The list of 66 contracts referenced only five that were entered into within the revised time frame the Grand Jury had specified, at the request of the City.

Upon arrival at City Hall on December 24, 2019, the Grand Jury was shown numerous boxes containing all types of contracts and invited to sort through the boxes and view the documents. The Grand Jury observed that the City employees appeared to be eager to assist; however, they indicated they were recent hires and were unfamiliar with where documents were stored. The City further stated that they lacked a record management system to identify and locate City documents. After searching through the boxes for two hours, the Grand Jury was unable to find the documents it was seeking. This was surprising since the Grand Jury had previously obtained copies of several of the requested documents from other sources. It was observed that the contracts had attached blue routing sheets that are used within the City to help ensure that all necessary City Departments, such as the Finance Department or the City Attorney, review and sign off on pending contracts.

Unable to obtain the information sought by the CPRA request, the Grand Jury scheduled interviews with current and former City employees and a City contractor. The contractor had recently obtained a general service contract via the City and Stadium Authority bid processes and would have knowledge of the steps leading up to securing the contract. The contractor had agreed to the interview but subsequently cancelled, refusing to reschedule. City staff was unresponsive to multiple requests to meet, forcing the Grand Jury to seek legal assistance to facilitate the interviews. The Grand Jury learned that the City had recently hired several new staff members who had limited knowledge of purchasing policies and practices.

Second CPRA Request

On February 6, 2019, the Grand Jury made a second CPRA request focusing on three specific General Services contracts and the purchasing process used in entering into these contracts. These contracts were not obscure agreements but involved contractual dealings between the City and the Stadium Authority.

The documents requested were:¹¹

¹¹ See Appendix 1 for the text of the second CPRA request

- Three specific contracts and their blue routing sheets;
- Invoices and payments associated with the three contracts;
- RFQs and RFPs associated with the procurement of the three specified contracts; and
- City and Stadium Authority purchasing policies and directives.

The timeline below outlines the dates and responses to the Grand Jury's second request:

- On February 11, 2019, the City responded stating, "The City will provide a further response to your request on or before February 16, 2019."
- On February 19, 2019 (two days beyond the 10-day CPRA response period), the City responded with an update stating the City was "...in the process of compiling responsive records to several items of your request and will be providing, at a minimum a partial response to 50% of your request by end of day tomorrow (February 20, 2019)."
- On February 21, 2019, the City provided some documents and stated that, pursuant to Government Code Section 6253(c), the City would respond further by March 1, 2019. The City also provided an email with a link to an electronic copy of some of the requested documents. The link did not work.
- On February 27, 2019, the City provided a working link to the electronic documents.
- On March 1, 2019, the Grand Jury received the additional documents.

The City did not produce the blue routing sheets even though the Grand Jury specifically referenced these documents in the second CPRA request. The City also did not provide some of the payment documents associated with two of three contracts. After almost three months of seeking purchasing and procurement records, the Grand Jury still could not get a complete set of documents that should have been easily retrievable and disclosed.

Grand Jury Changes Focus to CPRA

Due to the City's non-responsiveness to its CPRA requests after three months, the Grand Jury concluded that its investigation into the City's procurement process had become futile. Accordingly, the Grand Jury changed the focus of its investigation to the City's compliance with the CPRA.

The Grand Jury interviewed City staff to understand the City's current method of responding to CPRA requests. After more than a year of discussing the need to (a) centralize and streamline the public records process; (b) achieve higher quality and due diligence on records; and (c) modernize administrative procedures, the City Manager reported at the January 31, 2019 Council Goal and Priority Setting Session that the City had hired a Public Records Manager.

The Grand Jury learned that the City had been trying for over 18 months to implement a records management system and had procured two software systems: Lazerfiche®, a records management system to track records; and NextRequest, a software system used to trace record requests. To date, these systems are not operational and the City could not estimate when they would be.

The Grand Jury also learned that the recently hired Public Records Manager is responding to approximately 40 to 50 pending CPRA requests using the 14-day extension as a triage. At the same time, the Public Records Manager is also tasked with implementing the new records management software. The City Manager reported to the City Council, that the City still did not have adequate staff to properly process CPRA requests nor to implement the software systems. The City Council recently authorized the hiring of a part-time employee to assist the Public Records Manager, but that position remains unfilled.

The Grand Jury learned that the City currently has no city-wide process or written procedures in place for complying with CPRA requests and that the Public Records Manager is the only CPRA-trained City employee.

The Grand Jury learned that the City's current method of responding to in-person and written CPRA requests is to first notify the Public Records Manager for manual tracking of requests on a spreadsheet. Requests are then forwarded to the appropriate City departments, which are responsible for gathering and producing the requested information within the CPRA timelines. If the responsible department does not respond within the 10-day time period, its staff communicates with the Public Records Manager on how to resolve the request and assert a 14-day extension.

Third CPRA Request

The Grand Jury decided to test the City's CPRA compliance with a third request on April 3, 2019. This request sought three items: the missing payment documents and routing sheets that had not been provided in response to the second request, and copies of the City's CPRA tracking logs for the past year.¹²

On April 10, 2019, the City responded to the third CPRA request, stating it had records responsive to the request and again invoked a 14-day extension contending the request was "voluminous" and citing the need to search for and collect the requested records from field facilities. The Grand Jury had obtained two of the three requested items five days earlier on April 5, 2019, during a visit to City Hall. At that visit it turned out the missing payment documents and routing sheets were stored at the City Clerk's Office and Finance Department, not at field facilities. These two items were

¹² See Appendix 2 for the text of the third CPRA request

produced within minutes. Moreover, the entire request consisted of only three items totaling seven pages plus five logs. The Grand Jury's third request was not "voluminous."

On April 19, 2019, 16 days after its third request, the Grand Jury received the City's written response. It included five CPRA logs, three blue routing sheets and four invoices. The payment documents requested were not included in its written response, as they had already been produced by the Finance Department at the April 5, 2019 visit. However, at that visit, the Finance Department had produced additional payment documents that the Grand Jury had not previously been provided through the City's CPRA responses. This alerted the Grand Jury to seek the missing invoices that coincided with the payment documents. These invoices were included in the April 19, 2019 response.

After a review of the documents produced in response to the April 3, 2019, records request, the Grand Jury determined that the City had finally produced all the requested documents. Although the City stated all CPRA requests now go through the Public Records Manager to be logged, the Grand Jury found this not to be the case. The Public Records Manager was apparently unaware that the routing slips in the Grand Jury's request had been previously provided by the City Clerk's Office and duplicated work by producing them again.

The 14-day extension provision provided by Government Code Section 6253 was intended to be the exception not the rule. When invoking the 14-day extension, the City is required to state the reason for the extension. The City's responses to the initial CPRA requests did not state whether the records would be provided or cite a reason for invoking the 14-day extension. City staff gave the Grand Jury repeated excuses for the City's failure to produce requested documents in a timely manner. Documents were provided as they were found, not all at once. For example, a staff member stated that the requested routing sheets did not exist, even though the Grand Jury had two of them in its possession. During the April 5, 2019, visit to City Hall, the City staff was able, within minutes, to provide the routing sheets that had not previously been produced. At the same visit, the Finance Department produced the missing payment documents and missing invoices from the previous response, also within minutes.

The Grand Jury's experience in obtaining requested documents seems to be consistent with the City's general CPRA practices, as verified by the CPRA logs kept by the City. For the year 2018, the average response time for all CPRA requests was 10.6 days. For the first quarter of 2019, the average ballooned to 23.8 days. The Grand Jury was told that this increase in response time had been due to an increase in the number and type of document requests as well as to the fact that the City had not kept accurate records. However, the CPRA requires the City to timely respond to document requests regardless of the number received or the state of the City's record management system and does not permit extensions based merely on a spike in the number of requests.

CONCLUSIONS

The City's disorganized recordkeeping is hindering its ability to do the people's business in a transparent fashion. The City knew that the requester was the Grand Jury. Given the Grand Jury's statutory ability to investigate and report on the City, it can be assumed that the City gave the Grand Jury heightened attention. The Grand Jury is concerned because it has greater access to public records than a private citizen does, yet it had significant trouble obtaining documents despite multiple requests.

The City has acknowledged its shortcomings in complying with CPRA requests, and that its efforts during the past 18 months to address CPRA management have been unsuccessful. Not having a functional records management system in place to locate public records is an unacceptable excuse for noncompliance with the CPRA. The CPRA does not provide for exceptions for compliance due to seasonal City Hall closures, employee turnover, lack of training, organizational structure, understaffing or lack of adequate records and CPRA management systems.

The City is in the process of installing a new records management system which, when fully implemented, presumably will improve its ability to comply with the CPRA on a consistent basis. However, until such time as a records management system is implemented, the City must employ an interim method to comply with the CPRA.

FINDINGS AND RECOMMENDATIONS

Finding 1

The City does not properly respond to CPRA requests because it: (a) does not indicate if it will respond; (b) does not respond within 10 days; (c) overutilizes the 14-day extension; (d) invokes the need for a 14-day extension for reasons beyond those permitted in the statute; and (e) fails to provide all documentation responsive to the request.

Recommendation 1

The City should train staff responsible for responding to CPRA requests to timely indicate if the City will respond to the request and, further, only invoke the 14-day extension where permissible.

Finding 2

The City lacks a written policy to guide staff in responding to CPRA requests in a manner that complies with the law.

Recommendation 2

The City should create and implement a written policy, by October 31, 2019, to guide City staff in complying with the CPRA.

Finding 3

The City's disorganized recordkeeping and lack of a functional records management system hinders its ability to timely and accurately comply with CPRA requests. Although the City purchased records and CPRA management systems 18 months ago, it has yet to implement those systems.

Recommendation 3a

The City of Santa Clara should implement its records management and CPRA management systems by December 31, 2019.

Recommendation 3b

In the absence of an operational CPRA and records management system, the City of Santa Clara should create and immediately implement interim procedures to comply with the CPRA.

Finding 4

The City's Public Records Manager is the only staff member trained to respond to CPRA requests, yet the records are decentralized requiring the Records Manager to rely on other staff within multiple departments to search for and obtain the documents responsive to the CPRA requests.

Recommendation 4

The City should identify and train necessary staff on compliance with the CPRA by October 31, 2019.

REQUIRED RESPONSES

Pursuant to Penal Code sections 933 and 933.05, the Grand Jury requests responses as follows:

From the following governing bodies:

Responding Agency	Finding	Recommendation
The City of Santa Clara	1, 2, 3, 4	1, 2, 3a, 3b, 4

REFERENCES

The People's Business: A Guide to the California Public Records Act, League of California Cities, Revised April, 2017.

<http://www.cacities.org/CPRAGuide> (link active as of June 2019)

APPENDIX 1: Second CPRA Request, 2/6/2019

1. All documents, including RFQ/RFPs, solicitations, and proposals re the City of Santa Clara's hiring a public affairs/media relations consultant issued in 2017.
2. All documents, including RFQ/RFPs, solicitations, and proposals re the City of Santa Clara's hiring a public affairs/media relations consultant issued in 2018.
3. All documents, including RFQ/RFPs, solicitations, and proposals re the Santa Clara Stadium Authority's hiring a public affairs/media relations consultant for the Stadium Authority issued in 2017.
4. All documents, including RFQ/RFPs, solicitations, and proposals re the Santa Clara Stadium Authority's hiring a public affairs/media relations consultant for the Stadium Authority issued in 2018.
5. "AGREEMENT FOR THE PERFORMANACE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA AND SINGER ASSOCIATES, INC." (2018) including any Blue Routing Sheet.
6. "AGREEMENT FOR THE PERFORMANACE OF SERVICES BY AND BETWEEN THE SANTA CLARA STADIUM AUTHORITY AND SINGER ASSOCIATES, INC." (2018), including any Blue Routing Sheet.
7. "AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA, AND BANNER PUBLIC AFFAIRS" (2017), including any Blue Routing Sheet.
8. All City of Santa Clara policies, procedures and directives pertaining to the purchasing process for "general services as defined in city code 2.105.320."
9. All City of Santa Clara policies, procedures and directives pertaining to the RFP/RFQ bid process for "general services as defined in city code 2.105.320."
10. All Santa Clara Stadium Authority policies, procedures and directives associated with the purchasing process for "general services as defined in city code (Stadium Authority Procurement Policy) Chapter 17.30.120."

11. All documents (including invoices and payments) pertaining to the "AGREEMENT FOR THE PERFORMANACE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA AND SINGER ASSOCIATES, INC."
12. All documents (including invoices and payments) pertaining to the "AGREEMENT FOR THE PERFORMANACE OF SERVICES BY AND BETWEEN THE SANTA CLARA STADIUM AUTHORITY AND SINGER ASSOCIATES, INC."
13. All documents (including invoices and payments) pertaining to the "AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA AND BANNER PUBLIC AFFAIRS."
14. All invoices and related payment documents for services provided under "AGREEMENT FOR THE PERFORMANACE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA AND SINGER ASSOCIATES, INC."
15. All invoices and related payment documents for services provided under the "AGREEMENT FOR THE PERFORMANACE OF SERVICES BY AND BETWEEN THE SANTA CLARA STADIUM AUTHORITY AND SINGER ASSOCIATES, INC."

APPENDIX 2: Third CPRA Request, 4/3/2019

1. The blue routing sheet for the “AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA AND SINGER ASSOCIATES, INC.” 2018. (Item No 5 of Civil Grand Jury’s 2/6/19 records request.)
2. The blue routing sheet for the “AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE SANTA CLARA STADIUM AUTHORITY AND SINGER ASSOCIATES, INC.” 2018. (Item No 6 of Civil Grand Jury’s 2/6/19 records request.)
3. The blue routing sheet for the “AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA AND BANNER PUBLIC AFFAIRS.” 2017. (Item No 7 of Civil Grand Jury’s 2/6/19 records request.)
4. All invoices and payments pertaining to the “AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA AND SINGER ASSOCIATES, INC.” (Item No 11 of Civil Grand Jury’s 2/6/19 records request.)

*Note: The Civil Grand Jury received the following invoices and payments in your 3/21/19 response. Invoice No. 131921, 132001, 132062, 132137, 132204, 132427, 132344. Voucher Id No. 0424655, 00424656, 00425758, 00425758, 00425759, 00427659, 00429807. To clarify, we are requesting all additional invoices and payments not previously received that track the outstanding \$7,812.50 balance (shown by the records) still owed to Singer & Associates.


5. All invoices and payments pertaining to the “AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE SANTA CLARA STADIUM AUTHORITY AND SINGER ASSOCIATES, INC.” (Item No 12 of Civil Grand Jury’s 2/6/19 records request.)

*Note: The Civil Grand Jury received the following invoices and payments in your 3/21/19 response. Invoice No. 132002, 132138, 132205, 132273 and Purchase Order No. SCSA048 for \$100,000.00. To clarify, we are requesting all additional invoices and payments not previously received that track the \$85,888.87 balance from the \$100,000.00 purchase order to Singer & Associates. More specifically, I am requesting all documents that indicate where the \$85,888.87 went? Was it utilized, refunded, etc.?

6. All documents, logs, tracking systems, notes, etc. indicating the number of public record requests received from 4/1/18 to 4/1/19.
7. All documents, logs, tracking systems, notes, etc. including but not limited to, the number of public records request responsive within 10 days, within 24 days, or requiring a time extension to complete, from 4/1/18 to 4/1/19.

CITY OF SANTA CLARA: PUBLIC RECORDS ACCESS

This report was **ADOPTED** by the 2018-2019 Santa Clara County Civil Grand Jury on this 18th day of June 2019.



John Pedersen
Foreperson

The People's Business

A GUIDE TO THE CALIFORNIA PUBLIC RECORDS ACT

REVISED APRIL 2017



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Introduction and Overview

Origins of the Public Records Act

The California Public Records Act (the PRA) was enacted in 1968 to: (1) safeguard the accountability of government to the public; (2) promote maximum disclosure of the conduct of governmental operations; and (3) explicitly acknowledge the principle that secrecy is antithetical to a democratic system of “government of the people, by the people and for the people.”¹ The PRA was enacted against a background of legislative impatience with secrecy in government and was modeled on the federal Freedom of Information Act (FOIA) enacted a year earlier.² When the PRA was enacted, the Legislature had been attempting to formulate a workable means of minimizing secrecy in government. The resulting legislation replaced a confusing mass of statutes and court decisions relating to disclosure of government records.³ The PRA was the culmination of a 15-year effort by the Legislature to create a comprehensive general public records law.

Fundamental Right of Access to Government Information

The PRA is an indispensable component of California’s commitment to open government. The PRA expressly provides that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.”⁴ The purpose is to give the public access to information that enables them to monitor the functioning of their government.⁵ The concept that access to information is a fundamental right is not new to United States jurisprudence. Two hundred years ago James Madison observed “[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 tragedy or perhaps both.”⁶

1 Gov. Code, § 6250 *et seq.*; Stats 1968, Ch. 1473; *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651–652; 52 Ops.Cal.Atty.Gen 136, 143; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 771–772.

2 *San Gabriel Tribune v. Superior Court*, *supra*, 143 Cal.App.3d at p. 772; 5 U.S.C. §552 *et seq.*, 81 Stat. 54; *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 447; *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651. The basic purpose of the FOIA is to expose agency action to the light of public scrutiny. *U.S. Dept. of Justice v. Reporters Com. for Freedom of Press* (1989) 489 US 749, 774.

3 *San Gabriel Tribune v. Superior Court*, *supra*, 143 Cal.App.3d at p. 772; *American Civil Liberties Union Federation v. Deukmejian*, *supra*, 32 Cal.3d at p. 447.

4 Gov. Code, § 6250.

5 *CBS, Inc. v. Block*, *supra*, 42 Cal.3d at p. 651; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1350.

6 *San Gabriel Tribune v. Superior Court*, *supra*, 143 Cal.App.3d at p. 772, citing Shaffer *et al.*, *A Look at the California Records Act and Its Exemptions* (1974) 4 Golden Gate L Rev 203, 212.

The PRA provides for two different rights of access. One is a right to inspect public records: “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.”⁷ The other is a right to prompt availability of copies of public records:

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.⁸

Agency records policies and practices must satisfy both types of public records access that the PRA guarantees.

Exemptions from Disclosure — Protecting the Public’s Fundamental Right of Privacy and Need for Efficient and Effective Government

The PRA’s fundamental precept is that governmental records shall be disclosed to the public, upon request, unless there is a legal basis not to do so.⁹ The right of access to public records under the PRA is not unlimited; it does not extend to records that are exempt from disclosure. Express legal authority is required to justify denial of access to public records.

► PRACTICE TIP:

There is no general exemption authorizing non-disclosure of government records on the basis the disclosure could be inconvenient or even potentially embarrassing to a local agency or its officials. Disclosure of such records is one of the primary purposes of the PRA.

The PRA itself currently contains approximately 76 exemptions from disclosure.¹⁰ Despite the Legislature’s goal of accumulating all of the exemptions from disclosure in one place, there are numerous laws outside the PRA that create exemptions from disclosure. The PRA now lists other laws that exempt particular types of government records from disclosure.¹¹

The exemptions from disclosure contained in the PRA and other laws reflect two recurring interests. Many exemptions are intended to protect privacy rights.¹² Many other exemptions are based on the recognition that, in addition to the need for the public to know what its government is doing, there is a need for the government to perform its assigned functions in a reasonably efficient and effective manner, and to operate on a reasonably level playing field in dealing with private interests.¹³

7 Gov. Code, § 6253, subd. (a).

8 Gov. Code, § 6253, subd. (b).

9 Gov. Code, § 6253, subd. (b).

10 Gov. Code, §§ 6253.2 – 6268.

11 Gov. Code, §§ 6275 *et seq.*

12 See, e.g., “Personnel Records,” p. 46.

13 See, e.g., “Attorney Client Communications and Attorney Work Product,” p. 29.

Achieving Balance

The Legislature in enacting the PRA struck a balance among competing, yet fundamental interests: government transparency, privacy rights, and government effectiveness. The legislative findings declare access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in the state and the Legislature is "mindful of the right of individuals to privacy."¹⁴ "In the spirit of this declaration, judicial decisions interpreting the [PRA] seek to balance the public right to access to information, the government's need, or lack of need, to preserve confidentiality, and the individual's right to privacy."¹⁵

Of the approximately 76 current exemptions from disclosure contained in the PRA, 38 or half, appear intended primarily to protect privacy interests.¹⁶ Another 35 appear intended primarily to support effective governmental operation in the public's interest.¹⁷ A few exemptions appear to focus equally on protecting privacy rights and effective government. Those include: an exemption for law enforcement records; an exemption that incorporates into the PRA exemptions from disclosure in other state and federal laws, including privileges contained in the Evidence Code; and the "public interest" or "catch-all" exemption, where, based on the particular facts, the public interest in not disclosing the record clearly outweighs the public interest in disclosure.¹⁸ Additionally, the deliberative process privilege reflects both the public interests in privacy and government effectiveness by affording a measure of privacy to decision-makers that is intended to aid in the efficiency and effectiveness of government decision-making.¹⁹

The balance that the PRA strikes among the often-competing interests of government transparency and accountability, privacy rights, and government effectiveness intentionally favors transparency and accountability. The PRA is intended to reserve "islands of privacy upon the broad seas of enforced disclosure."²⁰ For the past four decades, courts have balanced those competing interests in deciding whether to order disclosure of records.²¹ The courts have consistently construed exemptions from disclosure narrowly and agencies' disclosure obligations broadly.²² Ambiguities in the PRA must be interpreted in a way that maximizes the public's access to information unless the Legislature has expressly provided otherwise.²³

The PRA requires local agencies, as keepers of the public's records, to balance the public interests in transparency, privacy, and effective government in response to records requests. Certain provisions in the PRA help maintain the balancing scheme established under the PRA and the cases interpreting it by prohibiting state and local agencies from delegating their balancing role and making arrangements with other entities that could limit access to public records. For example, state and local agencies may not allow another party to control the disclosure of information otherwise subject to disclosure under the PRA.²⁴ Also, state and local agencies may not provide public records subject to disclosure under the PRA to a private entity in a way that prevents a state or local agency from providing the records directly pursuant to the PRA.²⁵

14 Gov. Code, § 6250; Cal Const., art I, § 3(b)(3).

15 *American Civil Liberties Union Foundation v. Deukmejian*, *supra*, 32 Cal.3d at p. 447.

16 The following exemptions contained in the PRA appear primarily intended to protect privacy interests: Gov. Code, §§ 6253.2; 6253.5; 6253.6; 6254, subs. (c), (i), (j), (n), (o), (r), (u)(1), (u)(2), (u)(3), (x), (z), (ac), (ad), (ad)(1), (ad)(4), (ad)(5) & (ad)(6); 6254.1, subs. (a), (b) & (c); 6254.2; 6254.3; 6254.4; 6254.10; 6254.11; 6254.13; 6254.15; 6254.16; 6254.17; 6254.18; 6254.20; 6254.21; 6254.29; 6267; 6268.

17 The following exemptions contained in the PRA appear primarily intended to support effective government: Gov. Code, §§ 6254, subs. (a), (b), (c)(1), (c)(2), (c)(3), (c)(4), (e), (g), (h), (l), (m), (p), (q), (s), (t), (v)(1), (v)(1)(A), (v)(1)(B), (w), (y), (aa), (ab), (ad)(2) & (ad)(3); 6254.6; 6254.7; 6254.9; 6254.14; 6254.19; 6254.22; 6254.23; 6254.25; 6254.26; 6254.27; 6254.28.

18 Gov. Code, §§ 6254, subs. (f) & (k); Gov. Code, § 6255.

19 Gov. Code § 6255; *Times Mirror Co. v. Superior Court*, *supra*, 53 Cal.3d at pp. 1339–1344.

20 *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 653.

21 *Times Mirror Co. v. Superior Court*, *supra*, 53 Cal.3d at p. 1344; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136, 1144.

22 *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 476; *New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579, 1585; *San Gabriel Tribune v. Superior Court*, *supra*, 143 Cal.App.3d at pp. 772–773.

23 *Sierra Club v. Superior Court of Orange County* (2013) 57 Cal.4th 157, 175–176.

24 Gov. Code, § 6253.3.

25 Gov. Code, § 6270, subd. (a).

▶ PRACTICE TIP:

Even though contracts or settlement agreements between agencies and private parties may require that the parties give each other notice of requests for the contract or settlement agreement, such agreements cannot purport to permit private parties to dictate whether the agreement is a public record subject to disclosure.

Incorporation of the PRA into the California Constitution

Proposition 59

In November 2004, the voters approved Proposition 59, which amended the California Constitution to include the public's right to access public records: "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."²⁶ As amended, the California Constitution provides each statute, court rule, and other authority "shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access."²⁷ The Proposition 59 amendments expressly retained and did not supersede or modify other existing constitutional, statutory, or regulatory provisions, including the rights of privacy, due process and equal protection, as well as any constitutional, statutory, or common-law exception to the right of access to public records in effect on the amendments' effective date. That includes any statute protecting the confidentiality of law enforcement and prosecution records.²⁸

The courts and the California Attorney General have determined that the constitutional provisions added by Proposition 59 maintain the established principles that disclosure obligations under the PRA must be construed broadly, and exemptions construed narrowly.²⁹ By approving Proposition 59, the voters have incorporated into the California Constitution the PRA policy prioritizing government transparency and accountability, as well as the PRA's careful balancing of the public's right of access to government information with protections for the public interests in privacy and effective government. No case has yet held Proposition 59 substantively altered the balance struck in the PRA between government transparency, privacy protection, and government effectiveness.

Proposition 42

In June 2014, the voters approved Proposition 42, which amended the California Constitution "to ensure public access to the meetings of public bodies and the writings of public officials and agencies."³⁰ As amended, the Constitution requires local agencies to comply with the PRA, the Ralph M. Brown Act (The Brown Act), any subsequent amendments to either act, any successor act, and any amendments to any successor act that contain findings that the legislation furthers the purposes of public access to public body meetings and public official and agency writings.³¹ As amended, the Constitution also no longer requires the state to reimburse local governments for the cost of complying with legislative mandates in the PRA, the Brown Act,

26 Cal. Const., art I, § 3, subd. (b)(1).

27 Cal. Const., art I, § 3, subd. (b)(2).

28 Cal. Const. art. I, §§ 3, subds. (b)(3), (b)(4) & (b)(5).

29 *Sierra Club v. Superior Court of Orange County*, *supra*, 57 Cal.4th at pp. 175–176; *Sutter's Place, v. Superior Court* (2008) 161 Cal.App.4th 1370, 1378–1381; *Los Angeles Unified Sch. Dist. v. Superior Court* (2007) 151 Cal.App.4th 759, 765; *P.O.S.T. v. Superior Court* (2007) 42 Cal.4th 278, 305; *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 750; 89 Ops.Cal.Atty.Gen. 204, 211 (2006); 88 Ops.Cal.Atty.Gen. 16, 23 (2005); 87 Ops.Cal.Atty.Gen. 181, 189 (2004).

30 Cal. Const., art. I, § 3, subd. (b)(7).

31 Cal. Const., art. I, § 3, subd. (b)(7).

and successor statutes and amendments.³² Following the enactment of Proposition 42, the Legislature has enacted new local mandates related to public records, including requirements for agency data designated as “open data” that is kept on the Internet and requirements to create and maintain “enterprise system catalogs.”³³

Expanded Access to Local Government Information

The policy of government records transparency mandated by the PRA is a floor, not a ceiling. Most exemptions from disclosure that apply to the PRA are permissive, not mandatory.³⁴ Local agencies may choose to disclose public records even though they are exempt, although they cannot be required to do so.³⁵ The PRA provides that “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.”³⁶ A number of local agencies have gone beyond the minimum mandates of the PRA by adopting their own “sunshine ordinances” to afford greater public access to public records. Such “sunshine ordinances,” however, do not purport to authorize a locality to enact an ordinance addressing records access that conflicts with the locality’s governing charter.³⁷

Local agency disclosure of exempt records can promote the government transparency and accountability purposes of the PRA. However, local agencies are also subject to mandatory duties to safeguard some particularly sensitive records.³⁸ Unauthorized disclosure of such records can subject local agencies and their officials to civil and in some cases criminal liability.

► PRACTICE TIP:

Local agencies that expand on the minimum transparency prescribed in the PRA, which is something that the PRA encourages, should ensure that they do not violate their duty to safeguard certain records, or undermine the public’s interest in effective government.

Equal Access to Government Records

The PRA affords the same right of access to government information to all types of requesters. Every person has a right to inspect any public record, except as otherwise provided in the PRA, including citizens of other states and countries, elected officials, and members of the press.³⁹ With few exceptions, whenever a local agency discloses an exempt public record to any member of the public, unless the disclosure was inadvertent, all exemptions that apply to that particular record are waived and it becomes

32 Cal. Const., art. XIII B, §6, subd. (a)(4). Proposition 42 was a legislatively-referred constitutional amendment in response to public opposition to AB-1464 and SB-1006 approved June, 2012. The 2012 legislation suspended certain PRA and Brown Act provisions and was intended to eliminate the state’s obligation to reimburse local governments for the cost of complying with PRA and Brown Act mandates through the 2015 fiscal year. There is no record of local agencies ceasing to comply with the suspended provisions.

33 Gov. Code, §§ 6253.10, 6270.5.

34 *Black Panther Party v. Kehoe*, *supra*, 42 Cal.App.3d at p. 656.

35 See Gov. Code, § 6254.5 and “Waiver,” p. 26, regarding the effect of disclosing exempt records.

36 Gov. Code, § 6253, subd. (e).

37 *St. Croix v. Superior Court* (2014) 228 Cal.App.4th 434, 446. (“Because the charter incorporates the [attorney-client] privilege, an ordinance (whether enacted by the City’s board of supervisors or by the voters) cannot eliminate it, either by designating as not confidential a class of material that otherwise would be protected by the privilege, or by waiving the privilege as to that category of documents; only a charter amendment can achieve that result.”).

38 E.g., individually-identifiable medical information protected under state and federal law (Civ. Code §§ 56.10(a), 56.05(g); 42 U.S.C. § 1320d-1-d-3); child abuse and neglect records (Pen. Code, § 11167.5); elder abuse and neglect records (Welf. & Inst. Code, § 15633); mental health detention records (Welf. & Inst. Code, §§ 5150, 5328).

39 Gov. Code, §§ 6253, subd. (a); 6252, subd. (c); *Connell v. Superior Court* (1997) 56 Cal.App.4th 601, 610-612; Gov. Code § 6252.5; See “Who Can Request Records,” p. 16.

subject to disclosure to any and all requesters.⁴⁰ Accordingly, the PRA ensures equal access to government information by preventing local agencies from releasing exempt records to some requesters but not to others.

Enforced Access to Public Records

To enforce local agencies' compliance with the PRA's open government mandate, the PRA provides for the mandatory award of court costs and attorneys' fees to plaintiffs who successfully seek a court ruling ordering disclosure of withheld public records.⁴¹ The attorney's fees policy enforcing records transparency is liberally applied.⁴²

The PRA at the Crux of Democratic Government in California

Ongoing, important developments in PRA-related constitutional, statutory, and decisional law continue to reflect the central role government's handling of information plays in balancing tensions inherent in democratic society: considerations of privacy and government transparency, accountability, and effectiveness. Controversial records law issues in California have included government's use of social media and new law enforcement technologies, and treatment of related records; management and retention of public officials' emails; open data standards for government information; disclosure of attorney bills; and new legal means for preserving or opposing access to government information.⁴³ Regarding all those issues and others, the PRA has been, and continues to be an indispensable and dynamic arena for simultaneously preserving information transparency, privacy, and effective government, which the California Constitutional and statutory frameworks are intended to guarantee, and on which California citizens continue to insist.

⁴⁰ Gov. Code, § 6254.5. Section 6254.5 does not apply to inadvertent disclosure of exempt documents. *Ardon v. City of Los Angeles* (2016) 62 Cal.4th 1176, 1182–1183; *Newark Unified School Dist. v. Superior Court* (2015) 245 Cal.App.4th 887, 894. See “Waiver,” p. 26.

⁴¹ Gov. Code, § 6259, subd. (d); see “Attorney Fees and Costs,” p. 61.

⁴² See “Attorneys Fees and Costs,” p. 61.

⁴³ *American Civil Liberties Union Foundation of Southern California v. Superior Court* (review granted July 29, 2015, S227106; superseded opinion at 236 Cal. App.4th 673); *Regents of the Univ. of Cal. v. Superior Court* (2013) 222 Cal.App.4th 383, 399; *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608; Gov. Code, §§ 6253.10, 6270.5; *Marken v. Santa Monica-Malibu Unified Sch. Dist.* (2012) 202 Cal.App.4th 1250, 1265; *County of Los Angeles Board of Supervisors v. Superior Court* (review granted July 8, 2015, S226645; superseded opinion at 235 Cal.App.4th 1154).



Chapter 2

The Basics

The PRA “embodies a strong policy in favor of disclosure of public records.”⁴⁴ As with any interpretation or construction of legislation, the courts will “first look at the words themselves, giving them their usual and ordinary meaning.”⁴⁵ Definitions found in the PRA establish the statute’s structure and scope, and guide local agencies, the public, and the courts in achieving the legislative goal of disclosing local agency records while preserving equally legitimate concerns of privacy and government effectiveness.⁴⁶ It is these definitions that form the “basics” of the PRA.

What are Public Records?

The PRA defines “public records” as “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”⁴⁷ The term “public records” encompasses more than simply those documents that public officials are required by law to keep as official records. Courts have held that a public record is one that is “necessary or convenient to the discharge of [an] official duty[.]” such as a status memorandum provided to the city manager on a pending project.⁴⁸

Writings

A writing is defined as “any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.”⁴⁹

44 *Lorig v. Medical Board of Cal.* (2000) 78 Cal.App.4th 462, 467; see Chapter 1, “Fundamental Right of Access to Government Information,” *supra*, p. 5.

45 *People v. Lawrence* (2000) 24 Cal.4th 219, 230.

46 See Chapter 1, “Exemptions from Disclosure — Protecting the Public’s Fundamental Rights of Privacy and Need for Efficient and Effective Government,” *supra*, p.6.

47 Gov. Code, § 6252, subd. (e).

48 *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 340; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 774.

49 Gov. Code, § 6252, subd. (g).

The statute unambiguously states that “[p]ublic records” include “any writing containing information relating to the conduct of the public’s business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.”⁵⁰ Unless the writing is related “to the conduct of the public’s business” and is “prepared, owned, used or retained by” a local agency, it is not a public record subject to disclosure under the PRA.⁵¹

Information Relating to the Conduct of Public Business

Public records include “any writing containing information relating to the conduct of the public’s business.”⁵² However, “[c]ommunications that are primarily personal containing no more than incidental mentions of agency business generally will not constitute public records.”⁵³ Therefore, courts have observed that although a writing is in the possession of the local agency, it is not automatically a public record if it does not also relate to the conduct of the public’s business.⁵⁴ For example, records containing primarily personal information, such as an employee’s personal address list or grocery list, are considered outside the scope of the PRA.

Prepared, Owned, Used, or Retained

Writings containing information “related to the conduct of the public’s business” must also be “prepared, owned, used or retained by any state or local agency” to be public records subject to the PRA.⁵⁵ What is meant by “prepared, owned, used or retained” has been the subject of several court decisions.

Writings need not always be in the physical custody of, or accessible to, a local agency to be considered public records subject to the PRA. The obligation to search for, collect, and disclose the material requested can apply to records in the possession of a local agency’s consultants, which are deemed “owned” by the public agency and in its “constructive possession” when the terms of an agreement between the city and the consultant provide for such ownership.⁵⁶ Where a local agency has no contractual right to control the subconsultants or their files, the records are not considered to be within their “constructive possession.”⁵⁷

Likewise, documents that otherwise meet the definition of public records (including emails and text messages) are considered “retained” by the local agency even when they are actually “retained” on an employee or official’s personal device or account.⁵⁸

The California Supreme Court has provided some guidance on how a local agency can discover and manage public records located on their employees’ non-governmental devices or accounts. The Court did not endorse or mandate any particular search method, and reaffirmed that the PRA does not prescribe any specific method for searching, and that the scope of a local agency’s search for public records need only be “calculated to locate responsive documents.” When a local agency receives a request for records that may be held in an employee’s personal account, the local agency’s first step should be to communicate the request not only to the custodian of records but also to any employee or official who may have such information in personal devices or accounts. The Court states that a local agency may then “reasonably rely” on the employees to search their own personal files, accounts, and devices for responsive materials.⁵⁹

50 Gov. Code, § 6252(e); *Regents of the University of California v. Superior Court* (2013) 222 Cal.App.4th 383, 399; *Braun v. City of Taft*, *supra*, 154 Cal.App.3d at p. 340; *San Gabriel Tribune v. Superior Court*, *supra*, 143 Cal.App.3d at p. 774.

51 *Regents of the University of California v. Superior Court*, *supra*, 222 Cal.App.4th at p. 399.

52 Gov. Code, § 6252, subd. (e).

53 *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 618-619.

54 Gov. Code, § 6252, subd. (e); *Regents of the University of California v. Superior Court*, *supra*, 222 Cal.App.4th at pp. 403-405; *Braun v. City of Taft*, *supra*, 154 Cal.App.3d at p. 340; *San Gabriel Tribune v. Superior Court*, *supra*, 143 Cal.App.3d at p. 774.

55 Gov. Code § 6252, subd. (e).

56 *Consolidated Irrigation District v. Superior Court* (2013) 205 Cal.App.4th 697, 710; *City of San Jose v. Superior Court*, *supra*, 2 Cal.5th at p. 623.

57 *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1428; *City of San Jose v. Superior Court*, *supra*, 2 Cal.5th at p. 623.

58 *City of San Jose v. Superior Court*, *supra*, 2 Cal.5th at p. 629; *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1428.

59 *City of San Jose v. Superior Court*, *supra*, 2 Cal.5th at p. 628.

The Court's guidance, which includes a caveat that they "do not hold that any particular search method is required or necessarily adequate[,]" includes examples of policies and practices in other state and federal courts and agencies, including:⁶⁰

- Reliance on employees to conduct their own searches and record segregation, so long as the employees have been properly trained on what are public records;
- Where an employee asserts to the local agency that he or she does not have any responsive records on his or her personal device(s) or account(s), he or she may be required by a court (as part of a later court action concerning a records request) to submit an affidavit providing the factual basis for determining whether the record is a public or personal record (e.g., personal notes of meetings and telephone calls protected by deliberative process privilege, versus meeting agendas circulated throughout entire department.)⁶¹
- Adoption of policies that will reduce the likelihood of public records being held in an employee's private account, including a requirement that employees only use government accounts, or that they copy or forward all email or text messages to the local agency's official recordkeeping system.⁶²

Documents that a local agency previously possessed, but does not actually or constructively possess at the time of the request may not be public records subject to disclosure.⁶³

Regardless of Physical Form or Characteristics

A public record is subject to disclosure under the PRA "regardless of its physical form or characteristics."⁶⁴ The PRA is not limited by the traditional notion of a "writing." As originally defined in 1968, the legislature did not specifically recognize advancing technology as we consider it today. Amendments beginning in 1970 have added references to "photographs," "magnetic or punch cards," "discs," and "drums,"⁶⁵ with the latest amendments in 2002 providing the current definition of "writing."⁶⁶ Records subject to the PRA include records in any media, including electronic media, in which government agencies may possess records. This is underscored by the definition of "writings" treated as public records under the PRA, which includes "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."⁶⁷ The legislative intent to incorporate future changes in the character of writings has long been recognized by the courts, which have held that the "definition [of writing] 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."⁶⁸

60 *Id.* at pp. 627-629.

61 See *Grand Cent. Partnership, Inc. v. Cuomo* (2d. Cir. 1999) 166 F.3d 473, 481 for expanded discussion on the use of affidavit in FOIA litigation.

62 See 44 U.S.C. Sec. 2911(a).

63 See *Am. Small Bus. League v. United States SBA* (2010) 623 F.3d 1052, (analyzed under FOIA). See "Practice Tip," p. 30 which discusses treatment of FOIA precedence.

64 Gov. Code, § 6252, subd. (e).

65 Gov. Code, § 6252, subd. (e); Stats. 1970, c. 575, p. 1151, § 2.

66 Gov. Code, § 6252, subd. (g); Stats. 2002, c. 1073

67 Gov. Code, § 6252, subd. (g).

68 *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 340, citing "Assembly Committee on Statewide Information Policy California Public Records Act of 1968. 1 Appendix to Journal of Assembly 7, Reg. Sess. (1970)."

Metadata

Electronic records may include “metadata,” or data about data contained in a record that is not visible in the text. For example, metadata may describe how, when, or by whom particular data was collected, and contain information about document authors, other documents, or commentary or notes. No provision of the PRA expressly addresses metadata, and there are no reported court opinions in California considering whether or the extent to which metadata is subject to disclosure. Evolving law in other jurisdictions has held that local agency metadata is a public record subject to disclosure unless an exemption applies.⁶⁹ There are no reported California court opinions providing guidance on whether agencies have a duty to disclose metadata when an electronic record contains exempt information that cannot be reasonably segregated without compromising the record’s integrity.

► PRACTICE TIP:

Agencies that receive requests for metadata or requests for records that include metadata should treat the requests the same way they treat all other requests for electronic information and disclose non-exempt metadata.

Agency-Developed Software

The PRA permits government agencies to develop and commercialize computer software and benefit from copyright protections so that such software is not a “public record” under the PRA. This includes computer mapping systems, computer programs, and computer graphics systems.⁷⁰ As a result, public agencies are not required to provide copies of agency-developed software pursuant to the PRA. The PRA authorizes state and local agencies to sell, lease, or license agency-developed software for commercial or noncommercial use.⁷¹ The exception for agency-developed software does not affect the public record status of information merely because it is stored electronically.⁷²

Computer Mapping (GIS) Systems

While computer mapping systems developed by local agencies are not public records subject to disclosure, such systems generally include geographic information system (GIS) data. Many local agencies use GIS programs and databases for a broad range of purposes, including the creation and editing of maps depicting property and facilities of importance to the agency and the public. As with metadata, the PRA does not expressly address GIS information disclosure. However, the California Supreme Court has held that while GIS software is exempt under the PRA, the data in a GIS file format is a public record, and data in a GIS database must be produced.⁷³

69 *Lake v. City of Phoenix*, (2009) 218 P.3d 1004, 1008; *O’Neill v. City of Shoreline* (2010) 240 P.3d 1149, 1154; *Irwin v. Onondaga County* (2010) 895 N.Y.S.2d 262, 268.

70 Gov. Code, § 6254.9, subds. (a), (b).

71 Gov. Code, § 6254.9, subd. (a).

72 Gov. Code, § 6254.9, subd. (d).

73 *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 170. See also *County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301.

Specifically Identified Records

The PRA also expressly makes particular types of records subject to the PRA, or subject to disclosure, or both. For example, the PRA provides that the following are public records:

- Contracts of state and local agencies that require a private entity to review, audit, or report on any aspect of the agency, to the extent the contract is otherwise subject to disclosure under the PRA;⁷⁴
- Specified pollution information that state or local agencies require applicants to submit, pollution monitoring data from stationary sources, and records of notices and orders to building owners of housing or building law violations;⁷⁵
- Employment contracts between state and local agencies and any public official or employee;⁷⁶ and
- Itemized statements of the total expenditures and disbursements of judicial agencies provided for under the State Constitution.⁷⁷

What Agencies are Covered?

The PRA applies to state and local agencies. A state agency is defined as “every state office, officer, department, division, bureau, board and commission or other state body or agency.”⁷⁸ A local agency includes a county, city (whether general law or chartered), city and county, school district, municipal corporation, special district, community college district, or political subdivision.⁷⁹ This encompasses any committees, boards, commissions, or departments of those entities as well. Private entities that are delegated legal authority to carry out public functions, and private entities (1) that receive funding from a local agency, and (2) whose governing board includes a member of the local agency’s legislative body who is appointed by that legislative body and who is a full voting member of the private entity’s governing board, are also subject to the PRA.⁸⁰ Nonprofit entities that are legislative bodies under the Brown Act may be subject to the PRA.⁸¹

The PRA does not apply to the Legislature or the judicial branch.⁸² The Legislative Open Records Act covers the Legislature.⁸³ Most court records are disclosable as the courts have historically recognized the public’s right of access to public records maintained by the courts under the common law and the First Amendment of the United States Constitution.⁸⁴

74 Gov. Code, § 6253.31.

75 Gov. Code, § 6254.7. But see *Masonite Corp. v. County of Mendocino Air Quality Management District* (1996) 42 Cal.App.4th 436, 450–453 (regarding trade secret information that may be exempt from disclosure).

76 Gov. Code, § 6254.8. But see *Versaci v. Superior Court* (2005) 127 Cal.App.4th 805, 817 (holding that reference in a public employee’s contract to future personal performance goals, to be set and thereafter reviewed as a part of, and in conjunction with, a public employee’s performance evaluation does not incorporate such documents into the employee’s performance for the purposes of the Act).

77 Gov. Code, § 6261.

78 Gov. Code § 6252, subd. (f). Excluded from the definition of state agency are those agencies provided for in article IV (except section 20(k)) and article VI of the Cal. Constitution.

79 Gov. Code, § 6252, subd. (a).

80 Gov. Code, § 6252, subd. (a), 85 Ops.Cal.Atty.Gen 55 (2002).

81 See Open & Public V, Chapter 2.

82 Gov. Code, § 6252, subds. (a) & (b); *Michael J. Mack v. State Bar of Cal.* (2001) 92 Cal.App.4th 957, 962–963.

83 Gov. Code, § 1070

84 *Overstock.com v. Goldman Sachs Group, Inc.* (2014) 231 Cal.App.4th 471, 483–486; *Pantos v. City and County of San Francisco* (1984) 151 Cal.App.3d 258, 263; *Champion v. Superior Court* (1988) 201 Cal.App.3d 777, 288; *Craemer v. Superior Court* (1968) 265 Cal.App.2d 216, 220.

Who Can Request Records?

All “persons” have the right to inspect and copy non-exempt public records. A “person” need not be a resident of California or a citizen of the United States to make use of the PRA.⁸⁵ “Persons” include corporations, partnerships, limited liability companies, firms, or associations.⁸⁶ Often, requesters include persons who have filed claims or lawsuits against the government, or who are investigating the possibility of doing so, or who just want to know what their government officials are up to. With certain exceptions, neither the media nor a person who is the subject of a public record has any greater right of access to public records than any other person.⁸⁷

Local agencies and their officials are entitled to access public records on the same basis as any other person.⁸⁸ Further, local agency officials might be authorized to access public records of their own agency that are otherwise exempt if such access is permitted by law as part of their official duties.⁸⁹ Under such circumstances, however, the local agency shall not discriminate between or among local agency officials as to which writing or portion thereof is to be made available or when it is made available.⁹⁰

85 *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762.

86 Gov. Code, § 6252, subd. (c); *Connell v. Superior Court* (1997) 56 Cal.App.4th 601.

87 Gov. Code, § 6252.5; *Los Angeles Unified School Dist. v. Superior Court* (2007) 151 Cal.App.4th 759; *Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271, 1279.

88 Gov. Code, § 6252.5.

89 *Marylander v. Superior Court* (2002) 81 Cal.App.4th 1119; *Los Angeles Police Dept. v. Superior Court* (1977) 65 Cal.App.3d 661; *Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271. See “*Information That Must Be Disclosed*,” p. 22; “*Requests for Journalistic or Scholarly Purposes*,” p. 38.

90 Gov. Code, § 6252.7. See also Gov. Code, § 54957.2.

Responding to a Public Records Request

Local Agency's Duty to Respond to Public Record Requests

The fundamental purpose of the PRA is to provide access to information about the conduct of the people's business.⁹¹ This right of access to public information imposes a duty on local agencies to respond to PRA requests and does not "permit an agency to delay or obstruct the inspection or copying of public records."⁹² Even if the request does not reasonably describe an identifiable record, the requested record does not exist, or the record is exempt from disclosure, the agency must respond.⁹³

Types of Requests — Right to Inspect or Copy Public Records

There are two ways to gain access under the PRA to a public record: (1) inspecting the record at the local agency's offices or on the local agency's website; or (2) obtaining a copy from the local agency.⁹⁴ The local agency may not dictate to the requester which option must be used, that is the requester's decision. Moreover, a requester does not have to choose between inspection and copying but instead can choose both options. For example, a requester may first inspect a set of records, and then, based on that review, decide which records should be copied.

► PRACTICE TIP:

If the public records request does not make clear whether the requester wants to inspect or obtain a copy of the record or records being sought, the local agency should seek clarification from the requester without delaying the process of searching for, collecting, and redacting or "whiting out" exempt information in the records.

91 Gov. Code, § 6250.

92 Gov. Code, § 6253, subd. (d).

93 Gov. Code, § 6253.

94 Gov. Code, § 6253, subds. (a), (b), & (f).

► PRACTICE TIP:

To protect the integrity of the local agency files and preserve the orderly function of the offices, agencies may establish reasonable policies for the inspection and copying of public records.

Right to Inspect Public Records

Public records are open to inspection at all times during the office hours of the local agency and every person has a right to inspect any public record. This right to inspect includes any reasonably segregable portion of a public record after deletion of the portions that are exempted by law.⁹⁵ This does not mean that a requester has a right to demand to see a record and immediately gain access to it. The right to inspect is constrained by an implied rule of reason to protect records against theft, mutilation, or accidental damage; prevent interference with the orderly functioning of the office; and generally avoid chaos in record archives.⁹⁶ Moreover, the agency's time to respond to an inspection request is governed by the deadlines set forth below, which give the agency a reasonable opportunity to search for, collect, and, if necessary, redact exempt information prior to the records being disclosed in an inspection.⁹⁷

In addition, in lieu of providing inspection access at the local agency's office, a local agency may post the requested public record on its website and direct a member of the public to the website. If a member of the public requests a copy of the record because of the inability to access or reproduce the record from the website, the local agency must provide a copy.⁹⁸

► PRACTICE TIP:

Local agencies may want limit the number of record inspectors present at one time at a records inspection. The local agency may also want to prohibit the use of cell phones to photograph records where the inspection is of architectural or engineer plans with copyright protection.

Right to Copy Public Records

Except with respect to public records exempt from disclosure by express provisions of law, a local agency, upon receipt of a request for a copy of records that reasonably describes an identifiable record or records, must make the records promptly available to any person upon payment of the appropriate fees.⁹⁹ If a copy of a record has been requested, the local agency generally must provide an exact copy except where it is "impracticable" to do so.¹⁰⁰ The term "impracticable" does not necessarily mean that compliance with the public records request would be inconvenient or time-consuming to the local agency. Rather, it means that the agency must provide the best or most complete copy of the requested record that is reasonably possible.¹⁰¹ As with the right to inspect public records, the same rule of reasonableness applies to the right to obtain copies of those records. Thus, the local agency may impose reasonable restrictions on general requests for copies of voluminous classes of documents.¹⁰²

⁹⁵ Gov. Code, § 6253, subd. (a).

⁹⁶ *Bruce v. Gregory* (1967) 65 Cal.2d 666, 676; *Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754, 761; 64 Ops.Cal.Atty.Gen. 317 (1981).

⁹⁷ See "Timing of Response" p. 20.

⁹⁸ Gov. Code, §§ 5253, subds. (b), (f).

⁹⁹ See "Fees," p. 25.

¹⁰⁰ Gov. Code, § 6253, subd. (b).

¹⁰¹ *Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754, 759.

¹⁰² *Id.*, at p. 761; 64 Ops.Cal.Atty.Gen. 317 (1981).

The PRA does not provide for a standing or continuing request for documents that may be generated in the future.¹⁰³ However, the Brown Act provides that a person may make a request to receive a mailed copy of the agenda, or all documents constituting the agenda packet for any meeting of the legislative body. This request shall be valid for the calendar year in which it is filed.¹⁰⁴ A person may also make a request to receive local agency notices, such as public work contractor plan room documents,¹⁰⁵ and development impact fee,¹⁰⁶ public hearing,¹⁰⁷ or California Environmental Quality Act notices.¹⁰⁸ The local agency may impose a reasonable fee for these requests.

► **PRACTICE TIP:**

Agencies may consider the use of outside copy services for oversize records or a voluminous record request, provided that the requester consents to it and pays the appropriate fees in advance. Alternatively, local agencies may consider allowing the requester to use his or her own copy service.

Form of the Request

A public records request may be made in writing or orally, in person or by phone.¹⁰⁹ Further, a written request may be made in paper or electronic form and may be mailed, emailed, faxed, or personally delivered. A local agency may ask, but cannot require, that the requester put an oral request in writing. In general, a written request is preferable to an oral request because it provides a record of when the request was made and what was requested, and helps the agency respond in a more timely and thorough manner.

► **PRACTICE TIP:**

Though not legally required, a local agency may find it convenient to use a written form for public records requests, particularly for those instances when a requester “drops in” to an office and asks for one or more records. The local agency cannot require the requester to use a particular form, but having the form and even having agency staff assist with filling out the form may help agencies better identify the information sought, follow up with the requester using the contact information provided, and provide more effective assistance to the requester in compliance with the PRA.

103 Gov. Code, §§ 6252, subds. (e) & (g); 6253, subds. (a) & (b).

104 Gov. Code, § 54954.1; see also Gov. Code § 65092 (standing request for notice of public hearing), Cal. Code Regs., tit. 14, §§ 15072, 15082 and 15087 (standing requests for notice related to environmental documents).

105 Pub. Contract Code, § 20103.7.

106 Gov. Code, § 66016.

107 Gov. Code, § 65092.

108 Pub. Resources Code, § 21092.2

109 *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1392.

Content of the Request

A public records request must reasonably describe an identifiable record or records.¹¹⁰ It must be focused, specific,¹¹¹ and reasonably clear, so that the local agency can decipher what record or records are being sought.¹¹² A request that is so open-ended that it amounts to asking for all of a department's files is not reasonable. If a request is not clear or is overly broad, the local agency has a duty to assist the requester in reformulating the request to make it clearer or less broad.¹¹³

A request does not need to precisely identify the record or records being sought. For example, a requester may not know the exact date of a record or its title or author, but if the request is descriptive enough for the local agency to understand which records fall within its scope, the request is reasonable. Requests may identify writings somewhat generally by their content.¹¹⁴

No magic words need be used to trigger the local agency's obligation to respond to a request for records. The content of the request must simply indicate that a public record is being sought. Occasionally a requester may incorrectly refer to the federal Freedom of Information Act (FOIA) as the legal basis for the request. This does not excuse the agency from responding if the request seeks public records. A public records request need not state its purpose or the use to which the record will be put by the requester.¹¹⁵ A requester does not have to justify or explain the reason for exercising his or her fundamental right of access.¹¹⁶

► PRACTICE TIP:

A public records request is different than a question or series of questions posed to local agency officials or employees. The PRA creates no duty to answer written or oral questions submitted by members of the public. But if an existing and readily available record contains information that would directly answer a question, it is advisable to either answer the question or provide the record in response to the question.

A PRA request applies only to records existing at the time of the request.¹¹⁷ It does not require a local agency to produce records that may be created in the future. Further, a local agency is not required to provide requested information in a format that the local agency does not use.

Timing of the Response

Inspection of Public Records

Although the law precisely defines the time for responding to a public records request for copies of records, it is less precise in defining the deadline for disclosing records. Because the PRA does not state how soon a requester seeking to inspect records must be provided access to them, it is generally assumed that the standard of promptness set forth for copies of records¹¹⁸ applies to inspection. This assumption is bolstered by the provision in the PRA that states, "[n]othing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records,"¹¹⁹ which again signals the importance of promptly disclosing records to the requester.

¹¹⁰ Gov. Code, § 6253, subd. (b).

¹¹¹ *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 481.

¹¹² *Cal. First Amend. Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 165.

¹¹³ See "Assisting the Requester," p. 22.

¹¹⁴ *Cal. First Amend. Coalition v. Superior Court*, *supra*, 67 Cal.App.4th at p. 166.

¹¹⁵ See Gov. Code, § 6257.5.

¹¹⁶ Gov. Code, § 6250; Cal. Const., art I, § 3.

¹¹⁷ Gov. Code § 6254, subd. (c).

¹¹⁸ Gov. Code, § 6253, subd. (b) ["... 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. . ."]; 88 Ops. Cal. Atty. Gen. 153 (2005); 89 Ops. Cal. Atty. Gen. 39 (2006).

¹¹⁹ Gov. Code, § 6253, subd. (d).

Neither the 10-day response period for responding to a request for a copy of records nor the additional 14-day extension may be used to delay or obstruct the inspection of public records.¹²⁰ For example, requests for commonly disclosed records that are held in a manner that allows for prompt disclosure should not be withheld because of the statutory response period.

Copies of Public Records

Time is critical in responding to a request for copies of public records. A local agency must respond promptly, but no later than 10 calendar days from receipt of the request, to notify the requester whether records will be disclosed.¹²¹ If the request is received after business hours or on a weekend or holiday, the next business day may be considered the date of receipt. The 10-day response period starts with the first calendar day after the date of receipt.¹²² If the tenth day falls on a weekend or holiday, the next business day is considered the deadline for responding to the request.¹²³

► PRACTICE TIP:

To ensure compliance with the 10-day deadline, it is wise for local agencies to develop a system for identifying and tracking public records requests. For example, a local agency with large departments may find it useful to have a public records request coordinator within each department. It is also very helpful to develop and implement a policy for handling public records requests in order to ensure the agency's compliance with the law.

► PRACTICE TIP:

Watch for shorter statutory time periods for disclosure of public records. For example, Statements of Economic Interest (FPPC Form 700) and other campaign statements and filings required by the Political Reform Act of 1974 (Govt Code §§ 81000 et seq) are required to be made available to the public as soon as practicable, and in no event later than the second business day following receipt of the request.¹²⁴

Extending the Response Times for Copies of Public Records

A local agency may extend the 10-day response period for copies of public records for up to 14 additional calendar days because of the need:

- To search for and collect the requested records from field facilities or other establishments separate from the office processing the request;
- To search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request;
- To consult with another agency having substantial interest in the request (such as a state agency), or among two or more components of the local agency (such as two city departments) with substantial interest in the request; or
- In the case of electronic records, to compile data, write programming language or a computer program, or to construct a computer report to extract data.¹²⁵

No other reasons justify an extension of time to respond to a request for copies of public records. For example, a local agency

120 Gov. Code, § 6253, subd. (d). See also "Extending the Response Times for Copies of Public Records," p. 21.

121 Gov. Code, § 6253(c).

122 Civ. Code, § 10.

123 Civ. Code, § 11.

124 Gov. Code, § 81008.

125 Gov. Code, § 6253, subds. (c)(1)-(4).

may not extend the time on the basis that it has other pressing business or that the employee most knowledgeable about the records sought is on vacation or is otherwise unavailable.

If a local agency exercises its right to extend the response time beyond the ten-day period, it must do so in writing, stating the reason or reasons for the extension and the anticipated date of the response within the 14-day extension period.¹²⁶ The agency does not need the consent of the requester to extend the time for response.

► PRACTICE TIP:

If a local agency is having difficulty responding to a public records request within the 10-day response period and there does not appear to be grounds to extend the response period for an additional 14 days, the agency may obtain an extension by consent of the requester. Often a requester will cooperate with the agency on such matters as the timing of the response, particularly if the requester believes the agency is acting reasonably and conscientiously in processing the request. It is also advisable to document in writing any extension agreed to by the requester.

Timing of Disclosure

The time limit for responding to a public records request is not necessarily the same as the time within which the records must be disclosed to the requester. As a practical matter, records often are disclosed at the same time the local agency responds to the request. But in some cases, that time frame for disclosure is not feasible because of the volume of records encompassed by the request.

► PRACTICE TIP:

When faced with a voluminous public records request, a local agency has numerous options — for example, asking the requester to narrow the request, asking the requester to consent to a later deadline for responding to the request, and providing responsive records (whether redacted or not) on a “rolling” basis, rather than in one complete package. It is sometimes possible for the agency and requester to work cooperatively to streamline a public records request, with the result that the requester obtains the records or information the requester truly wants, while the burdens on the agency in complying with the request are reduced. If any of these options are used it is advisable that it is documented in writing.

Assisting the Requester

Local agencies must provide assistance to requesters who are having difficulty making a focused and effective request.¹²⁷ To the extent reasonable under the circumstances, a local agency must:

- Assist the requester in identifying records that are responsive to the request or the purpose of the request, if stated;
- Describe the information technology and physical location in which the record or records exist; and
- Provide suggestions for overcoming any practical basis for denying access to the record or records.¹²⁸

¹²⁶ Gov. Code, § 6253, subd. (c).

¹²⁷ Gov. Code, § 6253.1; *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1417.

¹²⁸ Gov. Code, § 6253.1, subds. (a)(1)–(3).

Alternatively, the local agency may satisfy its duty to assist the requester by giving the requester an index of records.¹²⁹ Ordinarily an inquiry into a requester's purpose in seeking access to a public record is inappropriate,¹³⁰ but such an inquiry may be proper if it will help assist the requester in making a focused request that reasonably describes an identifiable record or records.¹³¹

Locating Records

Local agencies must make a reasonable effort to search for and locate requested records, including by asking probing questions of city staff and consultants.¹³² No bright-line test exists to determine whether an effort is reasonable. That determination will depend on the facts and circumstances surrounding each request. In general, upon the local agency's receipt of a public records request, those persons or offices that would most likely be in possession of responsive records should be consulted in an effort to locate the records. For a local agency to have a duty to locate records they must qualify as public records.¹³³ "Thus, unless the writing is related 'to the conduct of the public's business' and is 'prepared, owned, used or retained by' a public entity, it is not a public record under the PRA, and its disclosure would not be governed by the PRA. No words in the statute suggest that the public entity has an obligation to obtain documents even though it has not prepared, owned, used or retained them."¹³⁴

► PRACTICE TIP:

To ensure compliance with the PRA and in anticipation of court scrutiny of agency diligence in locating responsive records, agencies may want to consider adopting policies similar to those required by state and federal E-discovery statutes to prevent records destruction while a request is pending.

The right to access public records is not without limits. A local agency is not required to perform a "needle in a haystack" search to locate the record or records sought by the requester.¹³⁵ Nor is it compelled to undergo a search that will produce a "huge volume" of material in response to the request.¹³⁶ On the other hand, an agency typically will endure some burden — at times, a significant burden — in its records search. Usually that burden alone will be insufficient to justify noncompliance with the request.¹³⁷ Nevertheless, if the request imposes a substantial enough burden, an agency may decide to withhold the requested records on the basis that the public interest in nondisclosure clearly outweighs the public interest in disclosure.¹³⁸

129 Gov. Code, §6253., subd. 1(d)(3).

130 See Gov. Code, § 6257.5.

131 Gov. Code, § 6253.1, subd. (a).

132 *Community Youth Athletic Center v. City of National City*, *supra*, 220 Cal.App.4th at pp. 1417–1418; *Cal. First Amend. Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166.

133 See "What Are Public Records" p. 11.

134 *Regents of the University of California v. Superior Court* (2013) 222 Cal.App.4th 383, 399.

135 *Cal. First Amend. Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166.

136 *Ibid.*

137 *Ibid.*

138 *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 452–454; *see also* 64 Ops.Cal.Atty.Gen. 317 (1981).

Types of Responses

After conducting a reasonable search for requested records, a local agency has only a limited number of possible responses. If the search yielded no responsive records, the agency must so inform the requester. If the agency has located a responsive record, it must decide whether to: (1) disclose the record; (2) withhold the record; or (3) disclose the record in redacted form.

► PRACTICE TIP:

Care should be taken in deciding whether to disclose, withhold, or redact a record. It is advisable to consult with the local agency's legal counsel before making this decision, particularly when a public records request presents novel or complicated issues or implicates policy concerns or third party rights.

If a written public records request is denied because the local agency does not have the record or has decided to withhold it, or if the requested record is disclosed in redacted form, the agency's response must be in writing and must identify by name and title each person responsible for the decision.¹³⁹

► PRACTICE TIP:

A local agency should always document that it is supplying the record to the requester. The fact and sufficiency of the response may become points of dispute with the requester.

► PRACTICE TIP:

Although not required, any response that denies in whole or in part an oral public records request should be put in writing.

If the record is withheld in its entirety or provided to the requester in redacted form, the local agency must state the legal basis under the PRA for its decision not to comply fully with the request.¹⁴⁰ Statements like "we don't give up those types of records" or "our policy is to keep such records confidential" will not suffice.

Redacting Records

Some records contain information that must be disclosed, along with information that is exempt from disclosure. A local agency has a duty to provide such a record to the requester in redacted form if the nonexempt information is "reasonably segregable" from that which is exempt,¹⁴¹ unless the burden of redacting the record becomes too great.¹⁴² What is reasonably segregable will depend on the circumstances. If exempt information is inextricably intertwined with nonexempt information, the record may be withheld in its entirety.¹⁴³

¹³⁹ Gov. Code, §§ 6253, subd. (d), 6255, subd. (b).

¹⁴⁰ Gov. Code, § 6255, subd. (a).

¹⁴¹ Gov. Code, § 6253, subd. (a); *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 458.

¹⁴² *American Civil Liberties Union Foundation v. Deukmejian*, *supra*, 32 Cal.3d, at p. 452–454.

¹⁴³ *Ibid.*

No Duty to Create a Record or a Privilege Log

A local agency has no duty to create a record that does not exist at the time of the request.¹⁴⁴ There is also no duty to reconstruct a record that was lawfully discarded prior to receipt of the request. However, an agency may be liable for attorney fees when a court determines the agency was not sufficiently diligent in locating requested records, even when the requested records no longer exist.¹⁴⁵

The PRA does not require that a local agency create a “privilege log” or list that identifies the specific records being withheld.¹⁴⁶ The response only needs to identify the legal grounds for nondisclosure. If the agency creates a privilege log for its own use, however, that document may be considered a public record and may be subject to disclosure in response to a later public records request.

► PRACTICE TIP:

To ensure compliance with the PRA or in anticipation of court scrutiny of the agency’s due diligence, the local agency may wish to maintain a separate file for copies of records that have been withheld and those produced (including redacted versions).

Fees

The public records process is in many respects cost-free to the requester. The local agency may only charge a fee for the direct cost of duplicating a record when the requester is seeking a copy,¹⁴⁷ or it may charge a statutory fee, if applicable.¹⁴⁸ A local agency may require payment in advance, before providing the requested copies;¹⁴⁹ however, no payment can be required merely to look at a record where copies are not sought.

Direct cost of duplication is the cost of running the copy machine, and conceivably 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.¹⁵⁰ For example, if concern for the security of records requires that an agency employee sit with the requester during the inspection, or if a record must be redacted before it can be inspected, the agency may not bill the requester for that expenditure of staff time.

► PRACTICE TIP:

The direct cost of duplication charged for a PRA request should be supported by a fee study adopted by a local agency resolution.

Although permitted to charge a fee for duplication costs, a local agency may choose to reduce or waive that fee.¹⁵¹ For example, the agency might waive the fee in a particular case because the requester is indigent; or it might generally choose to waive fees below a certain dollar threshold because the administrative costs of collecting the fee would exceed the revenue to be collected.

¹⁴⁴ Gov. Code, § 6252, subd. (e); *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1075; See Chapter 6 concerning duties and obligations with respect to electronic records.

¹⁴⁵ *Community Youth Athletic Center v. National City* (2013) 220 Cal.App.4th 1385, 1447. See “Attorney Fees and Costs,” p. 61.

¹⁴⁶ *Haynie v. Superior Court*, *supra*, 26 Cal.4th, at p. 1075.

¹⁴⁷ Gov. Code, § 6253, subd. (b).

¹⁴⁸ Gov. Code, § 6253, subd. (b); 85 Ops. Cal. Atty. Gen. 225 (2002); see, e.g., Gov. Code, § 81008.

¹⁴⁹ Gov. Code, § 6253, subd. (b).

¹⁵⁰ *North County Parents Organization v. Dept. of Education* (1994) 23 Cal.App.4th 144, 148.

¹⁵¹ Gov. Code, § 6253, subd. (e); *North County Parents Organization v. Dept. of Education*, *supra*, 23 Cal.App.4th at p. 148.

An agency may also set a customary copying fee for all requests that is lower than the amount of actual duplication costs.

► **PRACTICE TIP:**

If a local agency selectively waives or reduces the duplication fee, it should apply standards for waiver or reduction with consistency to avoid charges of favoritism or discrimination toward particular requesters.

Duplication costs of electronic records are limited to the direct cost of producing the electronic copy. However, requesters may be required to bear additional costs of producing a copy of an electronic record, such as programming and computer services costs, if the request requires the production of electronic records that are otherwise only produced at regularly scheduled intervals, or production of the record would require data compilation, extraction, or programming. Agencies are not required to reconstruct electronic copies of records no longer available to the agency in electronic format.

► **PRACTICE TIP:**

If there is a request for public records pursuant to Government Code section 6253.9 requiring “data compilation, extraction, or programming to produce the record” the local agency should ask the requester to pay the fees in advance, before the “data compilation, extraction, or programming” is actually done.

Waiver

Generally, whenever a local agency discloses an otherwise exempt public record to any member of the public, the disclosure constitutes a waiver of most of the exemptions contained in the PRA for all future requests for the same information. The waiver provision in Government Code section 6254.5 applies to an intentional disclosure of privileged documents, and a local agency’s inadvertent release of attorney-client documents does not waive such privilege.¹⁵² There are, however, a number of statutory exceptions to the waiver provisions, including, among others, disclosures made through discovery or other legal proceedings, and disclosures made to another governmental agency which agrees to treat the disclosed material as confidential.

¹⁵² *Ardon v. City of Los Angeles* (2016) 62 Cal.4th 1176, 1183; *Newark School District v. Superior Court* (2015) 245 Cal.App.4th 887, 897.

Specific Document Types, Categories and Exemptions from Disclosure

Overview of Exemptions

This chapter discusses how to address requests for certain specific types and categories of commonly requested records and many of the most frequently raised exemptions from disclosure that may, or in some cases, must be asserted by local agencies.

Transparent and accessible government is the foundational objective of the PRA. This recently constitutionalized right of access to the writings of local agencies and officials was declared by the Legislature in 1968 to be a “fundamental and necessary right.” While this right of access is not absolute, it must be construed broadly.¹⁵³ The PRA contains approximately 76 express exemptions, many of which are discussed below, including one for records that are otherwise exempt from disclosure by state or federal statutes,¹⁵⁴ and a balancing test, known as the “public interest” or “catchall” provision. This “catchall” provision allows local agencies to justify withholding any record by demonstrating that on the facts of a particular case the public interest in nondisclosure clearly outweighs the public interest in disclosure.¹⁵⁵

When local agencies claim an exemption or prohibition to disclosure of all or a part of a record, they must identify the specific exemption to disclosure in the response.¹⁵⁶ Where a record contains some information that is subject to an exemption and other information that is not, the local agency may redact the information that is exempt (identifying the exemption), but must otherwise still produce the record. Unless a statutory exemption applies, the public is entitled to access or a copy.¹⁵⁷

153 Cal. Const., art I, § 3(b)(2); *Humane Society of U.S. v. Superior Court* (2013) 214 Cal.App.4th 1233, 1254.

154 *State of California ex rel Division of Industrial Safety v. Superior Court* (1974) 43 Cal.App.3d 778, 785; *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414, 1422, fn. 5.

155 Gov. Code, § 6255; *Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 66–67; see also “Public Interest Exemption,” p. 54.

156 Gov. Code, § 6255, subd. (a); *Long Beach Police Officers Assn. v. City of Long Beach*, *supra*, 59 Cal.4th at p. 67.

157 *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 329.

▶ PRACTICE TIP:

When evaluating a record to determine whether it falls within an exemption in the PRA, do not overlook exemptions and even prohibitions to disclosure that are contained in other state and federal statutes, including, for example, evidentiary privileges, medical privacy laws, police officer personnel record privileges, official information, information technology or infrastructure security systems, etc. Many of these other statutory exemptions or prohibitions are also discussed below.

Types of Records and Specific Exemptions

Architectural and Official Building Plans

The PRA recognizes exemptions to the disclosure of a record “which is exempted or prohibited [from disclosure] pursuant to federal or state law”¹⁵⁸ Under this rule, architectural and official building plans may be exempt from disclosure, because: (1) architectural plans submitted by third parties to local agencies may qualify for federal copyright protections;¹⁵⁹ (2) local agencies may claim a copyright in many of their own records; or (3) state laws address inspection and duplication of building plans by members of the public.

“Architectural work,” defined under federal law as the “design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings,”¹⁶⁰ is considered an “original work of authorship,” which has automatic federal copyright protection.¹⁶¹ Architectural plans may be inspected, but cannot be copied without the permission of the owner.¹⁶²

▶ PRACTICE TIP:

Some requesters will cite the “fair use of copyrighted materials” doctrine as giving them the right to copy architectural plans. The fair use rule is a defense to a copyright infringement action only and not a legal entitlement to obtain copyrighted materials.

The official copy of building plans maintained by a local agency’s building department may be inspected, but cannot be copied without the local agency first requesting the written permission of the licensed or registered professional who signed the document and the original or current property owner.¹⁶³ A request made by the building department via registered or certified mail for written permission from the professional must give the professional at least 30 days to respond and be accompanied by a statutorily prescribed affidavit signed by the person requesting copies, attesting that the copy of the plans shall only be used for the maintenance, operation, and use of the building, that the drawings are instruments of professional service and are incomplete without the interpretation of the certified, licensed, or registered professional of record, and that a licensed architect who signs and stamps plans, specifications, reports, or documents shall not be responsible for damage caused by subsequent unauthorized changes to or uses of those plans.¹⁶⁴ After receiving this required information, the professional cannot withhold

¹⁵⁸ Gov. Code, § 6254, subd. (k).

¹⁵⁹ 17 U.S.C. § 17.

¹⁶⁰ 17 U.S.C. §§ 101, 102(A)(8).

¹⁶¹ 17 U.S.C. §§ 102(A)(8), 106.

¹⁶² 17 U.S.C. § 107.

¹⁶³ Health & Saf. Code, § 19851.

¹⁶⁴ *Ibid.*

written permission to make copies of the plans.¹⁶⁵ These statutory requirements do not prohibit duplication of reduced copies of plans that have been distributed to local agency decision-making bodies as part of the agenda materials for a public meeting.¹⁶⁶

The California Attorney General has determined that interim grading documents, including geology, compaction, and soils reports, are public records that are not exempt from disclosure.¹⁶⁷

Attorney-Client Communications and Attorney Work Product

The PRA specifically exempts from disclosure “records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, the provisions of the Evidence Code relating to privilege.”¹⁶⁸ The PRA’s exemptions protect attorney-client privileged communications and attorney work product, as well as, more broadly, other work product prepared for use in pending litigation or claims.¹⁶⁹

Attorney-Client Privilege

The attorney-client privilege protects from disclosure the entirety of confidential communications between attorney and client, as well as among the attorneys within a firm or in-house legal department representing such client, including factual and other information not in itself privileged outside of attorney-client communications.¹⁷⁰ The fundamental purpose of the attorney-client privilege is preservation of the confidential relationship between attorney and client. It is not necessary to demonstrate that prejudice would result from disclosure of attorney-client communications to prevent such disclosure.¹⁷¹ When the party claiming the privilege shows the dominant purpose of the relationship between the parties to the communication was one of attorney and client, the communication is protected by the privilege.¹⁷² Unlike the exemption for pending litigation, attorney-client privileged information is still protected from disclosure even after litigation is concluded.¹⁷³ But note, the attorney-client privilege will likely not protect communication between a public employee and his or her personal attorney if that communication occurs using a public entity’s computer system and the public entity has a computer policy that indicates the computers are intended for the public entity’s business and are subject to monitoring by the employer.¹⁷⁴

The attorney plaintiff in a wrongful termination suit and the defendant insurer may reveal privileged third-party attorney-client communications to their own attorneys to the extent necessary for the litigation, but may not publicly disclose such communications.¹⁷⁵

165 *Ibid.*

166 Gov. Code, § 54957.5.

167 89 Ops. Cal. Atty. Gen. 39 (2006).

168 Gov. Code, § 6254, subd. (k).

169 *Fairley v. Superior Court*, *supra*, 66 Cal. App. 4th 1414, 1420–1422; see also “Official Information Privilege,” p. 43.

170 *Costco Wholesale Corporation v. Superior Court* (2009) 47 Cal. 4th 725, 733; *Fireman’s Fund Insurance Company v. Superior Court* (2011) 196 Cal. App. 4th 1263, 1272–1275; *Clark v. Superior Court* (2011) 196 Cal. App. 4th 37, 49–54.

171 *Costco Wholesale Corporation v. Superior Court*, *supra*, 47 Cal. 4th at p. 747.

172 *Clark v. Superior Court*, *supra*, 196 Cal. App. 4th at p. 51.

173 *Roberts v. City of Palmdale* (1993) 5 Cal. 4th 363, 371–373; see “Pending Litigation or Claims,” p. 28.

174 *Holmes v. Petrovich Development Co. LLC* (2011) 191 Cal. App. 4th 1047, 1071–1072.

175 *Chubb & Son v. Superior Court* (2014) 228 Cal. App. 4th 1094, 1106–1109.

Attorney Work Product

Any writing that reflects an attorney's impressions, conclusions, opinions, legal research, or theories is not discoverable under any circumstances and is thus exempt from disclosure under the PRA. There is also a qualified privilege against disclosure of materials (e.g., witness statements, other investigative materials) developed by an attorney in preparing a case for trial as thoroughly as possible with a degree of privacy necessary to uncover and investigate both favorable and unfavorable aspects of a case.¹⁷⁶

Common Interest Doctrine

The common interest doctrine may also protect communications with third parties from disclosure where the communication is protected by the attorney-client privilege or attorney-work-product doctrine, and maintaining the confidentiality of the communication is necessary to accomplish the purpose for which legal advice was sought. The common interest doctrine is not an independent privilege; rather, it is a nonwaiver doctrine that may be used by plaintiffs or defendants alike.¹⁷⁷ For the common interest doctrine to attach, the parties to the shared communication must have a reasonable expectation that the information disclosed will remain confidential. Further, the parties must have a common interest in a matter of joint concern. In other words, they must have a common interest in securing legal advice related to the same matter and the communication must be made to advance their shared interest in securing legal advice on that common matter.¹⁷⁸

Attorney Bills and Retainer Agreements

The courts have established a narrower rule governing disclosure of attorney bills. An attorney's billing entries remain exempt from disclosure under the attorney-client privilege or attorney-work-product doctrine only insofar as they describe an attorney's impressions, conclusions, opinions, legal research, or strategy. Neither the attorney-client privilege nor the attorney work product doctrine categorically shields everything in a billing invoice from disclosure, even if the bills concern pending litigation. The court will look at whether, in pending or active matters, the billing entries are so closely related to the attorney-client communications that they "implicate the heartland" of the privilege.¹⁷⁹ Only substantive attorney communications such as legal conclusions, research, or strategy are protected.¹⁸⁰

Retainer agreements between a local agency and its attorneys may constitute confidential communications that fall within the attorney-client privilege.¹⁸¹ A local agency's governing body may waive the privilege and elect to produce the agreements.¹⁸²

► PRACTICE TIP:

Some agencies simplify redaction of attorney bills and production of non-exempt bill information in response to requests by requiring that non-exempt portions of attorney bills, such as the name of the matter, the invoice amount, and date, be contained in separate documents from privileged bill text.

176 Code Civ. Proc., § 2018.030, subs. (a) & (b); Gov. Code, § 6254, subd. (k).

177 *OXY Resources LLC v. Superior Court* (2004) 115 Cal.App.4th 874, 889.

178 Compare *Citizens for Ceres v. Superior Court* (2012) 217 Cal.App.4th 889, 914–922 (common interest doctrine inapplicable to communications between developer and city prior to approval of application because, pre-project approval, parties lacked a common interest) with *California Oak Foundation v. County of Tehama* (2009) 174 Cal.App.4th 1217, 1222–1223 (sharing of privileged documents with project applicant prepared by county's outside law firm regarding CEQA compliance was within common interest doctrine).

179 *County of Los Angeles v. Superior* (2016) 2 Cal.5th 282, 288.

180 *County of Los Angeles v. Superior Court* (2012) 211 Cal.App.4th 57; *Smith v. Laguna Sur Villas Community Assn.* (2000) 79 Cal.App.4th 639; *U.S. v. Amlani* (9th Cir. 1999) 169 F.3d 1189; *Clarke v. American Commerce Nat. Bank* (9th Cir. 1992) 974 F.2d 127.

181 Bus. & Prof. Code, § 6149 (a written fee contract shall be deemed to be a confidential communication within the meaning of section 6068(e) of the Business & Professions Code and section 952 of the Evidence Code); Evid. Code §952 ("Confidential communication between client and lawyer"); Evid. Code §954 (attorney-client privilege).

182 Evid. Code, § 912. See also Gov. Code, § 6254.5 and "Waiver," p. 26.

CEQA Proceedings

Increasingly, potential litigants have been submitting public records requests as a prelude to or during preparation of the administrative record for challenges to the adequacy of an agency's California Environmental Quality Act (CEQA) process or certification of CEQA documents. While there are no specific PRA provisions directly addressing CEQA proceedings, these requests can present multiple challenges as they may seek voluminous amounts of records, such as email communications between staff and consultants, or confidential and privileged documents.

► PRACTICE TIP:

A request to prepare an administrative record for a CEQA challenge does not excuse or justify ignoring or delaying responses to a CEQA-related PRA request. A failure to properly or fully respond to the PRA request can lead to claims of violations of the PRA and a demand for attorneys' fees being included in a CEQA lawsuit. Local agencies should, therefore, exercise the same due diligence when responding to CEQA-related PRA requests as they do with any other type of PRA request. As with any litigation or potential litigation, local agencies should also consider invoking internal litigation holds and evidence preservation practices early on in a contentious CEQA process.

Two particularly challenging issues that arise with CEQA-related PRA requests are whether and to what extent a subcontractor's files are public records subject to disclosure, and whether the deliberative process privilege or public interest exemption apply to the requested documents.

In determining whether a subcontractor's files are public records in the actual or constructive possession of the local agency, the court will look to the consultant's contract to determine the extent to which, if any, the local agency had control over the selection of subcontractors, and how they performed services required by the primary consultant.¹⁸³

► PRACTICE TIP:

Examine your contracts with consultants and clearly articulate who owns their work product, and that of their subcontractors.

Requests for materials that implicate the deliberative process privilege or public interest exemption are commonly made in CEQA-related PRA requests. While it may seem obvious that local agency staff and their consultants desire and in fact need to engage in candid dialogue about a project and the approaches to be taken, when invoking the deliberative process privilege to protect such communications from disclosure the local agency must clearly articulate why the privilege applies by more than a simple statement that it helps the process.¹⁸⁴ Likewise, when invoking the public interest exemption to protect documents from disclosure, local agencies must do more than simply state the conclusion that the public's interest in nondisclosure is clearly outweighed by the public interest in disclosure.¹⁸⁵

► PRACTICE TIP:

When evaluating whether the deliberative process privilege applies to documents covered by a PRA request during a pre-litigation CEQA process, keep in mind the close correlation between the drafts exemption, discussed below, and the deliberative process privilege.

¹⁸³ *Consolidated Irrigation District v. Superior Court* (2012) 205 Cal.App.4th 697, 710–712.

¹⁸⁴ See *Deliberative Process Privilege* p. 32.

¹⁸⁵ *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 307. See also, "Public Interest Exemption," p. 54.

Code Enforcement Records

Local agencies may pursue code enforcement through administrative or criminal proceedings, or a combination of both. Records of code enforcement cases for which criminal sanctions are sought may be subject to the same disclosure rules as police and other law enforcement records, including the rules for investigatory records and files, as long as there is a concrete and definite prospect of criminal enforcement.¹⁸⁶ Records of code enforcement cases being prosecuted administratively do not qualify as law enforcement records.¹⁸⁷ However, some administrative code enforcement information, such as names and contact information of complainants, may be exempt from disclosure under the official information privilege, the identity of informant privilege, or the public interest exemption.¹⁸⁸

Deliberative Process Privilege

The deliberative process privilege is derived from the public interest exemption, which provides that a local agency may withhold a public record if it can demonstrate that "on the facts of a particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record."¹⁸⁹ The deliberative process privilege was intended to address concerns that frank discussion of legal or policy matters might be inhibited if subject to public scrutiny, and to support the concept that access to a broad array of opinions and the freedom to seek all points of view, to exchange ideas, and to discuss policies in confidence are essential to effective governance in a representative democracy. Therefore, California courts invoke the privilege to protect communications to decisionmakers before a decision is made.¹⁹⁰

In evaluating whether the deliberative process privilege applies, the court will still perform the balancing test prescribed by the public interest exemption.¹⁹¹ In doing so, courts focus "less on the nature of the records sought and more on the effect of the records' release."¹⁹² Therefore, the key question in every deliberative process privilege case is "whether the disclosure of materials would expose an agency's decisionmaking process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions."¹⁹³ "Accordingly, the ... courts have uniformly drawn a distinction between predecisional communications, which are privileged [citations]; and communications made after the decision and designed to explain it, which are not."¹⁹⁴ Protecting the predecisional deliberative process gives the decision-maker "the freedom 'to think out loud,' which enables him [or her] to test ideas and debate policy and personalities uninhibited by the danger that his [or her] tentative but rejected thoughts will become subjects of public discussion. Usually the information is sought with respect to past decisions; the need is even stronger if the demand comes while policy is still being developed."¹⁹⁵

Courts acknowledge that even a purely factual document would be exempt from public scrutiny if it is "actually ... related to the process by which policies are formulated" or "inextricably intertwined" with "policy-making processes."¹⁹⁶ For example, the

186 Gov. Code, § 6254, subd. (f); *State of California ex rel. Division of Industrial Safety v. Superior Court* (1974) 43 Cal.App.3d 778, 783–784; *Haynie v Superior Court* (2001) 26 Cal.4th 1061, 1068–1069; see "Law Enforcement Records," p. 35.

187 *State of California ex rel. Division of Industrial Safety v Superior Court, supra*, 43 Cal.App.3d at pp. 783–784. See, e.g., 6254, subd. (a); 5 U.S.C. 1325783788788; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061.

188 *San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008; see "Official Information Privilege," p. 43, "Identity of Informant Privilege," p. 45, and "Public Interest Exemption," p. 54.

189 *Times Mirror Company v. Superior Court* (1991) 53 Cal.3d 1325, 1338.

190 *Ibid.*; 5 USC § 552(b)(5).

191 *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 172.

192 *Times Mirror Company v. Superior Court, supra*, 53 Cal.3d at pp. 1338, 1342.

193 *Times Mirror Company v. Superior Court, supra*, 53 Cal.3d at p. 1342, citing *Dudman Communications v. Dept. of Air Force* (D.C.Cir.1987) 815 F.2d 1565, 1568.

194 *NLRB v. Sears, Roebuck & Co.* (1975) 421 U.S. 132, 151–152.

195 *Times Mirror Company v. Superior Court, supra*, 53 Cal.3d at p. 1341, citing *Cox, Executive Privilege* (1974) 122 U Pa L. Rev 1383, 1410.

196 *Jordan v. United States Dept. of Justice* (D.C.Cir.1978) 591 F.2d 753, 774; *Ryan v. Department of Justice* (D.C.Cir.1980) 617 F.2d 781, 790; *Soucie v. David* (D.C.Cir.1971) 448 F.2d 1067, 1078.

California Supreme Court applied the deliberative process privilege in determining that the Governor's appointment calendars and schedules were exempt from disclosure under the PRA even though the information in the appointment calendars and schedules was based on fact.¹⁹⁷ The Court reasoned that such disclosure could inhibit private meetings and chill the flow of information to the executive office.¹⁹⁸

Drafts

The PRA exempts from disclosure "[p]reliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure."¹⁹⁹ The "drafts" exemption provides a measure of privacy for writings concerning pending local agency action. The exemption was adapted from the FOIA, which exempts from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency."²⁰⁰ The FOIA "memorandums" exemption is based on the policy of protecting the decision making processes of government agencies, and in particular the frank discussion of legal or policy matters that might be inhibited if subjected to public scrutiny.²⁰¹

The "drafts" exemption in the PRA has essentially the same purpose as the "memorandums" exemption in the FOIA. The key question under the FOIA test is whether the disclosure of materials would expose a local agency's decision-making process in such a way as to discourage candid discussion within the local agency and thereby undermine the local agency's ability to perform its functions.²⁰² To qualify for the "drafts" exemption the record must be a preliminary draft, note, or memorandum; that is not retained by the local agency in the ordinary course of business; and the public interest in withholding the record must clearly outweigh the public interest in disclosure.²⁰³

The courts have observed that preliminary materials that are not customarily discarded or that have not in fact been discarded pursuant to policy or custom must be disclosed.²⁰⁴ Records that are normally retained do not qualify for the exemption. This is in keeping with the purpose of the FOIA "memorandums" exemption of prohibiting the "secret law" that would result from confidential memos retained by local agencies to guide their decision-making.

► PRACTICE TIP:

By adopting written policies or developing consistent practices of discarding preliminary deliberative writings, local agencies may facilitate candid internal policy debate. Consider including in such policies when a document should be considered to be "discarded," which might prevent the need to search through bins of documents segregated and approved for destruction under the policies, yet awaiting appropriate shredding and disposal. Such policies and practices may exempt from disclosure even preliminary drafts that have not yet been discarded, so long as the drafts are not maintained by the local agency in the ordinary course of business, and the public interest in nondisclosure clearly outweighs the public interest in disclosure.

197 *Times Mirror Company v. Superior Court*, *supra*, 53 Cal.3d at p. 1338.

198 *Ibid.*

199 Gov. Code, § 6254, subd. (a).

200 Gov. Code, § 6254, subd. (a); 5 U.S.C. § 552, subd. (b)(5).

201 *Times Mirror Co. v. Superior Court*, *supra*, 53 Cal.3d 1325, 1339–1340.

202 *Id.* at p. 1342.

203 *Citizens for a Better Environment v. Department of Food and Agriculture* (1985) 171 Cal.App.3d 704, 711–712.

204 *Id.* at p. 714.

Elections

Voter Registration Information

Voter registration information, including the home street address, telephone number, email address, precinct number or other number specified by the Secretary of State for voter registration purposes is confidential and cannot be disclosed except as specified in section 2194 of the Elections Code.²⁰⁵ Similarly, the signature of the voter shown on the voter registration card is confidential and may not be disclosed to any person, except as provided in the Elections Code.²⁰⁶ Voter registration information may be provided to any candidate for federal, state, or local office; to any committee for or against an initiative or referendum measure for which legal publication is made; and to any person for election, scholarly, journalistic, or political purposes, or for governmental purposes, as determined by the Secretary of State.²⁰⁷

A California Driver's License, California ID card, or other unique identifier used by the State of California for purposes of voter identification shown on the affidavit of voter registration of a registered voter, or added to voter registration records to comply with the requirements of the federal Help America Vote Act of 2002, is confidential and may not be disclosed to any person.²⁰⁸

When a person's vote is challenged, the voter's home address or signature may be released to the challenger, elections officials, and other persons as necessary to make, defend against, or adjudicate a challenge.²⁰⁹

A person may view the signature of a voter to determine whether the signature matches a signature on an affidavit of registration or a petition. The signature cannot be copied, reproduced, or photographed in any way.²¹⁰

Information or data compiled by local agency officers or employees revealing the identity of persons who have requested bilingual ballots or ballot pamphlets is not a disclosable public record and may not be provided to any person other than those local agency officers or employees who are responsible for receiving and processing those requests.²¹¹

Initiative, Recall, and Referendum Petitions

Nomination documents and signatures filed in lieu of filing fee petitions may be inspected, but not copied or distributed.²¹² Similarly, any petition to which a voter has affixed his or her signature for a statewide, county, city, or district initiative, referendum, recall, or matters submitted under the Elections Code, is not a disclosable public record and is not open to inspection except by the local agency officers or employees whose duty it is to receive, examine, or preserve the petitions.²¹³ This prohibition extends to all memoranda prepared by county and city elections officials in the examination of the petitions indicating which voters have signed particular petitions.²¹⁴

If a petition is found to be insufficient, the proponents and their representatives may inspect the memoranda of insufficiency to determine which signatures were disqualified and the reasons for the disqualification.²¹⁵

205 Gov. Code, § 6254.4, subd. (a).

206 Gov. Code, § 6254.4.

207 Elec. Code, § 2194.

208 Elec. Code, § 2194.

209 Elec. Code, § 2194, subd. (c).

210 Elec. Code, § 2194, subd. (c)(2).

211 Gov. Code, § 6253.6.

212 Elec. Code, § 17100

213 Elec. Code, §§ 17200, 17400

214 Gov. Code, § 6253.5.

215 Gov. Code, § 6253.5.

Identity of Informants

A local agency also has a privilege to refuse to disclose and to prevent another from disclosing the identity of a person who has furnished information in confidence to a law enforcement officer or representative of a local agency charged with administration or enforcement of the law alleged to be violated.²¹⁶ This privilege applies where the information purports to disclose a violation of a federal, state, or another public entity's law, and where the public's interest in protecting an informant's identity outweighs the necessity for disclosure.²¹⁷ This privilege extends to disclosure of the contents of the informant's communication if the disclosure would tend to disclose the identity of the informant.²¹⁸

Information Technology Systems Security Records

An information security record is exempt from disclosure if, on the facts of a particular case, disclosure would reveal vulnerabilities to attack, or would otherwise increase the potential for an attack on a local agency's information technology system.²¹⁹

Disclosure of records stored within a local agency's information technology system that are not otherwise exempt under the law do not fall within this exemption.²²⁰

Law Enforcement Records

Overview

Law enforcement records are generally exempt from disclosure.²²¹ That is, the actual investigation files and records are themselves exempt from disclosure, but the PRA does require local agencies to disclose certain information derived from those files and records.²²² For example, the names of officers involved in a police shooting are subject to disclosure, unless disclosure would endanger an officer's safety (e.g., if there is a specific threat to an officer or an officer is working undercover).²²³

The type of information that must be disclosed differs depending upon whether it relates to, for example, calls to the police department for assistance, the identity of an arrestee, information relating to a traffic accident, or certain types of crimes, including car theft, burglary, or arson. The identities of victims of certain types of crimes, including minors and victims of sexual assault, are required to be withheld if requested by the victim or the victim's guardian, if the victim is a minor.²²⁴ Those portions of any file that reflect the analysis and conclusions of the investigating officers may also be withheld.²²⁵ Certain information that may be required to be released may be withheld where the disclosure would endanger a witness or interfere with the successful completion of the investigation. These exemptions extend indefinitely, even after the investigation is closed.²²⁶

²¹⁶ Evid. Code, § 1041

²¹⁷ Evid. Code, § 1041; *People v. Navarro* (2006) 138 Cal.App.4th 146, 164.

²¹⁸ *People v. Hobbs* (1994) 7 Cal.4th 948, 961–962.

²¹⁹ Gov. Code, § 6254.19

²²⁰ Gov. Code, § 6254.19; see also Gov. Code, § 6254, subd. (aa).

²²¹ Gov. Code, § 6254, subd. (f).

²²² *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1068; 65 Ops. Cal. Atty. Gen. 563 (1982).

²²³ *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59, 63–68.

²²⁴ Gov. Code, § 6254, subd. (f)(2).

²²⁵ *Rackauckas v. Superior Court* (2002) 104 Cal.App.4th 169, 174.

²²⁶ *Rivero v. Superior Court* (1997) 54 Cal.App.4th 1048, 1052; *Williams v. Superior Court* (1993) 5 Cal.4th 337, 361–362; *Office of the Inspector General v. Superior Court* (2010) 189 Cal.App.4th 695 (Office of the Attorney General has discretion to determine which investigatory records are subject to disclosure in connection with its investigations, and investigatory records in that context may include some documents that were not prepared as part of, but became subsequently relevant to, the investigation).

Release practices vary by local agencies. Some local agencies provide a written summary of information being disclosed, some release only specific information upon request, while others release reports with certain matters redacted. Other local agencies release reports upon request with no redactions except as mandated by statute. Some local agencies also release 911 tapes and booking photos, although this is not required under the PRA.²²⁷

► **PRACTICE TIP:**

If it is your local agency's policy to release police reports upon request, it is helpful to establish an internal process to control the release of the identity of minors or victims of certain types of crimes, or to ensure that releasing the report would not endanger the safety of a person involved in an investigation or endanger the completion of the investigation.

Exempt Records

The PRA generally exempts most law enforcement records from disclosure, including, among others:

- Complaints to or investigations conducted by a local or state police agency;
- Records of intelligence information or security procedures of a local or state police agency;
- Any investigatory or security files compiled by any other local or state police agency;
- Customer lists provided to a local police agency by an alarm or security company; and
- Any investigatory or security files compiled by any state or local agency for correctional, law enforcement, or licensing purposes.²²⁸

► **PRACTICE TIP:**

Many departments that choose not to release entire reports develop a form that can be filled out with the requisite public information.

Information that Must be Disclosed

There are three general categories of information contained in law enforcement investigatory files that must be disclosed: information which must be disclosed to victims, their authorized representatives and insurance carriers, information relating to arrestees, and information relating to complaints or requests for assistance.

Disclosure to Victims, Authorized Representatives, Insurance Carriers

Except where disclosure would endanger the successful completion of an investigation or a related investigation, or endanger the safety of a witness, certain information relating to specific listed crimes must be disclosed upon request to:

- A victim;
- The victim's authorized representative;
- An insurance carrier against which a claim has been or might be made; or
- Any person suffering bodily injury, or property damage or loss.

The type of crimes listed in this subsection to which this requirement applies include arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime defined by statute.²²⁹

²²⁷ *Haynie v. Superior Court*, *supra*, 26 Cal.4th 1061 (911 tapes); 86 Ops.Cal.Atty.Gen. 132 (2003) (booking photos).

²²⁸ Gov. Code, § 6254, subd. (f); *Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271, 1276 (coroner and autopsy reports).

²²⁹ Gov. Code, § 6254, subd. (f).

The type of information that must be disclosed under this section (except where it endangers safety of witnesses or the investigation itself) includes:

- Name and address of persons involved in or witnesses to incident (other than confidential informants);
- Description of property involved;
- Date, time, and location of incident;
- All diagrams;
- Statements of parties to incident; and
- Statements of all witnesses (other than confidential informants).²³⁰

Local agencies may not require a victim or a victim's authorized representative to show proof of the victim's legal presence in the United States to obtain the information required to be disclosed to victims.²³¹ However, if a local agency does require identification for a victim or authorized representative to obtain information disclosable to victims, the local agency must, at a minimum, accept a current driver's license or identification card issued by any state in the United States, a current passport issued by the United States or a foreign government with which the United States has a diplomatic relationship, or a current Matricula Consular card.²³²

The Vehicle Code addresses the release of traffic accident information. A law enforcement agency to whom an accident was reported is required to disclose the entire contents of a traffic accident report to persons who have a "proper interest" in the information, including, but not limited to, the driver(s) involved in the accident, or the authorized representative, guardian, or conservator of the driver(s) involved; the parent of a minor driver; any named injured person; the owners of vehicles or property damaged by the accident; persons who may incur liability as a result of the accident; and any attorney who declares under penalty of perjury that he or she represents any of the persons described above.²³³ The local enforcement agency may recover the actual cost of providing the information.

Information Regarding Arrestees

The PRA mandates that the following information be released pertaining to every individual arrested by the local law enforcement agency, except where releasing the information would endanger the safety of persons involved in an investigation or endanger the successful completion of the investigation or a related investigation:

- Full name and occupation of the arrestee;
- Physical description including date of birth, color of eyes and hair, sex, height and weight;
- Time, date, and location of arrest;
- Time and date of booking;
- Factual circumstances surrounding arrest;
- Amount of bail set;
- Time and manner of release or location where arrestee is being held; and
- All charges the arrestee is being held on, including outstanding warrants and parole or probation holds.²³⁴

As previously stated, a PRA request applies only to records existing at the time of the request.²³⁵ It does not require a local

²³⁰ Gov. Code, § 6254, subd. (f); *Buckheit v. Dennis* (ND Cal. 2012) 2012 U.S. Dist. LEXIS 49062 (noting that Government Code section 6254, subd. (f) requires disclosure of certain information to a victim. Suspects are not entitled to that same information).

²³¹ Gov. Code, § 6254.30.

²³² Gov. Code, § 6254.30.

²³³ Veh. Code, § 20012.

²³⁴ Gov. Code, § 6254, subd. (f)(1).

²³⁵ Gov. Code, § 6254, subd. (c).

agency to produce records that may be created in the future. Further, a local agency is not required to provide requested information in a format that the local agency does not use.

► **PRACTICE TIP:**

Most police departments have some form of a daily desk or press log that contains all or most of this information.

Complaints or Requests for Assistance

The Penal Code provides that except as otherwise required by the criminal discovery provisions, no law enforcement officer or employee of a law enforcement agency may 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 of or witness to the alleged offense.²³⁶

Subject to the restrictions imposed by the Penal Code, the following information must be disclosed relative to complaints or requests for assistance received by the law enforcement agency:

- 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;
- To the extent the crime alleged or committed or any other incident is recorded, the time, date, and location of occurrence, and the time and date of the report;
- The factual circumstances surrounding crime/incident;
- A general description of injuries, property, or weapons involved; and
- The names and ages of victims, except the names of victims of certain listed crimes may be withheld upon request of victim or parent of minor victim. These listed crimes include various Penal Code sections which relate to topics such as sexual abuse, child abuse, hate crimes, and stalking.²³⁷

Requests for Journalistic or Scholarly Purposes

Where a request states, under penalty of perjury, that (1) it is made for a scholarly, journalistic, political, or governmental purpose, or for an investigative purpose by a licensed private investigator, and (2) it will not be used directly or indirectly, or furnished to another, to sell a product or service, the PRA requires the disclosure of the name and address of every individual arrested by the local agency and the current address of the victim of a crime, except for specified crimes.²³⁸

Coroner Photographs or Video

No copies, reproductions, or facsimiles of a photograph, negative, print, or video recording of a deceased person taken by or for the coroner (including by local law enforcement personnel) at the scene of death or in the course of a post mortem examination or autopsy may be disseminated except as provided by statute.²³⁹

²³⁶ Pen. Code, § 841.5, subd. (a).

²³⁷ Gov. Code, § 6254, subd. (f)(2).

²³⁸ Gov. Code, § 6254, subd. (f); Pen. Code, § 841.5; *Los Angeles Police Dept. v. United Reporting Pub. Corp.* (1999) 528 U.S. 32.

²³⁹ Code Civ. Proc., § 129.

Mental Health Detention Information

All information and records obtained in the course of providing services to a mentally disordered individual who is gravely disabled or a danger to others or him or herself, and who is detained and taken into custody by a peace officer, are confidential and may only be disclosed to enumerated recipients and for the purposes specified in state law.²⁴⁰ Willful, knowing release of confidential mental health detention information can create liability for civil damages.²⁴¹

► **PRACTICE TIP:**

All information obtained in the course of a mental health detention (often referred to as a “5150 detention”) is confidential, including information in complaint or incident reports that would otherwise be subject to disclosure under the PRA.

Elder Abuse Records

Reports of suspected abuse or neglect of an elder or dependent adult, and information contained in such reports, are confidential and may only be disclosed as permitted by state law.²⁴² The prohibition against unauthorized disclosure applies regardless of whether a report of suspected elder abuse or neglect is from someone who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not for compensation (a mandated reporter), or from someone else.²⁴³ Unauthorized disclosure of suspected elder abuse or neglect information is a misdemeanor.²⁴⁴

Juvenile Records

Records or information gathered by law enforcement agencies relating to the detention of, or taking of, a minor into custody or temporary custody are confidential and subject to release only in certain circumstances and by certain specified persons and entities.²⁴⁵ Juvenile court case files are subject to inspection only by specific listed persons and are governed by both statute and state court rules.²⁴⁶

► **PRACTICE TIP:**

Some local courts have their own rules regarding inspection and they may differ from county to county and may change from time to time. Care should be taken to periodically review the rules as the presiding judge of each juvenile court makes their own rules.

Different provisions apply to dissemination of information gathered by a law enforcement agency relating to the taking of a minor into custody where it is provided to another law enforcement agency, including a school district police or security department, or other agency or person who has a legitimate need for information for purposes of official disposition of a case.²⁴⁷ In addition, a law enforcement agency must release the name of and descriptive information relating to any juvenile who has escaped from a secure detention facility.²⁴⁸

²⁴⁰ Welf. & Inst. Code, §§ 5150, 5328.

²⁴¹ Welf. & Inst. Code, § 5330.

²⁴² Welf. & Inst. Code, § 15633.

²⁴³ Welf. & Inst. Code, § 15633.

²⁴⁴ Welf. & Inst. Code, § 15633.

²⁴⁵ Welf. & Inst. Code, §§ 827, 828; see Welf & Inst. Code, § 827.9 (applies to Los Angeles County only); see also *T.N.G. v. Superior Court* (1971) 4 Cal.3d 767 (release of information regarding minor who has been temporarily detained and released without any further proceedings.)

²⁴⁶ Welf. & Inst. Code, § 827.

²⁴⁷ Welf & Inst. Code, § 828, subd. (a); Cal. Rules of Court, rule 5.552(g).

²⁴⁸ Welf & Inst. Code, § 828, subd. (b).

Child Abuse Reports

Reports of suspected child abuse or neglect, including reports from those who are “mandated reporters,” such as teachers and public school employees and officials, physicians, children’s organizations, and community care facilities, and child abuse and neglect investigative reports that result in a summary report being filed with the Department of Justice, are confidential and may only be disclosed to the persons and agencies listed in state law.²⁴⁹ Unauthorized disclosure of confidential child abuse or neglect information is a misdemeanor.²⁵⁰

Library Patron Use Records

All patron use records of any library that is supported in whole or in part by public funds are confidential and may not be disclosed except to persons acting within the scope of their duties within library administration, upon written authorization from the person whose records are sought, or by court order.²⁵¹ The term “patron use records” includes written or electronic records that identify the patron, the patron’s borrowing information, or use of library resources, including database search records and any other personally identifiable information requests or inquiries.²⁵² This exemption does not extend to statistical reports of patron use or records of fines collected by the library.²⁵³

Library Circulation Records

Library circulation records that are kept to identify the borrowers, and library and museum materials presented solely for reference or exhibition purposes, are exempt from disclosure.²⁵⁴ Further, all registration and circulation records of any library that is (in whole or in part) supported by public funds are confidential.²⁵⁵ The confidentiality of library circulation records does not extend to records of fines imposed on borrowers.²⁵⁶

Licensee Financial Information

When a local agency requires that applicants for licenses, certificates, or permits submit personal financial data, that information is exempt from disclosure.²⁵⁷ One frequent example of this is the submittal of sales or income information under a business license tax requirement. However, this exemption does not apply to financial information filed by an existing licensee or franchisee to justify a rate increase, presumably because those affected by the increase have a right to know its basis.²⁵⁸

Medical Records

California’s Constitution protects a person’s right to privacy in his or her medical records.²⁵⁹ Therefore, the PRA exempts from disclosure “personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.”²⁶⁰ In addition, the PRA exempts from disclosure “[r]ecords, the disclosure of which is exempted or prohibited pursuant

249 Pen. Code, §§ 11165.6, 11165.7, 11167.5, 11169.

250 Pen. Code, § 11167.5, subd. (a).

251 Gov. Code, § 6267.

252 Gov. Code, § 6267.

253 Gov. Code, § 6267.

254 Gov. Code, § 6254, subd. (j).

255 Gov. Code, § 6254, subd. (j).

256 Gov. Code, § 6254, subd. (j).

257 Gov. Code, § 6254, subd. (n).

258 *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 779–780.

259 Cal. Const., Art. I, § 1.

260 Gov. Code, § 6254, subd. (c).

to federal or state law,²⁶¹ including, but not limited to, those described in the Confidentiality of Medical Information Act,²⁶² physician/patient privilege,²⁶³ the Health Data and Advisory Council Consolidation Act,²⁶⁴ and the Health Insurance Portability and Accountability Act.²⁶⁵

► **PRACTICE TIP:**

Both subdivision (c) and subdivision (k) of Government Code section 6254 probably apply to most records protected under the physician/patient privilege, the Confidentiality of Medical Information Act, the Health Data and Advisory Council Consolidation Act, and the Health Insurance Portability and Accountability Act. In addition, individually identifiable health information is probably also exempt from disclosure under the “public interest” exemption in Government Code section 6255.

Health Data and Advisory Council Consolidation Act

Any organization that operates, conducts, owns, or maintains a health facility, hospital, or freestanding ambulatory surgery clinic must file reports with the state that include detailed patient health and financial information.²⁶⁶ Patient medical record numbers, and any other data elements of these reports that could be used to determine the identity of an individual patient are exempt from disclosure.²⁶⁷

Physician/Patient Privilege

Patients may refuse to disclose, and prevent others from disclosing, confidential communications between themselves and their physicians.²⁶⁸ The privilege extends to confidential patient/physician communication that is disclosed to third parties where reasonably necessary to accomplish the purpose for which the physician was consulted.²⁶⁹

► **PRACTICE TIP:**

Patient medical information provided to local agency emergency medical personnel to assist in providing emergency medical care may be subject to the physician/patient privilege if providing the privileged information is reasonably necessary to accomplish the purpose for which the physician was, or will be, consulted, including emergency room physicians.

261 Gov. Code, § 6254, subd. (k).

262 Civ. Code, § 56 *et seq.*

263 Evid. Code, § 990 *et seq.*

264 Health & Saf. Code, § 128675 *et seq.*

265 42 U.S.C. § 1320d.

266 Health & Saf. Code, §§ 128735, 128736, 128737.

267 Health & Saf. Code, § 128745, subd. (c)(6).

268 Evid. Code, § 994.

269 Evid. Code, § 992.

Confidentiality of Medical Information Act

Subject to certain exceptions, health care providers, health care service plan providers and contractors are prohibited from disclosing a patient's individually identifiable medical information without first obtaining authorization.²⁷⁰ Employers must establish appropriate procedures to ensure the confidentiality and appropriate use of individually identifiable medical information.²⁷¹ Local agencies that are not providers of health care, health care service plans, or contractors as defined in state law may possess individually identifiable medical information protected under state law that originated with providers of health care, health care service plans, or contractors.²⁷²

Health Insurance Portability and Accountability Act

Congress enacted the Health Insurance Portability and Accountability Act in 1996 to improve portability and continuity of health insurance coverage and to combat waste, fraud, and abuse in health insurance and health care delivery through the development of a health information system and establishment of standards and requirements for the electronic transmission of certain health information.²⁷³ The U.S. Department of Health and Human Services Secretary has issued privacy regulations governing use and disclosure of individually identifiable health information.²⁷⁴ Persons who knowingly and in violation of federal law use or cause to be used a unique health identifier, obtain individually identifiable health information relating to an individual, or disclose individually identifiable health information to another person are subject to substantial fines and imprisonment of not more than one year, or both, and to increased fines and imprisonment for violations under false pretenses or with the intent to use individually identifiable health information for commercial advantage, personal gain, or malicious harm.²⁷⁵ Federal law also permits the Health and Human Services Secretary to impose civil penalties.²⁷⁶

Workers' Compensation Benefits

Records pertaining to the workers' compensation benefits for an individually identified employee are exempt from disclosure as "personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of privacy."²⁷⁷ The PRA further prohibits the disclosure of records otherwise exempt or prohibited from disclosure pursuant to federal and state law.²⁷⁸ State law prohibits a person or public or private entity who is not a party to a claim for workers' compensation benefits from obtaining individually identifiable information obtained or maintained by the Division of Workers' Compensation on that claim.²⁷⁹

270 Civ. Code, §§ 56.10, subd. (a), 56.05, subd. (g). "Provider of health care" as defined means persons licensed under Business & Professions Code section 500 *et seq.*, or Health & Safety Code section 1797 and following, and clinics, health dispensaries, or health facilities licensed under Health and Safety Code section 1200 *and following*. "Health care service plan" as defined means entities regulated under Health & Safety Code section 1340 and following. "Contractor" as defined means medical groups, independent practice associations, pharmaceutical benefits managers, and medical service organizations that are not providers of health care or health care service plans.

271 Civ. Code, § 56.20.

272 Civ. Code, § 56.05, subd. (g).

273 Health Insurance Portability and Accountability Act of 1996, Pub L No. 104-192, § 261 (Aug. 24, 1996) 110 Stat 1936; 42 U.S.C. 1320d.

274 42 U.S.C. § 1320d-1– d-3, Health and Human Services Summary of the Privacy Rule, May, 2003. The final privacy regulations were issued in December, 2000 and amended in August, 2002. The definitions of "health information" and "individually identifiable health information" in the privacy regulations are in 45 C.F.R. 160.103. The general rules governing use and disclosure of protected health information are in 45 C.F.R. 164.502.

275 42 U.S.C. § 1320d-6. Federal law defines "individually identifiable health information" as any information collected from an individual that is created or received by a health care provider, health plan, employer or health care clearing house, that relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual, and that identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

276 42 U.S.C. § 1320d-5.

277 Gov. Code, § 6254, subd. (c).

278 Gov. Code, § 6254, subd. (k).

279 Lab. Code, § 138.7, subd. (a). This state statute defines "individually identifiable information" to mean "any data concerning an injury or claim that is linked to a uniquely identifiable employee, employer, claims administrator, or any other person or entity."

Certain information may be subject to disclosure once an application for adjudication has been filed.²⁸⁰ If the request relates to pre-employment screening, the administrative director must notify the person about whom the information is requested and include a warning about discrimination against persons who have filed claims for workers' compensation benefits. Further, a residential address cannot be disclosed, except to law enforcement agencies, the district attorney, other governmental agencies, or for journalistic purposes. Individually identifiable information is not subject to subpoena in a civil proceeding without notice and a hearing at which the court is required to balance the respective interests—privacy and public disclosure. Individually identifiable information may be used for certain types of statistical research by specifically listed persons and entities.²⁸¹

Official Information Privilege

A local agency may refuse to disclose official information.²⁸² "Official information" is statutorily defined as "information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed to the public prior to the time the claim of privilege is made."²⁸³ However, the courts have somewhat expanded on the statutory definition by determining that certain types of information, such as police investigative files and medical information, are "by [their] nature confidential and widely treated as such" and thus protected from disclosure by the privilege.²⁸⁴ Therefore, "official information" includes information that is protected by a state or federal statutory privilege or information, the disclosure of which 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.²⁸⁵

The local agency has the right to assert the official information privilege both to refuse to disclose and to prevent another from disclosing official information.²⁸⁶ Where the disclosure is prohibited by state or federal statute, the privilege is absolute. In all other respects, it is conditional and requires a judge to weigh the necessity for preserving the confidentiality of information against the necessity for disclosure in the interest of justice. This is similar to the weighing process provided for in the PRA — allowing nondisclosure when the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure.²⁸⁷ As part of the weighing process a court will look at the consequences to the public, including the effect of the disclosure on the integrity of public processes and procedures.²⁸⁸ This is typically done through *in camera* judicial review.²⁸⁹

There are a number of cases interpreting this statute.²⁹⁰ While many of the cases interpreting this privilege involve law enforcement records, other cases arise out of licensing and accreditation-type activities. The courts address these types of cases on an individualized basis and further legal research should be done within the context of particular facts.

▶ PRACTICE TIP:

Although there is no case law directly on point, this privilege, along with the informant privilege, may be asserted to protect the identities of code enforcement complainants and whistleblowers.

280 Lab. Code, §§ 5501.5, 138.7.

281 Lab Code, §138.7.

282 Evid. Code, § 1040.

283 Evid. Code, § 1040, subd. (a).

284 *Department of Motor Vehicles v. Superior Court* (2002) 100 Cal.App.4th 363, 373–374.

285 *White v. Superior Court* (2002) 102 Cal.App.4th.Supp. 1, 6.

286 Evid. Code, § 1040, subd. (b).

287 Gov. Code, § 6255.

288 *Shepherd v. Superior Court* (1976) 17 Cal.3d 107, 126.

289 The term "*in camera*" refers to a review of the document in the judge's chambers outside the presence of the requesting party.

290 *Department of Motor Vehicles v. Superior Court*, *supra*, 100 Cal.App.4th 363; *California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal. App.4th 810; *County of Orange v. Superior Court* (2000) 79 Cal.App.4th 759.

Pending Litigation or Claims

The PRA exempts from disclosure “(r)ecords pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to [the California Government Claims Act] until the pending litigation or claim has been finally adjudicated or otherwise settled.”²⁹¹ Although the phrase “pertaining to” pending litigation or claims might seem broad, the courts nevertheless have construed the exemption narrowly, consistent with the underlying policy of the PRA to promote access to public records. Therefore, the claim itself is not exempt from disclosure — the exemption applies only to documents specifically prepared by, or at the direction of, the local agency for use in existing or anticipated litigation.²⁹²

It may sometimes be difficult to determine whether a particular record was prepared specifically for use in litigation or for other purposes related to the underlying incident. For example, an incident report may be prepared either in anticipation of defending a potential claim, or simply for risk management purposes. In order for the exemption to apply, the local agency would have to prove that the dominant purpose of the record was to be used in defense of litigation.²⁹³ However, attorney payment and billing records related to ongoing litigation are not subject to the pending litigation exemption, because such records are not primarily prepared for use in litigation.²⁹⁴

It is important to remember that even members of the public that have filed a claim against or sued a local agency are entitled to use the PRA to obtain documents that may be relevant to the claim or litigation. The mere fact that the person might also be able to obtain the documents in discovery is not a ground for rejecting the request under the PRA.²⁹⁵

The pending litigation exemption does not prevent members of the public from obtaining records submitted to the local agency pertaining to existing or anticipated litigation, such as a claim for monetary damages filed prior to a lawsuit, because the records were not prepared by the local agency.²⁹⁶ Moreover, while medical records are subject to a constitutional right of privacy, and generally exempt from production under the PRA and other statutes,²⁹⁷ an individual may be deemed to have waived the right to confidentiality by submitting medical records to the public entity in order to obtain a settlement.²⁹⁸

Once the claim or litigation is no longer “pending,” records previously shielded from disclosure by the exemption must be produced, unless covered by another exemption. For example, the public may obtain copies of depositions from closed cases,²⁹⁹ and documents concerning the settlement of a claim that are not shielded from disclosure by other exemptions.³⁰⁰ Exemptions that may be used to withhold documents from disclosure after the claim or litigation is no longer pending include the exemptions for law enforcement investigative reports, medical records, and attorney-client privileged records and attorney work product.³⁰¹ Particular records or information relevant to settlement of a closed claim or case may also be subject to nondisclosure under the public interest exemption to the extent the local agency can show that the public interest in nondisclosure clearly outweighs the public interest in disclosure.³⁰²

291 Gov. Code, § 6254, subd. (b).

292 *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414, 1420–1421; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1420.

293 *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414, 1420; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1419.

294 *County of Los Angeles v. Superior Court* (2012) 211 Cal.App.4th 57, 67. See also the Attorney-Client Privilege, p. 29.

295 *Wilder v. Superior Court* (1998) 66 Cal.App.4th 77.

296 *Poway Unified Sch Dist. v. Superior Court* (1998) 62 Cal.App.4th 1496, 1502–1505.

297 See Medical Privacy Laws, p. 40.

298 *Poway Unified Sch Dist. v. Superior Court* (1998) 62 Cal.App.4th 1496, 1505.

299 *City of Los Angeles v. Superior Court* (1996) 41 Cal.App.4th 1083, 1089.

300 *Register Div. of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 901.

301 See, e.g., *D.I. Chadbourne, Inc. v. Superior Court* (1964) 60 Cal.2d 723; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411.

302 Gov. Code, § 6255.

► **PRACTICE TIP:**

In responding to a request for documents concerning settlement of a particular matter, it is critical to pay close attention to potential application of other exemptions under the PRA. Additionally, if the settlement is approved by the legislative body during a closed session, release of the settlement documents are governed by the Brown Act. It is recommended that you seek the advice of your local agency counsel.

There is considerable overlap between the pending litigation exemption and both the attorney-client privilege³⁰³ and attorney-work-product doctrine.³⁰⁴ However, the exemption for pending litigation is not limited solely to documents that fall within either the attorney-client privilege or work product protection.³⁰⁵ Moreover, while the exemption for pending litigation expires once the litigation is no longer pending, the attorney-client privilege and attorney-work-product doctrine continue indefinitely.³⁰⁶

Personal Contact Information

Court decisions have ruled that individuals have a substantial privacy interest in their personal contact information. However, a fact-specific analysis must be conducted to determine whether the public interest exemption protects this information from disclosure, i.e., whether the public interest in nondisclosure clearly outweighs the public interest in disclosure.³⁰⁷ Application of this balancing test has yielded varying results, depending on the circumstances of the case.

For example, courts have allowed nondisclosure of the names, addresses, and telephone numbers of airport noise complainants.³⁰⁸ In that instance, the anticipated chilling effect on future citizen complaints weighed heavily in the court's decision. On the other hand, the courts have ordered disclosure of information contained in applications for licenses to carry firearms, except for information that indicates when or where the applicant is vulnerable to attack or that concern the applicant's medical or psychological history or that of members of his or her family.³⁰⁹ Courts have also ordered disclosure of the names and addresses of residential water customers who exceeded their water allocation under a rationing ordinance,³¹⁰ and the names of donors to a university affiliated foundation, even though those donors had requested anonymity.³¹¹

► **PRACTICE TIP:**

In situations where personal contact information clearly cannot be kept confidential, inform the affected members of the public that their personal contact information is subject to disclosure under the PRA.

303 Evid. Code, § 950 *et seq.*; *Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725.

304 Code Civ. Proc. § 2018.030.

305 *City of Los Angeles v. Superior Court*, *supra*, 41 Cal.App.4th 1083, 1087.

306 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 373 (attorney-client privilege); *Fellows v. Superior Court* (1980) 108 Cal.App.3d 55, 61–63 (work-product doctrine); *Costco Wholesale Corp. v. Superior Court*, *supra*, 47 Cal.4th 725. *But see Los Angeles County Board of Supervisors v. Superior Court* (2016) 2 Cal.5th 282 (holding that the attorney-client privilege protects the confidentiality of invoices for work in pending and active legal matters, but that the privilege may not encompass invoices for legal matters that concluded long ago).

307 Gov. Code, § 6255, subd. (a).

308 *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008.

309 Gov. Code, § 6254, subd. (u)(1).

310 *New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579.

311 *California State Univ., Fresno Ass'n, Inc., v. Superior Court* (2001) 90 Cal.App.4th 810.

Posting Personal Contact Information of Elected/Appointed Officials on the Internet

The PRA prohibits a state or local agency from posting on the Internet the home address or telephone number of any elected or appointed officials without first obtaining their written permission.³¹² The prohibition against posting home addresses and telephone numbers of elected or appointed officials on the Internet does not apply to a comprehensive database of property-related information maintained by a state or local agency that may incidentally contain such information, where the officials are not identifiable as such from the data, and the database is only transmitted over a limited-access network, such as an intranet, extranet, or virtual private network, but not the Internet.³¹³

The PRA also prohibits someone from knowingly posting on the Internet the home address or telephone number of any elected or appointed official, or the official's "residing spouse" or child, and either threatening or intending to cause imminent great bodily harm.³¹⁴ Similarly, the PRA prohibits soliciting, selling, or trading on the Internet the home address or telephone number of any elected or appointed official with the intent of causing imminent great bodily harm to the official or a person residing at the official's home address.³¹⁵

In addition, the PRA prohibits a person, business, or association from publicly posting or displaying on the Internet the home address or telephone number of any elected or appointed official where the official has made a written demand to the person, business, or association to not to disclose his or her address or phone number.³¹⁶

Personnel Records

The PRA exempts from disclosure "[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy."³¹⁷ In addition, the public interest exemption may protect certain personnel records from disclosure.³¹⁸ In determining whether to allow access to personnel files, the courts have determined that the tests under each exemption are essentially the same: the extent of the local agency employee's privacy interest in certain information and the harm from its unwarranted disclosure is weighed against the public interest in disclosure. The public interest in disclosure will be considered in the context of the extent to which the disclosure of the information will shed light on the local agency's performance of its duties.³¹⁹

Decisions from the California Supreme Court have determined that local agency employees do not have a reasonable expectation of privacy in their name, salary information, and dates of employment. This interpretation also applies to police officers absent unique, individual circumstances.³²⁰

312 See Gov. Code, § 6254.21, subd. (f) (containing a non-exhaustive list of individuals who qualify as "elected or appointed official[s]").

313 91 Ops. Cal. Atty. Gen. 19 (2008).

314 Gov. Code, § 6254.21, subd. (b).

315 Gov. Code, § 6254.21, subd. (d).

316 Gov. Code, § 6254.21, subd. (c).

317 Gov. Code, § 6254, subd. (c).

318 Gov. Code, § 6255; *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 755; see also, *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272.

319 *International Fed'n of Prof. & Tech. Eng'rs, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 335; *Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 300; *Caldecott v. Superior Court* (2015) 243 Cal.App.4th 212, 231; *BRV, Inc. v. Superior Court*, *supra*, 143 Cal.App.4th 742, 755; *American Fed'n of State, County & Mun. Employees (AFSCME), Local 1650 v. Regents of Univ. of Cal.* (1978) 80 Cal.App.3d 913 914-916.

320 *International Fed'n of Prof. & Tech. Eng'rs, Local 21, AFL-CIO v. Superior Court*, *supra*, 42 Cal.4th 319, 327; *Commission on Peace Officer Standards & Training v. Superior Court*, *supra*, 42 Cal.4th 278, 289-293.

In situations involving allegations of non-law enforcement local agency employee misconduct, courts have considered the following factors in determining whether disclosure of employment investigation reports or related records would constitute an unwarranted invasion of personal privacy:

- Are the allegations of misconduct against a high-ranking public official or a local agency employee in a position of public trust and responsibility (e.g., teachers, public safety employees, employees who work with children)?
- Are the allegations of misconduct of a substantial nature or trivial?
- Were findings of misconduct sustained or was discipline imposed?

Courts have upheld the public interest against disclosure of “trivial or groundless” charges.³²¹ In contrast, when “the charges are found true, or discipline is imposed,” the public interest likely favors disclosure.³²² In addition, “where there is reasonable cause to believe the complaint to be well founded, the right of public access to related public records exists.”³²³ However, even if the local agency employee is exonerated of wrongdoing, disclosure may be warranted if the allegations of misconduct involve a high-ranking public official or local agency employee in a position of public trust and responsibility, given the public’s interest in understanding why the employee was exonerated and how the local agency employer treated the accusations.³²⁴

With respect to personnel investigation reports, although the PRA’s personnel exemption may not exempt such a report from disclosure, the attorney-client privilege or attorney-work-product doctrine may apply.³²⁵ Further, discrete portions of the personnel report may still be exempt from disclosure and redacted, such as medical information contained in a report or the names of third party witnesses.³²⁶

The courts have permitted persons who believe their rights may be infringed by a local agency decision to disclose records to bring a “reverse PRA action” to seek an order preventing disclosure of the records.³²⁷

Peace Officer Personnel Records

Peace officer personnel records, including internal affairs investigation reports regarding alleged misconduct, are both confidential and privileged. They clearly fall within the category of records, “the disclosure of which is exempted or prohibited pursuant to federal or state law”³²⁸

The discovery and disclosure of the personnel records of peace officers are governed exclusively by statutory provisions contained in the Evidence Code and Penal Code. Peace officer personnel records and records of citizen complaints “...or information obtained from these records...” are confidential and “shall not” be disclosed in any criminal or civil proceeding except by discovery pursuant to statutorily prescribed procedures.³²⁹ The appropriate procedure for obtaining information in the

321 *AFSCME, Local 1650 v. Regents of Univ. of Cal.* (1978) 80 Cal.App.3d 913, 918.

322 *Ibid.*

323 *Ibid.*

324 *Caldecott v. Superior Court* (2015) 243 Cal.App.4th 212, 223–224; *Marken v. Santa Monica-Malibu Unified Sch. Dist.* (2012) 202 Cal.App.4th 1250, 1275–1276; *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 759; *Bakersfield City Sch. Dist. v. Superior Court* (2004) 118 Cal.App.4th 1041, 1045–1047; *AFSCME, Local 1650 v. Regents of University of California* (1978) 80 Cal.App.3d 913, 918.

325 See “Attorney-client Communications and Attorney Work Product,” page 29; *City of Petaluma v. Superior Court* (2016) 248 Cal.App.4th 1023, 1035–1036. But see *BRV, Inc. v. Superior Court*, *supra*, 143 Cal.App.4th 742, where on the facts of that case, an investigation report that arguably was privileged was ordered disclosed.

326 *BRV, Inc. v. Superior Court*, *supra*, 143 Cal.App.4th 742, 759 (permitting redaction of names, home addresses, phone numbers, and job titles “of all persons mentioned in the report other than [the subject of the report] or elected members” of the school board); *Marken v. Santa Monica-Malibu Unified Sch. Dist.*, *supra*, 202 Cal.App.4th 1250, 1276 (permitting redaction of the identity of the complainant and other witnesses, as well as other personal information in the investigation report).

327 *Marken v. Santa Monica-Malibu Unified Sch. Dist.*, *supra*, 202 Cal.App.4th 1250, 1264–1271. See also “Reverse PRA Litigation,” p. 59.

328 Gov. Code, § 6254, subd. (k); Pen. Code, §§ 832.7–832.8; *International Fed’n of Prof. & Tech. Eng’rs, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 341; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1431.

329 Pen. Code, § 832.7; Evid. Code, §§ 1043, 1046.

protected peace officer personnel files is to file a motion commonly known as a “Pitchess” motion, which by statute entails a two-part process involving first a determination by the court regarding good cause and materiality of the information sought and a subsequent confidential review by the court of the files, where warranted.³³⁰

Peace officer personnel files are not protected from disclosure, however, when the district attorney, attorney general, or grand jury are investigating the conduct of the officers, including when the district attorney conducts a *Brady* review of files for exculpatory evidence relevant to a criminal proceeding.³³¹ The other notable exception arises where an officer publishes factual information concerning a disciplinary action that is known by the officer to be false. If the information is published in the media, the employing agency may disclose factual information about the discipline to refute the employee’s false statements.³³²

Peace officer “personnel records” include personal data, medical history, appraisals, and discipline; complaints and investigations relating to events perceived by the officer or relating to the manner in which his or her duties were performed; and any other information the disclosure of which would constitute an unwarranted invasion of privacy.³³³ The names, salary information, and employment dates and departments of peace officers have been determined to be disclosable records absent unique circumstances.³³⁴ Additionally, official service photographs of peace officers are subject to disclosure and are not exempt or privileged as personnel records unless disclosure would pose an unreasonable risk of harm to the peace officer.³³⁵ The names of officers involved in a police shooting are subject to disclosure, unless disclosure would endanger an officer’s safety (e.g., if there is a specific threat to an officer or an officer is working undercover).³³⁶ Video captured by a dashboard camera is not a personnel record protected from disclosure.³³⁷

While the Penal and Evidence Code privileges are not per se applicable in federal court, federal common law does recognize a qualified privilege for “official information” and considers government personnel files to be “official information.”³³⁸ Moreover, independent reports regarding officer-involved shootings are not exempt from disclosure, though portions of the report culled from personnel information or officers’ statements made in the course of an internal affairs investigation of the shooting are protected and may be redacted from the report.³³⁹ Such a qualified privilege in federal court results in a very similar weighing of the potential benefits of disclosure against potential disadvantages.³⁴⁰

330 See, e.g., *People v. Mooc* (2001) 26 Cal.4th 1216; *People v. Thompson* (2006) 141 Cal.App.4th 1312; *City of San Jose v. Superior Court* (1998) 67 Cal.App.4th 1135.

331 Pen. Code, § 832.7, subd. (a); *People v. Superior Court* (2015) 61 Cal.4th 696.

332 Pen. Code, § 832.7, subd. (d).

333 Pen. Code, § 832.8.

334 *International Fed’n of Prof. & Tech. Eng’rs, Local 21, AFL-CIO v. Superior Court*, *supra*, 42 Cal.4th 319, 327; *Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 289–293.

335 *Ibarra v. Superior Court* (2013) 217 Cal.App.4th 695, 700–705.

336 *Long Beach Police Officers Ass’n v. City of Long Beach* (2014) 59 Cal.4th 59, 75; 91 Ops.Cal.Atty.Gen. 11 (2008) (the names of peace officers involved in critical incidents, such as ones involving lethal force, are not categorically exempt from disclosure, however, the balancing test may be applied under the specific factual circumstances of each case to weigh the public interests at stake).

337 *City of Eureka v. Superior Court* (2016) 1 Cal.App.5th 755, 763–765. See also “Law Enforcement Records,” p. 35.

338 *Sanchez v. City of Santa Ana* (9th Cir. 1990) 936 F.2d 1027, 1033–1034, cert denied (1991) 502 U.S. 957; *Miller v. Pancucci* (C.D.Cal. 1992) 141 F.R.D. 292, 299–300.

339 *Pasadena Peace Officers Ass’n v. Superior Court* (2015) 240 Cal.App.4th 268, 288–290. See also “Law Enforcement Records,” p. 35.

340 Evid. Code, § 1043 *et seq.*; *Guerra v. Bd. of Trustees* (9th Cir. 1977) 567 F.2d 352; *Kerr v. United States Dist. Court for Northern Dist.* (9th Cir. 1975) 511 F.2d 192, *aff’d*, (1976) 426 U.S. 394; *Garrett v. City and County of San Francisco* (9th Cir. 1987) 818 F.2d 1515.

Employment Contracts, Employee Salaries, & Pension Benefits

Every employment contract between a local agency and any public official or local agency employee is a public record which is not subject to either the personnel exemption or the public interest exemption.³⁴¹ Thus, for example, one court has held that two letters in a city firefighter's personnel file were part of his employment contract and could not be withheld under either the local agency employee's right to privacy in his personnel file or the public interest exemption.³⁴²

With or without an employment contract, the names and salaries (including performance bonuses and overtime) of local agency employees, including peace officers, are subject to disclosure under the PRA.³⁴³ Public employees do not have a reasonable expectation that their salaries will remain a private matter. In addition, there is a strong public interest in knowing how the government spends its money. Therefore, absent unusual circumstances, the names and salaries of local agency employees are not subject to either the personnel exemption or the public interest exemption.³⁴⁴

In addition, the courts have held that local agencies are required to disclose the identities of pensioners and the amount of pension benefits received by such pensioners, reasoning that the public interest in disclosure of the names of pensioners and data concerning the amounts of their pension benefits outweighs any privacy interests the pensioners may have in such information.³⁴⁵ On the other hand, the courts have found that personal information provided to a retirement system by a member or on a member's behalf, such as a member's personal email address, home address, telephone number, social security number, birthday, age at retirement, benefits election, and health reports concerning the member, to be exempt from disclosure under the PRA.³⁴⁶ With regard to the California Public Employees' Retirement System (CalPERS), the identities of and amount of benefits received by CalPERS pensioners are subject to public disclosure.³⁴⁷

► PRACTICE TIP:

If a member of the public requests information regarding CalPERS from a local agency, make sure to check the terms of any agreement that may exist between the agency and CalPERS for confidentiality requirements.

Contractor Payroll Records

State law establishes requirements for maintaining and disclosing certified payroll records for workers employed on public works projects subject to payment of prevailing wages.³⁴⁸ State law requires contractors to make certified copies of payroll records available to employees and their representatives, representatives of the awarding body, the Department of Industrial Relations, and the public.³⁴⁹ Requests are to be made through the awarding agency or the Department of Industrial Relations, and the requesting party is required to reimburse the cost of preparation to the contractor, subcontractors, and the agency through

341 Gov. Code, § 6254.8; Gov. Code, § 53262, subd. (b).

342 *Braun v. City of Taft* (1984) 154 Cal.App.3d 332.

343 *International Fed'n of Prof. & Tech. Eng'rs, Local 21, AFL-CIO v. Superior Court*, *supra*, 42 Cal.4th 319, 327.

344 *Commission on Peace Officer Standards & Training v. Superior Court*, *supra*, 42 Cal.4th 278, 299, 303.

345 *Sacramento County Employees' Retirement System v. Superior Court* (2011) 195 Cal.App.4th 440, 472.

346 *Sonoma County Employees' Retirement Ass'n v. Superior Court* (2011) 198 Cal.App.4th 986, 1004.

347 Gov. Code, § 20230; See also *SDCERS v. Superior Court* (2011) 196 Cal.App.4th 1228, 1238–1239, citing with approval 25 Ops. Cal. Atty. Gen. 90 (1955), which exempts from disclosure employee election of benefits. For peace officer election of benefits see Pen. Code, §§ 832.7 - 832.8 and *International Fed'n of Prof. & Tech. Eng'rs, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 343.

348 Lab. Code, § 1776.

349 Lab. Code, § 1776, subd. (b).

which the request is made prior to being provided the records.³⁵⁰ Contractors are required to file certified copies of the requested records with the requesting entity within ten days after receipt of a written request.³⁵¹

However, state law also limits access to contractor payroll records. Employee names, addresses, and social security numbers must be redacted from certified payroll records provided to the public or any local agency by the awarding body or the Department of Industrial Relations.³⁵² Only the employee names and social security numbers are to be redacted from certified payroll records provided to joint labor-management committees established pursuant to the federal Labor Management Cooperation Act of 1978.³⁵³ The name and address of the contractor or subcontractor may not be redacted.³⁵⁴

The Department of Industrial Relations Director has adopted regulations governing release of certified payroll records and applicable fees.³⁵⁵ The regulations: (1) require that requests for certified payroll records be in writing and contain certain specified information regarding the awarding body, the contract, and the contractor; (2) require awarding agency acknowledgement of requests; (3) specify required contents of awarding agency requests to contractors for payroll records; and (4) set fees to be paid in advance by persons seeking payroll records.³⁵⁶

Test Questions and Other Examination Data

The PRA exempts from disclosure test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided in the portions of the Education Code that relate to standardized tests.³⁵⁷ Thus, for example, a local agency is not required to disclose the test questions it uses for its employment examinations. State law provides that standardized test subjects may, within 90 days after the release of test results to the test subject, have limited access to test questions and answers upon request to the test sponsor.³⁵⁸ This limited access may be either through an in-person examination or by release of certain information to the test subject.³⁵⁹ The Education Code also requires that test sponsors prepare and submit certain reports regarding standardized tests and test results to the California Postsecondary Education Commission.³⁶⁰ All such reports and information submitted to the Commission are public records subject to disclosure under the PRA.³⁶¹

Public Contracting Documents

Contracts with local agencies are generally disclosable public records due to the public's right to determine whether public resources are being spent for the benefit of the community as a whole or the benefit of only a limited few.³⁶² When the bids or proposals leading up to the contract become disclosable depends largely upon the type of contract.

350 Lab. Code, § 1776, subd. (c).

351 Contractors and subcontractors that fail to do so may be subject to a penalty of \$25 per worker for each calendar day until compliance is achieved. Lab. Code, § 1776, subds. (d) & (g).

352 Lab. Code, § 1776, subd. (e); *Trustees of Southern Cal. IBEW-NECA Pension Plan v. Los Angeles Unified School District* (2010) 187 Cal.App.4th 621.

353 Lab. Code, § 1776, subd. (e).

354 Lab. Code, § 1776, subd. (e).

355 Lab. Code, § 1776, subd. (i); see Lab. Code, § 16400 *et seq.*

356 8 C.C.R. §§ 16400, 16402.

357 Gov. Code, § 6254, subd. (g).

358 Ed. Code, § 99157, subd. (a) *Brutsch v. City of Los Angeles* (1982) 3 Cal.App.4th 354.

359 Ed. Code, §§ 99157, subds. (a) & (b).

360 Ed. Code, §§ 99153, 99154.

361 Ed. Code, § 99162.

362 *Cal. State Univ., Fresno Ass'n., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 833.

For example, local agency contracts for construction of public works and procurement of goods and non-professional services are typically awarded to the lowest responsive, responsible bidder through a competitive bidding process.³⁶³ Bids for these contracts are usually submitted to local agencies under seal and then publicly opened at a designated time and place. These bids are public records and disclosable as soon as they are opened.

Other local agency contracts for acquisition of professional services or disposition of property are awarded to the successful proposer through a competitive proposal process. As part of this process, interested parties submit proposals that are evaluated by the local agency and are used to negotiate with the winning proposer. While the public has a strong interest in scrutinizing the process leading to the selection of the winning proposer, a local agency's interest in keeping these proposals confidential frequently outweighs the public's interest in disclosure until negotiations with the winning proposer are complete.³⁶⁴ If a winning proposer has access to the specific details of other competing proposals, then the local agency is greatly impaired in its ability to secure the best possible deal on its constituents' behalf.

Some local agencies pre-qualify prospective bidders through a request for qualifications process. The pre-qualification packages submitted, including questionnaire answers and financial statements, are exempt from disclosure.³⁶⁵ Nevertheless, documents containing the names of contractors applying for pre-qualification status are public records and must be disclosed.³⁶⁶ In addition, the contents of pre-qualification packages may be disclosed to third parties during the verification process, in an investigation of substantial allegations or at an appeal hearing.

► **PRACTICE TIP:**

Local agencies should clearly advise bidders and proposers in their Requests for Bids and Requests for Proposals what bid and proposal documents will be disclosable public records and when they will be disclosable to the public.

Real Estate Appraisals and Engineering Evaluations

The PRA requires the disclosure of the contents of real estate appraisals, or engineering or feasibility estimates, and evaluations made for or by a local agency relative to the acquisition of property, or to prospective public supply and construction contracts, but only when all of the property has been acquired or when agreement on all terms of the contract have been obtained.³⁶⁷ By its plain terms, this exemption only applies while the acquisition or prospective contract is pending. Once all the property is acquired or agreement on all terms of the contract have been obtained, the exemption will not apply. In addition, this exemption is not intended to supersede the law of eminent domain.³⁶⁸ Thus, for example, this exemption would not apply to appraisals of owner-occupied residential property of four units or less, where disclosure of such appraisals is required by the Eminent Domain Law or related laws such as the California Relocation Assistance Act.³⁶⁹

► **PRACTICE TIP:**

If the exemption for real estate appraisals and engineering evaluations does not clearly apply, consider whether the facts of the situation justify withholding the record under Government Code section 6255.

363 Pub. Contract Code, § 22038.

364 Gov. Code, § 6255; *Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, 1077.

365 Pub. Contract Code, §§ 10165, 10506.6, 10763, 20101, 20111.5, 20209.7, 20209.26, 20651.5.

366 Pub. Contract Code, § 20101, subd. (a).

367 Gov. Code, § 6254, subd. (h).

368 Gov. Code, § 6245, subd. (h).

369 Gov. Code, § 7267.2, subd. (c).

Recipients of Public Services

Disclosure of information regarding food stamp recipients is prohibited.³⁷⁰ Subject to certain exceptions, disclosure of confidential information pertaining to applicants for or recipients of public social services for any purpose unconnected with the administration of the welfare department also is prohibited.³⁷¹ This latter prohibition does not create a privilege.³⁷²

Leases and lists or rosters of tenants of the Housing Authority are confidential and shall not be open to inspection by the public, but shall be supplied to the respective governing body on request.³⁷³ A Housing Authority has a duty to make available public documents and records of the Authority for inspection, except any applications for eligibility and occupancy which are submitted by prospective or current tenants of the Authority.³⁷⁴

The PRA exempts from disclosure records of 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.³⁷⁵

Taxpayer Information

Where information that is required from any taxpayer in connection with the collection of local taxes is received in confidence and where the disclosure of that information would result in unfair competitive disadvantage to the person supplying the information, the information is exempt from disclosure.³⁷⁶ Sales and use tax records may be used only for administration of the tax laws. Unauthorized disclosure or use of confidential information contained in these records can give rise to criminal liability.³⁷⁷

► PRACTICE TIP:

Make sure to check your local agency's codes and ordinances with respect to local taxes when determining what information submitted by the taxpayer is confidential.

Trade Secrets and Other Proprietary Information

As part of the award and administration of public contracts, businesses will often give local agencies information that the businesses would normally consider to be proprietary. There are three exemptions that businesses often use to attempt to protect this proprietary information — the official information privilege, the trade secret privilege, and the public interest exemption.³⁷⁸

³⁷⁰ Welf. & Inst. Code, § 18909.

³⁷¹ Welf. & Inst. Code, § 10850.

³⁷² *Jonon v. Superior Court* (1979) 93 Cal.App.3d 683, 690.

³⁷³ Health & Saf. Code, § 34283.

³⁷⁴ Health & Saf. Code, § 34332, subd. (c).

³⁷⁵ Gov. Code, § 6254.1.

³⁷⁶ Gov. Code, § 6254, subd. (i); see also Rev. & Tax. Code, § 7056.

³⁷⁷ Rev. & Tax. Code, §§ 7056, 7056.5

³⁷⁸ See, e.g., *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762.

However, California's strong public policy in favor of disclosure of public records precludes local agencies from protecting most business information. Both the official information privilege and the public interest exemption require that the public interest in nondisclosure outweigh the public interest in disclosure. While these provisions were designed to protect legitimate privacy interests, California courts have consistently held that when individuals or businesses voluntarily enter into the public sphere, they diminish their privacy interests.³⁷⁹ Courts have further found that the public interest in disclosure overrides alleged privacy interests. For example, a court ordered a university to release the names of anonymous contributors who received license agreements for luxury suites at the school's sports arena. Another court ordered a local agency to release a waste disposal contractor's private financial statements used by the local agency to approve a rate increase.³⁸⁰

The trade secret privilege is for information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.³⁸¹

However, even when records contain trade secrets, local agencies must determine whether disclosing the information is in the public interest. When businesses give local agencies proprietary information, courts will examine whether disclosure of that information serves the public interest.³⁸²

The PRA contains several exemptions that address specific types of information that are in the nature of trade secrets, including pesticide safety and efficacy information,³⁸³ air pollution data,³⁸⁴ and corporate siting information (financial records or proprietary information provided to government agencies in connection with retaining, locating, or expanding a facility within California).³⁸⁵

Other exemptions cover types of information that could include but are not limited to trade secrets — for example, certain information on plant production, utility systems development data, and market or crop reports.³⁸⁶

► **PRACTICE TIP:**

Issues concerning trade secrets and proprietary information tend to be complex and fact specific. Consider seeking the advice of your local agency counsel in determining whether records requested are exempt from disclosure.

379 *Cal. State Univ., Fresno Ass'n., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 834; *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 347; *San Gabriel Tribune v. Superior Court, supra*, 143 Cal.App.3d 762, 781.

380 *Cal. State Univ., Fresno Ass'n., Inc. v. Superior Court, supra*, 90 Cal.App.4th 810; *San Gabriel Tribune v. Superior Court, supra*, 143 Cal.App.3d 762.

381 Civ. Code, § 3426.1, subd. (d). This trade secret definition is set forth in the Uniform Trade Secrets Act ("UTSA"). However, Civil Code section 3426.7, subd. (c) states that any determination as to whether disclosure of a record under the Act constitutes a misappropriation of a trade secret shall be made pursuant to the law in effect before the operative date of the UTSA. At that time, California used the Restatement definition of a trade secret, which was lengthy. See *Uribe v. Howie* (1971) 19 Cal.App.3d 194. Accordingly, it is not clear that the trade secret definition that applies generally under the UTSA is the trade secret definition that applies in the context of a public records request.

382 *Uribe v. Howie, supra*, 19 Cal.App.3d 194, 213.

383 Gov. Code, § 6254.2.

384 Gov. Code, § 6254.7.

385 Gov. Code, § 6254.15.

386 Gov. Code, § 6254, subd. (e).

Utility Customer Information

Personal information expressly protected from disclosure under the PRA includes names, credit histories, usage data, home addresses, and telephone numbers of local agencies' utility customers.³⁸⁷ This exception is not absolute, and customers' names, utility usage data, and home addresses may be disclosable under certain scenarios. For example, disclosure is required when requested by a customer's agent or authorized family member,³⁸⁸ or an officer or employee of another governmental agency when necessary for performance of official duties,³⁸⁹ by court order or request of a law enforcement agency relative to an ongoing investigation,³⁹⁰ when the local agency determines the customer used utility services in violation of utility policies,³⁹¹ or if the local agency determines the public interest in disclosure clearly outweighs the public interest in nondisclosure.³⁹²

Utility customers who are local agency elected or appointed officials with authority to determine their agency's utilities usage policies have lesser protection of their personal information because their names and usage data are disclosable upon request.³⁹³

Public Interest Exemption

The PRA establishes a "public interest" or "catchall" exemption that permits local agencies to withhold a record if the agency can demonstrate 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.³⁹⁴ Weighing the public interest in nondisclosure and the public interest in disclosure under the public interest exemption is often described as a balancing test.³⁹⁵ The PRA does not specifically identify the public interests that might be served by not making the record public under the public interest exemption, but the nature of those interests may be inferred from specific exemptions contained in the PRA. The scope of the public interest exemption is not limited to specific categories of information or established exemptions or privileges. Each request for records must be considered on the facts of the particular case in light of the competing public interests.³⁹⁶

The records and situations to which the public interest exemption may apply are open-ended and, when it applies, the public interest exemption alone is sufficient to justify nondisclosure of local agency records. The courts have relied exclusively on the public interest exemption to uphold nondisclosure of:

- Local agency records containing names, addresses, and phone numbers of airport noise complainants;
- Proposals to lease airport land prior to conclusion of lease negotiations;
- Information kept in a public defender's database about police officers; and
- Individual teacher test scores, identified by name, designed to measure each teacher's effect on student performance on standardized tests.³⁹⁷

The public interest exemption is versatile and flexible, in keeping with its purpose of addressing circumstances not foreseen by the Legislature. For example, in one case, the court held local agencies could properly consider the burden of segregating exempt

387 Gov. Code, § 6254.16.

388 Gov. Code, § 6554.16, subd. (a).

389 Gov. Code, § 6254.16, subd. (b).

390 Gov. Code, § 6254.16, subd. (c).

391 Gov. Code, § 6254.16, subd. (d).

392 Gov. Code, § 6254.16, subd. (f).

393 Gov. Code, § 6265.16, subd. (e).

394 Gov. Code, § 6255; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1337–1339.

395 *CBS Broadcasting, Inc. v. Superior Court* 91 Cal.App.4th 892, 908.

396 *Times Mirror Co. v. Superior Court*, *supra*, 53 Cal.3d 1325, 1338.

397 *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008; *Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065; *Coronado Police Officers Assn. v. Carroll* (2003) 106 Cal.App.4th 1001; *Los Angeles Unified School District v. Superior Court* (2014) 228 Cal.App.4th 222.

from nonexempt records when applying the balancing test under the public interest exemption.³⁹⁸ In that case, the court held that the substantial burden of redacting exempt information from law enforcement intelligence records outweighed the marginal and speculative benefit of disclosing the remaining nonexempt information. In another case, the court applied the balancing test to the time of disclosure to hold that public disclosure of competing proposals for leasing city airport property could properly await conclusion of the negotiation process.³⁹⁹

The requirement that the public interest in nondisclosure must “clearly outweigh” the public interest in disclosure for records to qualify as exempt under the public interest exemption is important and emphasized by the courts. Justifying nondisclosure under the public interest exemption demands a clear overbalance on the side of confidentiality.⁴⁰⁰ Close calls usually do not qualify for an exemption. There are a number of examples of cases where a clear overbalance was not present to support nondisclosure under the public interest exemption. The courts have held that the following are all subject to disclosure under the public interest exemption balancing test:

- The identities of individuals granted criminal conviction exemptions to work in licensed day care facilities and the facilities employing them;
- Records relating to unpaid state warrants;
- Court records of a settlement between the insurer for a school district and a minor sexual assault victim;
- Applications for concealed weapons permits;
- Letters appointing then rescinding an appointment to a local agency position;
- The identities and license agreements of purchasers of luxury suites in a university arena; and
- GIS base map information.⁴⁰¹

The public interest exemption balancing test weighs only public interests — the public interest in disclosure and the public interest in nondisclosure. Agency interests or requester interests that are not also public interests are not considered.⁴⁰² For example, the courts have held that the public’s interest in information regarding peace officers retained in a database by the public defender in the representation of its clients is slight, and the private interests of the requesters (the police officers listed in the database) were not to be considered in determining whether the database was exempt from disclosure.⁴⁰³

398 *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440.

399 *Michaelis, Montanari & Johnson v. Superior Court*, *supra*, 38 Cal.4th 1065.

400 *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 657.

401 *CBS Broadcasting Inc., v. Superior Court* (2001) 91 Cal.App.4th 892; *Connell v. Superior Court* (1997) 56 Cal.App.4th 601; *Copley Press, Inc., v. Superior Court* (1998) 63 Cal.App.4th 367; *CBS, Inc. v. Block* (1986) 42 Cal.App.3d 646; *Braun v. City of Taft* (1984) 154 Cal.App.3d 332; *California State University, Fresno Assn. v. Superior Court* (2001) 90 Cal.App.4th 810; *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157; *County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301. See also, the discussion of GIS information in Chapter 6 at page 51.

402 *Coronado Police Officers Assn. v. Carroll* (2003) 106 Cal.App.4th 1001, 1015–1016.

403 *Id.*

Judicial Review and Remedies

Overview

The PRA establishes a special, expedited judicial process to resolve disputes over the public's right to inspect or receive copies of public records.⁴⁰⁴ In contrast to other governmental transparency laws such as the Brown Act,⁴⁰⁵ there are no criminal penalties for a local agency's failure to comply with the PRA. Rather, the PRA is enforced primarily through an expedited civil judicial process in which any person may ask a judge to enforce their right to inspect or to receive a copy of any public record or class of public records.⁴⁰⁶ Whether the PRA provides the exclusive judicial remedy for resolving a claim that a local agency has unlawfully refused to disclose a particular record or class of records remains unresolved.⁴⁰⁷ This chapter discusses the special rules that apply to lawsuits brought to enforce the PRA.

The Trial Court Process

Jurisdiction and Venue

Any person may file a civil action for injunctive or declaratory relief, or writ of mandate, to enforce their right to inspect or receive a copy of any public record or class of public records under the PRA.⁴⁰⁸ While the PRA clearly provides specific relief when a local agency denies access or copies of public records, it does not preclude a taxpayer lawsuit seeking declaratory or injunctive relief to challenge the legality of a local agency's policies or practices for responding to public records requests generally.⁴⁰⁹

Conversely, a local agency may not commence an action for declaratory relief to determine its obligation to disclose records under the PRA.⁴¹⁰ The rationale for this rule is that allowing a local agency to seek declaratory relief to determine whether it must disclose records would require the person requesting documents to defend civil actions they did not commence and discourage

404 Gov. Code, §§ 6258, 6259.

405 Gov. Code, § 54950 *et seq.*

406 Gov. Code, § 6258.

407 *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59, 66 fn.2.

408 Gov. Code, § 6258.

409 *County of Santa Clara v. Superior Court* (2009) 171 Cal.App.4th 119, 130.

410 *Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 426.

them from requesting records.⁴¹¹ That would frustrate the purpose of furthering the fundamental right of every person in the state to have prompt access to information in the possession of local agencies. However, a local agency is a “person” under the PRA and may maintain an action to compel the disclosure of records from another public entity subject to the PRA.⁴¹²

The action may be filed in any court of competent jurisdiction, which typically is the superior court in the county where the records or some part of them are maintained.⁴¹³

Procedural Considerations

Timing

The PRA does not contain a specific time period in which the action or responsive pleadings must be filed. Therefore, any action must be filed in a manner consistent with traditional actions for injunctive or declaratory relief, or writ of mandate, and is subject to any limitations periods or equitable concepts, such as laches, applicable to those actions. In a typical action under the PRA, the parties will file written arguments with the court to explain why the records should be disclosed or can be withheld. The court will also hold a hearing to give the parties an opportunity to argue the case. The judge in each case will establish the deadlines for briefing the issues and for hearings with the object of securing a decision at the earliest possible time.⁴¹⁴

Discovery

The PRA is considered a “special proceeding of a civil nature[.]” and as such, the Civil Discovery Act applies to actions brought under the PRA.⁴¹⁵ Any discovery sought must still, however, be relevant to the subject matter of the pending action and the trial court has the discretion to restrict discovery only where it would be likely to aid in the resolution of the particular issues presented in the proceeding.

A local agency that receives a request for records that would traditionally be sought through a formal discovery mechanism must handle the request in a manner consistent with the PRA rather than pursuant to discovery statutes.⁴¹⁶ A litigant using the PRA as an alternative to traditional discovery may not avoid California Environmental Quality Act’s statutory duty to pay for preparation of the administrative record by cloaking its discovery actions under the PRA.⁴¹⁷

Burden of Proof

In general, a plaintiff bears the burden of proving the plaintiff made a request for reasonably identifiable public records to a local agency and the agency improperly withheld or failed to conduct a reasonable search for the requested records.⁴¹⁸ A local agency may assert, as affirmative defenses, and bears the burden of proving that: (i) a request was unclear and the agency provided adequate assistance to the requestor to identify records but was still unable to identify any records; (ii) the withholding was justified under the PRA;⁴¹⁹ or (iii) the local agency undertook a reasonable search for records but was unable to locate the requested records.⁴²⁰

411 *Id.* at p. 423.

412 *Los Angeles Unified School Dist. v. Superior Court* (2007) 151 Cal.App.4th 759, 779.

413 Gov. Code, § 6259, subd. (a).

414 Gov. Code, § 6258.

415 *City of Los Angeles v. Superior Court* (2017) 9 Cal.App.5th 272.

416 *Bertoli v. City of Sebastopol* (2015) 233 Cal. App. 4th 353, 370-371.

417 *St. Vincent’s v. City of San Rafael* (2008) 161 Cal.App.4th 989, 1019, fn.9.

418 *Fredericks v. Superior Court* (2015) 233 Cal. App. 4th 209, 227 [“[A] person who seeks public records must present a reasonably focused and specific request, so that the public agency will have an opportunity to promptly identify and locate such records and to determine whether any exemption to disclosure applies”]; *American Civil Liberties Union of N. Cal. v. Superior Court* (2011) 202 Cal. App. 4th 55, 85 [“Government agencies are, of course, entitled to a presumption that they have reasonably and in good faith complied with the obligation to disclose responsive information.”]

419 See, e.g., *Los Angeles Unified School Dist. v. Superior Court*, *supra*, 151 Cal.App.4th at p. 767.

420 *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1420.

In Camera Review

The judge must decide the case based on a review of the record or records (if such review is permitted by the rules of evidence),⁴²¹ the papers filed by the parties, any oral argument, and additional evidence as the court may allow.⁴²² If permitted, the judge may examine the record or records at issue *in camera*, that is, in the judge's chambers and out of the presence and hearing of others, to help decide the case.⁴²³ However, a judge cannot compel *in camera* disclosure of records claimed to be protected from disclosure by the attorney-client privilege for the purpose of determining whether the privilege applies.⁴²⁴

Decision and Order

If the court determines, based upon a verified petition, that certain public records are being improperly withheld, the court will order the officer or person withholding the records to disclose the public record or show cause why he or she should not do so.⁴²⁵ If the court determines the local agency representative was justified in refusing to disclose the record, the court shall return the item to the local agency representative without disclosing its content with an order denying the motion and supporting the decision refusing disclosure.⁴²⁶ The court may also order some of the records to be disclosed while upholding the decision to withhold other records. In addition, the court may order portions of the records be redacted and compel the disclosure of the remaining portions of the records.

Reverse PRA Litigation

While there is no specific statutory authority for such an action, a person who believes their rights would be infringed by a local agency decision to disclose documents may bring a "reverse PRA action" to seek an order enjoining disclosure.⁴²⁷ The court has allowed a records requester to join in a reverse PRA action as a real party or an intervener.⁴²⁸

▶ PRACTICE TIP:

A local agency that receives a request for records that are or could be statutorily exempt from disclosure (under the PRA or otherwise) might consider notifying affected parties prior to disclosing the records. For example, "affected parties" would be individuals or organizations for whom disclosure could constitute an unwarranted intrusion of privacy if the requested documents contain potentially confidential information, such as trade secrets or confidential information of employees, contractors, or other third-party stakeholders. The notification prior to disclosing the records would allow the third parties to file a reverse PRA action to enjoin the local agency from disclosing the records.

421 Evid. Code, § 915.

422 Gov. Code, § 6259, subd. (a).

423 Gov. Code, § 6259, subd. (a).

424 *Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 737.

425 Gov. Code, § 6259, subd. (a).

426 Gov. Code, § 6259, subd. (b).

427 *Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250, 1264, 1267.

428 *Id.* at p. 1269.

Appellate Review

Petition for Review

The PRA establishes an expedited judicial review process. A trial court's order is not considered to be a final judgment subject to the traditional and often lengthy appeal process. In place of a traditional appeal, such orders are subject to immediate review through the filing of a petition to the appellate court for the issuance of an extraordinary writ.⁴²⁹

Because the trial court's decision is not a final judgment for which there is an absolute right of appeal, the appellate court may decline to review the case without a hearing or without issuance of a detailed written opinion.⁴³⁰ However, the intent of substituting writ review for the traditional appeal process is to provide for expedited appellate review, not an abbreviated review. Therefore, an appellate court may not deny an apparently meritorious writ petition that has been timely presented and is procedurally sufficient merely because the petition presents no important issue of law or because it considers the case less worthy of its attention.⁴³¹ This manner of providing for appellate review through an extraordinary writ procedure rather than a traditional appeal has been held to be constitutional.⁴³²

Timing

A party seeking review of a trial court's order must file a petition for review with the appellate court within 20 days after being served with 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.⁴³³ If the written notice of entry of the order is served by mail, the period within which to file the petition is increased by five days.⁴³⁴

Once a court of appeal accepts a petition for review the appellate process proceeds in much the same fashion as a traditional appeal. Unless the parties stipulate otherwise, the appellate court will establish a briefing schedule and may set the matter for oral arguments once briefing is complete.

Requesting a Stay

If a party wishes to prevent the disclosure of records pending appellate review of the trial court's decision, then that party must seek a stay of the trial court's order or judgment.⁴³⁵ In cases when the trial court's order requires disclosure of records prior to the time when a petition for review must be filed, the party seeking a stay may apply to the trial court for a stay of the order or judgment. Where there is sufficient time for a party to file a petition for review prior to the date for disclosure, that party may seek a stay from the appellate court. The trial and appellate courts may only grant a stay when the party seeking the stay demonstrates that: (1) the party will sustain irreparable damage because of the disclosure; and (2) it is probable the party will succeed on the merits of the case on appeal.⁴³⁶

Scope and Standard of Review

On appeal, the appellate court will conduct an independent review of the trial court's ruling, upholding the factual findings made by the trial court if they are based on substantial evidence.⁴³⁷

The decision of the appellate court, whether to deny review or on the merits of the case, is subject to discretionary review by the California Supreme Court through a petition for review.

⁴²⁹ Gov. Code, § 6259, subd. (c); but see *Mincal Consumer Law Group v. Carlsbad Police Department* (2013) 214 Cal.App.4th 259, 265 (under limited circumstances, an appellate court may exercise its discretion to treat an appeal from a non-appealable order as a petition for writ relief).

⁴³⁰ Gov. Code, § 6259, subd. (c).

⁴³¹ *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 113–114.

⁴³² *Id.* at p. 115.

⁴³³ Gov. Code, § 6259, subd. (c).

⁴³⁴ Gov. Code, § 6259, subd. (c).

⁴³⁵ Gov. Code, § 6259, subd. (c).

⁴³⁶ Gov. Code, § 6259, subd. (c).

⁴³⁷ *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1336.

Appeal of Other Decisions under the PRA

While the trial court's decision regarding disclosure of records is not subject to the traditional appeal process, other decisions of the trial court related to a lawsuit under the PRA are subject to appeal. Thus, a trial court's decision to grant or deny a motion for attorneys' fees and costs under the PRA is subject to appeal and is not subject to the extraordinary writ process.⁴³⁸ Similarly, an award of sanctions in a public records case is subject to appeal rather than a petition for an extraordinary writ.⁴³⁹

Attorneys' Fees and Costs

Attorneys' fees may be awarded to a prevailing party in an action under the PRA. If the plaintiff prevails in the litigation, the judge must award court costs and reasonable attorneys' fees to the plaintiff.⁴⁴⁰ A member of the public may be entitled to an award of attorneys' fees and costs even when he or she is not denominated as the "plaintiff" in a lawsuit under the PRA, if the party is the functional equivalent of a plaintiff.⁴⁴¹ Records requesters that participate in a reverse-PRA lawsuit are not entitled to an award of attorneys' fees for successfully opposing such litigation.⁴⁴² Successful local agency defendants may obtain an award of attorneys' fees and court costs against an unsuccessful plaintiff only when the court finds the plaintiff's case was clearly frivolous.⁴⁴³ Unless a plaintiff's case is "utterly devoid of merit or taken for improper motive," a court is unlikely to find a plaintiff's case frivolous and award attorneys' fees to an agency.⁴⁴⁴ Only one reported case has upheld an award of attorneys' fees to a local agency based on a frivolous request.⁴⁴⁵

Eligibility to Recover Attorneys' Fees

In determining whether a plaintiff has prevailed, courts have applied several variations of analysis similar to that used under the private attorney general laws, *i.e.*, whether the party has succeeded on any issue in the litigation and achieved some of the public benefits sought in the lawsuit. Some courts, however, have determined a plaintiff may still be a prevailing party entitled to attorneys' fees under the PRA even without a favorable ruling or other court action.⁴⁴⁶

Generally, if a local agency makes a timely effort to respond to a vague document request, then a plaintiff will not be awarded attorneys' fees as the prevailing party even in litigation resulting in issuance of a writ.⁴⁴⁷ However, where the court determines a local agency was not sufficiently diligent in locating all requested records and issues declaratory relief, stating there has in fact been a violation of the PRA, even if the records sought no longer exist and cannot be produced, the court may still award attorneys' fees on the basis of the statutory policies underlying the PRA.⁴⁴⁸

The trial court has significant discretion when determining the appropriate amount of attorneys' fees to award.⁴⁴⁹ Local agencies must pay any award of costs and fees, and not the individual local agency employees or officials who decide not to disclose requested records.⁴⁵⁰

438 *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1388.

439 *Butt v. City of Richmond* (1996) 44 Cal.App.4th 925, 929.

440 Gov. Code, § 6259, subd. (d); *Garcia v. Governing Board of Bellflower Unified School District* (2013) 220 Cal.App.4th 1058, 1065; *Los Angeles Times v. Alameda Corridor Transportation Authority*, *supra*, 88 Cal.App.4th at p. 1385.

441 *Fontana Police Dep't. v. Villegas-Banuelos* (1999) 74 Cal.App.4th 1249, 1253.

442 *Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250, 1268.

443 Gov. Code, §6259, subd. (d).

444 *Crews v. Willows Unified School Dist. et al.* (2013) 217 Cal.App.4th 1368.

445 *Butt v. City of Richmond*, *supra*, 44 Cal.App.4th at p. 932.

446 *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 482-483; *Belth v. Garamendi* (1991) 232 Cal.App.3d 896, 901-902.

447 *Motorola Commc'n & Elecs., Inc. v. Dep't of Gen. Servs.* (1997) 55 Cal. App. 4th 1340, 1350-51.

448 *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1446.

449 *Bernardi v. County of Monterey* (2008) 167 Cal.App.4th 1379, 1394.

450 Gov. Code, § 6259, subd. (d).

Records Management

In addition to the PRA, other California laws support and complement California's commitment to open government and the right of access to public records. These laws include, among others, open meeting laws under the Ralph M. Brown Act, records retention requirements, and California and federal laws prohibiting the spoliation of public records that might be relevant in litigation involving the local agency. Proper records management policies and practices facilitate efficient and effective compliance with these laws.

Public Meeting Records

Under the Brown Act,⁴⁵¹ any person may request a copy of a local agency meeting agenda and agenda packet by mail.⁴⁵² If requested, the agenda materials must be made available in appropriate alternative formats to persons with disabilities.⁴⁵³ If a local agency receives a written request to send agenda materials by mail, the materials must be mailed when the agenda is either posted or distributed to a majority of the agency's legislative body, whichever occurs first.⁴⁵⁴ Requests for mailed copies of agenda materials are valid for the calendar year in which they are filed, but must be renewed after January 1 of each subsequent year.⁴⁵⁵ Local agency legislative bodies may establish a fee for mailing agenda materials.⁴⁵⁶ The fee may not exceed the cost of providing the service.⁴⁵⁷ Failure of a requester to receive agenda materials is not a basis for invalidating actions taken at the meeting for which agenda materials were not received.⁴⁵⁸

Writings that are distributed to all or a majority of all members of a legislative body in connection with a matter subject to discussion or consideration at a public meeting of the local agency are public records subject to disclosure, unless specifically

451 Gov. Code, § 54950.5.

452 Gov. Code, § 54954.1. See *Open and Public V: A User's Guide to the Ralph M. Brown Act, 2d Edition*, 2016 (Contact the League of California Cities, 1400 K Street, Sacramento, CA 95814; phone (916) 658-8200; website <http://www.cacities.org/Resources/Open-Government>).

453 Gov. Code, § 54954.1.

454 *Ibid.*

455 *Ibid.*

456 *Ibid.*

457 *Ibid.*

458 *Ibid.*

exempted by the PRA, and must be made available upon request without delay.⁴⁵⁹ When non-exempt writings are distributed during a public meeting, in addition to making them available for public inspection at the meeting (if prepared by the local agency or a member of its legislative body) or after the meeting (if prepared by another person), they must be made available in appropriate alternative formats upon request by a person with a disability.⁴⁶⁰ The local agency may charge a fee for a copy of the records; however, no surcharge may be imposed on persons with disabilities.⁴⁶¹ When records relating to agenda items are distributed to a majority of all members of a legislative body less than 72 hours prior to the meeting, the records must be made available for public inspection in a designated location at the same time they are distributed.⁴⁶² The address of the designated location shall be listed in the meeting agenda.⁴⁶³ The local agency may also post the information on its website in a place and manner which makes it clear the records relate to an agenda item for an upcoming meeting.⁴⁶⁴

Maintaining Electronic Records

“Public records,” as defined by the PRA, 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.”⁴⁶⁵ The PRA does not require a local agency to keep records in an electronic format. But, if a local agency has an existing, non-exempt public record in an electronic format, the PRA does require the agency make those records available in any electronic format in which it holds the records when requested.⁴⁶⁶ The PRA also requires the local agency to provide a copy of such records in any alternative electronic format requested, if the alternative format is one the agency uses for itself or for provision to other agencies.⁴⁶⁷ The PRA does not require a local agency to release a public record in the electronic form in which it is held if the release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.⁴⁶⁸ Likewise, the PRA does not permit public access to records held electronically, if access is otherwise restricted by statute.⁴⁶⁹

► PRACTICE TIP:

Local agencies should consider adopting electronic records policies governing such issues as: what electronic records (e.g., emails, texts, and social media) and what attributes of the electronically stored information and communications are considered “retained in the ordinary course of business” for purposes of the PRA; whether personal electronic devices (such as computers, tablets, cell phones) and personal email accounts may be used to store or send electronic communications concerning the local agency, or whether the agency’s devices must be used; and privacy expectations. Local agencies should consult with information technology officials to understand what information is being stored electronically and the technological limits of their systems for the retention and production of electronic records.

459 Gov. Code, § 54957.5, subd. (a).

460 Gov. Code, § 54957.5, subd. (c).

461 Gov. Code, § 54957.5, subd. (d). *See* Chapter 3.

462 Gov. Code, § 54957.5, subds. (b)(1), (b)(2).

463 Gov. Code, § 54957.5, subd. (b)(2).

464 Govt C §54957.5, subd. (b)(2).

465 Gov. Code, § 6252, subd. (e).

466 Gov. Code, § 6253.9, subd. (a)(1).

467 Gov. Code, § 6253.9, subd. (a)(2).

468 Gov. Code, § 6253.9, subd. (f).

469 Gov. Code, § 6253.9, subd. (g).

Duplication costs of electronic records are limited to the direct cost of producing the electronic copy.⁴⁷⁰ However, requesters may be required to bear additional costs of producing a copy of an electronic record, such as programming and computer services costs, if the request requires the production of electronic records that are otherwise only produced at regularly scheduled intervals, or production of the record would require data compilation, extraction or programming.⁴⁷¹ Agencies are not required to reconstruct electronic copies of records no longer available to the agency in electronic format.⁴⁷²

Metadata

Electronic records may include “metadata,” or data about data contained in a record that is not visible in the text. For example, metadata may describe how, when or by whom particular data was collected, and contain information about document authors, other documents, or commentary or notes. Although no provision of the PRA expressly addresses metadata, and there are no reported court opinions in California considering whether or to what extent metadata is subject to disclosure, other jurisdictions have held that metadata is a public record subject to disclosure, unless an exemption applies.⁴⁷³ There are no reported California court opinions providing guidance on whether agencies have a duty to disclose metadata when an electronic record contains exempt information that cannot be reasonably segregated without compromising the record’s integrity.

Computer Software

The PRA permits government agencies to develop and commercialize computer software and to benefit from copyright protections for agency-developed software. Computer software developed by state or local agencies, including computer mapping systems, computer programs, and computer graphics systems, is not a public record subject to disclosure.⁴⁷⁴ As a result, public agencies are not required to provide copies of agency-developed software pursuant to the PRA. The PRA authorizes state and local agencies to sell, lease, or license agency-developed software for commercial or noncommercial use.⁴⁷⁵ The exception for agency-developed software does not affect the exempt status of records merely because it is stored electronically.⁴⁷⁶

Computer Mapping (GIS) Systems

While computer mapping systems developed by local agencies are not public records subject to disclosure, such systems generally include geographic information system (GIS) data. Many local agencies use GIS programs and databases for a broad range of purposes, including the creation and editing of maps depicting property and facilities of importance to the local agency and the public. As with metadata, the PRA does not expressly address GIS information disclosure. However, the California Supreme Court has held, that while GIS software is exempt under the PRA, the data in a GIS file format is a public record, and data in a GIS database must be produced.⁴⁷⁷

470 Gov. Code, § 6253.9, subd. (a)(2).

471 Gov. Code, § 6253.9, subd. (b).

472 Gov. Code, § 6253.9, subd. (c).

473 *Lake v. City of Phoenix*, (Ariz. 2009) 218 P.3d 1004, 1008; *O’Neill v. City of Shoreline* (Wash. 2010) 240 P.3d 1149, 1152–1154; *Irwin v. Onondaga County* (N.Y. 2010) 895 N.Y.S.2d 262, 265.

474 Gov. Code, § 6254.9, subds. (a), (b).

475 Gov. Code, § 6254.9, subd. (a).

476 Gov. Code, § 6254.9, subd. (d).

477 *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 170; see also *County of Santa Clara v Superior Court*, (2009) 170 Cal.App.4th 1301, 1323–1336.

Public Contracting Records

State and local agencies subject to the Public Contract Code that receive bids for construction of a public work or improvement, must, upon request from a contractor plan room service, provide an electronic copy of a project's contract documents at no charge to the contractor plan room.⁴⁷⁸ The Public Contract Code does not define the term "contractor plan room," but the term commonly refers to a clearinghouse that contractors can use to identify potential bidding opportunities and obtain bid documents. The term may also refer to an on-line resource for a contractor to share plans and information with subcontractors.

Electronic Discovery

The importance of maintaining a written document retention policy is evident by revisions to the Federal Rules of Civil Procedure, and California's Civil Discovery Act and procedures, relative to electronic discovery.⁴⁷⁹ Those provisions and discovery procedures require parties in litigation to address the production and preservation of electronic records. Those rule changes may require a local agency to alter its routine management or storage of electronic information, and illustrate the importance of having and following formal document retention policies.

Once a local agency knows or receives notice that information is relevant to litigation (e.g., a litigation hold notice or a document preservation notice), it has a duty to preserve that information for discovery. In some cases, the local agency may have to suspend the routine operation of its information systems (through a litigation hold) to preserve information relevant to the litigation and avoid the potential imposition of sanctions.

Record Retention and Destruction Laws

The PRA is not a records retention statute. The PRA does not prescribe what type of information a public agency may gather or keep, or provide a method for correcting records.⁴⁸⁰ Its sole function is to provide access to public records.⁴⁸¹ Other provisions of state law govern retention of public records.

Local agencies generally must retain public records for a minimum of two years.⁴⁸² However, some records may be destroyed sooner. For example, duplicate records that are less than two years old may be destroyed if no longer required.⁴⁸³ Similarly, the retention period for "recordings of telephone and radio communications" is 100 days⁴⁸⁴ and "routine video monitoring" need only be retained for one year, and may be destroyed or erased after 90 days if another record, such as written minutes, is kept of the recorded event. "Routine video monitoring" is defined as "video recording by a video or electronic imaging system designed to record the regular and ongoing operations of a [local agency] . . . , including mobile in-car video systems, jail observation and monitoring systems, and building security recording systems."⁴⁸⁵ The Attorney General has opined that recordings by security cameras on public buses and other transit vehicles constitute "routine video monitoring."⁴⁸⁶ Whether additional recording technology used for law and parking enforcement such as body cameras and Vehicle License Plate Recognition ("VLPR") systems also constitute routine video monitoring is an open question and may depend upon its use. While the technology is very similar to in-car video systems, recordings targeting specific activity may not be "routine." The retention statutes do not provide a specific retention period for e-mails, texts, or forms of social media.

⁴⁷⁸ Pub. Contract Code, §§ 10111.2, 20103.7.

⁴⁷⁹ Fed. Rules Civ. Proc., rule 26, 28 U.S.C.; Cal. Rules of Court, rule 3.724(8); Code Civ. Proc. §§ 2016.020, 2031.020–2031.320.

⁴⁸⁰ *Los Angeles Police Dept. v. Superior Court* (1977) 65 Cal.App.3d 661, 668.

⁴⁸¹ *Ibid.*

⁴⁸² Gov. Code, § 34090, subd. (d).

⁴⁸³ Gov. Code, § 34090.7.

⁴⁸⁴ Gov. Code, § 34090.6.

⁴⁸⁵ Gov. Code, §§ 34090.6, 34090.7.

⁴⁸⁶ 85 Ops.Cal.Atty.Gen. 256, 258 (2002).

By contrast, state law does not permit destruction of records affecting title to or liens on real property, court records, records required to be kept by statute, and the minutes, ordinances, or resolutions of the legislative body or city board or commission.⁴⁸⁷ In addition, employers are required to maintain personnel records for at least three years after an employee's termination, subject to certain exceptions, including peace officer personnel records, pre-employment records, and where an applicable collective bargaining agreement provides otherwise.⁴⁸⁸

To ensure compliance with these laws, most local agencies adopt records retention schedules as a key element of a records management system.

Records Covered by the Records Retention Laws

There is no definition of "public records" or "records" in the records retention provisions governing local agencies.⁴⁸⁹ The Attorney General has opined that the definition of "public records" for purposes of the records retention statutes is "a thing which constitutes an objective lasting indication of a writing, event or other information, which is in the custody of a public officer and is kept either (1) because a law requires it to be kept; or (2) because it is necessary or convenient to the discharge of the public officer's duties and was made or retained for the purpose of preserving its informational content for future reference."⁴⁹⁰ Under that definition, local agency officials retain some discretion concerning what agency records must be kept pursuant to state records retention laws. Similarly, the PRA allows for local agency discretion concerning what preliminary drafts, notes, or interagency or intra-agency memoranda are retained in the ordinary course of business.⁴⁹¹

► PRACTICE TIP:

Though there is no definition of "records" for purposes of the retention requirements applicable to local agencies, the retention requirements and the disclosure requirements of the PRA should complement each other. Local agencies should exercise caution in deviating too far from the definition of "public records" in the PRA in interpreting what records should be retained under the records retention statutes.

487 Gov. Code, § 34090, subs. (a), (b), (c) & (e).

488 Lab. Code, § 1198.5, subd. (c)(1).

489 64 Ops. Cal. Atty. Gen. 317, 323 (1981).

490 *Id.* at p. 324.

491 Gov. Code, § 6254, subd. (a). See "Drafts," p. 33.

Frequently Requested Information and Records

This table is intended as a general guide on the applicable law and is not intended to provide legal advice. The facts and circumstances of each request should be carefully considered in light of the applicable law. A local agency's legal counsel should always be consulted when legal issues arise.

INFORMATION/RECORDS REQUESTED	MUST THE INFORMATION/RECORD GENERALLY BE DISCLOSED?	APPLICABLE AUTHORITY
AGENDA MATERIALS DISTRIBUTED TO A LEGISLATIVE BODY RELATING TO AN OPEN SESSION ITEM	Yes	Gov. Code, § 54957.5. For additional information, see p. 63 of "The People's Business: A Guide to the California Public Records Act," "the Guide."
AUDIT CONTRACTS	Yes	Gov. Code, § 6253.31.
AUDITOR RECORDS	Yes, with certain exceptions	Gov. Code, § 36525(b).
AUTOMATED TRAFFIC ENFORCEMENT SYSTEM (RED LIGHT CAMERA) RECORDS	No	Veh. Code, § 21455.5(f)(1).
AUTOPSY REPORTS	No	Gov. Code, § 6254(f); <i>Dixon v. Superior Court</i> (2009) 170 Cal. App.4th 1271.
CALENDARS OF ELECTED OFFICIALS	Perhaps not, but note that there is no published appellate court decision on this issue post- Prop. 59. ¹	See <i>Times Mirror Co. v. Superior Court</i> (1991) 53 Cal.3d. 1325 and <i>Rogers v. Superior Court</i> (1993) 19 Cal.App.4th 469 for a discussion of the deliberative process privilege. For additional information, see p. 32 of the Guide.
CLAIMS FOR DAMAGES	Yes	<i>Poway Unified School District v. Superior Court</i> (1998) 62 Cal.App.4th 1496.
CORONER PHOTOS OR VIDEOS	No	Civ. Proc. Code, § 129.
DOG LICENSE INFORMATION	Unclear	See conflict between Health & Safety Code, § 121690(h) which states that license information is confidential, and Food and Agr. Code, § 30803(b) stating license tag applications shall remain open for public inspection.
ELECTION PETITIONS (INITIATIVE, REFERENDUM AND RECALL PETITIONS)	No, except to proponents if petition found to be insufficient	Gov. Code, § 6253.5; Elec. Code, §§ 17200, 17400, and 18650; Evid. Code, § 1050. For additional information, see p. 34 of the Guide.
EMAILS AND TEXT MESSAGES OF LOCAL AGENCY STAFF AND/OR OFFICIALS	Yes	Emails and text messages relating to local agency business on local agency and/or personal accounts and devices are public records. Gov. Code § 6252(e); <i>City of San Jose v. Superior Court</i> (2017) 2 Cal. 5th 608. For additional information, see p. 12 of the Guide.
EMPLOYMENT AGREEMENTS/CONTRACTS	Yes	Gov. Code, §§ 6254.8 and 53262(b). For additional information, see p. 49 of the Guide.
EXPENSE REIMBURSEMENT REPORT FORMS	Yes	Gov. Code, § 53232.3(e).
FORM 700 (STATEMENT OF ECONOMIC INTERESTS) AND CAMPAIGN STATEMENTS	Yes ²	Gov. Code, § 81008.

INFORMATION/RECORDS REQUESTED	MUST THE INFORMATION/RECORD GENERALLY BE DISCLOSED?	APPLICABLE AUTHORITY
GEOGRAPHIC INFORMATION SYSTEM (GIS) MAPPING SOFTWARE AND DATA	No as to proprietary software. Yes as to GIS base map information.	Gov. Code, § 6254.9; 88 Ops.Cal.Atty.Gen. 153 (2005); see <i>Sierra Club v. Superior Court</i> (2013) 57 Cal.4th 157 for data as a public record; see also <i>County of Santa Clara v. Superior Court</i> (2009) 170 Cal.App.4th 1301 for GIS basemap as public record; <i>Sierra Club v. Superior Court</i> (2011) 195 Cal.App.4th 1537; for additional information, see p. 14 of the Guide.
GRADING DOCUMENTS INCLUDING GEOLOGY REPORTS, COMPACTION REPORTS, AND SOILS REPORTS SUBMITTED IN CONJUNCTION WITH AN APPLICATION FOR A BUILDING PERMIT	Yes	89 Ops.Cal.Atty.Gen. 39 (2006); but see Gov. Code, § 6254(e). For additional information, see p. 29 of the Guide.
JUVENILE COURT RECORDS	No	<i>T.N.G. v. Superior Court</i> (1971) 4 Cal.3d. 767; Welf. & Inst. Code, §§ 827 and 828. For additional information, see p. 39 of the Guide.
LEGAL BILLING STATEMENTS	Generally, yes, as to amount billed and/or after litigation has ended. No, if pending or active litigation and the billing entries are closely related to the attorney-client communication. For example, substantive billing detail which reflects an attorney's impressions, conclusions, opinions or legal research or strategy.	Gov. Code, § 6254(k); Evid. Code, § 950, et seq.; <i>County of Los Angeles Board of Supervisors v. Superior Court</i> (2016) 2 Cal.5th 282; <i>Smith v. Laguna Sun Villas Community Assoc.</i> (2000) 79 Cal.App.4th 639; <i>United States v. Amlani</i> , 169 F.3d 1189 (9th Cir. 1999). But see Gov. Code, § 6254(b) as to the disclosure of billing amounts reflecting legal strategy in pending litigation. <i>County of Los Angeles v. Superior Court</i> (2012) 211 Cal.App.4th 57 (Pending litigation exemption does not protect legal bills reflecting the hours worked, the identity of the person performing the work, and the amount charged from disclosure; only work product or privileged descriptions of work may be redacted). For additional information, see p. 30 of the Guide.
LIBRARY PATRON USE RECORDS	No	Gov. Code, §§ 6254(j) and 6267. For additional information, see p. 40 of the Guide.
MEDICAL RECORDS	No	Gov. Code, § 6254(c). For additional information, see p. 40 of the Guide.
MENTAL HEALTH DETENTIONS (5150 REPORTS)	No	Welf. & Inst. Code, § 5328. For additional information, see p. 39 of the Guide.
MINUTES OF CLOSED SESSIONS	No	Gov. Code, § 54957.2(a). For additional information, see p. 43 of <i>Open and Public V: A User's Guide to the Ralph M. Brown Act, 2d Edition</i> , 2016 (Contact the League of California Cities, 1400 K Street, Sacramento, CA 95814; phone (916) 658-8200; website http://www.cacities.org/Resources/Open-Government).
NOTICES/ORDERS TO PROPERTY OWNER RE: HOUSING/BUILDING CODE VIOLATIONS	Yes	Gov. Code, § 6254.7(c). For additional information, see p. 1 of the Guide.

FREQUENTLY REQUESTED INFORMATION AND RECORDS

INFORMATION/RECORDS REQUESTED	MUST THE INFORMATION/RECORD GENERALLY BE DISCLOSED?	APPLICABLE AUTHORITY
OFFICIAL BUILDING PLANS (ARCHITECTURAL DRAWINGS AND PLANS)	Inspection only. Copies provided under certain circumstances.	Health & Saf. Code, § 19851; see also 17 U.S.C. §§ 101 and 102. For additional information, see p. 28 of the Guide.
PERSONAL FINANCIAL RECORDS	No	Gov. Code, §§ 7470, 7471, 7473; see also Gov. Code, § 6254(n). For additional information, see p. 40 of the Guide.
PERSONNEL		For additional information, see p. 46 of the Guide.
<ul style="list-style-type: none"> Employee inspection of own personnel file 	Yes, with exceptions	For additional information, see pp. 29-31 of the Guide. Lab. Code, § 1198.5. This section applies to charter cities. See Gov. Code, § 31011. For peace officers, see Gov. Code, § 3306.5. For firefighters, see Gov. Code, § 3256.5.
<ul style="list-style-type: none"> Investigatory reports 	It depends	<i>City of Petaluma v. Superior Court</i> (2016) 248 Cal.App.4th 1023; <i>Marken v. Santa Monica-Malibu Unified Sch. Dist.</i> (2012) 202 Cal.App.4th 1250; <i>Sanchez v. County of San Bernardino</i> (2009) 176 Cal.App.4th 516; <i>BRV, Inc. v. Superior Court</i> (2006) 143 Cal.App.4th 742.
<ul style="list-style-type: none"> Name and pension amounts of public agency retirees 	Yes. However, personal or individual records, including medical information, remain exempt from disclosure.	<i>Sacramento County Employees Retirement System v. Superior Court</i> (2011) 195 Cal.App.4th 440; <i>San Diego County Employees Retirement Association v. Superior Court</i> (2011) 196 Cal.App.4th 1228; <i>Sonoma County Employees Retirement Assn. v. Superior Court</i> (2011) 198 Cal.App.4th 196.
<ul style="list-style-type: none"> Names and salaries (including performance bonuses and overtime) of public employees, including peace officers 	Yes, absent unique, individual circumstances. However, other personal information such as social security numbers, home telephone numbers and home addresses are generally exempt from disclosure per Gov. Code, § 6254(c).	<i>International Federation of Professional and Technical Engineers, Local 21, AFL-CIO, et al. v. Superior Court</i> (2007) 42 Cal.4th 319; <i>Commission on Peace Officers Standards and Training v. Superior Court</i> (2007) 42 Cal.4th 278.
<ul style="list-style-type: none"> Officer's personnel file, including internal affairs investigation reports 	No	This information can only be disclosed through a Pitchess motion. Pen. Code, §§ 832.7 and 832.8; Evid. Code, §§ 1043-1045; <i>International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court</i> (2007) 42 Cal.4th 319; <i>People v. Superior Court</i> (2014) 228 Cal.App.4th 1046; <i>City of Hemet v. Superior Court</i> (1995) 37 Cal.App.4th 1411.
<ul style="list-style-type: none"> Test Questions, scoring keys, and other examination data. 	No	Gov. Code, § 6254(g).
POLICE/LAW ENFORCEMENT		For additional information, see p. 35 of the Guide.
<ul style="list-style-type: none"> Arrest Information 	Yes	Gov. Code, § 6254(f)(1); <i>County of Los Angeles v. Superior Court (Kusar)</i> (1993) 18 Cal.App.4th 588.
<ul style="list-style-type: none"> Charging documents and court filings of the DA 	Yes	<i>Weaver v. Superior Court</i> (2014) 224 Cal.App.4th 746.
<ul style="list-style-type: none"> Child abuse reports 	No	Pen. Code, §11167.5.

INFORMATION/RECORDS REQUESTED	MUST THE INFORMATION/RECORD GENERALLY BE DISCLOSED?	APPLICABLE AUTHORITY
POLICE/LAW ENFORCEMENT, Continued		
• Citizen complaint policy	Yes	Pen. Code, § 832.5(a)(1).
• Citizen complaints	No	Pen. Code, § 832.7.
• Citizen complaints – annual summary report to the Attorney General	Yes	Pen. Code, § 832.5.
• Citizen complainant information – names addresses and telephone numbers	No	<i>City of San Jose v. San Jose Mercury News</i> (1999) 74 Cal. App.4th 1008. For additional information see p.38 of the Guide.
• Concealed weapon permits and applications	Yes, except for home/business address and medical/psychological history	Gov. Code, § 6254(u)(1); <i>CBS, Inc. v. Block</i> (1986) 42 Cal.3d 646.
• Contact information – names, addresses and phone numbers of crime victims or witnesses	No	Gov. Code § 6254(f)(2). For additional information, see p. 38 of the Guide.
• Criminal history	No	Pen. Code, § 13300 et seq.; Pen. Code, § 11105 et seq.
• Criminal investigative reports including booking photos, audio recordings, dispatch tapes, 911 tapes and in-car video	No	Gov. Code, § 6254(f); <i>Haynie v. Superior Court</i> (2001) 26 Cal.4th 1061.
• Crime reports	Yes	Gov. Code, §§ 6254(f), 6255.
• Crime reports, including witness statements	Yes, but only to crime victims and their representatives	Gov. Code, §§ 6254(f), 13951.
• Elder abuse reports	No	Welf. and Inst. Code, §15633
• Gang intelligence information	No	Gov. Code, § 6254(f); 79 Ops.Cal.Atty Gen. 206 (1996).
• In custody death reports to AG	Yes	Gov. Code, § 12525
• Juvenile court records	No	<i>T.N.G. v. Superior Court</i> (1971) 4 Cal.3d 767; Welf. & Inst. Code, §§ 827 and 828. For additional information, see p. 39 of the Guide.
• List of concealed weapon permit holders	Yes	Gov. Code, § 6254(u)(1); <i>CBS, Inc. v. Block</i> (1986) 42 Cal.3d 646.
• Mental health detention(5150) reports	No	Welf. & Inst. Code, § 5328. For additional information, see p. 39 of the Guide.
• Names of officers involved in critical incidents	Yes, absent unique, individual circumstances	<i>Pasadena Peace Officers Ass'n v Superior Court</i> (2015) 240 Cal.App.4th 268; <i>Long Beach Police Officers Association v. City of Long Beach</i> (2014) 59 Cal.4th 59; <i>Commission on Peace Officer Standards and Training v. Superior Court</i> (2007) 42 Cal.4th 278; <i>New York Times v. Superior Court</i> (1997) 52 Cal.App.4th 97; 91 Ops. Cal.Atty.Gen. 11 (2008).

FREQUENTLY REQUESTED INFORMATION AND RECORDS

INFORMATION/RECORDS REQUESTED	MUST THE INFORMATION/RECORD GENERALLY BE DISCLOSED?	APPLICABLE AUTHORITY
POLICE/LAW ENFORCEMENT, Continued		
<ul style="list-style-type: none"> • Official service photographs of peace officers 	Yes, unless disclosure would pose an unreasonable risk of harm to the officer	<i>Ibarra v. Superior Court</i> (2013) 217 Cal.App.4th 695.
<ul style="list-style-type: none"> • Peace officer's name, employing agency and employment dates 	Yes, absent unique, individual circumstances	<i>Commission on Peace Officer Standards and Training v. Superior Court</i> (2007) 42 Cal.4th 278.
<ul style="list-style-type: none"> • Traffic accident reports 	Yes, in their entirety, but only to certain parties	Veh. Code, §§ 16005, 20012 [only disclose to those needing the information, such as insurance companies, and the individuals involved].
PUBLIC CONTRACTS		
<ul style="list-style-type: none"> • Bid Proposals, RFP proposals 	Yes, except competitive proposals may be withheld until negotiations are complete to avoid prejudicing the public	<i>Michaelis v. Superior Court</i> (2006) 38 Cal. 4th 1065; but see Gov. Code, § 6255 and Evid. Code, § 1060. For additional information, see p. 50 of the Guide.
<ul style="list-style-type: none"> • Certified payroll records 	Yes, but records must be redacted to protect employee names, addresses, and social security number from disclosure	Labor Code, § 1776.
<ul style="list-style-type: none"> • Financial information submitted for bids 	Yes, except some corporate financial information may be protected	Gov. Code, §§ 6254(a),(h), and (k), 6254.15; and 6255; <i>Schnabel v. Superior Court of Orange County</i> (1993) 5 Cal. App.4th 704, 718. For additional information, see p. 51 of the Guide.
<ul style="list-style-type: none"> • Trade secrets 	No	Evid. Code, § 1060; Civ. Code, § 3426, et seq. For additional information, see p. 52 of the Guide.
PURCHASE PRICE OF REAL PROPERTY	Yes, after the agency acquires the property	Gov. Code, § 7275.
REAL ESTATE		For additional information, see p. 51 of the Guide.
<ul style="list-style-type: none"> • Property information (such as selling assessed value, square footage, number of rooms) 	Yes	88 Ops.Cal.Atty.Gen. 153 (2005).
<ul style="list-style-type: none"> • Appraisals and offers to purchase 	Yes, but only after conclusion of the property acquisition	Gov. Code, § 6254(h). Note that Gov. Code, § 7267.2 requires release of more information to the property owner while the acquisition is pending.
REPORT OF ARREST NOT RESULTING IN CONVICTION	No, except as to peace officers or peace officer applicants	Lab. Code, § 432.7.
SETTLEMENT AGREEMENTS	Yes	<i>Register Division of Freedom Newspapers v. County of Orange</i> (1984) 158 Cal.App.3d 893. For additional information, see p. 44 of the Guide.
SOCIAL SECURITY NUMBERS	No	Gov. Code § 6254.29.

INFORMATION/RECORDS REQUESTED	MUST THE INFORMATION/RECORD GENERALLY BE DISCLOSED?	APPLICABLE AUTHORITY
SPEAKER CARDS	Yes	Gov. Code, § 6255.
TAX RETURN INFORMATION	No	Gov. Code, § 6254(k); Internal Revenue Code, § 6103.
TAXPAYER INFORMATION RECEIVED IN CONNECTION WITH COLLECTION OF LOCAL TAXES	No	Gov. Code, § 6254(i). For additional information, see p. 52 of the Guide.
TEACHER TEST SCORES, IDENTIFIED BY NAME, SHOWING TEACHERS' EFFECT ON STUDENTS' STANDARDIZED TEST PERFORMANCE	No	Gov. Code, § 6255; <i>Los Angeles Unified School Dist. v. Superior Court</i> (2014) 228 Cal.App.4th 222.
TELEPHONE RECORDS OF ELECTED OFFICIALS	Yes, as to expense totals. No, as to phone numbers called.	See <i>Rogers v. Superior Court</i> (1993) 19 Cal.App.4th 469.
UTILITY USAGE DATA	No, with certain exceptions.	Gov. Code, § 6254.16. For additional information, see p. 54 of the Guide.
VOTER INFORMATION	No	Gov. Code, § 6254.4. For additional information, see p. 34 of the Guide.

- 1 The analysis with respect to elected officials may not necessarily apply to executive officers such as City Managers or Chief Administrative Officers, and there is no case law directly addressing this issue.
- 2 It should be noted that these statements must be made available for inspection and copying not later than the second business day following the day on which the request was received.

Revised April 2017



1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8200 | Fax: (916) 658-8240
www.cacities.org | www.cacities.org/events | www.westerncity.com

Simrat Dhadli

From: Georgine Scott <gvscott57>
Sent: Monday, December 3, 2018 4:47 PM
To: Clerk
Subject: CA Public Records Request

Dear Nora Pimental or Custodian of Records:

I would like to request to view the following public records:

1. All "General Services" Bids, RFP's, RFQ's for the City of Santa Clara and Santa Clara Stadium Authority within the last five years in the amount of \$40,000.00 or more.
2. All "General Services" contracts (excluding utility contracts) for the City of Santa Clara and Santa Clara Stadium Authority awarded within the last five years.
3. All invoices for "General Services" contracts (excluding utility contract invoices) awarded in 2017 and 2018 for the City of Santa Clara and Santa Clara Stadium Authority.

Does the City of Santa Clara have an on-line portal to review public record requests? If not, would it be possible to review the records electronically?

Please let me know when these public records will be available for viewing and if you need any further clarification.

Sincerely,

Georgine Scott-Codiga
gvscott57

Simrat Dhadli

From: Georgine Scott-Codiga - CGJ <gscottcodiga.cgj@scscourt.org>
Sent: Wednesday, February 6, 2019 5:24 PM
To: Clerk
Subject: PUBLIC RECORDS REQUEST

February 6, 2019

City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

RECEIVED

FEB - 7 2019

City Clerk's Office
City of Santa Clara

Attention: Nora Pimental or Custodian of Records:

Hi Nora,

The Santa Clara County Civil Grand Jury is requesting copies of the public records listed below. If you need further clarification or have any questions feel free to contact me at the telephone number listed below.

If it is possible to provide the information electronically (on a disc or thumb drive) that would be great. If not hard copies are fine. Please contact me by phone or email when the documents are ready for pick-up.

Regards,

Georgine Scott-Codiga
2018-19 Santa Clara County Civil Grand Jury

Confidentiality Notice: This message, together with any attachments, is intended only for the review and/or use of the individual(s) or entity to which it is addressed and may contain confidential or privileged information. If you think you have received this message in error, please advise the sender immediately and delete this and any copies of the message.

Public Records Requested:

1. All documents, including RFQ/RFP's, solicitations, and proposals re the City of Santa Clara's hiring a public affairs/media relations consultant issued in 2017.

2. All documents, including RFQ/RFP's, solicitations, and proposals re the City of Santa Clara's hiring a public affairs/media relations consultant issued in 2018.
3. All documents, including RFQ/RFP's, solicitations, and proposals re the Santa Clara Stadium Authority's hiring a public affairs/media relations consultant for the Stadium Authority issued in 2017.
4. All documents, including RFQ/RFP's, solicitations, and proposals re the Santa Clara Stadium Authority's hiring a public affairs/media relations consultant for the Stadium Authority issued in 2018.
5. "AGREEMENT FOR THE PERFORMANACE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA AND SINGER ASSOCIATES, INC." (2018) including any Blue Routing Sheet.
6. "AGREEMENT FOR THE PERFORMANACE OF SERVICES BY AND BETWEEN THE SANTA CLARA STADIUM AUTHORITY AND SINGER ASSOCIATES, INC." (2018), including any Blue Routing Sheet.
7. "AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA, AND BANNER PUBLIC AFFAIRS" (2017), including any Blue Routing Sheet.
8. All City of Santa Clara policies, procedures and directives pertaining to the purchasing process for "general services as defined in city code 2.105.320."
9. All City of Santa Clara policies, procedures and directives pertaining to the RFP/RFQ bid process for "general services as defined in city code 2.105.320."
10. All Santa Clara Stadium Authority policies, procedures and directives associated with the purchasing process for "general services as defined in city code (Stadium Authority Procurement Policy) Chapter 17.30.120."
11. All documents (including invoices and payments) pertaining to the "AGREEMENT FOR THE PERFORMANACE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA AND SINGER ASSOCIATES, INC."
12. All documents (including invoices and payments) pertaining to the "AGREEMENT FOR THE PERFORMANACE OF SERVICES BY AND BETWEEN THE SANTA CLARA STADIUM AUTHORITY AND SINGER ASSOCIATES, INC."
13. All documents (including invoices and payments) pertaining to the "AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA AND BANNER PUBLIC AFFAIRS."
14. All invoices and related payment documents for services provided under "AGREEMENT FOR THE PERFORMANACE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA AND SINGER ASSOCIATES, INC."
15. All invoices and related payment documents for services provided under the "AGREEMENT FOR THE PERFORMANACE OF SERVICES BY AND BETWEEN THE SANTA CLARA STADIUM AUTHORITY AND SINGER ASSOCIATES, INC."

Confidentiality Notice: This message, together with any attachments, is intended only for the review and/or use of the individual(s) or entity to which it is addressed and may contain confidential or privileged information. If you think you have received this message in error, please advise the sender immediately and delete this and any copies of the message.

Attachment 5(c) - April 3, 2019 Grand Jury Request

From: Georgine Scott-Codiga - CGJ
To: [Publicrecords](#)
Cc: [CSC 1819-109](#)
Subject: Public Records Act Request
Date: Wednesday, April 3, 2019 4:01:04 PM

April 3, 2019

Dominique Davis, Public Records Manager
City of Santa Clara

Re: Civil Grand Jury Public Records Act Request

Dear Ms. Davis;

The Santa Clara Civil Grand Jury requests the following documents:

1. The blue routing sheet for the "AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA AND SINGER ASSOCIATES, INC." 2018. (Item No 5 of Civil Grand Jury's 2/6/19 records request.)
2. The blue routing sheet for the "AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE SANTA CLARA STADIUM AUTHORITY AND SINGER ASSOCIATES, INC." 2018. (Item No 6 of Civil Grand Jury's 2/6/19 records request.)
3. The blue routing sheet for the "AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA AND BANNER PUBLIC AFFAIRS." 2017. (Item No 7 of Civil Grand Jury's 2/6/19 records request.)
4. All invoices and payments pertaining to the "AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA AND SINGER ASSOCIATES, INC." (Item No 11 of Civil Grand Jury's 2/6/19 records request.)

*Note: The Civil Grand Jury received the following invoices and payments in your 3/21/19 response. Invoice No. 131921, 132001, 132062, 132137, 132204, 132427, 132344. Voucher Id No. 0424655, 00424656, 00425758, 00425758, 00425759, 00427659, 00429807. To clarify, we are requesting all additional invoices and payments not previously received that track the outstanding \$7,812.50 balance (shown by the records) still owed to Singer & Associates.

5. All invoices and payments pertaining to the "AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE SANTA CLARA STADIUM AUTHORITY AND SINGER ASSOCIATES, INC." (Item No 12 of Civil Grand Jury's 2/6/19 records request.)

*Note: The Civil Grand Jury received the following invoices and payments in your 3/21/19 response. Invoice No. 132002, 132138, 132205, 132273 and Purchase Order No. SCSA048 for \$100,000.00. To clarify, we are requesting all additional invoices and payments not previously received that track the \$85,888.87 balance from the \$100,000.00 purchase order to Singer & Associates. More specifically, I am requesting all documents that indicate where the \$85,888.87 went? Was it utilized, refunded, etc.?

6. All documents, logs, tracking systems, notes, etc. indicating the number of public record requests received from 4/1/18 to 4/1/19.
7. All documents, logs, tracking systems, notes, etc. including but not limited to, the number of public records request responsive within 10 days, within 24 days, or requiring a time extension to complete, from 4/1/18 to 4/1/19.

Please feel free to contact me if you require further clarification on these requests. I can be reached at _____ or at my email.

Thank you in advance for your assistance.

Georgine Scott-Codiga

Georgine Scott-Codiga
2018-19 Santa Clara County Civil Grand Jury

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From: [Publicrecords](#)
To: todd@transparentcalifornia.com
Subject: City of Santa Clara - Public Record Request Updated (19-PRR.115)
Date: Tuesday, June 11, 2019 11:31:00 AM
Attachments: [image003.png](#)

Dear Todd Maddison:

Thank you for your public records request. The City of Santa Clara acknowledges receipt and hereby responds to your request pursuant to the California Public Record Act.

This letter is in response to your correspondence dated May 30, 2019 which seeks the production of the following records: "records which provide a complete and comprehensive account of Santa Clara's total costs associated with employee compensation. Specifically, this request seeks an accounting of total gross wages paid to each employee and the total cost incurred by the employer for providing retirement and health benefits."

14 day extension:

The City is still determining if it possesses records that may be responsive to your request, and respectfully extend the response until **June 18, 2019** for the following reasons and pursuant to California Public Record Act ("the Act"), Government code section 6253(c)(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 and; (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.*

If you have any questions or concerns regarding this correspondence, and to submit future public records requests, please do not hesitate to contact me at Publicrecords@santaclaraca.gov

Sincerely,

Dominique L. Davis
Public Records Manager
City of Santa Clara



Please note that email correspondence with the City of Santa Clara, along with attachments, may be subject to the California Public Records Act, and therefore may be subject to disclosure unless otherwise exempt.

City of Santa Clara
Policy and Procedure Manual



MAYOR AND COUNCIL PUBLIC RECORDS POLICY

POLICY

As technology has evolved, the creation and retention of public records has changed. In order to make clear what records created, received or retained by the Mayor and the Council Members are considered public records available for disclosure, the City Council hereby establishes the following policy.

Any communications, including emails, texts, messages or comments on social media, to or from the Mayor or City Council Member that pertain to the conduct of public business, regardless of whether or not they were created or sent to a private or public account, are public records that may be disclosed unless otherwise exempt from disclosure.

PROCEDURE

1. The Mayor and the Council Members shall only use official City email and text accounts to conduct City business.
2. The City shall provide the Mayor and the Council Members with separate publicly owned devices such as cell phones and tablets for the conduct of City business.
3. The Mayor and the Council Members shall endeavor to keep communications regarding City business out of their personal accounts and shall forward any communications regarding City business that they receive in their personal accounts to their official City accounts.
4. Any communications, including emails and texts that relate to an Agenda item received before or during a Council meeting by a majority of the Council must be disclosed in accordance with Government Code Section 54957.5.
5. No campaign activity may be conducted on City accounts or City devices.
6. If a request for records is received, a search that is reasonably calculated to locate responsive records will be conducted. Privacy concerns can and should be addressed on a case-by-case basis. Communications that are primarily personal, containing no more than incidental mentions of City business are generally not considered public records.

Reference: **City Council-approved policy**

RESOLUTION NO. 17-8433

A RESOLUTION OF THE CITY OF SANTA CLARA,
CALIFORNIA ADOPTING A MAYOR AND CITY COUNCIL
PUBLIC RECORDS POLICY

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, a recent California Supreme Court decision has clarified the nature of communications that may constitute a public record subject to disclosure;

WHEREAS, the City Council referred this matter to its Governance Committee; and,

WHEREAS, the Governance Committee has recommended that the attached Mayor and City Council Public Records Policy be approved and adopted by the City Council.


NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. Adoption of Policy. The attached Mayor and City Council Public Records Policy is hereby approved and adopted.
2. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 16th DAY OF MAY 2017, BY THE FOLLOWING VOTE:

AYES:	COUNCILORS:	Davis, Kolstad, Mahan, O'Neill and Watanabe and Mayor Gillmor
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	Caserta
ABSTAINED:	COUNCILORS:	None

ATTEST: _____


ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:
1. Mayor and City Council Public Records Policy
I:\RESOLUTIONS\Mayor and City Council Public Records Policy 05-16-17.docx

Attachment 8



ADMINISTRATIVE CODE

CMD NUMBER 13

CITY MANAGER'S DIRECTIVE-PROCEDURE

DATE: July 23, 2003

CANCELS: None

SUBJECT : PUBLIC RECORD REQUESTS

POLICY : The California Public Records Act ("Act") requires the City to assist members of the public make a "focused and effective" request that reasonably describes an identifiable record or records. The City must assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request. The Act also provides that the City shall 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.

RESPONSIBILITY : ACTION

All Departments

1. Date stamp all Public Records Requests (Request).
2. Ascertain if there are any legal questions or issues involved with the Request. Contact the City Attorney's Office for advice, if necessary.
3. Identify if the Request can be processed within 10 days. If the Request cannot be processed within 10 days, contact the requester and inform him/her when the information/documentation will be available and request a response time extension. Document time extensions agreed upon.
4. Obtain clarification from the requester, if necessary, to answer the Request. Make a reasonable effort to elicit additional clarifying information from the requester if the Request is either vague and difficult to understand, or is so broad that it would produce volumes of records. Additional information may be necessary to focus the Request in order to help the requester and the City identify the appropriate records. Describe the information technology, mediums and formats and physical location in which the records exist. This requirement is most applicable when the records sought exist in mediums and formats other than a paper record. Providing the requester with this information will assist the requester in identifying which records would be most responsive to the inquiry. Provide suggestions for overcoming any practical basis for denying access to the records or information sought. If unsure whether the information is retrievable or available, it may also be helpful to explain the City's record keeping policies. This will help avoid practical reasons for denying a Request. The City is not obligated to create

a new records index if one exists.

5. If requested by the City Attorney's Office, transmit a copy of the information/documentation for review before mailing to the requester.
6. Prepare a transmittal memo identifying which information or documentation is being transmitted or keep a copy of all of the information or documentation that has been transmitted including the date that it was transmitted. Maintain the information for the time specified in the City's Files Management Manual.

Requests Involving Multiple Departments:

7. Identify if there are other departments that may be involved in answering the Request. Deliver a copy of the Request to the other department involved and bring the Request to the attention of the department head (or someone designated by the department head that will follow through with the Request). Indicate on the bottom of the Request the name of the staff member and date that the Request was delivered.
8. Decide what department will be the lead department (Lead Department)
9. The Lead Department will follow all the steps above.

Cross Reference:

City's Files Management Manual

Kathleen McGraw

From: Kathleen McGraw
Sent: Friday, April 05, 2019 2:31 PM
To: Georgine Scott-Codiga - CGJ; jlevin.cgj@scscourt.org; hoberhelman.cgj@scscourt.org
Subject: Additional Info re: 4/5 CGJ Meeting w/Santa Clara City Manager
Attachments: EDMS Update 4-5-19.pdf

Good afternoon,

Deanna asked that I forward the attached as well, this is one of the referenced PowerPoints she mentioned during her conversation with you regarding Monday's strategic meeting for advancing LaserFiche and Next Record.

Regards,

Kathi McGraw | Executive Assistant to the City Manager
City Manager's Office
1500 Warburton Avenue | Santa Clara, CA 95050
O: 408.615.2214 www.SantaClaraCA.gov



**City of
Santa Clara
Enterprise Document
Management System Update**

April 8, 2019



**City of
Santa Clara**
The Center of What's Possible

Agenda

- Laserfiche
- Project Goals
- Initial Projects & Status
- Timeline
- FitGap Analysis
- What's Next



What is Laserfiche?

- Laserfiche is an Enterprise Document Management System (EDMS):
 - Digitize Documents
 - Organize Documents
 - Automate Processes
 - Streamline Process
- 35,000 customers with 5 million users worldwide
- More local government customers than any other EDMS system
- 400 customers in 15 states
- 13 counties and more than 125 cities in California
- ECS is the #1 provider of Laserfiche solutions in Western US and has offices in the Bay Area



Project Goals

- Implement a citywide system to store and find documents
- Reduce paper, digitally manage information
- Implement electronic forms, streamline processes and workflow
- Enable increased transparency and accountability via public web portal and enhanced search capabilities
- Implement digital and electronic signatures for contracts
- Retire Sire system (end of life 07/19)



Initial Departments/Projects

- **City Attorney:** Legal Service Request form Workflow and electronic signatures (DocuSign) for contracts
- **Silicon Valley Power:** Electronic forms and department wide document management
- **City Clerk:** Centralize records retention management for city records from creation to disposition
- **Fire Dept:** Access to maps, surveys, Hazmat and other documents in the field via smart phone or tablet
- **Other projects:** Permitting System Integration, GIS Integration
- Retire Sire



Current Status

CAO - LSR

City of Santa Clara CAO - LSR

City Attorney's Office - Legal Service Request

Case Number: [Field]
 Contact Person: [Field]
 Contact Email: [Field]
 Phone/Cell Number: [Field]
 Contact Title: [Field]
 Requested Assistance: [Field]
 Date: 07/2018
 Legal Service Requested: [Field]
 Department Manager: [Field]
 Supervisor: [Field]

Attachments: [Field]

File Location: [Field]
 Submit

SVP - FRAP

City of Santa Clara FRAP Application Form

SECTION 1: CUSTOMER INFORMATION

First Name: [Field]
 Last Name: [Field]
 Title of Requester: [Field]
 Email Address: [Field]
 Phone: [Field]
 Home Address: [Field]
 City: [Field]
 State: CA
 Zip: [Field]
 Mailing Address: [Field]
 City: [Field]
 State: CA
 Zip: [Field]
 Email Address: [Field]
 Phone: [Field]

SECTION 2A: PUBLIC ASSISTANCE PROGRAM ELIGIBILITY

Eligible Program 1: [Field]
 Eligible Program 2: [Field]
 Eligible Program 3: [Field]

SECTION 2B: HOUSEHOLD INCOME ELIGIBILITY

Annual Income: [Field]

CCO - Records Retention

City of Santa Clara Application for Board, Commissions, and Committees

Board/Commission/Committee Approval For: [Field]

Name: [Field]
 Address: [Field]
 City: [Field]
 State: CA
 Zip: [Field]
 Email: [Field]

Phone: [Field]
 Primary Phone #: [Field]
 Secondary Phone #: [Field]

Are you a regular voter in Santa Clara? [Field]
 Are you a registered voter in Santa Clara? [Field]
 Have you attended a meeting of this Board/Commission/Committee? [Field]

Print Name: [Field]

CCO - Boards & Commissions

City of Santa Clara Application for Board, Commissions, and Committees

Board/Commission/Committee Approval For: [Field]

Name: [Field]
 Address: [Field]
 City: [Field]
 State: CA
 Zip: [Field]
 Email: [Field]

Phone: [Field]
 Primary Phone #: [Field]
 Secondary Phone #: [Field]

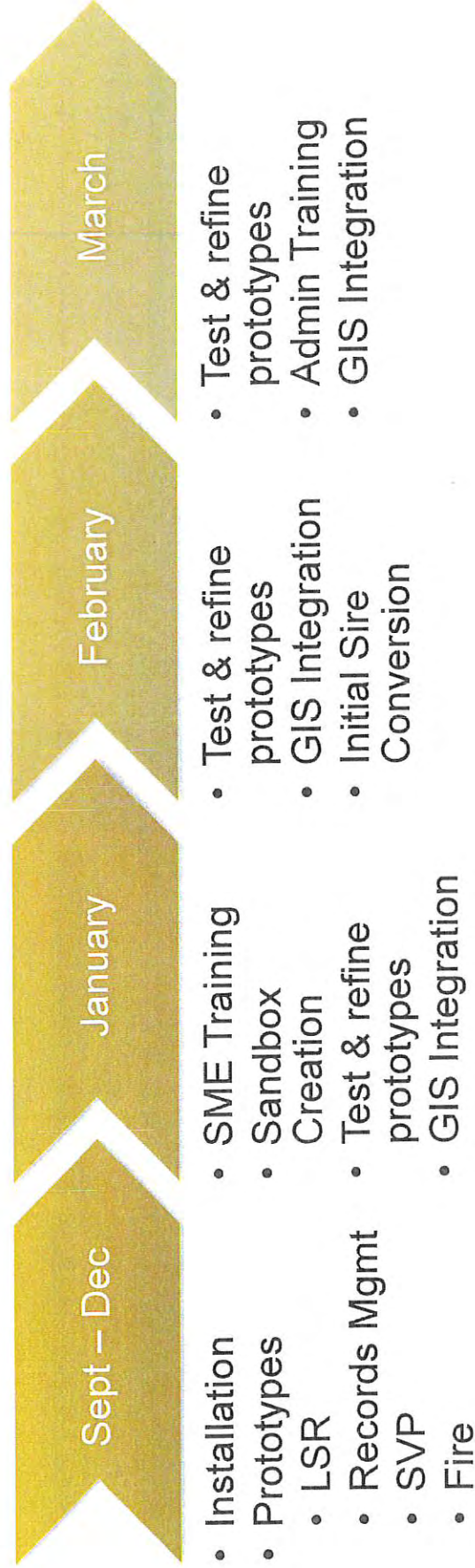
Are you a regular voter in Santa Clara? [Field]
 Are you a registered voter in Santa Clara? [Field]
 Have you attended a meeting of this Board/Commission/Committee? [Field]

Print Name: [Field]

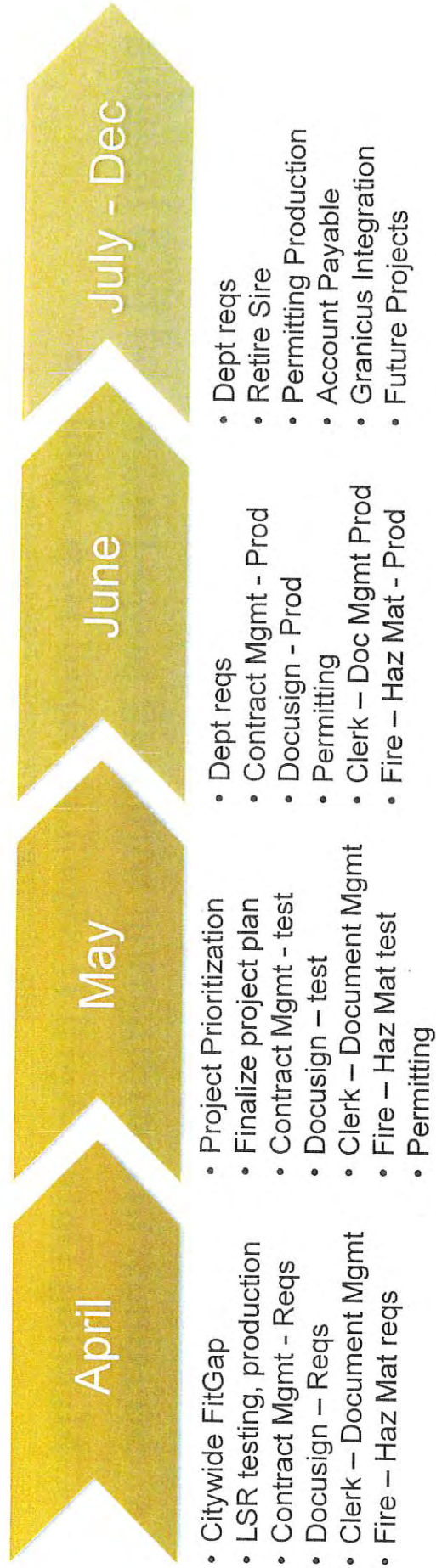


City of Santa Clara
 The Center of What's Possible

Timeline



Timeline



FitGap Analysis Meetings

- Designed to help each department:
 - Determine current process
 - Propose new & more efficient business processes to improve existing process
 - Determine what records may be made available through public portal
 - Digitize records and reduce paper
- Meetings: in coordination with staff project team and ECS Imaging
- Meeting Dates: April 11, April 15, April 16 & April 22

(Time slot assigned upon receipt of questionnaire)

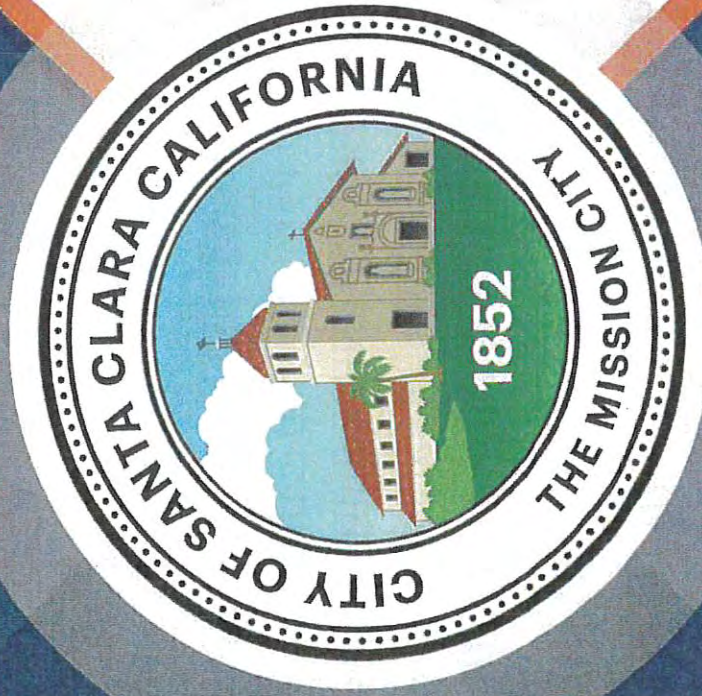


What's Next

- Test, refine & implement prototypes
- End user training
- Complete Fit Gap analysis with each department City-wide
 - Determine existing use of SIRE and suggested improvements to be made
 - Determine other document management needs
 - Prioritize departmental needs
 - Determine additional resource requirements



Public Records 60 Day Review





First 60 Days

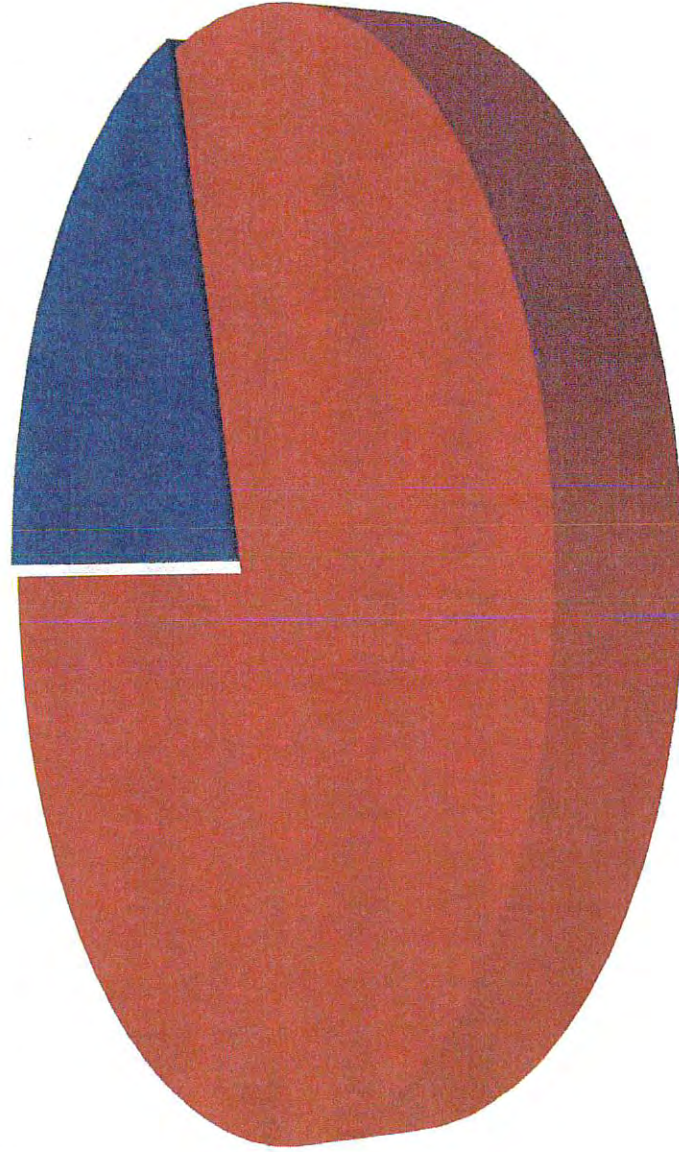
- Conducted department meet & greet
- Determined goals for the role of Public Records Manager
- Developed plan for sustaining knowledge, increasing transparency & implementing systems
- Developed plan for strategic planning/positioning



Total Citywide Public Records Request in 2019

114 Requests Tracked

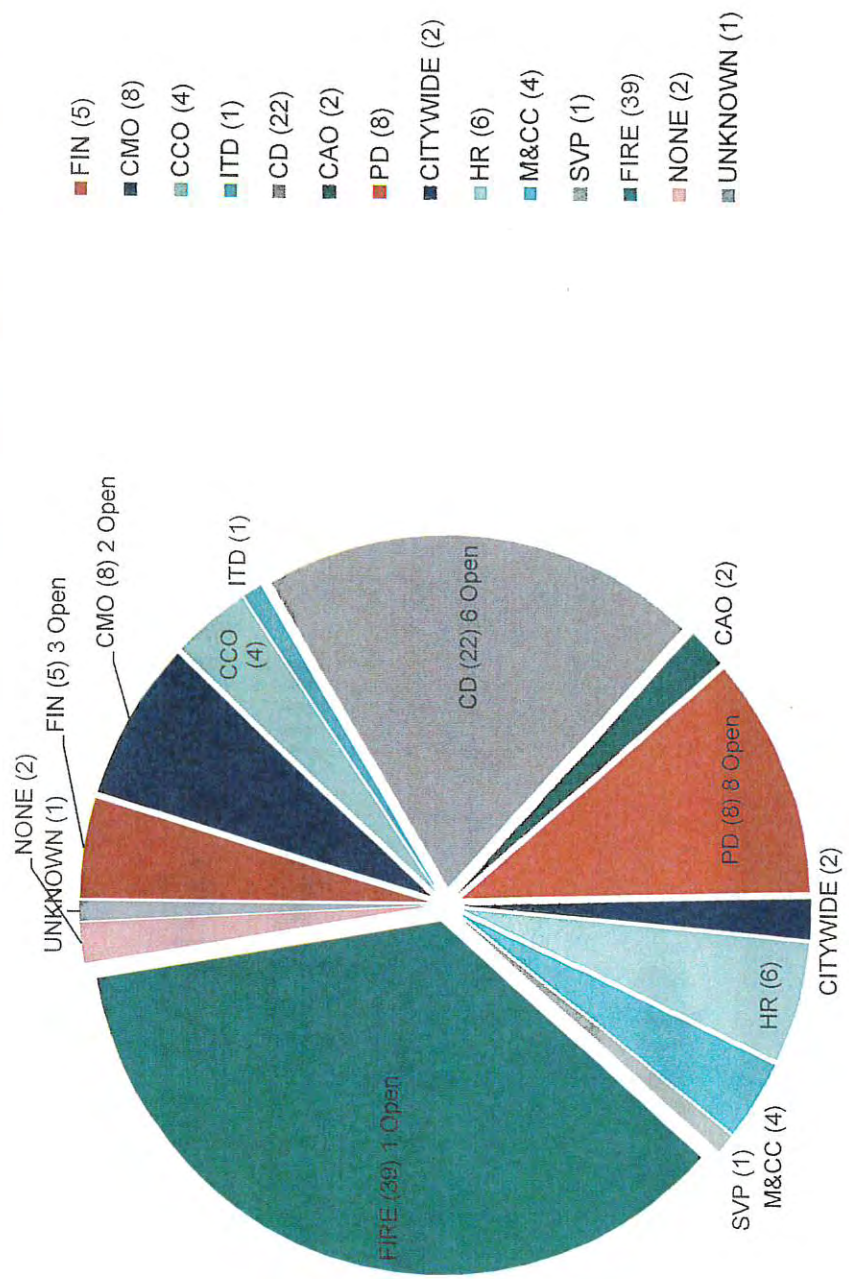
11 PRA Email Sweeps



■ 24 Open ■ 90 Closed



Public Records Requests by Department





**City of
Santa Clara**
The Center of What's Possible

Managing Records

- Digitizing records
- Identifying records locations
- Email Retention Policy – CMD 42
- Utilizing software to increase efficiency
 - Laserfiche & Next Request

Why not just keep everything??

- Must look through it.
- Must track it.
- Takes up expensive space.
- Causes additional processing in litigation, audit, or public records requests.





Email Retention Policy

90 days



Inbox
Subfolders of
Inbox
Sent Items

21 days



Recover Deleted Items
Or
Aged Items Cleanup
(SVP)



Items
permanently
deleted



Folders outside the Inbox,
Calendar, Contacts, Tasks, Notes, Drafts
Items in these locations will remain
unless you delete them.



Next Request

Online portal to receive and respond to public records requests.





Public Records Legislation

- 112 Bills introduced in the 2019-2020 session year
 - *It is common to see various proposals for changes to the CPRA that often do not result in becoming law.*
- Example: SB 615 (Hueso) Public records: disclosure.



Updates to Process

- Select departments have been routing PRA requests through Public Records Manager (testing centralized process)
- Refinement of email sweeps (coordination with IT)
- Citywide tracking of PRA's
- Created repository of PRA request, responses & responsive records
- Determined/identified Public Records Coordinators in each department

Next Steps



**City of
Santa Clara**
The Center of What's Possible



**City of
Santa Clara**
The Center of What's Possible

QUESTIONS?

Dominique L. Davis
Public Records Manager

Ddavis1@santaclara.ca.gov | 615-2293

Kathleen McGraw

From: Deanna Santana
Sent: Friday, March 08, 2019 11:44 AM
To: Kathleen McGraw
Subject: RE: Would like to meet with you to discuss the City of Santa Clara

I was hoping for early April...is that still possible given the late night and March 25 calendar that I need to prep for?

From: Kathleen McGraw
Sent: Friday, March 8, 2019 10:34 AM
To: Deanna Santana
Subject: FW: Would like to meet with you to discuss the City of Santa Clara

Deanna,

I've confirmed the meeting for Tuesday, 3/26 at 1 p.m.

Kathi McGraw | Executive Assistant to the City Manager
City Manager's Office
1500 Warburton Avenue | Santa Clara, CA 95050
O: 408.615.2214 www.SantaClaraCA.gov



From: Georgine Scott-Codiga - CGJ [mailto:gscottcodiga.cgj@scscourt.org]
Sent: Friday, March 08, 2019 10:17 AM
To: Kathleen McGraw
Subject: Re: Would like to meet with you to discuss the City of Santa Clara

Kathleen,

We can meet 3/26/19 at 1:00 pm. There are five jurors in our subcommittee who will be attending. Please confirm.

Georgine

Georgine Scott-Codiga
2018-19 Santa Clara County Civil Grand Jury

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From: Kathleen McGraw <KMcGraw@SantaClaraCA.gov>
Sent: Thursday, March 7, 2019 11:11 AM
To: Georgine Scott-Codiga - CGJ
Subject: RE: Would like to meet with you to discuss the City of Santa Clara

Hi Georgine,

Since Deanna is traveling starting next week, the first available time I have is Friday, 3/22, at 1:00, however Deanna needs to leave by 2:00. Additional times are Monday, 3/25, at 2:00; or Tuesday, 3/26, at 1:00. All of the meeting dates and times are predicated on meeting here at City Hall. Thank you.

Regards,
Kathi McGraw | Executive Assistant to the City Manager
City Manager's Office
1500 Warburton Avenue | Santa Clara, CA 95050
O: 408.615.2214 www.SantaClaraCA.gov



From: Georgine Scott-Codiga - CGJ [mailto:gscottcodiga.cgj@scscourt.org]
Sent: Tuesday, March 05, 2019 11:54 AM
To: Kathleen McGraw
Subject: Re: Would like to meet with you to discuss the City of Santa Clara

Hi Kathleen,

The topic of grand jury interviews are confidential at this time, but the grand jury believes Ms. Santana could help provide some information on a matter that we're looking into. She is not the subject of a criminal investigation and the interview is part of our fact-finding role and helps us gather information as part of a civil investigation.

Grand jury interviews are confidential, so she is the only person allowed to be present in the interview room. Let me know if you have any other questions.

Regards,
Georgine

Georgine Scott-Codiga
2018-19 Santa Clara County Civil Grand Jury

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From: Kathleen McGraw <KMcGraw@SantaClaraCA.gov>
Sent: Tuesday, March 5, 2019 10:37 AM
To: Georgine Scott-Codiga - CGJ
Subject: RE: Would like to meet with you to discuss the City of Santa Clara

Good morning Georgine,

I have forwarded your request to the City Manager, could you please let me know the focus of the meeting in case she wants to invite staff? Also just to give you a heads up, she will be out of the office all next week. I will get back to you with some dates/times. Thank you.

Regards,

Kathi McGraw | Executive Assistant to the City Manager
City Manager's Office
1500 Warburton Avenue | Santa Clara, CA 95050
O: 408.615.2214 www.SantaClaraCA.gov



From: Georgine Scott-Codiga - CGJ [mailto:gscottcodiga.cgj@scscourt.org]
Sent: Tuesday, March 05, 2019 9:46 AM
To: Manager
Subject: Would like to meet with you to discuss the City of Santa Clara

Ms. **Deanna** Santana,

I am serving on the Santa Clara County civil grand jury this year, and our subcommittee would like to meet with you in the next two weeks to discuss the City of Santa Clara.

The civil grand jury is a watchdog organization within the judicial branch of the county government, and we are chartered with investigating complaints about county government offices and services. We serve for one-year appointments, and consequently time is of the essence for us and we would appreciate your prompt assistance in scheduling this meeting.

We invite you to meet us at our office in downtown San Jose, near the county courthouse, for a confidential conversation, or we could meet at your office if that would be more convenient. There are five of us on this subcommittee, and we will accommodate your schedule to the best of our ability.

Thank you in advance for your help. Email is easiest for me, so if you can suggest a few windows of time when we could meet I will check with the other jurors and get back to you promptly.

Georgine

Georgine Scott-Codiga
2018-19 Santa Clara County Civil Grand Jury

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Kathleen McGraw

From: Deanna Santana
Sent: Monday, March 11, 2019 1:00 PM
To: Kathleen McGraw
Subject: RE: Would like to meet with you to discuss the City of Santa Clara

Thank you!

From: Kathleen McGraw
Sent: Monday, March 11, 2019 11:12 AM
To: Deanna Santana
Subject: FW: Would like to meet with you to discuss the City of Santa Clara

Deanna,

FYI.

Kathi McGraw | Executive Assistant to the City Manager
City Manager's Office
1500 Warburton Avenue | Santa Clara, CA 95050
O: 408.615.2214 www.SantaClaraCA.gov



**City of
Santa Clara**
The Spirit of Values. Focus On Us.

From: Georgine Scott-Codiga - CGJ [mailto:gscottcodiga.cgj@scscourt.org]
Sent: Monday, March 11, 2019 10:58 AM
To: Kathleen McGraw
Subject: Re: Would like to meet with you to discuss the City of Santa Clara

Kathleen,

Thank you for getting back to us. We had hoped for a March interview as time is of the essence as we are nearing the end of our grand jury term.

The civil grand jury can meet with the City Manager on April 5th at 9:00 am. This will be considered a firm date and any further changes may necessitate issuance of a subpoena. Please confirm the April 5th date.

Should a an opening arise before the April 5th date, please advise.

Regards,

Georgine

Georgine Scott-Codiga
2018-19 Santa Clara County Civil Grand Jury

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From: Kathleen McGraw <KMcGraw@SantaClaraCA.gov>
Sent: Monday, March 11, 2019 9:38 AM
To: Georgine Scott-Codiga - CGJ
Subject: FW: Would like to meet with you to discuss the City of Santa Clara

Good morning Georgine,

There were new developments over the weekend and Deanna asked me to let you know that we are awaiting several meetings with state regulatory agencies that have not yet been scheduled, but are targeted for the week of April 8. One date that we were previously holding (April 5) is now available from 9:00 to noon. Also available is April 12 from 9:00 to noon, however, the dates below are no longer available. Thank you again.

Regards,
Kathi McGraw | Executive Assistant to the City Manager
City Manager's Office
1500 Warburton Avenue | Santa Clara, CA 95050
O: 408.615.2214 www.SantaClaraCA.gov



From: Kathleen McGraw
Sent: Friday, March 08, 2019 12:24 PM
To: 'Georgine Scott-Codiga - CGJ'
Subject: FW: Would like to meet with you to discuss the City of Santa Clara
Importance: High

Hello Georgine,

I'm sorry but it looks like competing priorities the end of March with the County and Stadium Budget will necessitate rescheduling this meeting to early April. The very beginning of April Deanna will be traveling – she is available April 10 at 3:00 or April 11 at 9:00, 10:00 or 1:00. Thank you for your patience.

Kathi McGraw | Executive Assistant to the City Manager
City Manager's Office
1500 Warburton Avenue | Santa Clara, CA 95050
O: 408.615.2214 www.SantaClaraCA.gov



From: Kathleen McGraw
Sent: Friday, March 08, 2019 10:29 AM
To: 'Georgine Scott-Codiga - CGJ'
Subject: RE: Would like to meet with you to discuss the City of Santa Clara

Georgine,

The meeting is confirmed for March 26 at 1:00 p.m. in the City Manager's Office at City Hall in the East Wing. Please check in with the Clerk's Office when you arrive.

Kathi McGraw | Executive Assistant to the City Manager
City Manager's Office
1500 Warburton Avenue | Santa Clara, CA 95050
O: 408.615.2214 www.SantaClaraCA.gov



From: Georgine Scott-Codiga - CGJ [mailto:gscottcodiga.cgj@scscourt.org]
Sent: Friday, March 08, 2019 10:17 AM
To: Kathleen McGraw
Subject: Re: Would like to meet with you to discuss the City of Santa Clara

Kathleen,

We can meet 3/26/19 at 1:00 pm. There are five jurors in our subcommittee who will be attending. Please confirm.

Georgine

Georgine Scott-Codiga
2018-19 Santa

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From: Kathleen McGraw <KMCGraw@SantaClaraCA.gov>
Sent: Thursday, March 7, 2019 11:11 AM
To: Georgine Scott-Codiga - CGJ
Subject: RE: Would like to meet with you to discuss the City of Santa Clara

Hi Georgine,

Since Deanna is traveling starting next week, the first available time I have is Friday, 3/22, at 1:00, however Deanna needs to leave by 2:00. Additional times are Monday, 3/25, at 2:00; or Tuesday, 3/26, at 1:00. All of the meeting dates and times are predicated on meeting here at City Hall. Thank you.

Regards,
Kathi McGraw | Executive Assistant to the City Manager
City Manager's Office
1500 Warburton Avenue | Santa Clara, CA 95050

O: 408.615.2214 www.SantaClaraCA.gov



From: Georgine Scott-Codiga - CGJ [mailto:gscottcodiga.cgj@scscourt.org]
Sent: Tuesday, March 05, 2019 11:54 AM
To: Kathleen McGraw
Subject: Re: Would like to meet with you to discuss the City of Santa Clara

Hi Kathleen,

The topic of grand jury interviews are confidential at this time, but the grand jury believes Ms. Santana could help provide some information on a matter that we're looking into. She is not the subject of a criminal investigation and the interview is part of our fact-finding role and helps us gather information as part of a civil investigation.

Grand jury interviews are confidential, so she is the only person allowed to be present in the interview room. Let me know if you have any other questions.

Regards,
Georgine

Georgine Scott-Codiga
2018-19 Santa Clara County Civil Grand Jury
(

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From: Kathleen McGraw <KMcGraw@SantaClaraCA.gov>
Sent: Tuesday, March 5, 2019 10:37 AM
To: Georgine Scott-Codiga - CGJ
Subject: RE: Would like to meet with you to discuss the City of Santa Clara

Good morning Georgine,

I have forwarded your request to the City Manager, could you please let me know the focus of the meeting in case she wants to invite staff? Also just to give you a heads up, she will be out of the office all next week. I will get back to you with some dates/times. Thank you.

Regards,
Kathi McGraw | Executive Assistant to the City Manager
City Manager's Office
1500 Warburton Avenue | Santa Clara, CA 95050
O: 408.615.2214 www.SantaClaraCA.gov



From: Georgine Scott-Codiga - CGJ [mailto:gscottcodiga.cgj@scscourt.org]
Sent: Tuesday, March 05, 2019 9:46 AM
To: Manager
Subject: Would like to meet with you to discuss the City of Santa Clara

Ms. Deanna Santana,

I am serving on the Santa Clara County civil grand jury this year, and our subcommittee would like to meet with you in the next two weeks to discuss the City of Santa Clara.

The civil grand jury is a watchdog organization within the judicial branch of the county government, and we are chartered with investigating complaints about county government offices and services. We serve for one-year appointments, and consequently time is of the essence for us and we would appreciate your prompt assistance in scheduling this meeting.

We invite you to meet us at our office in downtown San Jose, near the county courthouse, for a confidential conversation, or we could meet at your office if that would be more convenient. There are five of us on this subcommittee, and we will accommodate your schedule to the best of our ability.

Thank you in advance for your help. Email is easiest for me, so if you can suggest a few windows of time when we could meet I will check with the other jurors and get back to you promptly.

Georgine

Georgine Scott-Codiga
2018-19 Santa Clara County Civil Grand Jury

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The information contained in this email may be privileged, confidential and exempt from disclosure under applicable law. The information is intended only for the use of the individual or entity to which it is addressed. If you are not the intended recipient or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately by reply email and delete this message from your computer. Thank you

Kathleen McGraw

From: Georgine Scott-Codiga - CGJ <gscottcodiga.cgj@scscourt.org>
Sent: Friday, April 05, 2019 2:03 PM
To: Kathleen McGraw
Subject: Re: 2019 Citywide Public Records Request Log

Thank you.

Georgine Scott-Codiga
2018-19 Santa Clara County Civil Grand Jury

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From: Kathleen McGraw <KMcGraw@SantaClaraCA.gov>
Sent: Friday, April 5, 2019 12:55 PM
To: Georgine Scott-Codiga - CGJ; Jeffrey Levin - CGJ; Harry Oberhelman - CGJ
Subject: FW: 2019 Citywide Public Records Request Log

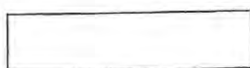
Good afternoon,

Deanna made a mistake when she entered your email addresses and as a result the email bounced back (please see below). She asked me to forward the attached spreadsheet.

Regards,
Kathi McGraw | Executive Assistant to the City Manager
City Manager's Office
1500 Warburton Avenue | Santa Clara, CA 95050
O: 408.615.2214 www.SantaClaraCA.gov



From: postmaster@scscourt.org [<mailto:postmaster@scscourt.org>]
Sent: Friday, April 05, 2019 11:49 AM
To: Deanna Santana
Subject: Undeliverable: FW: 2019 Citywide Public Records Request Log.xlsx



Your message couldn't be delivered to multiple recipients.

The recipients weren't found at scscourt.org.

DSantana

Office 365

Recipients

Action Required

Recipients

Unknown To address

Couldn't deliver to the following recipients:

gscottcodiga@scscourt.org, hoberhelman@scscourt.org

How to Fix It

The address may be misspelled or may not exist. Try one or more of the following:

- Send the message again following these steps: In Outlook, open this non-delivery report (NDR) and choose **Send Again** from the Report ribbon. In Outlook on the web, select this NDR, then select the link "**To send this message again, click here.**" Then delete and retype the entire recipient address. If prompted with an Auto-Complete List suggestion don't select it. After typing the complete address, click **Send**.
- Contact the recipient (by phone, for example) to check that the address exists and is correct.
- The recipient may have set up email forwarding to an incorrect address. Ask them to check that any forwarding they've set up is working correctly.
- Clear the recipient Auto-Complete List in Outlook or Outlook on the web by following the steps in this article: [Fix email delivery issues for error code 5.1.10 in Office 365](#), and then send the message again.

Retype the entire recipient address before selecting **Send**.

If the problem continues, forward this message to your email admin. If you're an email admin, refer to the **More Info for Email Admins** section below.

Was this helpful? [Send feedback to Microsoft](#).

More Info for Email Admins

Status code: 550 5.1.10

This error occurs because the sender sent a message to an email address hosted by Office 365 but the address is incorrect or doesn't exist at the destination domain. The error is reported by the recipient domain's email server, but most often it must be fixed by the person who sent the message. If the steps in the **How to Fix It** section above

don't fix the problem, and you're the email admin for the recipient, try one or more of the following:

The email address exists and is correct - Confirm that the recipient address exists, is correct, and is accepting messages.

Synchronize your directories - If you have a hybrid environment and are using directory synchronization make sure the recipient's email address is synced correctly in both Office 365 and in your on-premises directory.

Errant forwarding rule - Check for forwarding rules that aren't behaving as expected. Forwarding can be set up by an admin via mail flow rules or mailbox forwarding address settings, or by the recipient via the Inbox Rules feature.

Recipient has a valid license - Make sure the recipient has an Office 365 license assigned to them. The recipient's email admin can use the Office 365 admin center to assign a license (Users > Active Users > select the recipient > Assigned License > Edit).

Mail flow settings and MX records are not correct - Misconfigured mail flow or MX record settings can cause this error. Check your Office 365 mail flow settings to make sure your domain and any mail flow connectors are set up correctly. Also, work with your domain registrar to make sure the MX records for your domain are configured correctly.

For more information and additional tips to fix this issue, see [Fix email delivery issues for error code 5.1.10 in Office 365](#).

Original Message Details

Created Date: 4/5/2019 6:48:44 PM
Sender Address: DSantana@SantaClaraCA.gov
Recipient Address: gscottcodiga@scscourt.org, hoberhelman@scscourt.org
Subject: FW: 2019 Citywide Public Records Request Log.xlsx

Error Details

Reported error: 550 5.1.10 RESOLVER.ADR.RecipientNotFound; Recipient gscottcodiga@scscourt.org not found by SMTP address lookup
DSN generated by: BYAPR12MB3382.namprd12.prod.outlook.com

Message Hops

HOP	TIME (UTC)	FROM	TO	WITH
1	4/5/2019 6:48:44 PM	CY1PR09MB0443.namprd09.prod.outlook.com	CY1PR09MB0443.namprd09.prod.outlook.com	mapi
2	4/5/2019 6:48:44 PM	CY1PR09MB0443.namprd09.prod.outlook.com	BN6PR09MB1315.namprd09.prod.outlook.com	Microsoft SMTP : cipher=TLS_ECDI
3	4/5/2019 6:48:50 PM	GCC01-CY1-obe.outbound.protection.outlook.com	DM3NAM05FT064.mail.protection.outlook.com	Microsoft SMTP : cipher=TLS_ECDI

4	4/5/2019 6:48:50 PM	DM3NAM05FT064.eop- nam05.prod.protection.outlook.com	DM5PR12CA0004.outlook.office365.com	Microsoft SMTP : cipher=TLS_ECDI
5	4/5/2019 6:48:50 PM	DM5PR12CA0004.namprd12.prod.outlook.com	BYAPR12MB3382.namprd12.prod.outlook.com	Microsoft SMTP : cipher=TLS_ECDI

Original Message Headers

Received: from DM5PR12CA0004.namprd12.prod.outlook.com (2603:10b6:4:1::14) by BYAPR12MB3382.namprd12.prod.outlook.com (2603:10b6:a03:a9::31) with Microsoft SMTP Server (version=TLS1_2, cipher=TLS_ECDHE_RSA_WITH_AES_256_GCM_SHA384) id 15.20.1771.16; Fri, 5 Apr 2019 18:48:50 +0000

Received: from DM3NAM05FT064.eop-nam05.prod.protection.outlook.com (2a01:111:f400:7e51::207) by DM5PR12CA0004.outlook.office365.com (2603:10b6:4:1::14) with Microsoft SMTP Server (version=TLS1_2, cipher=TLS_ECDHE_RSA_WITH_AES_256_CBC_SHA384) id 15.20.1771.16 via Frontend Transport; Fri, 5 Apr 2019 18:48:50 +0000

Authentication-Results: spf=pass (sender IP is 40.107.83.59) smtp.mailfrom=SantaClaraCA.gov; scscourt.org; dkim=pass (signature was verified) header.d=SantaClaraCA.onmicrosoft.com; scscourt.org; dmarc=pass action=none header.from=SantaClaraCA.gov; compauth=pass reason=100

Received-SPF: Pass (protection.outlook.com: domain of SantaClaraCA.gov designates 40.107.83.59 as permitted sender) receiver=protection.outlook.com; client-ip=40.107.83.59; helo=GCC01-CY1-obe.outbound.protection.outlook.com;

Received: from GCC01-CY1-obe.outbound.protection.outlook.com (40.107.83.59) by DM3NAM05FT064.mail.protection.outlook.com (10.152.98.188) with Microsoft SMTP Server (version=TLS1_2, cipher=TLS_ECDHE_RSA_WITH_AES_256_CBC_SHA384) id 15.20.1771.6 via Frontend Transport; Fri, 5 Apr 2019 18:48:50 +0000

DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed; d=SantaClaraCA.onmicrosoft.com; s=selector1-santaclaraca-gov; h=From:Date:Subject:Message-ID:Content-Type:MIME-Version:X-MS-Exchange-SenderADCheck; bh=65U0kd32n3Rm8MQBwv/yrACMAQJYqiN9JA9ePp4tRRo=;

b=t7Hht6DhnGX2CYKR6vrw6QBHJSn9kULsidNLN5kJ9x6AcU7oXxk/JjL4e2kWalHbeFhfMIvVgf4wAtzSMzfV5Pl toWfpP8yP6ewIF2nkOzh8JNJ0Zy685ruN41ZaXbdReWiCozZKIEPRWHfjBIzU1V4S2eQaiuisWtUW8MpDmk=

Received: from CY1PR09MB0443.namprd09.prod.outlook.com (10.160.150.24) by BN6PR09MB1315.namprd09.prod.outlook.com (10.172.21.135) with Microsoft SMTP Server (version=TLS1_2, cipher=TLS_ECDHE_RSA_WITH_AES_256_GCM_SHA384) id 15.20.1771.13; Fri, 5 Apr 2019 18:48:44 +0000

Received: from CY1PR09MB0443.namprd09.prod.outlook.com ([fe80::e858:672f:adf2:e852]) by CY1PR09MB0443.namprd09.prod.outlook.com ([fe80::e858:672f:adf2:e852%10]) with mapi id 15.20.1771.014; Fri, 5 Apr 2019 18:48:44 +0000

From: Deanna Santana <DSantana@SantaClaraCA.gov>

To: "gscottcodiga@scscourt.org" <gscottcodiga@scscourt.org>, "hoberhelman@scscourt.org" <hoberhelman@scscourt.org>, "jlevin.cgj@scscourt.org" <jlevin.cgj@scscourt.org>

CC: Nadine Nader <nnader@SantaClaraCA.gov>, Dominique Davis <DDavis1@SantaClaraCA.gov>

Subject: FW: 2019 Citywide Public Records Request Log.xlsx
Thread-Topic: 2019 Citywide Public Records Request Log.xlsx
Thread-Index: AdTr1UF9LEHa4y00S52F50Co0DIbZwACnTWA
Date: Fri, 5 Apr 2019 18:48:44 +0000

Message-ID:
<CY1PR09MB04431930E53F1EAA1D16D545BE510@CY1PR09MB0443.namprd09.prod.outlook.com>

References:
<DM5PR0901MB2165D3AB74ED1C9FA7081D4A80510@DM5PR0901MB2165.namprd09.prod.outlook.com>

In-Reply-To:
<DM5PR0901MB2165D3AB74ED1C9FA7081D4A80510@DM5PR0901MB2165.namprd09.prod.outlook.com>

Accept-Language: en-US

Content-Language: en-US

X-MS-Has-Attach: yes

X-MS-TNEF-Correlator:

Authentication-Results-Original: spf=none (sender IP is)

smtp.mailfrom=DSantana@SantaClaraCA.gov;

x-originating-ip: [38.99.114.106]

x-ms-publictraffictype: Email

X-MS-Office365-Filtering-Correlation-Id: 9950ee8f-fdd6-44cf-1e7f-08d6b9f75807

X-Microsoft-Antispam-Untrusted:

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(201702281549075)(8990200)(5600139)(711020)(4605104)(2017052603328)(49563074)(7193020);S
RVR:BN6PR09MB1315;

X-MS-TrafficTypeDiagnostic: BN6PR09MB1315:|BYAPR12MB3382:

X-MS-Exchange-PUrLCount: 3

x-microsoft-antispam-prvs:

<BN6PR09MB1315EB2D318CD4FF1CA257E1BE510@BN6PR09MB1315.namprd09.prod.outlook.com>

x-forefront-prvs: 0998671D02

X-Forefront-Antispam-Report-Untrusted:

SFV:NSPM;SFS:(10009020)(366004)(346002)(136003)(376002)(396003)(39850400004)(189003)(1990
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792005)(53936002)(81156014)(81166006)(52536014)(8676002)(107886003);DIR:OUT;SFP:1101;SCL:
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InfoNoRecords;MX:1;A:1;

received-spf: None (protection.outlook.com: SantaClaraCA.gov does not

designate permitted sender hosts)

x-ms-exchange-senderadcheck: 1

X-Microsoft-Antispam-Message-Info-Original:

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Content-Type: multipart/mixed;

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MIME-Version: 1.0

X-MS-Exchange-Transport-CrossTenantHeadersStamped: BN6PR09MB1315

Return-Path: DSantana@SantaClaraCA.gov

X-EOPAttributedMessage: 0

X-EOPTenantAttributedMessage: 2318fda3-e8fd-4c25-a7c5-d72489e999da:0

X-MS-Exchange-Transport-CrossTenantHeadersStripped: DM3NAM05FT064.eop-nam05.prod.protection.outlook.com

X-MS-Exchange-Transport-CrossTenantHeadersPromoted: DM3NAM05FT064.eop-nam05.prod.protection.outlook.com

X-Forefront-Antispam-Report:

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X-MS-Office365-Filtering-Correlation-Id-Prvs:

61c292e5-bb21-4ccb-cbec-08d6b9f7544a

X-Microsoft-Antispam:

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X-Microsoft-Antispam-Message-Info:

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X-MS-Exchange-CrossTenant-OriginalArrivalTime: 05 Apr 2019 18:48:50.0713 (UTC)

X-MS-Exchange-CrossTenant-Network-Message-Id: 9950ee8f-fdd6-44cf-1e7f-08d6b9f75807

X-MS-Exchange-CrossTenant-Id: 2318fda3-e8fd-4c25-a7c5-d72489e999da

X-MS-Exchange-CrossTenant-FromEntityHeader: Internet

X-MS-Exchange-Transport-CrossTenantHeadersStamped: BYAPR12MB3382

Kathleen McGraw

From: Georgine Scott-Codiga - CGJ <gscottcodiga.cgj@scscourt.org>
Sent: Wednesday, May 01, 2019 1:26 PM
To: Manager
Cc: Kathleen McGraw
Subject: CPRA logs
Attachments: d2 2019 Citywide Public Records Request Log.xlsx

Ms. Santana,

Can you help us to understand why last year the average time frame to complete a CPRA request was 10.64 days? This year however the turnaround time increased to 23.81 days or a 124% increase.

We'd like to know why (under the closed tab) there is no closed listed date in lines 1 through 26? Is there possibly an updated copy?

Thank you,

Georgine

Georgine Scott-Codiga
2018-19 Santa

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Kathleen McGraw

From: Manager
Sent: Tuesday, May 21, 2019 8:05 AM
To: Georgine Scott-Codiga - CGJ
Subject: RE: Exit Interview

Georgine,

The meeting is confirmed for 5/28 at 3:30 p.m. at City Hall. Thank you.

Regards,

Kathi McGraw | Executive Assistant to the City Manager
City Manager's Office
1500 Warburton Avenue | Santa Clara, CA 95050
O: 408.615.2214 www.SantaClaraCA.gov



From: Georgine Scott-Codiga - CGJ <gscottcodiga.cgj@scscourt.org>
Sent: Monday, May 20, 2019 4:24 PM
To: Manager <Manager@santaclaraca.gov>
Subject: Re: Exit Interview

We can meet on May 28th between 3:30 and 5:00. Please confirm.

Thanks,

Georgine

Georgine Scott-Codiga

2018-19 Santa Clara County Civil Grand Jury

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From: Manager <Manager@santaclaraca.gov>
Sent: Friday, May 17, 2019 12:10:24 PM
To: Georgine Scott-Codiga - CGJ
Subject: RE: Exit Interview

Georgine,

Thank you for your response regarding additional staff attendance at the meeting. Along with May 23 between 1:30 and 4:00, Deanna is available on May 28 between 3:30 and 5:00.

Regards,
Kathi McGraw | Executive Assistant to the City Manager
City Manager's Office
1500 Warburton Avenue | Santa Clara, CA 95050
O: 408.615.2214 www.SantaClaraCA.gov



From: Georgine Scott-Codiga - CGJ <gscottcodiga.cgj@scscourt.org>
Sent: Friday, May 17, 2019 9:56 AM
To: Manager <Manager@santaclaraca.gov>
Subject: Re: Exit Interview

Kathi,

Thanks for responding so quickly. Deanna or any staff member(s) that is available and able to validate the Grand Jury's findings with respect to CPRA requests is appropriate. We wanted to extend the invitation to the City Manager but she is not required to be there.

Can you give us a couple of dates as we are trying to coordinate several Grand Jury members schedules to attend.

As a reminder, Grand Jury topics and information is confidential and should not be discussed until reports are released to the public.

Regards,

Georgine

Georgine Scott-Codiga

2018-19 Santa Clara County Civil Grand Jury

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From: Manager <Manager@santaclaraca.gov>

Sent: Friday, May 17, 2019 8:29 AM

To: Georgine Scott-Codiga - CGJ

Subject: RE: Exit Interview

Georgine,

Deanna is available on May 23 between 1:30 and 4:00. Also she is interested to find out if knowledgeable, subject-matter staff can attend since she may not be able to validate all of the findings. Thank you.

Regards,

Kathi McGraw | Executive Assistant to the City Manager

City Manager's Office

1500 Warburton Avenue | Santa Clara, CA 95050

O: 408.615.2214 www.SantaClaraCA.gov



**City of
Santa Clara**
The Center of Wholly Santa Clara

From: Georgine Scott-Codiga - CGJ <gscottcodiga.cgj@scscourt.org>

Sent: Thursday, May 16, 2019 5:22 PM

To: Manager <Manager@santaclaraca.gov>

Subject: Exit Interview

Dear Ms. Santana:

The Civil Grand Jury would like to meet with you concerning an upcoming Grand Jury report as part of our exit interview process. The purpose of an exit interview is to validate our findings and recommendations.

Could you please advise your availability over the next few weeks so that we can schedule?

Georgine Scott-Codiga

2018-19 Santa Clara County Civil Grand Jury

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Kathleen McGraw

From: Deanna Santana
Sent: Friday, April 05, 2019 12:13 PM
To: Kathleen McGraw
Subject: FW: 2019 Citywide Public Records Request Log.xlsx
Attachments: d2 2019 Citywide Public Records Request Log.xlsx

This bounced back, I have three cards that this needs to go to...will give them to you when I am off the phone.

From: Dominique Davis
Sent: Friday, April 5, 2019 10:32 AM
To: Deanna Santana <DSantana@SantaClaraCA.gov>
Cc: Nadine Nader <nnader@SantaClaraCA.gov>
Subject: 2019 Citywide Public Records Request Log.xlsx

Deanna,

Attached is the public records logs. Please note that these requests are those that have been reported to me by each department.

Thanks,
Dominique