

California Public Records Act

GOVT. CODE §§ 6250 - 6276.48

THE BASICS

The Public Records Act is designed to give the public access to information in possession of public agencies: "public records are open to inspection at all times during the office hours of the...agency and every person has a right to inspect any public record, except as . . . provided, [and to receive] an exact copy" of an identifiable record unless impracticable. (§ 6253). Specific exceptions to disclosure are listed in sections 6253.2, 6253.5, 6253.6, 6254, 6254.1-6254.22, 6255, 6267, 6268, 6276.02-6276.48; to ensure maximum access, they are read narrowly. The agency always bears the burden of justifying nondisclosure, and "any reasonably segregable portion . . . shall be available for inspection...after deletion of the portions which are exempt." (§ 6253(a))

WHO'S COVERED

- **All state and local agencies**, including: (1) any officer, bureau, or department.; (2) any "board, commission or agency" created by the agency (including advisory boards); and (3) nonprofit entities that are legislative bodies of a local agency. (§ 6252(a),(b)). Many state and regional agencies are required to have written public record policies. A list appears in § 6253.4.

WHO'S NOT COVERED

- Courts (except itemized statements of total expenditures and disbursement). (§§ 6252(a), 6261)
- The Legislature. (§ 6252) See Legislative Open Records Act, Govt. Code §§ 9070-9080.
- Private non-profit corporations and entities.
- Federal agencies. See Federal Freedom Of Information Act, 5 U.S.C. § 552.

ACCESS TIP ☞ Look to access laws (e.g. Legislative Open Records Act, IRS rules, court cases) that permit inspection and copying of records of agencies not subject to the Public Records Act. Many local jurisdictions also have "Sunshine" laws that grant greater rights of access to records.

WHAT'S COVERED

- "Records" include all communications related to public business "regardless of physical form or characteristics, including any writing, picture, sound, or symbol, whether paper, . . . , magnetic or other media." (§ 6252(e)) Electronic records are included, but software may be exempt. (§§ 6253.9(a),(g), 6254.9 (a),(d))

WHAT MUST HAPPEN

- **Access is immediate** and allowed at all times during business hours. (§ 6253(a)) Staff need not disrupt operations to allow immediate access, but a decision whether to grant access must be prompt. An agency may not adopt rules that limit the hours records are open for viewing and inspection. (§§ 6253(d); 6253.4(b))
- **The agency must provide assistance** by helping to identify records and information relevant to the request and suggesting ways to overcome any practical basis for denying access. (§ 6253.1)
- **An agency has 10 days to decide if copies will be provided.** In "unusual" cases (request is "voluminous," seeks records held off-site, OR requires consultation with other agencies), the agency may, upon written notice to the requesters, give itself an additional 14 days to respond. (§ 6253(c)) These time periods may not be used solely to delay access to the records. (§ 6253(d))
- **The agency may never make records available only in electronic form.** (§ 6253.9(e))
- **Access is always free.** Fees for "inspection" or "processing" are prohibited. (§ 6253)
- **Copy costs are limited to "statutory fees"** set by the Legislature (not by local ordinance) or the "direct cost of duplication", usually 10 to 25 cents per page. Charges for search, review or deletion are not allowed. (§ 6253(b); North County Parents v. D.O.E., 23 Cal.App.4th 144 (1994)) If a request for electronic records either (1) is for a record normally issued only periodically, or (2) requires data compilation, extraction, or programming, copying costs may include the cost of the programming. (§ 6253.9(a),(b))
- **The agency must justify the withholding of any record** by demonstrating that the record is exempt or that the public interest in confidentiality outweighs the public interest in disclosure. (§ 6255)

ACCESS TIP ☞ Always ask for both copies and access; after inspection you can reduce the copy request (and associated costs) to the materials you need.

REQUESTING PUBLIC RECORDS

- Plan your request; know what exemptions may apply.
- Ask informally before invoking the law. If necessary, use this guide to state your rights under the Act.
- Don't ask the agency to create a record or list.
- A written request is not required, but may help if your request is complex, or you anticipate trouble.
- Put date limits on any search.
- If the agency claims the records don't exist, ask what files were searched; offer any search clues you can.
- Limit pre-authorized costs (or ask for a cost waiver), and pay only copying charges.
- Demand a written response within 10 days.

IF YOUR REQUEST IS DENIED

- Keep a log of to whom you speak and the stated reason for the denial.
- Employ the following six-step DENIAL strategy:
D = Discretionary: Exemptions are permissive, never mandatory. Ask the agency if it will waive the exemption and release the record.
E = Explanation: Insist that the agency explain in a written denial why the exemption applies to the requested record.
N = Narrow Application: The Act favors access. Exemptions must be narrowly construed.
I = Isolate: Request the release of any non-exempt portions of the record.
A = Appeal: State your rights, using this guide, and ask to speak to a higher agency official.
L = Lawsuit: File suit to enforce your rights. If you win, the agency must pay your costs and legal fees. (§ 6259(d)); *Belth v. Garamendi* 232 Cal.App.3d 896 (1991).
- Write a news story or Letter to the Editor about the denial.
- Consult your supervisor or lawyer, or contact one of the groups listed on this brochure.

WHAT'S NOT COVERED

- Employees' private papers, unless they "relat[e] to the conduct of the public's business [and are] prepared, owned, used, or retained by the agency." (§ 6252(e))
- Computer software "developed by a state or local agency ... includ[ing] computer mapping systems, computer programs, and computer graphic systems." (§§ 6254.9(a),(b))
- Records not yet in existence: The PRA covers only records that already exist, and an agency cannot be required to create a record, list, or compilation. "Rolling requests" for future-generated records are not permitted.

RECORDS EXEMPT FROM DISCLOSURE

The Act exempts certain records from disclosure in whole or in part. This does not mean they are not public records or that disclosure is prohibited. An agency may withhold the records, but can allow greater access if it wishes. (§ 6253(e)). However, "selective" or "favored" access is prohibited; once it is disclosed to one requester, the record is public for all. (§ 6254.5) Many categories of records are exempt, some by the Act itself, (§§ 6254(a)-(z)) and some by other laws (§§ 6275-6276.48). These include:

- **Attorney-Client discussions** are confidential, even if the agency is the client, but the agency (not the lawyer) may waive secrecy. (§§ 6254(k), 6254.25, 6276.04)
- Appointment calendars and applications, phone records, and other records which impair the **deliberative process** by revealing the thought process of government decision-makers may be withheld only if "the public interest served by not making the record[s] public clearly outweighs the public interest served by disclosure of the record[s]." (§ 6255; *Times Mirror v. Superior Ct.*, 53 Cal.3d 1325 (1991); *CFAC v. Superior Ct.*, 67 Cal.App.4th 159 (1998); *Rogers v. Superior Ct.*, 19 Cal.App.4th 469 (1993)) If the interest in secrecy does not clearly outweigh the interest in disclosure, the records must be disclosed, "whatever the incidental impact on the deliberative process." (*Times Mirror v. Superior Ct.*) The agency must explain, not merely state, why the public interest does not favor disclosure.

- **Preliminary drafts, notes and memos** may be withheld only if: (1) they are "not retained...in the ordinary course of business" and (2) "the public interest in withholding clearly outweighs the public interest in disclosure." Drafts are not exempted if: (1) staff normally keep copies; or (2) the report or document is final even if a decision is not. (§ 6254(a)) Where a draft contains both facts and recommendations, only the latter may be withheld. The facts must be disclosed. (*CBE v. CDFA.*, 171 Cal.App.3d 704 (1985))
- **Home Addresses** in DMV, voter registration, gun license, public housing, local agency utility and public employee records are exempt, as are addresses of certain crime victims. (§§ 6254(f),(u), 6254.1, 6254.3, 6254.4, 6254.16, 6254.21)
- **Records concerning agency litigation** are exempt, but only until the claim is resolved or settled. The complaint, claim, or records filed in court, records that pre-date the suit (e.g., reports about projects that eventually end in litigation), and settlement records are public. (§§ 6254(b), 6254.25; *Register Div. of Freedom Newspapers, Inc. v. County of Orange*, 158 Cal. App. 3d 893 (1984))
- **Personnel, medical and similar files** are exempt only if disclosure would reveal intimate, private details. (§ 6254(c)) Employment contracts are not exempt. (§ 6254.8)
- **Police incident reports, rap sheets and arrest records** are exempt (Penal Code §§ 11075, 11105, 11105.1), but information in the "police blotter" (time and circumstances of calls to police; name and details of arrests, warrants, charges, hearing dates, etc.) must be disclosed unless disclosure would endanger an investigation or the life of an investigator. Investigative files may be withheld, even after an investigation is over. (Gov. Code § 6254(f); *Williams v. Superior Ct.*, 5 Cal. 4th 337 (1993); *County of L.A. v. Superior Ct.*, 18 Cal. App. 4th 588 (1994). Identifying data in police personnel files and misconduct complaints are exempt, but disclosure may be obtained using special procedures under Evidence Code section 1043.
- **Financial data** submitted for licenses, certificates, or permits, or given in confidence to agencies that oversee insurance, securities, or banking firms; **tax, welfare, and family/adoption/birth records** are all exempt. (§§ 6254(d),(k),(l), 6276)

A POCKET GUIDE TO THE CALIFORNIA PUBLIC RECORDS ACT

A SERVICE OF
THE FIRST AMENDMENT PROJECT
SOCIETY OF PROFESSIONAL
JOURNALISTS (Nor. Cal.)

HOW TO USE THIS GUIDE

This pocket guide is intended to be a quick reference and provide general information to journalists and citizens. It addresses some common public records problems, but does not substitute for research or consultation with a lawyer on detailed questions. This guide current as of December 3, 2003.

FOR MORE INFORMATION OR HELP:

FIRST AMENDMENT PROJECT.....510/208-7744
www.thefirstamendment.org

California First Amendment Coalition.....415/460-5060
www.cfac.org

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