Exhibit A

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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

J. TYLER McCAULEY
AUDITOR-CONTROLLER

October 10, 2002

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

RECEIVED
OCT 15 2002
COMMISSION ON
STATE MANDATES

Dear Ms. Higashi:

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

We submit and enclose herein the subject test claim.

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

Very truly yours,

for J. Tyler McCauley
Auditor-Controller

JTM:JN:LK
Enclosures

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

page a

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

For Official Use Only

RECEIVED
OCT 1[illegible] 2002
COMMISSION ON STATE MANDATES

TEST CLAIM FORM

Claim No. 02-TC-10

Local Agency or School District Submitting Claim

Los Angeles County

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

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

Representative Organization to be Notified

California State Association of Counties

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

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

See page a

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

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

Page b

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

Notice of Filing

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

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

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

Table of Contents

I. Title Page ..... page a

II. Commission on State Mandates Test Claim Form (CSM1-12/89) page b

III. Notice of Filing ..... page c

IV. Test Claim Brief

A. Section 6253.1 Services ..... page 1

B. Section 6253 Services ..... page 3

C. Section 6255 Services ..... page 5

D. Section 6253.9 Services ..... page 6

E. Section 6252 Definition ..... page 8

F. Legislative Intent ..... page 9

G. Redirected effort is prohibited ..... page 11

H. State Funding Disclaimers Are Not Applicable ..... page 12

I. Costs Mandated by The State ..... page 14

J. "Public Records Act Manual" ..... page 16

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

Table of Exhibits

1.	Richard L. Castro Declaration	Tab A
2.	Michael R. McDermott Declaration	Tab B
3.	J. Tyler McCauley Declaration	Tab C
4.	Leonard Kaye Declaration	Tab D
5.	Chapter 355, Statutes of 2001	Tab E, pages 1-4
6.	Chapter 982, Statutes of 2000	Tab E, pages 5-8
7.	Chapter 1073, Statutes of 2002	Tab E, pages 9-11
8.	Chapter 945, Statutes of 2002	Tab E, pages 12-14
9.	Committee Report (AB1014)	Tab E, pages 15-16
10.	Concurrence Report (AB2799)	Tab E, pages 17-18
11.	Elizabeth G. Hill Letter	Tab F
12.	Public Records Act Manual	Tab G

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

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

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

Section 6253.1 Services

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

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

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

(1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.

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

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

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

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

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

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

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

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

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

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

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

Section 6253 Services

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

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

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

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

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

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

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

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

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

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

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

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

Section 6255 Services

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

> " A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing".

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

> "The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record."

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

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

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

[2] See page 6 in Tab E.

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

Section 6253.9 Services

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

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

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

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

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

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

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

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

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

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

[3] See page 18 in Tab E.

Section 6252 Definitions

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

> "(a) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.
>
> (b) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.
>
> (c) "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.
>
> (d) "Public agency" means any state or local agency.
>
> (e) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.
>
> (f) "Writing" means <u>any</u> handwriting, typewriting, printing, photostating, photographing, <u>photocopying, transmitting by electronic mail or facsimile</u>, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof thereof, and <u>any record thereby created, regardless of the manner in which the record has been stored</u>.
>
> (g) "Member of the public" means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting

within the scope of his or her membership, agency, office, or employment." [Emphasis added.]

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

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

Legislative Intent

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

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

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

> determination and the reasons therefor. The act further provides that, in unusual circumstances, as defined, the agency may extend this time limit by written notice, which shall specify the reasons for the extension and the date on which a determination is expected to be dispatched.
>
> This bill would require that, when the agency dispatches the determination of whether the request seeks disclosable public records, it state the estimated date and time when the records will be made available."

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

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

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

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

[5] See page 4 in Tab E.

[6] See page 15 in Tab E.

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

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

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

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

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

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

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

Redirected Effort is Prohibited

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

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

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

[7] See page 15 in Tab E.

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

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

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

State Funding Disclaimers Are Not Applicable

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

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

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

[8] See page 6 in Tab F.

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

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

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

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

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

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

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

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

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

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

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

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

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

Costs Mandated by the State

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Public Records Act Manual"

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

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

> "A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing".

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

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

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

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

County of Los Angeles Test Claim

Chapter 355, Statutes of 2001, Adding Section 6253.1

And Amending Section 6253 of the Government Code

California Public Records Act: Disclosure Procedures

Declaration of Richard L. Castro

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

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

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

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

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

(1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.

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

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

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

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

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

I declare that Section 6253.1(d) provides that:

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

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

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

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

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

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

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

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

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

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

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

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

Richard Nash

Signature

9/23/02 Monterey Park, CA

Date and Place

Attachment: Declaration of Richard L. Castro

Public Record Disclosure Duties

Chapter 355, Statutes of 2001, Adding Section 6253.1

And Amending Section 6253 of the Government Code

One-time Activities

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

Continuing Activities

I. Staff time for:

A. Station or branch personnel.

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

B. Central Unit personnel.

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

a. consult with specialized personnel

b. document findings

c. notify requestor of results.

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

II. Supplies and Materials

III. Contract Services – eg PC maintenance

IV. Travel

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

Declaration of Michael R. McDermott

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

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

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

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

> (a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public makes a focused and effective request that reasonably describes an identifiable record or records, shall do all of the following, to the extent reasonable under the circumstances:
>
> (1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.
>
> (2) Describe the information technology and physical location in which the records exist.
>
> (3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

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

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

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

I declare that Section 6253.1(d) provides that:

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

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

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

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

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

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

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

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

10/2/02
Date and Place

Monterey Park, California

Signature

-4-

Attachment: Declaration of Michael R. McDermott

One-time Activities

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

Continuing Activities

I. Staff time for:

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

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

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

II. Supplies and Materials

III. Contract Services – eg PC maintenance

IV. Travel

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

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

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

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

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

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

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

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

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

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

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

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

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

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(f) "Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof thereof, and any record thereby created, regardless of the manner in which the record has been stored.

(g) "Member of the public" means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment." [Emphasis added.]

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

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

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

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

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

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

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

10/9/02 Los Angeles, CA

Date and Place

Signature

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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

J. TYLER McCAULEY
AUDITOR-CONTROLLER

January 23, 2001

To: All Department and District Heads

From: J. Tyler McCauley
Auditor-Controller

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

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

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

Requirements of New Law

Following are the principal requirements of the new law:

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

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

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

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

Cost Recovery - Information in Electronic Format

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

Cost Recovery - Non-Electronic Records

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

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

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

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

Auditor-Controller
County of Los Angeles

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

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

Please call me if you have any questions.

JTM:PTM:JMS

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

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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

J. TYLER McCAULEY
AUDITOR-CONTROLLER

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

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

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

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

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

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

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

10/9/02; Los Angeles, CA — Leonard Kaye
Date and Place — Signature

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

Copr. © West Group 2001. All rights reserved.

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

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

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

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

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

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

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

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

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

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

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

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

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

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

<< CA GOVT § 6253 >>

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

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

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. <<+When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available.+>> As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

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

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

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

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

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

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

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

<< CA GOVT § 6253.1 >>

6253.1. (a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do all of the following, to the extent reasonable under the circumstances:

(1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.

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

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

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

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

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

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

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

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

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

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

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

CA LEGIS 355 (2001)

END OF DOCUMENT

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

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

Copr. © West Group 2000. All rights reserved.

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

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

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

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2799, Shelley. Public records: disclosure.

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

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

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

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

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

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

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

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

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

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

<< CA GOVT § 6253 >>

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

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

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

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

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

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

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

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

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

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

<< CA GOVT § 6253.9 >>

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

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

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

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

the record when either of the following applies:

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

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

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

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

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

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

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

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

<< CA GOVT § 6255 >>

6255. <<+(a)+>> The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not <<+disclosing+>> the record <<-* * *->>clearly outweighs the public interest served by disclosure of the record.

<<+(b) A response to a written request for inspection or copies of **public records** that includes a determination that the request is denied, in whole or in part, shall be in writing.+>>

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

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

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

Copr. © West Group 2002. All rights reserved.

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

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

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

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

This bill would delete nonprofit from this definition.

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

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

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

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

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

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

<< CA GOVT § 6252 >>

6252. As used in this chapter:

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

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

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

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

(e) **"Public records"** includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. **"Public records"** in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

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

(g) "Member of the public" means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.

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

<< CA GOVT § 6252 >>

6252. As used in this chapter:

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

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

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

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

(e) **"Public records"** includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. **"Public records"** in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

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

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

transmitting by electronic mail or facsimile and every other means of recording upon any tangible durable form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and * * * any record thereby created, regardless of the manner in which the record has been stored.

(g) "Member of the public" means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.

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

<< CA GOVT § 54952 >>

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

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

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

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

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

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

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

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

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

CA LEGIS 1073 (2002)

END OF DOCUMENT

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

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

Copr. © West Group 2002. All rights reserved.

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

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

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

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1962, Hollingsworth. Electronic communication.

Existing law relating to evidence in court actions and specified administrative proceedings defines evidence as including a writing, which is defined as handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

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

This bill would define writing under these provisions to mean handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored. By expanding the scope of public records that local agencies are required to make available for public inspection, this bill would constitute a state-mandated local program.

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

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

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

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

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

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

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

<< CA EVID § 250 >>

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

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

<< CA GOVT § 6252 >>

6252. As used in this chapter:

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

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

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

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

(e) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(f) "Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and * * * any record thereby created, regardless of the manner in which the record has been stored.

(g) "Member of the public" means any person, except a member, agent, officer, or employee of a federal, state, or

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

local agency acting within the scope of his or her membership, agency, office, or employment.

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

<< CA GOVT § 6252 >>

6252. As used in this chapter:

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

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

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

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

(e) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(f) "Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, and form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and * * * any record thereby created, regardless of the manner in which the record has been stored.

(g) "Member of the public" means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.

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

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

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

CA LEGIS 945 (2002)

END OF DOCUMENT

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

Date of Hearing: May 23, 2001

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Carole Migden, Chairwoman

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

Policy Committee: Governmental
Organization Vote: 15-0

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

SUMMARY

This bill:

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

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

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

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

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

FISCAL EFFECT

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

COMMENTS

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

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

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

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

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

Original Committee Reference: G.O.

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

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

EXISTING LAW :

1) Defines "public record" to include any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

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

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

covering direct costs of duplication.

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

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

FISCAL EFFECT :

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

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

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

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

CHAIRMAN
WILLIAM CAMPBELL

VICE CHAIRMAN
JOHN VASCONCELLOS

SENATE
ALFRED E. ALQUIST
ROBERT G. BEVERLY
BILL GREENE
MILTON MARKS
JOSEPH B. MONTOYA
NICHOLAS C. PETRIS

ASSEMBLY
WILLIAM BAKER
JOHN L. BURTON
ROBERT CAMPBELL
ROBERT C. FRAZEE
WILLIAM LEONARD
MAXINE WATERS

Joint Legislative Budget Committee

GOVERNMENT CODE SECTIONS 9140-9143

CALIFORNIA LEGISLATURE

LEGISLATIVE ANALYST
ELIZABETH G. HILL

925 L STREET, SUITE 650
SACRAMENTO, CALIFORNIA 95814
(916) 445-4656

December 13, 1988

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

Dear Mr. Jesse Huff:

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

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

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

490

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

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

Background

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

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

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

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

Analysis

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

491

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Elizabeth G. Hill

Elizabeth G. Hill
Legislative Analyst

PUBLIC RECORDS ACT MANUAL

Prepared Exclusively for the
Los Angeles County Sheriff's Department

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

August 2002

© 2002

INTRODUCTION

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

CONSULT WITH COUNTY COUNSEL FOR ADVICE.

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

This manual is organized in four (4) sections:

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

Office of the County Counsel
Legal Advisory Unit
Sheriff's Department Headquarters Bureau
(323) 526-5045

TABLE OF CONTENTS

Section 1

		Page
1.	What is the Public Records Act?	3
2.	Why was the Public Records Act enacted?	3
3.	What is considered a public record?	3
4.	What is considered a "writing"?	3
5.	How much time does the Department have to respond to a request for records?	3
6.	What is the Department's obligation in responding to the request for records?	4
7.	What is the Los Angeles County Public Records Act protocol?	4
8.	When can the public inspect records?	5
9.	Does a request for records have to be in writing?	5
10.	Can a fee be charged for the cost of duplicating the records?	5
11.	Can a fee be charged for the time spent searching for the records?	6
12.	Should the media be charged for records?	6
13.	Is the Department required to create a record to respond to a PRA request?	6
14.	How far back must we search for a record?	7
15.	How does the Public Records Act relate to other laws applicable to the release of records?	7
16.	Are all records subject to disclosure?	8
17.	What records don't have to be disclosed?	8
18.	Are there other common exemptions which are not found in the PRA?	10
19.	What if the request is too vague, ambiguous, or overbroad?	12

TABLE OF CONTENTS
(Continued)

20. What if the request asks for specific "information" in the form of interrogatories?.....13

21. What about requests for addresses and phone numbers of employees or arrestees?.....13

22. What if the person is a minor?.....14

23. Can I release a crime report to the victim?.....14

24. What if the request asks for the personnel files of peace officers?.....14

25. What about requests for arrest information?.....15

26. What if the request for records relates to pending litigation?.....15

27. Is the Department required to withhold records that are exempt?.....15

28. Who should sign the letter responding to the request?.....16

29. What if the records are kept in an electronic format?.....16

30. What happens if the Department does not respond in a timely manner?.....16

31. Can the Department release a summary of the event instead of the actual investigation documents?.....16

32. What is the requestor's remedy if we refuse to produce a record which he/she believes is not exempt from disclosure?.....17

Section 2 18

Section 3 21

Section 4 36

Section 1 - Common Questions/Answers

1. What is the Public Records Act?

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

2. Why was the Public Records Act enacted?

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

3. What is considered a public record?

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

4. What is considered a "writing"?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. When can the public inspect records?

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

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

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

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

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

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

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

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

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

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

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

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

12. Should the media be charged for records?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. Are all records subject to disclosure?

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

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

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

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

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

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

public's interest in disclosure;

(b) Records pertaining to pending litigation;

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

under the California Constitution;

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

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

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

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

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

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

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

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

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

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

(1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request,

if stated.

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

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

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

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

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

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

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

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

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

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

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

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

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

22. What if the person is a minor?

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

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

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

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

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

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

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

25. What about requests for arrest information?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2 - EXAMPLES OF PRA REQUESTS AND ANSWERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3

SAMPLE FORMS FOR CENTRALIZED CUSTODIAN OF RECORDS UNIT

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

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

[Department Letterhead]

DATE:

OFFICE CORRESPONDENCE

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

TO: [NAME], CAPTAIN
NAME OF UNIT

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

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

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

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

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

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

DA/PC/ms

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

[Department Letterhead]

[date]

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

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

Dear Susan,

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

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

8802 E. Artesia Blvd.
Bellflower, CA 90706

The records he is seeking are as follows:

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

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

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

Very truly yours,

[NAME]
CENTRAL CUSTODIAN OF RECORDS UNIT

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

[Department Letterhead]

July 16, 2002

Name
Attorney at Law
[address]

Re: Public Records Act Request dated_____

Dear Mr. or Ms. Attorney:

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

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

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

Very truly yours,

LEROY D. BACA, SHERIFF

[NAME], CAPTAIN

FORM NO. 4
REQUEST FOR ADDITIONAL FOURTEEN DAYS

[Sheriff's Department Letterhead]

[DATE]

[NAME OF REQUESTER]
[ADDRESS OF REQUESTER]

Re: Public Records Act Request dated _____

Dear _____:

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

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

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

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

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

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

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

Very truly yours,

LEROY D. BACA
SHERIFF

[NAME]
CAPTAIN

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

[Sheriff's Department Letterhead]

DATE:

OFFICE CORRESPONDENCE

FROM: OWEN MARSHALL
CENTRALIZED CUSTODIAN RECORDS UNIT
LEGAL ADVISORY UNIT

TO: FRANK CANNON
LIEUTENANT
RAINING BUREAU

SUBJECT: PUBLIC RECORDS ACT REQUEST DATED AUGUST 1, 1001

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

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

OM/GM/ms

Attachment

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

[Sheriff's Department Letterhead]

June 3, 2002

F. Lee Belly
Attorney at Law
[address]

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

Dear Mr. Belly:

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

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

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

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

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

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

Very truly yours,

LEROY D. BACA, SHERIFF

[NAME], CAPTAIN

FORM NO. 7

Public Records Act Request
Exemptions/Objections Checklist

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

PROMPTLY CONSULT WITH COUNTY COUNSEL FOR ADVICE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Sheriff's Department Letterhead]

[DATE]

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

Re: Public Records Act request dated_____

Dear [NAME]:

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

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

Very truly yours,

LEROY D. BACA
SHERIFF

[NAME]
CAPTAIN

FORM NO. 9
LETTER MAILING RECORDS AFTER FEE RECEIVED

[Sheriff's Department Letterhead]

May 16, 2002

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

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

Dear Mr. Mann:

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

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

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

Very truly yours,

LEROY D. BACA
SHERIFF

(NAME) CAPTAIN

FORM NO. 10

LETTER MAILING RECORDS TO CIVIL LITIGATION AFTER FEE RECEIVED

[Sheriff's Department Letterhead]

DATE: September 2, 2000

OFFICE CORRESPONDENCE

FROM: OLIVER CARDOZO
CENTRALIZED CUSTODIAN RECORDS UNIT

TO: RALPH WEBB, LIEUTENANT
CIVIL LITIGATION UNIT

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

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

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

OC:OK:aa
Attachment

FORM NO. 11

LETTER TO PITCHESS ATTORNEY AT COUNTY COUNSEL

[Sheriff's Department Letterhead]

DATE

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

PRA Request Denied under Evidence Code §§1043 and 1045

Dear Mr. Nicklin:

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

Sincerely,

LEROY D. BACA
SHERIFF

NAME

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

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

SECTION 4

LEGAL AUTHORITY
STATUTES, BOARD AND DEPARTMENT POLICIES

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

CALIFORNIA PUBLIC RECORDS ACT (2001)

CALIFORNIA GOVERNMENT CODE, SECTIONS 6250-6277

Article I.

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

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

6252. As used in this chapter:

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

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

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

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

(e) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

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

(g) "Member of the public" means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.

ATTCHMENT A

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

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

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

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

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The State Air Resources Board.

(2) The California Integrated Waste Management Board.

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

(4) The Department of Pesticide Regulation.

(5) The Department of Toxic Substances Control.

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

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

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

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

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

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

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

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

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

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

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

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

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

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

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

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

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

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

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

(d) Contained in or related to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

containing the rates of payment shall be open to inspection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

state by a service contractor.

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

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

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

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

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

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

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

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

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

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

1808.21 of the Vehicle Code.

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

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

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

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

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

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

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

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

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

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

AFFIRMATION OF STATUS

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

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

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

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

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

_____

_____

Name of Requester Name of Requester's Organization

_____

Signature of Requester Address of Requester

Date Request No. Telephone Number of Requester

Name, Address, and Telephone Number of Requester's Client, if the requester has requested access to the information on behalf of someone other than the requester or the requester's organization listed above.

(i) Notwithstanding any other provision of this section, the director may disclose information submitted by an applicant or registrant to any person in connection with a public proceeding conducted under law or regulation, if the director determines that the information is needed to determine whether a pesticide, or any ingredient of any pesticide, causes unreasonable adverse effects on health or the environment.

(j) The director shall maintain records of the names of persons to whom data is disclosed pursuant to this section and the persons or organizations they represent and shall inform the applicant or registrant of the names and the affiliation of these persons.

(k) Section 118 of the Penal Code applies to any affirmation made pursuant to this section.

(l) Any officer or employee of the state or former officer or employee of the state who, because of this employment or official position, obtains possession of, or has access to, material which is prohibited from disclosure by this section, and who, knowing that disclosure of this material is prohibited by this section, willfully discloses the material in any manner to any person not entitled to receive it, shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000), or by imprisonment in the county jail for not more than one year, or by both fine and imprisonment.

For purposes of this subdivision, any contractor with the state who is furnished information pursuant to this section, or any employee of any contractor, shall be considered an employee of the state.

(m) This section does not prohibit any person from maintaining a civil action for wrongful disclosure of trade secrets.

(n) The director may limit an individual to one request per month pursuant to this section if the director determines that a person has made a frivolous request within the past 12-month period.

6254.20. Nothing in this chapter shall be construed to require the disclosure of records that relate to electronically collected personal information, as defined by Section 11015.5, received, collected, or compiled by a state agency.

6254.21. (a) No state or local agency shall post the home address or telephone number of any elected or appointed official on the Internet without first obtaining the written permission of that individual.

(b) For purposes of this section "elected or appointed official" includes, but is not limited to, all of the following:

(1) State constitutional officers.
(2) Members of the Legislature.
(3) Judges and court commissioners.
(4) District attorneys.
(5) Public defenders.
(6) Members of a city council.
(7) Members of a board of supervisors.
(8) Appointees of the Governor.
(9) Appointees of the Legislature.
(10) Mayors.
(11) City attorneys.
(12) Police chiefs and sheriffs.

6254.22. Nothing in this chapter or any other provision of law shall require the disclosure of records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors, whether paper records, records maintained in the management information system, or records in any other form, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulae or calculations for these payments, and contract negotiations with providers of health care for alternative rates for a period of three years after the contract is fully executed. The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the board of supervisors shall be subject to this same exemption. The provisions of this section shall not prevent access to any records by the Joint Legislative Audit Committee in the exercise of its powers pursuant to Article 1 (commencing with Section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The provisions of this section also shall not prevent access to any records by the Department of Corporations in the exercise of its powers pursuant to Article 1 (commencing with Section 1340) of

Chapter 2.2 of Division 2 of the Health and Safety Code.

6254.25. Nothing in this chapter or any other provision of law shall require the disclosure of a memorandum submitted to a state body or to the legislative body of a local agency by its legal counsel pursuant to subdivision (q) of Section 11126 or Section 54956.9 until the pending litigation has been finally adjudicated or otherwise settled. The memorandum shall be protected by the attorney work-product privilege until the pending litigation has been finally adjudicated or otherwise settled.

6254.3. (a) The home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

(1) To an agent, or a family member of the individual to whom the information pertains.

(2) To an officer or employee of another state agency, school district, or county office of education when necessary for the performance of its official duties.

(3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the me addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed.

(4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to state, school districts, and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

(b) Upon written request of any employee, a state agency, school district, or county office of education shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and an agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee.

6254.4. (a) The home address, telephone number, e-mail address, precinct number, or other number specified by the Secretary of State for voter registration purposes, and prior registration information shown on the voter registration card for all registered voters is confidential, and shall not be disclosed to any person, except ursuant to Section 2194 of the Elections Code.

b) For purposes of this section, "home address" means street address only, and does not include an individual's city or post

office address.

(c) The California driver's license number or California identification card number shown on a voter registration card of a registered voter is confidential and shall not be disclosed to any person.

6254.5. Notwithstanding any other provisions of the law, whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law. For purposes of this section, "agency" includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment.

This section, however, shall not apply to disclosures:

(a) Made pursuant to the Information Practices Act (commencing with Section 1798 of the Civil Code) or discovery proceedings.

(b) Made through other legal proceedings or as otherwise required by law.

(c) Within the scope of disclosure of a statute which limits disclosure of specified writings to certain purposes.

(d) Not required by law, and prohibited by formal action of an elected legislative body of the local agency which retains the writings.

(e) Made to any governmental agency which agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes which are consistent with existing law.

(f) Of records relating to a financial institution or an affiliate thereof, if the disclosures are made to the financial institution or affiliate by a state agency responsible for the regulation or supervision of the financial institution or affiliate.

(g) Of records relating to any person that is subject to the jurisdiction of the Department of Corporations, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Corporations.

(h) Made by the Commissioner of Financial Institutions under Section 1909, 8009, or 18396 of the Financial Code.

(i) Of records relating to any person that is subject to the jurisdiction of the Department of Managed Health Care, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or if a

corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Managed Health Care.

6254.6. Whenever a city and county or a joint powers agency, pursuant to a mandatory statute or charter provision to collect private industry wage data for salary setting purposes, or a contract entered to implement that mandate, is provided this data by the federal Bureau of Labor Statistics on the basis that the identity of private industry employers shall remain confidential, the identity of the employers shall not be open to the public or be admitted as evidence in any action or special proceeding.

6254.7. (a) All information, analyses, plans, or specifications that disclose the nature, extent, quantity, or degree of air contaminants or other pollution which any article, machine, equipment, or other contrivance will produce, which any air pollution control district or air quality management district, or any other state or local agency or district, requires any applicant to provide before the applicant builds, erects, alters, replaces, operates, sells, rents, or uses the article, machine, equipment, or other contrivance, are public records.

(b) All air or other pollution monitoring data, including data compiled from stationary sources, are public records.

(c) All records of notices and orders directed to the owner of any building of violations of housing or building codes, ordinances, statutes, or regulations which constitute violations of standards provided in Section 1941.1 of the Civil Code, and records of subsequent action with respect to those notices and orders, are public records.

(d) Except as otherwise provided in subdivision (e) and Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code, trade secrets are not public records under this section. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

(e) Notwithstanding any other provision of law, all air pollution emission data, including those emission data which constitute trade crets as defined in subdivision (d), are public records. Data used o calculate emission data are not emission data for the purposes of

this subdivision and data which constitute trade secrets and which are used to calculate emission data are not public records.

(f) Data used to calculate the costs of obtaining emissions offsets are not public records. At the time that an air pollution control district or air quality management district issues a permit to construct to an applicant who is required to obtain offsets pursuant to district rules and regulations, data obtained from the applicant consisting of the year the offset transaction occurred, the amount of offsets purchased, by pollutant, and the total cost, by pollutant, of the offsets purchased is a public record. If an application is denied, the data shall not be a public record.

6254.8. Every employment contract between a state or local agency and any public official or public employee is a public record which is not subject to the provisions of Sections 6254 and 6255.

6254.9. (a) Computer software developed by a state or local agency is not itself a public record under this chapter. The agency may sell, lease, or license the software for commercial or noncommercial use.

(b) As used in this section, "computer software" includes computer mapping systems, computer programs, and computer graphics systems.

(c) This section shall not be construed to create an implied warranty on the part of the State of California or any local agency for errors, omissions, or other defects in any computer software as provided pursuant to this section.

(d) Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer. Public records stored in a computer shall be disclosed as required by this chapter.

(e) Nothing in this section is intended to limit any copyright protections.

6254.10. Nothing in this chapter requires disclosure of records that relate to archeological site information maintained by the Department of Parks and Recreation, the State Historical Resources Commission, or the State Lands Commission.

6254.11. Nothing in this chapter requires the disclosure of records that relate to volatile organic compounds or chemical substances information received or compiled by an air pollution control officer pursuant to Section 42303.2 of the Health and Safety Code.

6254.12. Any information reported to the North American Securities Administrators Association/National Association of Securities Dealers' Central Registration Depository and compiled as disciplinary records which are made available to the Department of Corporations through a

computer system, shall constitute a public record. Notwithstanding ny other provision of law, the Department of Corporations may isclose that information and the current license status and the year of issuance of the license of a broker-dealer upon written or oral request pursuant to Section 25247 of the Corporations Code.

6254.13. Notwithstanding Section 6254, upon the request of any Member of the Legislature or upon request of the Governor or his or her designee, test questions or materials that would be used to administer an examination and are provided by the State Department of Education and administered as part of a statewide testing program of pupils enrolled in the public schools shall be disclosed to the requester. These questions or materials may not include an individual examination that has been administered to a pupil and scored. The requester may not take physical possession of the questions or materials, but may view the questions or materials at a location selected by the department. Upon viewing this information, the requester shall keep the materials that he or she has seen confidential.

6254.14. (a) Except as provided in Sections 6254 and 6254.7, nothing in this chapter shall be construed to require disclosure of records of the Department of Corrections that relate to health care rvices contract negotiations, and that reveal the deliberative ocesses, discussions, communications, or any other portion of the negotiations, including, but not limited to, records related to those negotiations such as meeting minutes, research, work product, theories, or strategy of the department, or its staff, or members of the California Medical Assistance Commission, or its staff, who act in consultation with, or on behalf of, the department.

Except for the portion of a contract that contains the rates of payment, contracts for health services entered into by the Department of Corrections or the California Medical Assistance Commission on or after July 1, 1993, shall be open to inspection one year after they are fully executed. In the event that a contract for health services that is entered into prior to July 1, 1993, is amended on or after July 1, 1993, the amendment, except for any portion containing rates of payment, shall be open to inspection one year after it is fully executed.

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

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee and the Bureau of State Audits. The Joint Legislative dit Committee and the Bureau of State Audits shall maintain the confidentiality of the contracts and amendments until the contract or

amendment is fully open to inspection by the public.

It is the intent of the Legislature that confidentiality of health care provider contracts, and of the contracting process as provided in this subdivision, is intended to protect the competitive nature of the negotiation process, and shall not affect public access to other information relating to the delivery of health care services.

(b) The inspection authority and confidentiality requirements established in subdivisions (q), (v), and (w) of Section 6254 for the Legislative Audit Committee shall also apply to the Bureau of State Audits.

6254.15. Nothing in this chapter shall be construed to require the disclosure of records that are any of the following: corporate financial records, corporate proprietary information including trade secrets, and information relating to siting within the state furnished to a government agency by a private company for the purpose of permitting the agency to work with the company in retaining, locating, or expanding a facility within California. Except as provided below, incentives offered by state or local government agencies, if any, shall be disclosed upon communication to the agency or the public of a decision to stay, locate, relocate, or expand, by a company, or upon application by that company to a governmental agency for a general plan amendment, rezone, use permit, building permit, or any other permit, whichever occurs first.

The agency shall delete, prior to disclosure to the public, information that is exempt pursuant to this section from any record describing state or local incentives offered by an agency to a private business to retain, locate, relocate, or expand the business within California.

6254.16. Nothing in this chapter shall be construed to require the disclosure of the name, credit history, utility usage data, home address, or telephone number of utility customers of local agencies, except that disclosure of name, utility usage data, and the home address of utility customers of local agencies shall be made available upon request as follows:

(a) To an agent or authorized family member of the person to whom the information pertains.

(b) To an officer or employee of another governmental agency when necessary for the performance of its official duties.

(c) Upon court order or the request of a law enforcement agency relative to an ongoing investigation.

(d) Upon determination by the local agency that the utility customer who is the subject of the request has used utility services in a manner inconsistent with applicable local utility usage policies.

(e) Upon determination by the local agency that the utility

customer who is the subject of the request is an elected or appointed official with authority to determine the utility usage policies of the local agency, provided that the home address of an appointed official shall not be disclosed without his or her consent.

(f) Upon determination by the local agency that the public interest in disclosure of the information clearly outweighs the public interest in nondisclosure.

6254.17. (a) Nothing in this chapter shall be construed to require disclosure of records of the State Board of Control that relate to a request for assistance under Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2.

(b) This section shall not apply to a disclosure of the following information, if no information is disclosed that connects the information to a specific victim, derivative victim, or applicant under Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2:

(1) The amount of money paid to a specific provider of services.

(2) Summary data concerning the types of crimes for which assistance is provided.

6255. (a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

74 CA4th 1008

(b) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.

6257.5. This chapter does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure.

6258. Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter. The times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.

6259. (a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the

officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

(c) In an action filed on or after January 1, 1991, an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

6260. The provisions of this chapter shall not be deemed in any manner to affect the status of judicial records as it existed immediately prior to the effective date of this section, nor to affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state, nor to limit or impair any rights of discovery in a criminal case.

6261. Notwithstanding Section 6252, an itemized statement of the total expenditures and disbursement of any agency provided for in Article VI of the California Constitution shall be open for inspection.

6262. The exemption of records of complaints to, or investigations conducted by, any state or local agency for licensing purposes under subdivision (f) of Section 6254 shall not apply when a request for inspection of such records is made by a district attorney.

6263. A state or local agency shall allow an inspection or copying of any public record or class of public records not exempted by this chapter when requested by a district attorney.

6264. The district attorney may petition a court of competent jurisdiction to require a state or local agency to allow him to inspect or receive a copy of any public record or class of public records not exempted by this chapter when the agency fails or refuses to allow inspection or copying within 10 working days of a request. The court may require a public agency to permit inspection or copying by the district attorney unless the public interest or good cause in withholding such records clearly outweighs the public interest in disclosure.

6265. Disclosure of records to a district attorney under the provisions of this chapter shall effect no change in the status of the records under any other provision of law.

6267. All registration and circulation records of any library which is in whole or in part supported by public funds shall remain confidential and shall not be disclosed to any person, local agency, or state agency except as follows:

(a) By a person acting within the scope of his or her duties within the administration of the library.

(b) By a person authorized, in writing, by the individual to whom the records pertain, to inspect the records.

(c) By order of the appropriate superior court.

As used in this section, the term "registration records" includes any information which a library requires a patron to provide in order to become eligible to borrow books and other materials, and the term "circulation records" includes any information which identifies the patrons borrowing particular books and other material.

This section shall not apply to statistical reports of registration and circulation nor to records of fines collected by the library.

6268. Public records, as defined in Section 6252, in the custody or control of the Governor when he or she leaves office, either voluntarily or involuntarily, shall, as soon as is practical, be transferred to the State Archives. Notwithstanding any other provision of law, the Governor, by written instrument, the terms of which shall be made public, may restrict public access to any of the transferred public records, or any other writings he or she may transfer, which have not already been made accessible to the public. With respect to public records, public access, as otherwise provided for by this chapter, shall not be restricted for a period greater than 50 years or the death of the Governor, whichever is later, nor shall there be any restriction whatsoever with respect to enrolled bill files, press releases, speech files, or writings relating to applications for clemency or extradition in cases which have been closed for a period of at least 25 years. Subject to any restrictions permitted by this section, the Secretary of State, as custodian of the State Archives, shall make all such public records and other writings available to the public as otherwise provided for in this chapter.

Except as to enrolled bill files, press releases, speech files, or writings relating to applications for clemency or extradition, this section shall not apply to public records or other writings in the direct custody or control of any Governor who held office between 1974 and 1988 at the time of leaving office, except to the extent that Governor may voluntarily transfer those records or other writings to the State Archives.

Notwithstanding any other provision of law, the public records and other writings of any Governor who held office between 1974 and 1988 may be transferred to any educational or research institution in California provided that with respect to public records, public access, as otherwise provided for by this chapter, shall not be restricted for a period greater than 50 years or the death of the Governor, whichever is later. No records or writings may be transferred pursuant to this paragraph unless the institution receiving them agrees to maintain, and does maintain, the materials according to commonly accepted archival standards. No public records transferred shall be destroyed by that institution without first receiving the written approval of the Secretary of State, as custodian of the State Archives, who may require that the records be placed in the State Archives rather than being destroyed. An institution receiving those records or writings shall allow the Secretary of State, as custodian of the State Archives, to copy, at state expense, and to make available to the public, any and all public records, and inventories, indices, or finding aids relating to those records, which the institution makes available to the public generally. Copies of those records in the custody of the State Archives shall be given the same legal effect as is given to the originals.

6270. (a) Notwithstanding any other provision of law, no state or local agency shall sell, exchange, furnish, or otherwise provide a public record subject to disclosure pursuant to this chapter to a private entity in a manner that prevents a state or local agency from providing the record directly pursuant to this chapter. Nothing in this section requires a state or local agency to use the State Printer to print public records. Nothing in this section prevents the destruction of records pursuant to law.

(b) This section shall not apply to contracts entered into prior to January 1, 1996, between the County of Santa Clara and a private entity for the provision of public records subject to disclosure under this chapter.

Article II.

[6275 -6277]

COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL
648 KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012-2713

TDD
(213) 633-0901
TELEPHONE
(213) 974-1904
TELECOPIER
(213) 687-7300

LLOYD W. PELLMAN
County Counsel

March 28, 2002

Syn. No. 86
3/19/02

TO: SUPERVISOR ZEV YAROSLAVSKY, Chairman
SUPERVISOR GLORIA MOLINA
SUPERVISOR YVONNE BRATHWAITE BURKE
SUPERVISOR DON KNABE
SUPERVISOR MICHAEL D. ANTONOVICH

FROM: LLOYD W. PELLMAN
County Counsel

RE: **County's Internet Web Page**
Public Records Act Protocol

By motion of Supervisor Burke adopted on March 19, 2002, your Board requested development of a countywide Public Records Act protocol for publication on the County's internet web page. A copy of Supervisor Burke's motion is enclosed.

Enclosed for your consideration is a draft of such protocol which has been prepared by this Office and reviewed by the Chief Administrative Officer and Auditor-Controller. The proposed protocol references existing County Code provisions and Board policy. (See, Los Angeles County Code § 2.170, *et seq.*, and Board Policy #3.140.)

If you have any questions regarding this proposed protocol, please contact Senior Deputy County Counsel Halvor Melom at (213) 974-1821.

LWP:HSM:jb

Enclosures
c: David E. Janssen
Chief Administrative Officer

J. Tyler McCauley
Auditor-Controller

Violet Varona-Lukens, Executive Officer
Board of Supervisors

HOA.115080.1

ATTACHMENT B

PUBLIC RECORDS REQUESTS

Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. Records of the County of Los Angeles which are not exempt from disclosure are available for inspection and copying in accordance with the California Public Records Act upon a request that reasonably describes an identifiable record or records. (Los Angeles County Code § 2.170.010(a).)

The California Public Records Act is found in the California Government Code, beginning at Section 6250. Records subject to inspection and copying include any writings, meaning any handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including information available in an electronic format. (See, Government Code §§ 6252(f) and 6253.9.)

The County of Los Angeles does not maintain a centralized record keeping system. County departments, agencies, commissions and committees process innumerable requests for records on a daily basis at various public facilities dispersed throughout the County.

The list of all County departments, agencies, commissions and committees is available on the County's website at www.co.la.ca.us under the headings "County Departments" and "Commissions & Committees."

Requests to inspect and copy public records which are not otherwise immediately available to the public should be made directly to the responsible department or agency head, commission or committee secretary, or to his or her designee, as identified on the website of the department, agency, commission or committee.

The Public Affairs Office of the Chief Administrative Office, located at Room 358, Kenneth Hahn Hall of Administration, 500 W. Temple Street, Los Angeles, 90012, shall be responsible for directing the public to the appropriate department, agency, commission or committee.

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

Records shall be made promptly available for inspection, and for copying within ten (10) calendar days. In unusual circumstances, the ten (10) days may be extended by written notice from the department or agency head, commission or committee secretary, or from his or her designee, for no more than an additional fourteen (14) days as provided by law.

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

A fee for copies of public records may be charged which covers the direct costs of duplication as determined by the County's Auditor-Controller. (Los Angeles County Code § 2.170.010(a).) It is the policy of the Los Angeles County Board of Supervisors to waive charges for duplicating routine records when requested by the media. (Board of Supervisors Policy Manual, "Media Policy Guidelines For Departments," Policy #3.140 adopted 03/29/94.)

Amendment by Supervisor Burke to Proposed Motion – Item 88-A
Supplemental Agenda

We all agree that the County must respond to Public Records Act Requests appropriately. We want to reaffirm our commitment to open government and the public's right to timely information.

I **Therefore, Move That:**

1. The Office of the County Counsel, along with the Auditor-Controller and the CAO, develop a Countywide protocol for appropriately responding to Public Records Act Requests. That protocol must have the Office of the County Counsel as the department ultimately responsible to advise on issues of the presence or absence of confidentiality or privilege relating to the documents in question; and

2. The Office of the County Counsel, along with the Auditor-Controller and the CAO, report back to this Board in fourteen (14) days with a proposed protocol.

3. Finally, upon adoption by this Board of such a protocol, that the definitions, guidelines and steps outlining the request process shall be placed on the County's Internet Web Page.

LOS ANGELES COUNTY CODE

Section 2.170.010

2.170.010 Fees for providing county records.

A. Whenever a request for copies of county records reasonably describes an identifiable record subject to disclosure, that record shall be provided to the requestor in accordance with the California Public Records Act for a fee which covers the direct costs of duplication as determined by the auditor-controller.

B. Whenever a request for copies of county records subject to disclosure describes the records sought by listing categories of records related to a particular matter, issue or subject, ***or otherwise does not reasonably describe an identifiable record***, the requestor shall reimburse the county for the costs incurred by the county in responding to the request as set forth in subsection C of this section.

C. For requests for county records as described in subsection B of this section, the requestor shall be charged a fee for the actual duplication of the records which is the same as that set forth for the records described in subsection A of this section. In addition, the requestor shall be charged a fee of $22.50 for each hour of time expended by county employees to locate, retrieve and refile such records; provided, however, the first full hour of such time expended on all requests of any one requestor each month, shall be provided free of charge.

D. If it is anticipated that the fee to be charged for the provision of any county records described in this section will exceed $50.00, a good faith estimate of the total fee to be charged shall be provided to the requestor, and the requestor shall make payment of such amount to the county before work is commenced on the request. Any overpayment or underpayment shall be reconciled at the time the records are provided to the requestor. (Ord. 93-0057 §§1, 1993.)

ATTCHMENT C

Policy #:	Title:	Effective Date:	Page:
3.040	DESTRUCTION AND DISPOSITION OF OLD RECORDS	2/18/47 05/13/58	1 of 1

PURPOSE

Saves County departments costs and storage space for storing old records that have no lasting value.

REFERENCE

May 13, 1958 Board Order, Synopsis 46
Government Code Section 26202

POLICY

It is the policy of the Board of Supervisors to allow County departments to destroy any record, paper or document that:

(1) Is more than two years old;
(2) Is of no further use to the department; and
(3) Is not expressly prepared or received pursuant to State statute or County charter.

RESPONSIBLE DEPARTMENT

Chief Administrative Office

DATE ISSUED/SUNSET DATE

Issue Date: May 13, 1958 Sunset Date: May 13, 2004

ATTACHMENT D

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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

J. TYLER McCAULEY
AUDITOR-CONTROLLER

January 23, 2001

To: All Department and District Heads

From: J. Tyler McCauley
Auditor-Controller

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

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

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

Requirements of New Law

Following are the principal requirements of the new law:

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

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

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

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

Cost Recovery - Information in Electronic Format

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

Cost Recovery - Non-Electronic Records

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

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

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

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

Auditor-Controller
County of Los Angeles

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

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

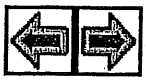
Please call me if you have any questions.

JTM:PTM:JMS

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

Auditor-Controller
County of Los Angeles

MANUAL OF POLICY AND PROCEDURES



09/090.00 RELEASE OF OFFICIAL INFORMATION

Except under specific circumstances, complaint reports, arrest reports and investigator files, defined as public records under Section 6250 of the Government Code, are exempt from disclosure. Those specific exceptions are defined in the 1982 amendment to Section 6254(f) of the Government Code.

The purpose of the amendment is to clarify the rights of the public to access nonsensitive law enforcement records. The revised section addresses this issue by classifying those persons requesting record information as victims and/or the general public (including the media).

Although legislation governing the release of crime and arrest information does not differentiate between adult and juvenile subjects, refer to the Juvenile chapter of this manual for Department policy on the release of information concerning juveniles.

Public records are defined under Section 6250 of the Government Code as any recordation containing information relating to the conduct of the public's business prepared, owned, used or retained by any local agency, regardless of physical form or characteristics. For the purpose of this manual section, the term "information" shall include any material that is maintained in the normal course of business in written, photographic or electronically recorded form.

This section does not apply to the dissemination of criminal record information. For dissemination of such information, refer to section 3-09/110.00 of this chapter.

ATTACHMENT F

4-01/020.65 ASSERTION OF GOVERNMENT PRIVILEGE

The County, and any other public entity, has a privilege to refuse to disclose certain official information/records when the privilege is claimed. The following is information that may be classified as privileged, and under which Evidence Code Section or Government Code Section the assertion is to be applied.

Government Code Section 6254

- Records that are preliminary drafts, notes, or Department memoranda (interagency or intra agency) which are not retained by this Department in the ordinary course of business and when the public interest in withholding clearly outweighs the disclosure,
- Records pertaining to pending litigation to which this Department is a party,
- Any personnel, medical, or similar file when the disclosure would constitute an unwarranted invasion of personal privacy,
- Records of complaints, intelligence information, or security procedures.

The Department has experienced a certain degree of success in asserting privileges for the above information/records under Section 6254 of the Government Code; however, the following situations under Sections 1040 and 1041 of the Evidence Code requires sound judgment by Department personnel, as the courts often make dismissal of the case the price of assertion.

Evidence Code Section 1040

- Information acquired in confidence by a public employee, if the privilege is claimed by an authorized person, and:
  - Disclosure is forbidden by State or Federal law or,
  - Need to preserve the confidentiality of the information outweighs the necessity of disclosure.
- No privilege may be claimed if consent to disclose has been obtained from an authorized person.

Evidence Code Section 1041

- To refuse to disclose the identity of a person who has furnished information purporting to disclose a violation of law and to prevent another from disclosing such identity if:
  - Disclosure is forbidden by federal or state law or,
  - The need to preserve the confidentiality of his identity outweighs the necessity for disclosure.
- No privilege may be claimed if the consent to disclose has been obtained from an authorized person or the informer.

Reports containing information, as noted above, should be stamped as containing privileged information by the reporting unit. For uniformity, reports should be stamped in the narrative section just prior to the written report.

This procedure in no way eliminates the writing of confidential reports as outlined in section 4-01/020.60.

ıe purpose of the stamp is to alert an individual, station, or bureau receiving a motion for pre-trial discovery of subpoena duces tecum requesting information, from our reports and records, that our documents may contain information that has been Departmentally classified as privileged information and shall, in all cases, be evaluated prior to surrender. This stamp on a document will not automatically preclude the disclosure of the information. This specific immunity is to be asserted, when necessary, during legal proceedings.

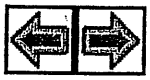
Personnel responsible for gathering information in answer to a court order shall, in all cases, advise the reporting unit when the privileged information stamp appears. The originating unit shall either declassify the information or be prepared to assert the privilege in court. If assistance or information is necessary in asserting the privilege, personnel should contact the Executive Planning Council (EPC) Staff, Legal Unit, (refer to section 3-09/210.00).

Any member may request that certain documents/reports be classified as containing privileged information; however, only watch commanders or permanent lieutenants and ranks above shall classify or declassify.

The stamp shall contain the following:

- "This document may contain privileged information,"
- Reference to the code sections,
- Name and rank of the classifier,
- Unit of assignment,
- Date of classification.

To provide uniformity, Records and Identification Bureau shall control the acquisition, supply and distribution of the stamps.



4-01/020.60 CONFIDENTIAL REPORTS

When URN numbers are requested from the Event Index (EI), the "Name Kind Code" (S = Suspect, V = Victim, C = Confidential, etc.) must be entered in the name kind code field.

Confidential reports are those that have a confidential distribution, and which the unit of assignment does not want released to anyone, including unauthorized Department personnel. The confidential Kind Code (C) should be very rarely used for other than homicide reports. Other examples of appropriate use of this code are: Open criminal investigations of County personnel; open criminal investigations of any law enforcement personnel; narcotic undercover operations where buy money is required, etc.

Reports that are not to be released as public information due to their sensitive nature e.g., non-sexual, child abuse cases, investigative reports, politically sensitive reports, etc. are not confidential reports. These reports fall under the parameters of Government Code Section 6254(f) and should be stamped/identified "Limited Distribution." THESE REPORTS SHALL NOT BE STAMPED "Confidential," with the exception of the following sex offense Penal Code Sections: 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 267, 281, 284, 285, 286, 288, 288a, 288.2, 288.5, and 289. They shall be processed in the normal manner with the original sent to Records and Identification Bureau for microfilming.

For additional information regarding confidentiality of these sex offense Penal Code sections, refer to manual section 5-09/350.00, Policy and Procedure for Sex Related Crimes.

All confidential reports shall be frequently reviewed by the concerned unit commander, and upon concurrence, held at the unit of assignment until no longer considered confidential. These reports shall then be processed in the normal manner with the original sent to Records and Identification Bureau for microfilming.

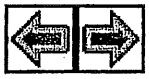
The station/unit initiating a confidential report is responsible for making the necessary Event Index entries after the report has been declassified and is no longer considered confidential.

Distribution of confidential reports will vary with the originating units.

In homicide cases, the complaint report shall be sent via JDIC or faxed as soon as possible to Homicide Bureau and the Coroner's Office. Both the complaint report and supplementary reports on homicide cases are confidential.

The distribution of confidential homicide reports shall be made by Homicide Bureau. All copies, except for the station file, shall be forwarded directly to the Homicide Bureau.

Revised 02/22/99



09/350.00 POLICY AND PROCEDURE FOR SEX RELATED CRIMES

The names and addresses of victims of 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 267, 273a, 273d, 281, 284, 285, 286, 288, 288a, 288.5, and 289 shall be confidential and not disclosed to the public.

The watch sergeant shall stamp all such reports as confidential.

In accordance with California Penal Code Section 293(a), it is mandatory for all personnel who receive a report from an alleged victim of a sex offense to advise the victim that his name will become a matter of public record unless he requests otherwise (pursuant to Section 6254 of the Government Code). Any written sex offense report shall indicate that the alleged victim has been so informed. The victim's response shall be documented by the appropriate notation on the pre-printed "Victim of a Sex Crime Request for Confidentiality" box on the reverse side of the Complaint Report form (SH-R-49, Rev. 5/93). The advisement shall be read to and signed by the victim. An additional notation shall be completed on the pre-printed "Sex Offense Victim Information" box on the front page of the Complaint Report. This section shall indicate if the report contains a sex offense victim's personal information.

In all alleged cases of violations of section 261, 261.5, 262, 286, 288a or 289 of the Penal Code, deputies assigned to the case shall furnish the victim with the following: a handout containing information regarding procedures to follow after a sexual assault; the names and locations of rape victim centers within the County; and a statement that sexual assault by a person known to the victim, including the victim's spouse, is also a crime. Deputies shall notify the local rape counseling center whenever the victim has been transported to a hospital for examination, provided the victim approves of the notification.

In all cases when the crime was an attempt, victims shall be provided the same information and notification.

Revised 02/22/99

Public Records

County of Los Angeles

Public Records Requests

Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. Records of the County of Los Angeles which are not exempt from disclosure are available for inspection and copying in accordance with the California Public Records Act upon a request that reasonably describes an identifiable record or records. (Los Angeles County Code § 2.170.010(a).)

The California Public Records Act is found in the California Government Code, beginning at Section 6250. Records subject to inspection and copying include any writings, meaning any handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including information available in an electronic format. (See, Government Code §§ 6252(f) and 6253.9.)

The County of Los Angeles does not maintain a centralized record keeping system. County departments, agencies, commissions and committees process innumerable requests for records on a daily basis at various public facilities dispersed throughout the County.

The list of all County departments, agencies, commissions and committees is available on the County's website at www.co.la.ca.us under the headings "County Departments" and "Commissions & Committees."

Requests to inspect and copy public records which are not otherwise immediately available to the public should be made directly to the responsible department or agency head, commission or committee secretary, or to his or her designee, as identified on the website of the department, agency, commission or committee.

The Public Affairs Office of the Chief Administrative Office, located at Room 358, Kenneth Hahn Hall of Administration, 500 W. Temple Street, Los Angeles, 90012, shall be responsible for directing the public to the appropriate department, agency, commission or committee.

Records may be described by their content. It is the responsibility of the department, agency, commission or committee to search for records based on the criteria set forth

in the records request, and to determine whether it has such records under its control.

Records shall be made promptly available for inspection, and for copying within ten (10) calendar days. In unusual circumstances, the ten (10) days may be extended by written notice from the department or agency head, commission or committee secretary, or from his or her designee, for no more than an additional fourteen (14) days as provided by law.

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

A fee for copies of public records may be charged which covers the direct costs of duplication as determined by the County's Auditor-Controller. (Los Angeles County Code § 2.170.010(a).) It is the policy of the Los Angeles County Board of Supervisors to waive charges for duplicating routine records when requested by the media. (Board of Supervisors Policy Manual, "Media Policy Guidelines For Departments," Policy #3.140 adopted 03/29/94.)

Adopted by the Los Angeles County Board of Supervisors, April 2, 2002.

DEPARTMENT OF FINANCE
GRAY DAVIS, GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

November 20, 2002

RECEIVED
NOV 26 2002
COMMISSION ON
STATE MANDATES

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

Dear Ms. Higashi:

As requested in your letter of October 21, 2002, the Department of Finance has reviewed the test claim submitted by Los Angeles County (claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 355, Statutes of 2001, (AB 1014, Papan), Chapter No. 982, Statutes of 2000, (AB 2799, Shelley), Chapter No. 945, Statutes of 2002, (AB 1962, Hollingsworth), and Chapter No. 1073, Statutes of 2002, (AB 2937, Shelley) are reimbursable state-mandated costs (Claim No. CSM-02-TC-10 "California Public Records Act: Disclosure Procedures"). Commencing with Page 1, of the test claim, claimant has identified the following new duties, which it asserts are reimbursable state mandates:

- Develop policies and protocols related to the Public Records Act (PRA),
- Conduct training on implementing new policies and procedures
- Purchase or develop database software for tracking and processing PRA requests
- Develop a website for public record disclosure requests
- Legal consultations with the County Counsel
- Purchase computers to monitor and document public record service actions, supplies and materials, contract services (computer maintenance), and travel.

The claimant has also identified increased staff time dedicated to PRA requests, such as:

- Assist in defining telephone, walk-in or written requests,
- Write and logging requests
- Research of the requests
- Notifications to requestors of availability
- Indicate date and time record will be available
- When availability is unknown consult with specialized personnel
- Document findings
- Provide the public records or a written denial of the request.

As a result of our review, we have concluded that a portion of this request may be a state mandate. The test claim legislation specifies the type of response that the claimant must give to the requestor and the timelines that must be met which could potentially result in a greater number of staff hours spent researching and helping requestors. Anything above and beyond staff time dedicated to expediting and or researching requests would not be considered state-mandated activities, and additional activities and equipment noted by the claimant are considered discretionary and therefore not reimbursable.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your October 21, 2002 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Tom Lutzenberger, Principal Program Budget Analyst, at (916) 445-8913, or Keith Gmeinder, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Calvin Smith

S. Calvin Smith
Program Budget Manager

Attachment

Attachment A

DECLARATION OF
DEPARTMENT OF FINANCE
CLAIM NO. CSM-02-TC-10—California Public Records Act: Disclosure Procedures

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

2. We concur that the Chapter No. 355, Statutes of 2001, (AB 1014, Papan), Chapter No. 982, Statutes of 2000, (AB 2799, Shelley), Chapter No. 945, Statutes of 2002, (AB 1962, Hollingsworth), and Chapter No. 1073, Statutes of 2002, (AB 2937, Shelley) sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

3. Attachment B is a true copy of Finance's analysis of AB 1014 prior to its enactment as Chapter No. 355, Statutes of 2001, (AB 1014, Papan).

4. Attachment C is a true copy of Finance's analysis of AB 2799 prior to its enactment as Chapter No. 982, Statutes of 2000, (AB 2799, Shelley).

5. Attachment D is a true copy of Finance's analysis of AB 1962 prior to its enactment as Chapter No. 945, Statutes of 2002, (AB 1962, Hollingsworth).

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

11/20/02
at Sacramento, CA

Tom Lutzenberger

PROOF OF SERVICE

Test Claim Name: California Public Records Act: Disclosure Procedures
Test Claim Number: CSM—02-TC-10

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, Eighth Floor, Sacramento, CA 95814.

On November 20, 2002, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, Eighth Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: Michael Havey, Bureau Chief
3301 C Street, Room 500
Sacramento, CA 95816

Mandate Resource Services
Attention: Harmeet Barkschat
5325 Elkhorn Boulevard #307
Sacramento, CA 95842

Mandated Cost Systems, Inc.
Attention: Steve Smith, CEO
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Cost Recovery Systems
Attention: Annette Chinn
705-2 East Bidwell Street #294
Folsom, CA 95630

County of Los Angeles
Office of Auditor-Controller's Office
Attention: Leonard Kaye
222 West Temple Street, Room 603
Los Angeles, CA 90012

SixTen & Associates
Attention: Keith B. Peterson, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Riverside County Sheriff's Office
Attention: Mark Sigman, Accountant II
4095 Lemon Street PO Box 512
Riverside, CA 92502

MAXIMUS
Attention: Pam Stone, Legal Counsel
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

David Wellhouse & Associates, Inc.
Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

Centration, Inc.
Attention: Andy Nichols
12150 Tributary Point Drive, Suite 140
Gold River, CA 95670

Spector, Middleton, Young & Minney, LLP
Attention: Paul Minney
7 Park Center Drive
Sacramento, CA 95825

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 20, 2002 at Sacramento, California.

Mary Latorre

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: August 23, 2001
POSITION: Oppose
SPONSOR: California Newspaper Publishers Association

BILL NUMBER: AB 1014
AUTHOR: L. Papan

BILL SUMMARY: Public Records Act: Disclosure Procedures

This bill would require government agencies, both state and local, to follow specified procedures when a member of the public requests a copy of, or information regarding a public record.

FISCAL SUMMARY

By increasing the duties of local agencies, this bill would result in a reimbursable state mandate. However, this cost is unknown since it depends on how many requests for public information are made to locals, and how much time is spent providing assistance to members of the public.

Additionally, this bill would result in unknown but potentially significant costs to state agencies by requiring agencies to assist members of the public in researching information.

COMMENTS

The Department of Finance is opposed to this measure since it would result in General Fund costs that are not budgeted in the 2001-02 Budget Act. Additionally, we note that government agencies receive hundreds of Public Records Act requests every month, and spend thousands of hours each year responding to those requests. While it is appropriate for state and local agencies to make available to the public all documents to which public access is granted, this bill may overly burden government agencies by requiring them to assist members of the public in researching the information as well.

Specifically, this bill would:

- Require agencies to assist an individual requesting to inspect or copy a copy of a public record. This would include helping the person to identify records and information that may be useful, describing the technology and physical location in which the records exist, and provide suggestions for overcoming legal or practical obstacles to obtaining the records.
- Provide that an agency has 10 days to determine whether the information requested is disclosable, and requires the agency to notify the requester of the determination as well as inform the requester as to when the information can be obtained.

Apparently, an independent audit was recently conducted of various local agencies to assess compliance with the California Public Records Act (PRA). The results showed that a high percentage of requests were denied or ignored, and little or no information was provided to the requester as to why the request was not honored. This bill attempts to address the lack of response to public inquiries by increasing the duties of state and local agencies receiving requests.

Some concerns have been raised that requiring state and local agencies to assist members of the public in finding ways to overcome any practical basis for denying access to the records or information could raise legal issues. It is unclear if this concern is warranted.

Analyst/Principal	Date	Program Budget Manager	Date
(0263) J. Lombard	8/24/01	S. Calvin Smith	8/24/01
Department Deputy Director		Original signed by Robert D. Miyashiro	Date AUG 24 2001
Governor's Office:	By: AR	Date: 8/24/01	Position Noted / Position Approved ✓ / Position Disapproved

BILL ANALYSIS — Form DF-43 (Rev 03/95 Buff)

Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) FC 2001-2002	FC 2002-2003	FC 2003-2004	Fund Code
9990/Var Depts	SO	No	See Fiscal Summary			0001
9990/Var Depts	LA	No	See Fiscal Summary			0001

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: July 6, 2000
POSITION: No position

BILL NUMBER: AB 2799
AUTHOR: K. Shelley, et al.

BILL SUMMARY: Public Records: Disclosure

This bill would revise various provisions in the Public Records Act (PRA) related to electronic copies of information.

FISCAL SUMMARY

The PRA provides that any person may receive a copy of any identifiable public record upon payment of fees covering direct costs of duplication or a statutory fee if applicable. This bill would provide that in regards to the payment of fees for records released in an electronic format, the requester of information would bear the "direct cost" of programming and computer services necessary to produce a record not otherwise readily produced, as specified. Therefore, any additional costs to the state would be paid by the requester.

COMMENTS

This bill would revise various provisions in the PRA related to electronic copies of information. Because the requester of such information would be responsible for the costs, we have no fiscal concerns.

The PRA provides that any person may receive a copy of any identifiable public record from any state or local agency upon payment of fees covering direct costs of duplication or a statutory fee if applicable. The act provides that it should not be construed to permit an agency to obstruct the inspection or copying of public records and requires any notification of denial of any request for records pursuant to the act to set forth the names and titles or positions of each person responsible for the denial. The act also requires computer data to be provided in a form determined by the agency. The PRA also requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the act or that, on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by the disclosure of the record.

This bill would:

- Provide that nothing in the PRA should be construed to permit an agency to delay or obstruct the inspection or copying of public records.
- Delete the requirement that computer data be provided in a form determined by the agency and would require any agency that has information that constitutes an identifiable public record not

Analyst/Principal	Date	Program Budget Manager	Date
(0263) J. Lombard		S. Calvin Smith	
[signature]	8/10/2000	[signature]	8-10-00
Department Deputy Director			Date

Governor's Office:	By:	Date:	Position Noted / Position Approved / Position Disapproved

otherwise exempt from disclosure that is in an electronic format to make that information available in an electronic format when requested by any person.

- Require the agency to make the information available in any electronic format in which it holds the information, but would not require release of a record in the electronic form in which security or integrity of the original record or any proprietary software that could be compromised.
- This bill would require a response to a written request for public records that includes a denial of the request in whole or in part to be in writing.

Because these requirements would apply to local agencies as well as state agencies, this bill would impose a state-mandated local program. However, this bill would provide that the requester of this information would bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record. Any costs upon local governments that result from this bill would be paid by the requester of information, therefore, no reimbursement would be required.

In the period of technology that we are currently in more people want access to information in an electronic format. However, there is not current authority under which a person seeking electronically available records could obtain such records in that format. For example, if an agency makes a CD or disk of copies of the records, a member of the public could not obtain records in that format. The public would have to buy copies made out of the printouts from the records. According to the author, the expense of copying these records in paper format, especially when there are so many records, makes it inaccessible to the public.

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) PROP 98	FC	2000-2001	FC	2001-2002	FC	2002-2003	Fund Code
9901/Var Depts	SO	No	---------- See Fiscal Summary ----------						0001

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: August 5, 2002
POSITION: No position
SPONSOR: United States Justice Foundation

BILL NUMBER: AB 1962
AUTHOR: D. Hollingsworth

BILL SUMMARY: Electronic Communication

This bill would clarify the definitions of "writing" used in the Public Records Act and Evidence Code to include correspondence via facsimile and electronic mail.

FISCAL SUMMARY

Judicial Council staff indicate that this bill would not result in any increased costs to the courts.

The California Constitution requires the State to reimburse local government for the costs of any program or increased level of service mandated by the Legislature or any State agency. By increasing the types of public records local agencies are required to make available for public inspection, this bill could result in a state-mandated local program. However, although this bill may result in additional costs to local government, those costs are not reimbursable because this bill implements a court order. Section 17556(b) of the Government Code provides that the Commission on State Mandates shall not find a reimbursable mandate in a statute if the statute affirmed for the State that which had been declared existing law or regulation by action of the courts.

COMMENTS

Existing law established the Public Records Act (PRA), which requires state and local agencies to make specified records open to public inspection. Currently, the PRA and the Evidence Code define "writing" as handwriting, typing, printing, photostating, photographing, and other means of recording upon any tangible thing any form of communication or representation. The PRA also includes all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents in this definition.

This bill would add transmitting by electronic mail or facsimile to the definition of "writing" in both the PRA and Evidence Code. In addition, this bill would further clarify the definition by deleting references to specific types of items upon which writing can be stored and replacing it with the phrase "any tangible thing." These changes would make the definition for "writing" used in both the PRA and Evidence Code the same and consistent with current case law.

It is our understanding existing case law interpreted the PRA requirements to include electronic documents. Case law has also determined that computer printouts of records made electronically are admissible under the evidence code. Therefore, this bill would simply codify existing case law and make technical changes clarify and improve the consistency of existing law.

Analyst/Principal	Date	Program Budget Manager	Date
(0213) M. Caballin		S. Calvin Smith	8-16-02
for Mark Magnan	8/16/02	Calvin Smith	
Department Deputy Director	Original signed by Robert D. Miyashiro		Date AUG 18 2002
Governor's Office:	By: AR	Date: 8/19/02	Position Noted ____ Position Approved ✓ Position Disapproved ____

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED) **Form DF-43**

AUTHOR	AMENDMENT DATE	BILL NUMBER
D. Hollingsworth	August 5, 2002	AB 1962

Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	FC	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) 2002-2003	FC	2003-2004	FC	2004-2005	Fund Code
0250/Judiciary	SO	No		See Fiscal Summary					0001

EXHIBIT C

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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

J. TYLER McCAULEY
AUDITOR-CONTROLLER

January 8, 2003

RECEIVED
JAN 1 9 2003
COMMISSION ON
STATE MANDATES

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

Dear Ms. Higashi:

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

We concur with the [November 20, 2002] State Department of Finance finding that a reimbursable state-mandated program is imposed upon local government under the subject legislation.

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

Very truly yours,

for J. Tyler McCauley
Auditor-Controller

JTM:JN:LK

Mailing List

Claim Number: 02-TC-10
Issue: California Public Records Act: Disclosure Procedures

Ms. Harmeet Barkschat,
Mandate Resource Services
5325 Elkhorn Blvd. # 307
Sacramento, CA 95842

Mr. Mark Sigman, Accountant II
Riverside County Sheriff's Office
4095 Lemon Street, P.O. Box 512
Riverside, CA 92502

Ms. Annette Chinn,
Cost Recovery Systems
705-2 East Bidwell Street, Suite 294
Folsom, CA 95630

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

ORIGINALS

Mr. Steve Smith, CEO
Mandated Cost Systems, Inc.
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Mr. David Wellhouse,
Wellhouse & Associates, Inc.
9175 Kiefer Blvd., Suite 121
Sacramento, CA 95826

Ms. Susan Geanacou, Senior Staff Attorney
Department of Finance
915 l Street, 11th Floor
Sacramento, CA 95814

Mr. Michael Harvey, Bureau Chief
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Mr. Andy Nichols, Senior Manager
Centration, Inc.
12150 Tributary Point Drive
Gold River, CA 95670

Mr. Keith Gmeinder, Principal Analyst
Department of Finance
915 L Street, Suite 1190
Sacramento, CA 95814

Mr. Paul Minney
Spector, Middleton, Young & Minney, LLP
7 Park Center Drive
Sacramento, CA 95825

Mr. Keith Petersen, President
Six Ten & Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Ms. Pam Stone, Legal Counsel
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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

J. TYLER McCAULEY
AUDITOR-CONTROLLER

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Hasmik Yaghobyan states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 9th day of January 2003, I served the attached:

Documents: Review of State Agency Comments on Los Angeles County's Test Claim: Chapter 355, Statutes of 2001, Adding Section 6253.1 & Amending Section 6253 of the Government Code; Chapter 982, Statutes of 2000, Adding Section 6253.9 & Amending Sections 6253 and 6255 of the Government Code; Chapter 945, Statutes of 2002 & Chapter 1073, Statutes of 2002 [Both] Amending Section 6252 of the Government Code , California Public Records Act: Disclosure Procedures, including *a 1 page letter of J. Tyler McCauley dated 1/8/03, CSM-02-TC-10, now* pending before the Commission on State Mandates.

upon all Interested Parties listed on the attachment hereto and by

[X] by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date. Commission on State Mandates - FAX as well as mail of originals.

[ ] by placing [ ] true copies [ ] original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.

[X] by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.

[ ] by personally delivering the document(s) listed above to the person(s) as set forth below at the indicated address.

PLEASE SEE ATTACHED MAILING LIST

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 9th day of January 2003, at Los Angeles, California.

Hasmik Yaghobyan

SixTen and Associates
Mandate Reimbursement Services

EXHIBIT D

:EITH B. PETERSEN, MPA, JD, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

June 26, 2003

Certified Mail: 7001 0360 0000 5999 9956

RECEIVED
JUL 09 2003
COMMISSION ON
STATE MANDATES

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

Re: TEST CLAIM OF Riverside Unified School District
Statutes of 2001/Chapter 355
California Public Records Act (K-14)

Dear Ms. Higashi:

Enclosed are the original and seven copies of the Riverside Unified School District test claim for the above referenced mandate.

I have been appointed by the District as its representative for the test claim. The District requests that all correspondence originating from your office and documents subject to service by other parties be directed to me, with copies to:

Michael H. Fine,
Business Services & Governmental
Relations Division
Riverside Unified School District
3380 14th Street
Sacramento, California 95814

Cheryl Miller
Associate Vice President,
Business Services
Santa Monica Community College
1900 Pico Boulevard
Santa Monica, CA 90405-1628

The Commission regulations provide for an informal conference of the interested parties

within thirty days. If this meeting is deemed necessary, I request that it be conducted in conjunction with a regularly scheduled Commission hearing.

Sincerely,

Keith B. Petersen

C: Michael H. Fine, Business Services & Governmental Relations Division
Riverside Unified School District
Cheryl Miller, Associate Vice President, Business Services

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (1/91)

TEST CLAIM FORM

For Official Use Only

RECEIVED
JUL 09 2003
COMMISSION ON STATE MANDATES

Claim No. 02-TC-51

Local Agency or School District Submitting Claim

Riverside Unified School District

Contact Person	Telephone Number
Keith B. Petersen, President SixTen and Associates	Voice: 858-514-8605 Fax: 858-514-8645

Claimant Address

Riverside Unified School District
3380 14th Street
Riverside, California 92516-2800

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network c/o School Services of California 1121 L Street, Suite 1060 Sacramento, CA 95814	Voice: 916-446-7517 Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

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

California Public Records Act (K-14)

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

Government Code Section 6253
Government Code Section 6253.1
Government Code Section 6253.5
Government Code Section 6253.9
Government Code Section 6254.3
Government Code Section 6255
Government Code Section 6259

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

Name and Title of Authorized Representative	Telephone No.
Michael H. Fine, Deputy Superintendent Business Services & Governmental Relations Division	(909) 788-7134

Signature of Authorized Representative	Date
X Michael H. Fine	June 13, 2003

Claim Prepared By:
Keith B. Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117
Voice: (858) 514-8605

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

	No. CSM _____
Test Claim of	
	Chapter 355, Statutes of 2001
	Chapter 982, Statutes of 2000
	Chapter 83, Statutes of 1999
Riverside Unified School District,	Chapter 620, Statutes of 1998
	Chapter 923, Statutes of 1994
	Chapter 926, Statutes of 1993
	Chapter 970, Statutes of 1992
Test Claimant.	Chapter 463, Statutes of 1992
	Chapter 908, Statutes of 1990
	Chapter 1053, Statutes of 1985
	Chapter 1657, Statutes of 1984
	Chapter 802, Statutes of 1984
	Chapter 163, Statutes of 1982
	Chapter 535, Statutes of 1980
	Chapter 556, Statutes of 1977
	Chapter 1246, Statutes of 1975
	Chapter 678, Statutes of 1975
	(Continued on next page)
	California Public Records Act (K-14)
	TEST CLAIM FILING

)	Government Code Section 6253
)	Government Code Section 6253.1
)	Government Code Section 6253.5
)	Government Code Section 6253.9
)	Government Code Section 6254.3
)	Government Code Section 6255
)	Government Code Section 6259
)	

PART I. AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code section 17551(a) to "...hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." Riverside Unified School District is a "school district" as defined in Government Code section 17519.[1]

PART II. LEGISLATIVE HISTORY OF THE CLAIM

This test claim alleges mandated costs reimbursable by the state for school districts, community college districts and county offices of education to comply with public records disclosure requirements including notification, assisting members of the public, responses in electronic format, redaction of records and the payment of courts

[1] Government Code Section 17519, added by Chapter 1459/84:

""School District" means any school district, community college district, or county superintendent of schools."

costs and attorney fees.

SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975

Chapter 1473, Statutes of 1968, Section 39, added Chapter 3.5 to Division 7 of Title 1 of the Government Code. Section 6251[2] provided that the chapter shall be known as the California Public Records Act.

Section 6252[3] provided definitions which included "school district" in its definition of a "local agency".

---

[2] Government Code Section 6251, added by Chapter 1473, Statutes of 1968, Section 39:

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

[3] Government Code Section 6252, as amended by Chapter 575, Statutes of 1970, Section 2:

"As used in this chapter:
(a) "State agency means every state office, officer, department, division, bureau, board, and commission or other state agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.
(b) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; or other local public agency.
(c) "Person" includes any natural person, corporation, partnership, firm, or association.
(d) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.
(e) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents."

Section 6253[4] required public records to be open for inspection at all times during the office hours of the agency and provided that every citizen has a right to inspect any public record, except as therein provided.

Sections 6253.5[5] and 6254[6] set forth exceptions to the public records disclosure

---

[4] Government Code Section 6253, as amended by Chapter 664, Statutes of 1973. Section 1:

"(a) Public records are open to inspection at all times during the office hours of the state or local agency and every citizen has a right to inspect any public record, except as hereafter provided. Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section."

The following state and local bodies shall establish written guidelines for accessibility of records by July 1, 1974. A copy of these guidelines shall be posted in a conspicuous public place at the offices of such bodies by July 1, 1974, and a copy of such guidelines shall be available upon request free of charge to any person requesting that body's records:

[List of agencies, Department of Motor Vehicles through Golden Gate Bridge, Highway and Transporation District, intentionally omitted.]

(b) Guidelines and regulations adopted pursuant to this section shall be consistent with all other sections of this chapter and shall reflect the intention of the Legislature to make such records accessible to the public."

[5] Government Code Section 6253.5, as amended by Chapter 1445, Statutes of 1974, Section 10:

"Notwithstanding the provisions of Sections 6252 and 6253, statewide, county, city, and district initiative referendum, and recall petitions and all memoranda prepared by the county clerks in the examination of such petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving such petitions or who are responsible for the preparation of such memoranda."

[6] Government Code Section 6254, as amended by Chapter 1295, Statutes of 1970, Section 1.5:

1

"Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are:

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

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, until such litigation or claim has been finally adjudicated or otherwise settled;

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

(d) Contained in or related to:

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

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

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

(4) Information received in confidence by any state agency referred in subdivision (1).

(e) Geological and geophysical data, plant production data and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person;

(f) Records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any such investigatory or security files compiled by any other state or local agency for correctional, law enforcement or licensing purposes;

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination;

(h) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all of the contract agreement obtained, provided, however, the law of eminent domain shall not be affected by this provision;

(i) Information required from any taxpayer in connection with the collection of local

requirements.

Section 6255[7] provided that an agency was required to justify withholding any record by demonstrating that the record in question was exempt under express provisions of the appropriate chapter or, that on the facts of the particular case, the public interest served by not making the record public clearly outweighed the public interest served by disclosure of the record.

---

taxes which is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying such information;

(j) Library and museum materials made or acquired and presented solely for reference or exhibition purposes; and

(k) Records the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(l) In the custody of or maintained by the Governor or employees of the Governor's office employed directly in his office, provided that public records shall not be transferred to the custody of the Governor's office to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with such licensing agency to establish his personal qualification for the license, certificate, or permit applied for.

Nothing in this section is to be construed as preventing any age ncy from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law."

[7]Government Code Section 6255, added by Chapter 1473, Statutes of 1968, Section 39:

"The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not the record clearly outweighs the public interest served by disclosure of the record."

Section 6256[8] required that any person may receive a copy of any identifiable public record or copy thereof and that, upon request, an exact copy be provided unless it was impracticable to do so. Computer data was to be provided in a form determined by the agency.

Section 6257[9] required that a request for an identifiable public record or certified copy, be accompanied by payment of a reasonable fee.

Section 6258[10] provided that any person could institute proceedings in any court of competent jurisdiction to enforce his right to inspect or to receive a copy of any public

---

[8] Government Code Section 6256, as amended by Chapter 575, Statutes of 1970, Section 3:

"Any person may receive a copy of any identifiable public record or copy thereof. Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency."

[9] Government Code Section 6257, added by Chapter 1473, Statutes of 1968, Section 39:

"A request for a copy of an identifiable public record or information produced therefrom, or a certified copy of such record, shall be accompanied by payment of a reasonable fee or deposit established by the state or local agency, or the prescribed statutory fee, where applicable."

[10] Government Code Section 6258, as amended by Chapter 575, Statutes of 1970, Section 4:

"Any person may institute proceedings for injunctive or declarative relief in any court of competent jurisdiction to enforce his right to inspect or to receive a copy of any public record or class of public records under this chapter. The times for responsive pleadings and for hearings in such proceedings shall be set by the judge of the court with the object of securing a decision as to such matters at the earliest possible time."

record. The times for responsive pleadings and for hearings in such proceedings were to be set by the judge of the court with the object of securing a decision as to such matters at the earliest possible time.

Section 6259[11] provided a judicial procedure to be followed when a member of the public claimed public records were being improperly withheld.

SECTION 2. LEGISLATIVE HISTORY AFTER DECEMBER 31, 1974

Chapter 678, Statutes of 1975, Section 26, amended Government Code Section 6253.5 by making non-substantive, technical changes.

Chapter 1246, Statutes of 1975, Section 9, amended Government Code Section 6259[12] by requiring the court to award court costs and reasonable attorney fees to a

---

[11]Government Code Section 6259, added by Chapter 1473, Statutes of 1968, Section 39:

"Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and such oral argument and additional evidence as the court may allow.

If the court finds that the public official's decision to refuse disclosure is not justified under the provisions of Sections 6254 or 6255, he shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure. Any person who fails to obey the order of the court shall be cited to show cause why he is not in contempt of court."

[12]Government Code Section 6259, as amended by Chapter 1246, Statutes of 1975, Section 9:

plaintiff who prevails in a petition alleging that public records were improperly withheld. Court costs and reasonable attorney's fees shall be awarded to a public agency only upon a finding that the plaintiff's case was clearly frivolous. Therefore, for the first time, a public agency could be required, when ordered by the court, to pay a plaintiff's court costs and attorney's fees.

Chapter 556, Statutes of 1977, Section 4, amended Government Code Section 6253.5[13] by adding a provision authorizing specified officers and entities to examine

---

"Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and such oral argument and additional evidence as the court may allow.

If the court finds that the public official's decision to refuse disclosure is not justified under the provisions of Sections 6254 or 6255, he shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure. Any person who fails to obey the order of the court shall be cited to show cause why he is not in contempt of court. The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. Such costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency."

[13]Government Code Section 6253.5, as amended by Chapter 556, Statutes of 1977, Section 4:

"Notwithstanding the provisions of Sections 6252 and 6253, statewide, county,

materials upon court approval.

Chapter 535, Statutes of 1980, Section 1, amended Government Code Section 6253.5[14] by adding authority for proponents of a recall petition to examine insufficient

---

city, and district initiative, referendum, and recall petitions and all memoranda prepared by the county clerks in the examination of such petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving such petitions or who are responsible for the preparation of such memoranda; provided, however, that the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, and a city attorney shall be permitted to examine such material upon approval of the appropriate superior court."

[14]Government Code Section 6253.5, as amended by Chapter 535, Statutes of 1980, Section 1:

"Notwithstanding the provisions of Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions and all memoranda prepared by the county clerks in the examination of such petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving such petitions or who are responsible for the preparation of such memoranda and, if the petition is found to be insufficient, by the proponents of the petition and such representatives of the proponents as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor; provided, however, that the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, and a city attorney shall be permitted to examine such material upon approval of the appropriate superior court.

If the proponents of a petition are permitted to examine the petition and memoranda, such examination shall commence not later than 21 days after certification of insufficiency.

As used in this section "proponents of the petition" means the following:

(a) For statewide initiative and referendum measures, the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he prepare a title and summary of the chief purpose and points of the proposed measure.

(b) For other initiative and referenda on measures, the person or persons

petitions in order to determine which signatures were disqualified and the reasons therefor.

Chapter 968, Statutes of 1981, Section 3.4, repealed former Government Code Section 6257 and Section 3.5 added a new Government Code Section 6257[15] which required that each state or local agency, upon request for a copy of a public record, make non-exempt records promptly available to any person, upon payment of fees covering only the direct costs of duplication or a statutory fee, if applicable. The amendment also required that any reasonably segregable portion of a record shall be provided after deletion of portions exempt by law. Therefore, for the first time, public agencies were required to delete exempted portions and provide redacted copies of public records.

Chapter 163, Statutes of 1982, Section 2, amended Government Code Section

---

who publish a notice of intention to circulate petitions, or, where publication is not required, who file petitions with the clerk.

(c) For recall measures, the person or persons defined in Section 29711 of the Elections Code."

[15]Government Code Section 6257, added by Chapter 968, Statutes of 1981, Section 3.5:

"Except with respect to public records exempt by express provisions of law from disclosure, each state or local agency, upon any request for a copy of records, which reasonably describes an identifiable record, or information produced therefrom, shall make the records promptly available to any person, upon payment of fees covering direct costs of duplication, or a statutory fee, if applicable. Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt by law."

6253.5[16] by adding school district or community college district attorneys to the provision authorizing specified officers and entities to examine materials upon court approval. Subdivision (d) was added to further define "proponents of the petition" to include the person or persons having charge of the petition who submits the petition pursuant to

---

[16] Government Code Section 6253.5, as amended by Chapter 163, Statutes of 1982, Section 2:

"Notwithstanding the provisions of Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions, and petitions circulated pursuant to Section 5091 of the Education Code, and all memoranda prepared by the county clerks in the examination of such petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving such petitions or who are responsible for the preparation of such memoranda and, if the petition is found to be insufficient, by the proponents of the petition and such representatives of the proponents as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor; provided, however, that the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a school district or a community college district attorney, and a city attorney shall be permitted to examine such material upon approval of the appropriate superior court.

If the proponents of a petition are permitted to examine the petition and memoranda, such examination shall commence not later than 21 days after certification of insufficiency.

As used in this section "proponents of the petition" means the following:

(a) For statewide initiative and referendum measures, the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he prepare a title and summary of the chief purpose and points of the proposed measure.

(b) For other initiative and referenda on measures, the person or persons who publish a notice of intention to circulate petitions, or, where publication is not required, who file petitions with the clerk.

(c) For recall measures, the person or persons defined in Section 29711 of the Elections Code.

(d) For petitions circulated pursuant to Section 5091 of the Education Code, the person or persons having charge of the petition who submit the petition to the county superintendent of schools."

Education Code Section 5091. Therefore, for the first time, school districts may be required to examine petition materials pertaining to elections to fill a vacancy on the governing board, when appropriate, after obtaining approval of the superior court.

Chapter 802, Statutes of 1984, Section 1, amended Government Code Section 6259[17] to letter the two paragraphs as subdivisions (a) and (b). Subdivision (c) was

---

[17]Government Code Section 6259, added by Chapter 1473, Statutes of 1968, Section 39, as amended by Chapter 802, Statutes of 1984, Section 1:

"(a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and such oral argument and additional evidence as the court may allow.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under the provisions of Sections 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

(c) In an action filed on or after January 1, 1985, an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of the extraordinary writ of review as defined in Section 1067 of the code of Civil Procedure. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency."

added to allow an order of the Superior Court to be reviewed immediately by an appellate court by an extraordinary writ of review. New subdivision (d) restated the provision of former subdivision (c) which allows the court to award attorney's fees and costs.

Chapter 1657, Statutes of 1984, Section 1, added Government Code Section 6254.3[18] which provides in subdivision (a) that the home addresses and home telephone numbers of state employees shall not be deemed to be public records and shall not be open to public inspection, with specified exceptions. Subdivision (b) provides that, upon

[18] Government Code Section 6254.3, added by Chapter 1657, Statutes of 1984, Section 1:

"(a) The home addresses and home telephone numbers of state employees shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

(1) To an agent, or a family member of the individual to whom the information pertains.

(2) To an officer or employee of another state agency necessary for the performance of its official duties.

(3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of state employees performing law enforcement-related functions shall not be disclosed.

(4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to state employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

(b) Upon written request of any employee, a state agency shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and a state agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee."

written request of any employee, a state agency shall not disclose the employee's home address or home telephone number to an employee organization and the state agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee for any use of which is deemed necessary and proper within the limitations of the standards of the agency.

Chapter 1053, Statutes of 1985, Section 1, amended Government Code Section 6253.5[19] by adding petitions for the reorganization of school districts and petitions for the

[19]Government Code Section 6253.5, as amended by Chapter 1053, Statutes of 1985, Section 1:

"Notwithstanding the provisions of Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions, and petitions circulated pursuant to Section 5091 of the Education Code, petitions for the reorganization of school districts submitted pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, petitions for the reorganization of community college districts submitted pursuant to Part 46 (commencing with Section 74000) of the Education Code and all memoranda prepared by the county clerks in the examination of such petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving such petitions or who are responsible for the preparation of such memoranda and, if the petition is found to be insufficient, by the proponents of the petition and such representatives of the proponents as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor; provided, however, that the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a school district or a community college district attorney, and a city attorney shall be permitted to examine such material upon approval of the appropriate superior court.

If the proponents of a petition are permitted to examine the petition and memoranda, such examination shall commence not later than 21 days after certification of insufficiency.

As used in this section "proponents of the petition" means the following:

reorganization of community college districts to the list of materials which are not subject to public disclosure except as specified in the section. Subdivision (e) was added to define "proponents of the petition" for purposes of petitions circulated for the reorganization of school districts. Subdivision (f) was added to define "proponents of the petition" for purposes of petitions circulated for the reorganization of community college districts.

Chapter 908, Statutes of 1990, Section 2, amended subdivision (c) of Government Code Section 6259[20] by specifying the procedures required by a party

---

(a) For statewide initiative and referendum measures, the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he prepare a title and summary of the chief purpose and points of the proposed measure.

(b) For other initiative and referenda on measures, the person or persons who publish a notice of intention to circulate petitions, or, where publication is not required, who file petitions with the clerk.

(c) For recall measures, the person or persons defined in Section 29711 of the Elections Code.

(d) For petitions circulated pursuant to Section 5091 of the Education Code, the person or persons having charge of the petition who submit the petition to the county superintendent of schools.

(e) For petitions circulated pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, the person or persons designated as chief petitioners under Section 35701 of the Education Code.

(f) For petitions circulated pursuant to Part 46 (commencing with Section 74000) of the Education Code, the person or persons designated as chief petitioners under Sections 74102, 74133, and 74152 of the Education Code."

[20]Government Code Section 6259, added by Chapter 1473, Statutes of 1968, Section 39, as amended by Chapter 908, Statutes of 1990, Section 2:

"(a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order

before filing a petition for review of a court order to disclose or not disclose public records.

Chapter 463, Statutes of 1992, Section 1, amended Government Code Section

---

the officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and such oral argument and additional evidence as the court may allow.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under the provisions of Sections 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

(c) In an action filed on or after January 1, 1991 ~~1985~~, an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of the extraordinary writ, ~~of review as defined in Section 1067 of the code of Civil Procedure.~~ Upon entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within 10 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency."

6254.3[21] by adding employees of a school district or county office of education to those people whose addresses and telephone numbers are not deemed to be public records. Therefore, for the first time, school districts and county offices of education are required to limit disclosure of its employees' home addresses and telephone numbers to only those identified in subparagraphs (1) through (4) and, upon the written request of an employee, to also refuse disclosure to an employee organization.

---

[21] Government Code Section 6254.3, as amended by Chapter 463, Statutes of 1992, Section 1:

"(a) The home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

(1) To an agent, or a family member of the individual to whom the information pertains.

(2) To an officer or employee of another state agency, school district, or county office of education when necessary for the performance of its official duties.

(3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of ~~state~~ employees performing law enforcement-related functions shall not be disclosed.

(4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to state, school districts, and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

(b) Upon written request of any employee, a state agency, school district, or county office of education shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and ~~a state~~ an agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee."

Chapter 970, Statutes of 1992, Section 22, amended Government Code Section 6253.5[22] by adding the definition of "petition" for purposes of the section, and by making technical changes.

Chapter 926, Statutes of 1993, Section 1, amended Government Code Section 6259 by making technical changes.

Chapter 923, Statutes of 1994, Section 32, amended Government Code Section 6253.5 by making technical changes.

Chapter 620, Statutes of 1998, Section 4, renumbered former Government Code Section 6253 as Government Code Section 6253.4, and Section 5, added a new Government Code Section 6253[23]. Subdivision (a) of new section 6253 requires that

---

[22]Government Code Section 6253.5, as amended by Chapter 970, Statutes of 1992, Section 22:

"(a) As used in this section, "petition" shall mean any petition to which a registered voter has affixed his or her signature."

[23]Government Code Section 6253, added by Chapter 620, Statutes of 1998, Section 5:

"(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person, upon payment of fees covering direct costs of duplication, or a statutory fee, if applicable. Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency.

public records shall be open to inspection at all times during the office hours of the state or local agency and that every person has a right to inspect any public record except as therein provided. Subdivision (b) provides that the state or local agency must make records promptly available to any person upon payment of fees covering the direct costs of duplication or a statutory fee, if applicable. Subdivision (c) requires that each agency determine whether a request, in whole or in part, seeks copies of disclosable public

---

(c) Each agency, upon request for a copy of records shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. As used in this section, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(d) Nothing in this chapter shall be construed to permit an agency to obstruct the inspection or copying of public records. Any notification of denial of any request for records shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter."

records in the possession of the agency and, for the first time, requires the agency to promptly notify the person making the request of that determination and the reasons therefore. Subdivision (c) also allows an agency, in unusual circumstances, to extend the time allowed for production and requires the head of the agency to provide written notice of that fact to the person making the request setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. Subdivision (d) provides that nothing in the chapter shall be construed to permit an agency to obstruct the inspection or copying of public records and, for the first time, requires that any notification of denial of any request for records shall set forth the names and titles or positions of each person responsible for the denial.

Chapter 620, Statutes of 1998, Section 10, repealed Government Code Section 6257.

Chapter 83, Statutes of 1999, Section 64, amended Government Code Section 6253 by making technical changes.

Chapter 982, Statutes of 2000, Section 1, amended Government Code Section 6253[24] by adding subdivision (c)(4) to add the need to compile data, to write

---

[24]Government Code Section 6253, added by Chapter 620, Statutes of 1998, Section 5, as amended by Chapter 982, Statutes of 2000, Section 1:

"(c) Each agency, upon request for a copy of records shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the

programming language of a computer program, or to construct a computer report to extract data, to the list of examples of "unusual circumstances" which would justify an extension of time.

Chapter 982, Statutes of 2000, Section 2, added Government Code Section 6253.9[25] which, for the first time, requires agencies which have non-exempt public

---

request setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data."

[25]Government Code Section 6253.9, added by Chapter 982, Statutes of 2000, Section 2:

"(a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of

records in an electronic format to make that information available in an electronic format, when requested.

Chapter 982, Statutes of 2000, Section 3, amended Government Code Section 6255[26] by adding subdivision (b) which requires that a response to a written request for

---

duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.

(c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

(d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.

(e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute."

[26]Government Code Section 6255, as amended by Chapter 982, Statutes of 2000, Section 3:

"(a)The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing ~~making~~ the record

inspection or copies of public records that includes a determination that the request is denied, in whole or in part, to be in writing. The section was also amended to make non-substantive technical changes. Therefore, for the first time, school districts are required, when a determination that a request for disclosure of a document is denied in whole or in part, to respond in writing.

Chapter 355, Statutes of 2001, Section 3, added Government Code Section 6253.1[27] which, for the first time, requires a public agency, upon receipt of a request to

---

~~public~~ clearly outweighs the public interest served by disclosure of the record.

(b) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.

[27]Government Code Section 6253.1, added by Chapter 355, Statutes of 2001, Section 3:

"(a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do all of the following, to the extent reasonable under the circumstances:

(1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.

(2) Describe the information technology and physical location in which the records exist.

(3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

(b) The requirements of paragraph (1) of subdivision (a) shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records.

(c) The requirements of subdivision (a) are in addition to any action required of a public agency by Section 6253.

(d) This section shall not apply to a request for public records if any of the following applies:

(1) The public agency makes available the requested records pursuant to

inspect a public record by a member of the public, to do all of the following: (1) assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

PART III. STATEMENT OF THE CLAIM

SECTION 1. COSTS MANDATED BY THE STATE

The Government Code Sections referenced in this test claim result in school districts, community college districts and county offices of education incurring costs mandated by the state, as defined in Government Code section 17514[28], by creating new state-mandated duties related to the uniquely governmental function of providing service to students and the public and these statutes apply to school districts and do not

---

Section 6253.
(2) The public agency makes available an index of its records."

[28] Government Code section 17514, added by Chapter 1459, Statutes of 1984:

""Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIIIB of the California Constitution."

apply generally to all residents and entities in the state.[29]

The new duties mandated by the state upon school districts, community colleges and county offices of education require state reimbursement of the direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, staff and student training and travel to implement the following activities:

A) Pursuant to Chapter 3.5 of the Government Code (Government Code Sections 6250, et. seq.) to establish and implement policies and procedures, and to periodically update those policies and procedures, to provide for the processing of requests for disclosure of public documents pursuant to the California Public Records Act.

B) Pursuant to Government Code Section 6253, subdivision (a), providing redacted copies of requested documents deleting portions exempted by law.

C) Pursuant to Government Code Section 6253, subdivision (b), providing copies of public records to the public, including the determination and collection of the fee.

D) Pursuant to Government Code Section 6253, subdivision (c), promptly notifying a

---

[29] Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 225 Cal.App.3d 155; 275 Cal.Rptr. 449:

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. V. State of California (1987) 190 Cal.App.3d at p.537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

person making a request for a copy of records, within 10 days from receipt of the request, of the determination of whether the requested records are disclosable public records.

E) Pursuant to Government Code Section 6253, subdivision (c), when it is determined that an extension is necessary, setting forth the reasons for the extension in writing.

F) Pursuant to Government Code Section 6253, subdivision (c), when it is determined that an extension is necessary, setting forth, in writing, a date upon which a determination is expected to be dispatched.

G) Pursuant to Government Code Section 6253, subdivision (d), when denying a request for disclosure of public records, setting forth the names and titles or positions of each person responsible for the denial.

H) Pursuant to Government Code Section 6253.1, when embers of the public make a request to inspect a public record or obtain a copy of a public record,

(1) Assisting members of the public identify records and information that are responsive to the request or to the purpose of the request, if stated,

(2) Describing the information technology and physical location in which the records exist, and

(3) Providing suggestions for overcoming any practical basis for denying access to the records or information sought.

I) Pursuant to Government Code Section 6253.5, when necessary, examining

petitions for the district when petitions are filed to fill vacancies on the governing board and petitions for recall, after obtaining approval of the appropriate superior court.

J) Pursuant to Government Code Section 6253.9, subdivision (a), making disclosable public records in an electronic format available in an electronic format when requested.

K) Pursuant to Government Code Section 6254.3, subdivision (a), limiting disclosure of employees' home addresses and telephone numbers to those identified in subparagraphs (1) through (4) and, upon the written request of an employee, refusing disclosure to an employee organization.

L) Pursuant to Government Code Section 6254.3, subdivision (b), removing an employee's home address and home telephone number from any mailing list maintained by the agency when requested by that employee.

M) Pursuant to Government Code Section 6255, subdivision (b), responding in writing when a determination has been made that a request for disclosure of a document is denied in whole or in part.

N) Pursuant to Government Code Section 6259, when ordered by a court, paying to a prevailing plaintiff his or her court costs and reasonable attorney fees.

SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

None of the Government Code Section 17556[30] statutory exceptions to a finding of costs mandated by the state apply to this test claim. Note, that to the extent school districts may have previously performed functions similar to those mandated by the referenced code sections, such efforts did not establish a preexisting duty that would relieve the state of its constitutional requirement to later reimburse school districts when

[30] Government Code section 17556, as last amended by Chapter 589, Statutes of 1989:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

these activities became mandated.[31]

SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM

Local agencies are authorized to collect their direct costs of duplication or statutory fees when providing copies of public records pursuant to Government Code Section 6253, subdivision (b). To the extent such costs and fees are collected, they would reduce the expenses claimed. Otherwise, no funds are appropriated by the state for reimbursement of these costs mandated by the state and there is no other provision of law for recovery of costs from any other source.

PART IV. ADDITIONAL CLAIM REQUIREMENTS

The following elements of this claim are provided pursuant to Section 1183, Title 2, California Code of Regulations:

Exhibit 1: Declaration of Michael H. Fine
Riverside Unified School District

Declaration of Cheryl Miller
Santa Monica Community College District

Exhibit 2: Copies of Statutes Cited

Chapter 355, Statutes of 2001
Chapter 982, Statutes of 2000
Chapter 83, Statutes of 1999
Chapter 620, Statutes of 1998

---

[31]Government Code Section 17565:

"If a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

Chapter 923, Statutes of 1994
Chapter 926, Statutes of 1993
Chapter 970, Statutes of 1992
Chapter 463, Statutes of 1992
Chapter 908, Statutes of 1990
Chapter 1053, Statutes of 1985
Chapter 1657, Statutes of 1984
Chapter 802, Statutes of 1984
Chapter 163, Statutes of 1982
Chapter 535, Statutes of 1980
Chapter 556, Statutes of 1977
Chapter 1246, Statutes of 1975
Chapter 678, Statutes of 1975

Exhibit 3: Copies of Code Sections Cited
Government Code Section 6253
Government Code Section 6253.1
Government Code Section 6253.5
Government Code Section 6253.9
Government Code Section 6254.3
Government Code Section 6255
Government Code Section 6259

/

/

/

/

PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on June 13, 2003, at Riverside, California by:

Michael H. Fine
Deputy Superintendent
Business Services & Governmental Relations Division

Voice: (909) 788-7134
Fax: (909) 788-7110

PART VI. APPOINTMENT OF REPRESENTATIVE

Riverside Unified School District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.

Michael H. Fine
Deputy Superintendent
Business Services & Governmental Relations Division

6/13/03
Date

EXHIBIT 1
DECLARATION

DECLARATION OF Michael H. Fine

Riverside Unified School District

Test Claim of Riverside Unified School District

COSM No. _____

Chapter 355, Statutes of 2001
Chapter 982, Statutes of 2000
Chapter 83, Statutes of 1999
Chapter 620, Statutes of 1998
Chapter 923, Statutes of 1994
Chapter 926, Statutes of 1993
Chapter 970, Statutes of 1992
Chapter 463, Statutes of 1992
Chapter 908, Statutes of 1990
Chapter 1053, Statutes of 1985
Chapter 1657, Statutes of 1984
Chapter 802, Statutes of 1984
Chapter 163, Statutes of 1982
Chapter 535, Statutes of 1980
Chapter 556, Statutes of 1977
Chapter 1246, Statutes of 1975
Chapter 678, Statutes of 1975

Government Code Section 6253
Government Code Section 6253.1
Government Code Section 6253.5
Government Code Section 6253.9
Government Code Section 6254.3
Government Code Section 6255
Government Code Section 6259

California Public Records Act (K-14)

I, Michael H. Fine, Deputy Superintendent, Business Services & Governmental Relations Division, Riverside Unified School District , make the following declaration and statement.

In my capacity as Deputy Superintendent, Business Services & Governmental Relations Division, I am responsible for the receipt, processing and compliance with the

California Public Records Act. I am familiar with the provisions and requirements of the statutes and Government Code Sections enumerated above.

These Government Code sections require the Riverside Unified School District to implement the following activities:

A) Pursuant to Chapter 3.5 of the Government Code (Government Code Sections 6250, et. seq.) to establish and implement policies and procedures, and to periodically update those policies and procedures, to provide for the processing of requests for disclosure of public documents pursuant to the California Public Records Act.

B) Pursuant to Government Code Section 6253, subdivision (a), providing redacted copies of requested documents deleting portions exempted by law.

C) Pursuant to Government Code Section 6253, subdivision (b), retrieving, inspecting, and handling of files from which copies are made.

D) Pursuant to Government Code Section 6253, subdivision (c), promptly notifying a person making a request for a copy of records, within 10 days from receipt of the request, of the determination of whether the requested records are disclosable public records.

E) Pursuant to Government Code Section 6253, subdivision (c), when it is determined that an extension is necessary, setting forth the reasons for the extension in writing.

F) Pursuant to Government Code Section 6253, subdivision (c), when it is determined that an extension is necessary, setting forth, in writing, a date upon which a determination is expected to be dispatched.

G) Pursuant to Government Code Section 6253, subdivision (d), when denying a request for disclosure of public records, setting forth the names and titles or positions of each person responsible for the denial.

H) Pursuant to Government Code Section 6253.1, when members of the public make a request to inspect a public record or obtain a copy of a public record,

(1) Assisting members of the public identify records and information that are responsive to the request or to the purpose of the request, if stated,

(2) Describing the information technology and physical location in which the records exist, and

(3) Providing suggestions for overcoming any practical basis for denying access to the records or information sought.

I) Pursuant to Government Code Section 6253.5, when necessary, examining petitions that are filed to fill vacancies on the governing board and petitions for recall, after obtaining approval of the appropriate superior court.

J) Pursuant to Government Code Section 6253.9, subdivision (a), making disclosable public records in an electronic format available in an electronic format when requested.

K) Pursuant to Government Code Section 6254.3, subdivision (a), limiting disclosure

of employees' home addresses and telephone numbers to those identified in subparagraphs (1) through (4) and, upon the written request of an employee, refusing disclosure to an employee organization.

L) Pursuant to Government Code Section 6254.3, subdivision (b), removing an employee's home address and home telephone number from any mailing list maintained by the agency when requested by that employee.

M) Pursuant to Government Code Section 6255, subdivision (b), responding in writing when a determination has been made that a request for disclosure of a document is denied in whole or in part.

N) Pursuant to Government Code Section 6259, when ordered by a court, paying to a prevailing plaintiff his or her court costs and reasonable attorney fees.

It is estimated that the Riverside Unified School District, to the extent public records disclosure requests are made, incurred more than $1,000 in staffing and other costs, annually, in excess of any fees collected pursuant to Government Code Section 6253, subdivision (b) and funding provided to school districts and the state for the period from July 1, 2001 through June 30, 2002 to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where

so stated I declare that I believe them to be true.

EXECUTED this 25 day of June, 2003, at Riverside, California.

Michael H. Fine,
Deputy Superintendent
Business Services & Governmental Relations Division
Riverside Unified School District

DECLARATION OF Cheryl Miller

Santa Monica Community College District

Test Claim of Riverside Unified School District

COSM No. _____

Chapter 355, Statutes of 2001
Chapter 982, Statutes of 2000
Chapter 83, Statutes of 1999
Chapter 620, Statutes of 1998
Chapter 923, Statutes of 1994
Chapter 926, Statutes of 1993
Chapter 970, Statutes of 1992
Chapter 463, Statutes of 1992
Chapter 908, Statutes of 1990
Chapter 1053, Statutes of 1985
Chapter 1657, Statutes of 1984
Chapter 802, Statutes of 1984
Chapter 163, Statutes of 1982
Chapter 535, Statutes of 1980
Chapter 556, Statutes of 1977
Chapter 1246, Statutes of 1975
Chapter 678, Statutes of 1975

Government Code Section 6253
Government Code Section 6253.1
Government Code Section 6253.5
Government Code Section 6253.9
Government Code Section 6254.3
Government Code Section 6255
Government Code Section 6259

California Public Records Act (K-14)

I, Cheryl Miller, Associate Vice President Business Services, Santa Monica Community College District, make the following declaration and statement.

In my capacity as Associate Vice President Business Services, I am responsible for the receipt, processing and compliance with the California Public Records Act. I am familiar with the provisions and requirements of the statutes and Government Code

Sections enumerated above.

These Government Code sections require the Santa Monica Community College District to implement the following activities:

A) Pursuant to Chapter 3.5 of the Government Code (Government Code Sections 6250, et. seq.) to establish and implement policies and procedures, and to periodically update those policies and procedures, to provide for the processing of requests for disclosure of public documents pursuant to the California Public Records Act.

B) Pursuant to Government Code Section 6253, subdivision (a), providing redacted copies of requested documents deleting portions exempted by law.

C) Pursuant to Government Code Section 6253, subdivision (b), providing copies of public records to the public, including the determination and collection of the fee.

D) Pursuant to Government Code Section 6253, subdivision (c), promptly notifying a person making a request for a copy of records, within 10 days from receipt of the request, of the determination of whether the requested records are disclosable public records.

E) Pursuant to Government Code Section 6253, subdivision (c), when it is determined that an extension is necessary, setting forth the reasons for the extension in writing.

F) Pursuant to Government Code Section 6253, subdivision (c), when it is determined that an extension is necessary, setting forth, in writing, a date upon

which a determination is expected to be dispatched.

G) Pursuant to Government Code Section 6253, subdivision (d), when denying a request for disclosure of public records, setting forth the names and titles or positions of each person responsible for the denial.

H) Pursuant to Government Code Section 6253.1, when members of the public make a request to inspect a public record or obtain a copy of a public record,

(1) Assisting members of the public identify records and information that are responsive to the request or to the purpose of the request, if stated,

(2) Describing the information technology and physical location in which the records exist, and

(3) Providing suggestions for overcoming any practical basis for denying access to the records or information sought.

I) Pursuant to Government Code Section 6253.5, when necessary, examining petitions that are filed to fill vacancies on the governing board and petitions for recall, after obtaining approval of the appropriate superior court.

J) Pursuant to Government Code Section 6253.9, subdivision (a), making disclosable public records in an electronic format available in an electronic format when requested.

K) Pursuant to Government Code Section 6254.3, subdivision (a), limiting disclosure of employees' home addresses and telephone numbers to those identified in subparagraphs (1) through (4) and, upon the written request of an employee,

refusing disclosure to an employee organization.

L) Pursuant to Government Code Section 6254.3, subdivision (b), removing an employee's home address and home telephone number from any mailing list maintained by the agency when requested by that employee.

M) Pursuant to Government Code Section 6255, subdivision (b), responding in writing when a determination has been made that a request for disclosure of a document is denied in whole or in part.

N) Pursuant to Government Code Section 6259, when ordered by a court, paying to a prevailing plaintiff his or her court costs and reasonable attorney fees.

It is estimated that Santa Monica Community College District, to the extent public records disclosure requests are made, incurred more than approximately $1,000 in staffing and other costs, annually, in excess of any fees collected pursuant to Government Code Section 6253, subdivision (b), and of any funding provided to school districts and the state for the period from July 1, 2001 through June 30, 2002 to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the

/

foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 3rd day of June, 2003, at Santa Monica, California.

Cheryl Miller

Cheryl Miller
Associate Vice President Business Services
Santa Monica Community College District

EXHIBIT 2
COPIES OF STATUTES CITED

CHAPTER 678

An act to amend Sections 491 and 10131.7 of, and to amend and renumber Section 10342 of, the Business and Professions Code, to amend Sections 3059 and 4456 of the Civil Code, to amend Sections 684.1 and 1699 of the Code of Civil Procedure, to amend Section 9506 of the Commercial Code, to amend Sections 1203, 1230, 1796, 6751.1, 13253.5, 14009, 14262, 16725, 17522.5, 20811, and 31913.5 of, to add an article heading immediately preceding Section 526 of, and to repeal Section 13192.3 of, the Education Code, to amend Section 14800 of the Elections Code, to amend Section 8022 of the Fish and Game Code, to amend Section 60014 of the Food and Agricultural Code, to amend Sections 4107, 6253.5, 8668, 14254, 14810, 20815, 53570, 55551, 68515, and 74662 of, to amend and renumber Sections 18850.1 and 18850.2 of, to amend and renumber the heading of Chapter 17 (commencing with Section 7290) of Division 7 of Title 1 of, and to repeal Section 34217.1 of, the Government Code, to amend Section 6038 of the Harbors and Navigation Code, to amend Sections 11007, 11161, 11163, 11164, 11167, 11176, 13915, 19881, and 33427 of, and to repeal Sections 19880 and 25956 of, the Health and Safety Code, to amend Section 12900 of the Insurance Code, to amend Sections 227, 2631.1, and 7354.5 of the Labor Code, to amend Section 626 of the Penal Code, to amend Section 5135 of, and to repeal Chapter 5 (commencing with Section 2851) of Part 2 of Division 1 of, the Public Utilities Code, to amend Section 7272.5 of, to amend and renumber Section 255.6 of, and to repeal Section 7272.5 of, the Revenue and Taxation Code, to amend and renumber Sections 2400, 2404, 2404.2, 2404.5, and 2406 of, and to add Chapter 18 (commencing with Section 27500) to Part 3 of Division 16 of, the Streets and Highways Code, to amend Sections 1461 and 2801 of the Unemployment Insurance Code, to add Chapter 7 (commencing with Section 12000) to Division 5 of, to repeal Section 12000 of, and to repeal Chapter 5 (commencing with Section 11900) of Division 5 of, the Vehicle Code, to amend Sections 12912 and 22264 of the Water Code, to amend Sections 727, 11151, and 16140 of, and to amend the heading of Division 4 (commencing with Section 4000) of, to repeal the heading of Article 2.3 (commencing with Section 16140) of, and to add a chapter heading immediately preceding Section 16140 of, Part 4 of Division 9 of, the Welfare and Institutions Code, to amend Section 8 of Chapter 1064 of the Statutes of 1973 and Section 1 of Chapter 1076 of the Statutes of 1974, and to repeal Chapter 805 of the Statutes of

4736 27 10 425 765

presented to him by the prime contractor,

(2) When the listed subcontractor becomes bankrupt or insolvent, or,

(3) When the listed subcontractor fails or refuses to perform his subcontract, or

(4) When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor as set forth in Section 4108, or

(5) When the prime contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions set forth in Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error, or

(6) When the listed subcontractor is not licensed pursuant to the Contractors License Law, or

(7) When the awarding authority, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work.

Prior to approval of the prime contractor's request for such substitution the awarding authority, or its duly authorized officer, shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and of the reasons for such request. Such notice shall be served by certified or registered mail to the last known address of such subcontractor. The listed subcontractor who has been so notified shall have five working days within which to submit written objections to the substitution to the awarding authority. Failure to file such written objections shall constitute the listed subcontractor's consent to the substitution.

If written objections are filed, the awarding authority shall give notice in writing of at least five working days to the listed subcontractor of a hearing by the awarding authority on the prime contractor's request for substitution.

(b) Permit any such subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, without the consent of the awarding authority, or its duly authorized officer.

(c) Other than in the performance of "change orders" causing changes or deviations from the original contract, sublet or subcontract any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which his original bid did not designate a subcontractor.

SEC. 26. Section 6253.5 of the Government Code is amended to read:

6253.5. Notwithstanding the provisions of Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions and all memoranda prepared by the county clerks in the examination of such petitions indicating which registered voters

have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving such petitions or who are responsible for the preparation of such memoranda.

SEC. 27. The heading of Chapter 17 (commencing with Section 7290) of Division 7 of Title 1 of the Government Code is amended and renumbered to read:

CHAPTER 17.5. USE OF A FOREIGN LANGUAGE IN PUBLIC SERVICES

SEC. 28. Section 8668 of the Government Code is amended to read:

8668. (a) Any disaster council previously accredited, the State Civil Defense and Disaster Plan, the State Emergency Resources Management Plan, the State Fire Disaster Plan, the State Law Enforcement Mutual Aid Plan, all previously approved civil defense and disaster plans, all mutual aid agreements, and all other documents and agreements existing as of the effective date of this chapter, shall remain in full force and effect until revised, amended, or revoked in accordance with the provisions of this chapter.

(b) Nothing in this chapter shall be construed to diminish or remove any authority of any city, county, or city and county granted by Section 7 of Article XI of the California Constitution.

SEC. 29. Section 14254 of the Government Code is amended to read:

14254. As used in this chapter, "project" includes the erection, construction, alteration, repair or improvement of any state structure, building, road, or other state improvement of any kind which will exceed in cost a total of ten thousand dollars ($10,000).

SEC. 30. Section 14810 of the Government Code is amended to read:

14810. The department shall adopt, publish and apply uniform standards of rating bidders, on the basis of questionnaires and required statements, with respect to contracts upon which each bidder is qualified to bid.

The department may remove, for a period not to exceed 90 calendar days, from any list of qualified bidders prepared by the department any bidder who, based upon his performance on contracts which he has previously been awarded by the state, has demonstrated a lack of reliability in complying with and completing such previously awarded contracts.

Any bidder temporarily removed under this section shall be returned to the list of qualified bidders at any time during this 90-day period, upon demonstrating to the department's satisfaction that the problems which resulted in the bidder's previously demonstrated unreliability in completing state contracts, have been corrected.

SEC. 31. Section 18850.1 of the Government Code, as added by

(8) Stateline Beach
(9) Celio Ranch
(10) Ward Valley (including Page Meadows)
(11) Blackwood Canyon

SEC. 80. Section 1 of Chapter 1076 of the Statutes of 1974 is amended to read:

Section 1. Chapter 7.7 (commencing with Section 25880) of Division 20 of the Health and Safety Code is repealed.

SEC. 81. Any section of any act enacted by the Legislature during the 1975 portion of the 1975–76 Regular Session, which takes effect on or before January 1, 1976, and which amends, amends and renumbers, or repeals a section amended, amended and renumbered, or repealed by this act, shall prevail over this act, whether such act is enacted prior or subsequent to this act.

CHAPTER 1246

An act to amend Sections 6252, 6254, 6257, and 6259 of, to add Sections 6261, 9131, 9132, 12022 and 12032, and to add Article 3.5 (commencing with Section 9070) to Chapter 1.5 of Part 1 of Division 2 of Title 2 of, the Government Code, relating to public records.

[Approved by Governor October 1, 1975. Filed with Secretary of State October 1, 1975.]

The people of the State of California do enact as follows:

SECTION 1. Article 3.5 (commencing with Section 9070) is added to Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code, to read:

Article 3.5. Legislative Open Records Act

9070. The Legislature finds and declares that access to information concerning the conduct of the people's business by the Legislature is a fundamental and necessary right of every citizen in this state.

9071. This article shall be known and may be cited as the Legislative Open Records Act.

9072. As used in this article:

(a) "Person" includes any natural person, corporation, partnership, firm, or association.

(b) "Legislature" includes any Member of the Legislature, any legislative officer, any standing, joint, or select committee or subcommittee of the Senate and Assembly, and any other agency or employee of the Legislature.

(c) "Legislative records" means any writing prepared on or after December 2, 1974 which contains information relating to the conduct of the public's business prepared, owned, used, or retained by the Legislature.

(d) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

9073. Legislative records are open to inspection at all times

023 199150 66

expenditures for the Governor in the following categories:

(a) Travel and living expense reimbursement.
(b) Automotive and charter or lease airplane expenses.
(c) Rent.
(d) Telephone.
(e) Postage.
(f) Printing.
(g) Office supplies.

SEC. 8. Section 6257 of the Government Code is amended to read:

6257. A request for a copy of an identifiable public record or information produced therefrom, or a certified copy of such record, shall be accompanied by payment of a reasonable fee or deposit established by the state or local agency, provided such fee shall not exceed ten cents ($0.10) per page or the prescribed statutory fee, where applicable.

SEC. 9. Section 6259 of the Government Code is amended to read:

6259. Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and such oral argument and additional evidence as the court may allow.

If the court finds that the public official's decision to refuse disclosure is not justified under the provisions of Section 6254 or 6255, he shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure. Any person who fails to obey the order of the court shall be cited to show cause why he is not in contempt of court.The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. Such costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

023 199265 89

CHAPTER 556

An act to amend Sections 3512, 3756, and 27300 of the Elections Code, and to amend Section 6253.5 of the Government Code, relating to election petitions.

[Approved by Governor September 2, 1977. Filed with Secretary of State September 3, 1977.]

The people of the State of California do enact as follows:

SECTION 1. Section 3512 of the Elections Code is amended to read:

3512. Officers required by law to receive or file in their offices any initiative or referendum petition shall preserve the petition until eight months after the certification of the results of the election for which the petition qualified or attempted to qualify for placement on the ballot. Thereafter, the petition shall be destroyed as soon as practicable unless it is in evidence in some action or proceeding then pending or unless the officer has received a written request from the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a grand jury, or the governing body of a county, city and county, or district, including a school district, that the petition be preserved for use in a pending or ongoing investigation into election irregularities, the subject of which relates to the petition's qualification or disqualification for placement on the ballot, or in a pending or ongoing investigation into a violation of the Political Reform Act of 1974 as set forth in Title 9 (commencing with Section 81000) of the Government Code.

SEC. 2. Section 3756 of the Elections Code is amended to read:

3756. An initiative or referendum petition received or filed in the office of the county clerk shall be preserved until eight months after the certification of the results of the election for which the petition qualified or attempted to qualify for placement on the ballot. Public access to any such petition shall be restricted in accordance with the provisions of Section 6253.5 of the Government Code. At the end of the eight-month period, the petition shall be destroyed as soon as practicable unless it is in evidence in some action or proceeding then pending, or unless the clerk has received a written request from the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a grand jury, or the governing body of a county, city and county, or district including a school district, that the petition be preserved for use in a pending or ongoing investigation into election irregularities, or in a pending or ongoing investigation into a violation of the Political Reform Act of 1974 as set forth in Title 9 (commencing with Section 81000) of the Government Code.

SEC. 3. Section 27300 of the Elections Code is amended to read:

27300. The clerk or, in the case of the recall of a state officer, the Secretary of State, shall preserve in his office all recall petitions filed for eight months after the certification of the results of the election for which the petition qualified or, if no election is held, eight months after the clerks final examination of the petition. Public access to any such petition shall be restricted in accordance with provisions of Section 6253.5 of the Government Code. At the end of the eight-month period, the petition shall be destroyed as soon as

practicable, unless it is in evidence in some action or proceeding then pending or unless a written request is received from the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a grand jury, or the governing body of a county, city, or district, including a school district, that the petition be preserved for use in a pending or ongoing investigation into election irregularities, or in a pending or ongoing investigation into a violation of the Political Reform Act of 1974 as set forth in Title 9 (commencing with Section 81000) of the Government Code.

SEC. 4. Section 6253.5 of the Government Code is amended to read:

6253.5. Notwithstanding the provisions of Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions and all memoranda prepared by the county clerks in the examination of such petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving such petitions or who are responsible for the preparation of such memoranda; provided, however, that the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, and a city attorney shall be permitted to examine such material upon approval of the appropriate superior court.

CHAPTER 535

An act to amend Section 6253.5 of the Government Code, relating to public records.

[Approved by Governor July 16, 1980. Filed with Secretary of State July 17, 1980.]

The people of the State of California do enact as follows:

SECTION 1. Section 6253.5 of the Government Code is amended to read:

6253.5. Notwithstanding the provisions of Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions and all memoranda prepared by the county clerks in the examination of such petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving such petitions or who are responsible for the preparation of such memoranda and, if the petition is found to be insufficient, by the proponents of the petition and such representatives of the proponents as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor; provided, however, that the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, and a city attorney shall be permitted to examine such material upon approval of the appropriate superior court.

If the proponents of a petition are permitted to examine the petition and memoranda, such examination shall commence not later than 21 days after certification of insufficiency.

As used in this section "proponents of the petition" means the following:

(a) For statewide initiative and referendum measures, the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he prepare a title and summary of the chief purpose and points of the proposed measure.

(b) For other initiative and referenda on measures, the person or

persons who publish a notice of intention to circulate petitions, or, where publication is not required, who file petitions with the clerk.

(c) For recall measures, the person or persons defined in Section 29711 of the Elections Code.

SEC. 2. Notwithstanding Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act pursuant to these sections because the duties, obligations, or responsibilities imposed on local government by this act are minor in nature and will not cause any financial burden to local government. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

CHAPTER 163

An act to amend Section 5091 of the Education Code, and to amend Section 6253.5 of the Government Code, relating to elections.

[Approved by Governor April 24, 1982. Filed with Secretary of State April 26, 1982.]

The people of the State of California do enact as follows:

SECTION 1. Section 5091 of the Education Code is amended to read:

5091. (a) Whenever a vacancy occurs, or whenever a resignation has been filed with the county superintendent of schools containing a deferred effective date, the school district or community college district governing board shall, within 30 days of the vacancy or the filing of the deferred resignation, either order an election or make a provisional appointment to fill the vacancy. A governing board member may not defer the effective date of his or her resignation for more than 30 days after he or she files the resignation with the county superintendent of schools.

In the event that a governing board fails to make a provisional appointment or order an election within the prescribed 30-day period as required by this section, the county superintendent of schools shall call an election to fill the vacancy.

(b) When an election is ordered, it shall be held on the next regular election date provided pursuant to Chapter 1 (commencing with Section 2500) of Division 4 of the Elections Code not less than 98 days after the occurrence of the vacancy or after the written resignation is filed with the county superintendent of schools.

(c) If a provisional appointment is made within the 30-day period, the registered voters of the district may, within 30 days from the date of the appointment, petition for the conduct of a special election to fill the vacancy. A petition shall be deemed to bear a sufficient number of signatures if signed by at least the number of registered voters of the district equal to 1½ percent of the number of registered voters of the district at the time of the last regular election for governing board members.

The petition shall be submitted to the county superintendent of schools having jurisdiction who shall have 30 days to verify the signatures. If the petition is determined to be legally sufficient by the county superintendent of schools, the provisional appointment is terminated, and the county superintendent of schools shall call a special election to be conducted no later than the 120th day after the determination; provided, however, if a regular election date, as defined in Section 2500 of the Elections Code, occurs between the

120th day and the 150th day following the determination, the county superintendent of schools may call such election to be conducted on the regular election date.

(d) A provisional appointment made pursuant to subdivision (a) confers no powers or duties of a governing board member upon the appointee during the 30-day period following his appointment and within which a petition calling for special election may be filed. If a petition is not filed within the 30-day period, the appointee shall thereafter have all the powers and perform all the duties of a governing board member.

(e) A person appointed to fill a vacancy shall hold office only until the next regularly scheduled election for district governing board members, whereupon an election shall be held to fill the vacancy for the remainder of the unexpired term. A person elected at an election to fill the vacancy shall hold office for the remainder of the term in which the vacancy occurs or will occur.

(f) Whenever a petition calling for a special election is circulated, the petition shall contain the clerk's estimate of the cost of conducting the special election.

No person shall permit the list of names on petitions prescribed by this section to be used for any purpose other than qualification of the petition for the purpose of holding an election pursuant to this section.

The petition filed with the county superintendent of schools shall be subject to the restrictions in Section 6253.5 of the Government Code.

(g) Elections held pursuant to subdivisions (b) and (c) shall be conducted in as nearly the same manner as practicable as other governing board member elections.

SEC. 2. Section 6253.5 of the Government Code is amended to read:

6253.5. Notwithstanding the provisions of Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions, and petitions circulated pursuant to Section 5091 of the Education Code, and all memoranda prepared by the county clerks in the examination of such petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving such petitions or who are responsible for the preparation of such memoranda and, if the petition is found to be insufficient, by the proponents of the petition and such representatives of the proponents as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor; provided, however, that the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a school district or a community college district attorney, and a city attorney shall be permitted to examine such material upon approval of the appropriate superior

court.

If the proponents of a petition are permitted to examine the petition and memoranda, such examination shall commence not later than 21 days after certification of insufficiency.

As used in this section "proponents of the petition" means the following:

(a) For statewide initiative and referendum measures, the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he prepare a title and summary of the chief purpose and points of the proposed measure.

(b) For other initiative and referenda on measures, the person or persons who publish a notice of intention to circulate petitions, or, where publication is not required, who file petitions with the clerk.

(c) For recall measures, the person or persons defined in Section 29711 of the Elections Code.

(d) For petitions circulated pursuant to Section 5091 of the Education Code, the person or persons having charge of the petition who submit the petition to the county superintendent of schools.

CHAPTER 802

An act to amend Section 6259 of the Government Code, relating to public records.

[Approved by Governor August 28, 1984. Filed with Secretary of State August 29, 1984.]

The people of the State of California do enact as follows:

SECTION 1. Section 6259 of the Government Code is amended to read:

6259. (a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and such oral argument and additional evidence as the court may allow.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under the provisions of Section 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

(c) In an action filed on or after January 1, 1985, an order of the court, either directing disclosure by a public official or supporting

the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of the extraordinary writ of review as defined in Section 1067 of the Code of Civil Procedure. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

CHAPTER 1657

An act to add Section 6254.3 to the Government Code, relating to public records.

[Approved by Governor September 30, 1984. Filed with Secretary of State September 30, 1984.]

The people of the State of California do enact as follows:

SECTION 1. Section 6254.3 is added to the Government Code, to read:

6254.3. (a) The home addresses and home telephone numbers of state employees shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

(1) To an agent, or a family member of the individual to whom the information pertains.

(2) To an officer or employee of another state agency when necessary for the performance of its official duties.

10 05

(3). To an employee organization pursuant to regulations adopted by the Public Employment Relations Board, except that the home addresses and home telephone numbers of state employees performing law enforcement-related functions shall not be disclosed.

(4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to state employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

(b) Upon written request of any employee, a state agency shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and a state agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee.

SEC. 2. It is the intent of the Legislature that this act shall not apply to any court action filed prior to April 1, 1984.

SEC. 3. Nothing herein shall be deemed to affect existing rights under the provisions of Sections 1798.3 and 1798.60 of the Civil Code.

SEC. 4. This act shall not be construed to limit or affect Section 1808 of the Vehicle Code.

CHAPTER 1053

An act to amend Section 6253.5 of the Government Code, relating to public records.

[Approved by Governor September 26, 1985. Filed with Secretary of State September 27, 1985.]

The people of the State of California do enact as follows:

SECTION 1. Section 6253.5 of the Government Code is amended to read:

6253.5. Notwithstanding the provisions of Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions, petitions circulated pursuant to Section 5091 of the Education Code, petitions for the reorganization of school districts submitted pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, petitions for the reorganization of community college districts submitted pursuant to Part 46 (commencing with Section 74000) of the Education Code and all memoranda prepared by the county clerks in the examination of such petitions indicating which registered voters have signed

particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving such petitions or who are responsible for the preparation of such memoranda and, if the petition is found to be insufficient, by the proponents of the petition and such representatives of the proponents as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor; provided, however, that the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a school district or a community college district attorney, and a city attorney shall be permitted to examine such material upon approval of the appropriate superior court.

If the proponents of a petition are permitted to examine the petition and memoranda, such examination shall commence not later than 21 days after certification of insufficiency.

As used in this section "proponents of the petition" means the following:

(a) For statewide initiative and referendum measures, the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he prepare a title and summary of the chief purpose and points of the proposed measure.

(b) For other initiative and referenda on measures, the person or persons who publish a notice of intention to circulate petitions, or, where publication is not required, who file petitions with the clerk.

(c) For recall measures, the person or persons defined in Section 29711 of the Elections Code.

(d) For petitions circulated pursuant to Section 5091 of the Education Code, the person or persons having charge of the petition who submit the petition to the county superintendent of schools.

(e) For petitions circulated pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, the person or persons designated as chief petitioners under Section 35701 of the Education Code.

(f) For petitions circulated pursuant to Part 46 (commencing with Section 74000) of the Education Code, the person or persons designated as chief petitioners under Sections 74102, 74133, and 74152 of the Education Code.

CHAPTER 908

An act to amend Sections 6258 and 6259 of the Government Code, relating to public records.

[Approved by Governor September 13, 1990. Filed with Secretary of State September 14, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 6258 of the Government Code is amended to read:

6258. Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter. The times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.

SEC. 2. Section 6259 of the Government Code is amended to read:

6259. (a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

(c) In an action filed on or after January 1, 1991, an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within 10 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

CHAPTER 463

An act to amend Section 6254.3 of the Government Code, relating to public records, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 9, 1992. Filed with Secretary of State August 10, 1992.]

The people of the State of California do enact as follows:

SECTION 1. Section 6254.3 of the Government Code is amended to read:

6254.3. (a) The home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

(1) To an agent, or a family member of the individual to whom the information pertains.

(2) To an officer or employee of another state agency, school district, or county office of education when necessary for the performance of its official duties.

(3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed.

(4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to state, school districts, and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

(b) Upon written request of any employee, a state agency, school district, or county office of education shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and an agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement the protections provided to school employees at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 970

An act to amend Sections 5022, 19700, 35105, 37612, and 72027 of the Education Code, to amend Sections 44, 60, 1006.3, 1633, 4052, 5354, 6163, 6864, 8944, 9444, 9744, 9854, 25500, and 27023 of, and to add Sections 311.6 and 5355 to, the Elections Code, to amend Section 6253.5 of the Government Code, to amend Sections 32100.5 of the Health and Safety Code, and to amend Section 9314 of the Public Resources Code, relating to elections.

148810

(b) No person may be a candidate nor have his or her name printed upon any ballot as a candidate for a party nomination for the office of State Senator or Member of the Assembly, or for any state constitutional office, or for Insurance Commissioner at the direct primary election unless he or she has filed the declaration of intention provided for in this section. However, if the incumbent of the office who is affiliated with any qualified political party files a declaration of intention, but for any reason fails to qualify for nomination for the office by the last day prescribed for the filing of nomination papers, an additional five days shall be allowed for the filing of nomination papers for the office, and any person, other than the incumbent if otherwise qualified, may file nomination papers for the office during the extended period, notwithstanding that he or she has not filed a written and signed declaration of intention to become a candidate for the office as provided in subdivision (a).

SEC. 21. Section 27023 of the Elections Code is amended to read:

27023. (a) Within seven days after the filing of the notice of intention, the officer sought to be recalled may file with the clerk, or in the case of a state officer, the Secretary of State, an answer, in not more than 200 words, to the statement of the proponents.

(b) If an answer is filed, the officer shall, within seven days after the filing of the notice of intention, also serve a copy of it, by personal delivery or by certified mail, on one of the proponents named in the notice of intention.

(c) The answer shall be signed and shall be accompanied by the printed name and business or residence address of the officer sought to be recalled.

SEC. 22. Section 6253.5 of the Government Code is amended to read:

6253.5. Notwithstanding the provisions of Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions, petitions circulated pursuant to Section 5091 of the Education Code, petitions for the reorganization of school districts submitted pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, petitions for the reorganization of community college districts submitted pursuant to Part 46 (commencing with Section 74000) of the Education Code and all memoranda prepared by the county clerks in the examination of the petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving the petitions or who are responsible for the preparation of that memoranda and, if the petition is found to be insufficient, by the proponents of the petition and the representatives of the proponents

as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor; provided, however, that the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a school district or a community college district attorney, and a city attorney shall be permitted to examine the material upon approval of the appropriate superior court.

If the proponents of a petition are permitted to examine the petition and memoranda, the examination shall commence not later than 21 days after certification of insufficiency.

(a) As used in this section, "petition" shall mean any petition to which a registered voter has affixed his or her signature.

(b) As used in this section "proponents of the petition" means the following:

(1) For statewide initiative and referendum measures, the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he or she prepare a title and summary of the chief purpose and points of the proposed measure.

(2) For other initiative and referenda on measures, the person or persons who publish a notice of intention to circulate petitions, or, where publication is not required, who file petitions with the clerk.

(3) For recall measures, the person or persons defined in Section 29711 of the Elections Code.

(4) For petitions circulated pursuant to Section 5091 of the Education Code, the person or persons having charge of the petition who submit the petition to the county superintendent of schools.

(5) For petitions circulated pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, the person or persons designated as chief petitioners under Section 35701 of the Education Code.

(6) For petitions circulated pursuant to Part 46 (commencing with Section 74000) of the Education Code, the person or persons designated as chief petitioners under Sections 74102, 74133, and 74152 of the Education Code.

SEC. 23. Section 32100.5 of the Health and Safety Code is amended to read:

32100.5. An election which shall be known as the hospital district general election, shall be held in each local hospital district on the first Tuesday after the first Monday in November in each even-numbered year, at which a successor shall be chosen to each officer whose term shall expire when the successor takes office pursuant to Section 23556 of the Elections Code. The hospital district general election shall be consolidated with the statewide general election pursuant to Chapter 4 (commencing with Section 23300), Part 2, Division 14 of the Elections Code.

The person receiving the highest number of votes for each office to be filled at the election shall be elected thereto. The term of office of each elective officer of the district elected, shall be four years, or

counties to waive or minimize the charges for costs of elections conducted pursuant to this division.

SEC. 25. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Moreover, no reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for other costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law for those other costs. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 926

An act to amend Sections 6086.13 and 17204 of the Business and Professions Code, to amend Sections 575.1, 712.020, 1094.6, 1987.5, 2020, and 2025 of, and to repeal Section 1167.6 of, the Code of Civil Procedure, and to amend Sections 6259 and 26800 of the Government Code, relating to civil remedies.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 6086.13 of the Business and Professions Code is amended to read:

6086.13. (a) Any order of the Supreme Court imposing suspension or disbarment of a member of the State Bar, or accepting a resignation with a disciplinary matter pending may include an order that the member pay a monetary sanction not to exceed five thousand dollars ($5,000) for each violation, subject to a total limit of fifty thousand dollars ($50,000).

(b) Monetary sanctions collected under subdivision (a) shall be deposited into the Client Security Fund.

(c) The State Bar shall, with the approval of the Supreme Court, adopt rules setting forth guidelines for the imposition and collection of monetary sanctions under this section.

(d) The authority granted under this section is in addition to the provisions of Section 6086.10 and any other authority to impose costs or monetary sanctions.

(e) Monetary sanctions imposed under this section shall not be collected to the extent that the collection would impair the collection of criminal penalties or civil judgments arising out of transactions connected with the discipline of the attorney. In the event monetary sanctions are collected under this section and criminal penalties or civil judgments arising out of transactions connected with the discipline of the attorney are otherwise uncollectible, those penalties or judgments may be reimbursed from the Client Security Fund to the extent of the monetary sanctions collected under this section.

SEC. 2. Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for any relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county in the

allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(4) Any party may use a video tape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

SEC. 10. Section 6259 of the Government Code is amended to read:

6259. (a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

(c) In an action filed on or after January 1, 1991, an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of any order pursuant

to this section, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

SEC. 11. Section 26800 of the Government Code is amended to read:

26800. The county clerk shall act as clerk of the superior court in and for his or her county. However, in any county in which a superior court executive officer has been appointed pursuant to Section 69898, the term "county clerk" shall mean the superior court executive officer to the extent that the superior court, by local rule, has delegated any duties of the county clerk to the superior court executive officer.

SEC. 11.5. Section 3.5 of this bill incorporates amendments to Section 575.1 of the Code of Civil Procedure proposed by both this bill and SB 425. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 575.1 of the Code of Civil Procedure, and (3) this bill is enacted after SB 425, in which case Section 3 of this bill shall not become operative.

SEC. 12. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

166160

CHAPTER 923

An act to amend Sections 203 and 416.80 of the Code of Civil Procedure, to amend Sections 5000.1, 5000.5, 5006, 5008, 5010, 5010.7, 5013, 5018, 5019, 5029, 5091, 5342, 5344, 5363, 5440, 5441, 5442, 15101, 15121, 16062, 18558, 19700, 24903, 39310, 41022, and 84042 of the Education Code, to amend Sections 810.2, 1780, 6253.5, 6254.4, 6547, 6547.2, 7060.5, 12172, 12172.5, 16100.6, 23274, 23353, 23359, 23365, 23374.3, 23374.13, 23559, 23702, 23709, 23713, 23720, 23721, 23722, 24001, 24009, 25210.18a, 25210.23, 26298.10, 26298.12, 26802, 29907.5, 31105.2, 34050, 34450, 34452, 34457, 34458, 34460, 34871, 34882, 34904,

163030

that is 130 or more days after the vacancy occurs.

(2) If the number of remaining members of the board falls below a quorum, at the request of the district secretary, or a remaining board member, the board of supervisors or the city council may waive the 60-day period provided in subdivision (a) and appoint immediately to fill the vacancy as provided in subdivision (a), or may call an election to fill the vacancy. The election shall be held on the next available election date provided by Chapter 1 (commencing with Section 1000) of Division 1 of the Elections Code that is held 130 or more days after the vacancy occurs.

The board of supervisors or the city council shall only fill enough vacancies to provide the board with a quorum.

(d) Persons appointed to fill a vacancy shall hold office until the next district general election and thereafter until the person elected at that election to fill the vacancy has been qualified, but persons elected to fill a vacancy shall hold office for the unexpired balance of the term of office.

SEC. 32. Section 6253.5 of the Government Code is amended to read:

6253.5. Notwithstanding Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions, petitions circulated pursuant to Section 5091 of the Education Code, petitions for the reorganization of school districts submitted pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, petitions for the reorganization of community college districts submitted pursuant to Part 46 (commencing with Section 74000) of the Education Code and all memoranda prepared by the county elections officials in the examination of the petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving the petitions or who are responsible for the preparation of that memoranda and, if the petition is found to be insufficient, by the proponents of the petition and the representatives of the proponents as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor. However, the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a school district or a community college district attorney, and a city attorney shall be permitted to examine the material upon approval of the appropriate superior court.

If the proponents of a petition are permitted to examine the petition and memoranda, the examination shall commence not later than 21 days after certification of insufficiency.

(a) As used in this section, "petition" shall mean any petition to which a registered voter has affixed his or her signature.

(b) As used in this section "proponents of the petition" means the following:

(1) For statewide initiative and referendum measures, the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he or she prepare a title and summary of the chief purpose and points of the proposed measure.

(2) For other initiative and referenda on measures, the person or persons who publish a notice of intention to circulate petitions, or, where publication is not required, who file petitions with the elections official.

(3) For recall measures, the person or persons defined in Section 343 of the Elections Code.

(4) For petitions circulated pursuant to Section 5091 of the Education Code, the person or persons having charge of the petition who submit the petition to the county superintendent of schools.

(5) For petitions circulated pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, the person or persons designated as chief petitioners under Section 35701 of the Education Code.

(6) For petitions circulated pursuant to Part 46 (commencing with Section 74000) of the Education Code, the person or persons designated as chief petitioners under Sections 74102, 74133, and 74152 of the Education Code.

SEC. 33. Section 6254.4 of the Government Code is amended to read:

6254.4. (a) The home address, telephone number, occupation, precinct number, and prior registration information shown on the voter registration card for the following persons is confidential if the person requests confidentiality of that information at the time of registration or reregistration and shall not be disclosed to any person except pursuant to Section 2194 of the Elections Code:

(1) Any active or retired judge, magistrate, or court commissioner.

(2) Any active or retired district attorney, assistant district attorney, or deputy district attorney.

(3) Any active or retired public defender or assistant public defender or public defender investigator.

(4) Any active or retired peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(5) The spouse or children of any person included in paragraphs (1) to (4), inclusive, who are living with that person.

(b) Confidentiality granted under this section shall apply only to records prepared or generated on or after the date that the voter is granted confidentiality.

(c) A person who requests confidentiality of the information specified in subdivision (a) shall register or reregister to vote by means of a confidential affidavit of registration form which shall be prescribed by the Secretary of State and which shall be attested to under penalty of perjury by the affiant that he or she is a person entitled to confidential treatment pursuant to this section.

conservatee's being gravely disabled. The court shall make a specific determination regarding imposition of this disability.

(f) The disqualification of the person from possessing a firearm pursuant to subdivision (e) of Section 8103.

SEC. 269. Section 5358.3 of the Welfare and Institutions Code is amended to read:

5358.3. At any time, a conservatee or any person on his behalf with the consent of the conservatee or his counsel, may petition the court for a hearing to contest the rights denied under Section 5357 or the powers granted to the conservator under Section 5358. However, after the filing of the first petition for hearing pursuant to this section, no further petition for rehearing shall be submitted for a period of six months.

A request for hearing pursuant to this section shall not affect the right of a conservatee to petition the court for a rehearing as to his status as a conservatee pursuant to Section 5364. A hearing pursuant to this section shall not include trial by jury. If a person's right to vote is restored, the court shall so notify the county elections official pursuant to subdivision (c) of Section 2210 of the Elections Code.

SEC. 270. Section 5364 of the Welfare and Institutions Code is amended to read:

5364. At any time, the conservatee may petition the superior court for a rehearing as to his status as a conservatee. However, after the filing of the first petition for rehearing pursuant to this section, no further petition for rehearing shall be submitted for a period of six months. If the conservatorship is terminated pursuant to this section, the court shall, in accordance with subdivision (c) of Section 2210 of the Elections Code, notify the county elections official that the person's right to register to vote is restored.

SEC. 271. The Legislature declares that the changes made by this act are technical and nonsubstantive in nature, and are necessitated by the reorganization of the Elections Code by SB 1547 of the 1993–94 Regular Session.

SEC. 272. This act shall become operative only if SB 1547 of the 1993–94 Regular Session is chaptered.

SEC. 273. Any section of any act enacted by the Legislature during the 1994 calendar year that takes effect on or before January 1, 1995, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section amended by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, this act.

PUBLIC RECORDS—CALIFORNIA PUBLIC RECORDS ACT—DEFINITIONS

CHAPTER 620

S.B. No. 143

AN ACT to amend Section 6252 of, to amend and renumber Section 6253 of, to add Sections 6252.5 and 6253 to, to add a heading as Article 1 (commencing with Section 6250) to Chapter 3.5 of, to add Article 2 (commencing with Section 6275) to Chapter 3.5 of, Division 7 of Title 1 of, and to repeal Sections 6253.1, 6256, 6256.1, 6256.2, and 6257 of, the Government Code, relating to records.

[Approved by Governor September 19, 1998.]

[Filed with Secretary of State September 21, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 143, Kopp. Records.

(1) Existing provisions of the California Public Records Act require each state and local agency, as defined, to make its records open to public inspection at all times during office hours, except as specifically exempted from disclosure by law. The act also defines the terms "writing," "person," and "member of the public."

This bill would revise the definitions of local agency and "writing" and would define "public agency." The bill would also provide for public inspection of public records and copying in all forms, as specified. The bill would further require public agencies to ensure that systems used to collect and hold public records be designed to ensure ease of public access.

This bill would expressly state that notwithstanding the definition of "member of the public," an elected member or officer of any state or local agency is entitled to access to public records of that agency on the same basis as any other person and would state that it is declaratory of existing law.

This bill would incorporate changes made to the California Public Records Act by the Governor's Reorganization Plan of 1991, including adding the Department of Toxic Substances Control and the Office of Environmental Health Hazard Assessment to the list of state and local bodies that are required to establish written guidelines for accessibility of records.

(2) Existing law provides that the California Public Records Act shall not be construed to require disclosure of records, the disclosure of which is exempted or prohibited by provisions of federal or state law.

This bill would list specific provisions of law coming within that exemption.

By requiring a higher level of service of local agencies in administering the California Public Records Act, this bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed $1,000,000, shall be made from the State Mandates Claims Fund.

The people of the State of California do enact as follows:

SECTION 1. A heading as Article 1 (commencing with Section 6250) is added to Chapter 3.5 of Division 7 of Title 1 of the Government Code, to read:

Article 1. General Provisions

SEC. 2. Section 6252 of the Government Code is amended to read:

6252. As used in this chapter:

(a) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or nonprofit * * * entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

(c) "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.

(d) * * * "Public agency" means any state or local agency.

(e) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(f) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps,

magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

(g) "Member of the public" means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.

SEC. 3. Section 6252.5 is added to the Government Code, to read:

6252.5. Notwithstanding the definition of "member of the public" in Section 6252, an elected member or officer of any state or local agency is entitled to access to public records of that agency on the same basis as any other person. Nothing in this section shall limit the ability of elected members or officers to access public records permitted by law in the administration of their duties.

This section does not constitute a change in, but is declaratory of, existing law.

SEC. 4. Section 6253 of the Government Code is amended and renumbered to read:

6253.4. (a) * * * Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section.

The following state and local bodies shall establish written guidelines for accessibility of records. A copy of these guidelines shall be posted in a conspicuous public place at the offices of these bodies, and a copy of the guidelines shall be available upon request free of charge to any person requesting that body's records:

Department of Motor Vehicles
Department of Consumer Affairs
Department of Transportation
Department of Real Estate
Department of Corrections
Department of the Youth Authority
Department of Justice
Department of Insurance
Department of Corporations
Secretary of State
State Air Resources Board
Department of Water Resources
Department of Parks and Recreation
San Francisco Bay Conservation and Development Commission
State Board of Equalization
State Department of Health Services
Employment Development Department
State Department of Social Services
State Department of Mental Health
State Department of Developmental Services
State Department of Alcohol and Drug Abuse
Office of Statewide Health Planning and Development
Public Employees' Retirement System
Teachers' Retirement Board
Department of Industrial Relations
Department of General Services
Department of Veterans Affairs
Public Utilities Commission
California Coastal Commission

State Water Resources Control Board

San Francisco Bay Area Rapid Transit District

All regional water quality control boards

Los Angeles County Air Pollution Control District

Bay Area Air Pollution Control District

Golden Gate Bridge, Highway and Transportation District

Department of Toxic Substances Control

Office of Environmental Health Hazard Assessment

(b) Guidelines and regulations adopted pursuant to this section shall be consistent with all other sections of this chapter and shall reflect the intention of the Legislature to make the records accessible to the public. The guidelines and regulations adopted pursuant to this section shall not operate to limit the hours public records are open for inspection as prescribed in Section 6253.

SEC. 5. Section 6253 is added to the Government Code, to read:

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person, upon payment of fees covering direct costs of duplication, or a statutory fee, if applicable. Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency.

(c) Each agency, upon a request for a copy of records shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. As used in this section, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(d) Nothing in this chapter shall be construed to permit an agency to obstruct the inspection or copying of public records. Any notification of denial of any request for records shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

SEC. 6. Section 6253.1 of the Government Code is repealed.

SEC. 7. Section 6256 of the Government Code is repealed.

SEC. 8. Section 6256.1 of the Government Code is repealed.

SEC. 9. Section 6256.2 of the Government Code is repealed.

SEC. 10. Section 6257 of the Government Code is repealed.

SEC. 11. Article 2 (commencing with Section 6275) is added to Chapter 3.5 of Division 7 of Title 1 of the Government Code, to read:

Article 2. Other Exemptions from Disclosure

6275. It is the intent of the Legislature to assist members of the public and state and local agencies in identifying exemptions to the California Public Records Act. It is the intent of the Legislature that, after January 1, 1999, each addition or amendment to a statute that exempts any information contained in a public record from disclosure pursuant to subdivision (k) of Section 6254 shall be listed and described in this article. The statutes listed in this article may operate to exempt certain records, or portions thereof, from disclosure. The statutes listed and described may not be inclusive of all exemptions. The listing of a statute in this article does not itself create an exemption. Requesters of public records and public agencies are cautioned to review the applicable statute to determine the extent to which the statute, in light of the circumstances surrounding the request, exempts public records from disclosure.

6276. Records or information not required to be disclosed pursuant to subdivision (k) of Section 6254 may include, but shall not be limited to, records or information identified in statutes listed in this article.

6276.02. Accident Reports, Admissibility as Evidence, Section 315, Public Utilities Code.

Acquired Immune Deficiency Syndrome, blood test results, written authorization not necessary for disclosure, Section 121010, Health and Safety Code.

Acquired Immune Deficiency Syndrome, blood test subject, compelling identity of, Section 120975, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of personal data of patients in State Department of Health Services programs, Section 120820, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of research records, Sections 121090, 121095, 121115, and 121120, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of vaccine volunteers, Section 121280, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of information obtained in prevention programs at correctional facilities and law enforcement agencies, Sections 7552 and 7554, Penal Code.

Acquired Immune Deficiency Syndrome, confidentiality of test results of person convicted of prostitution, Section 1202.6, Penal Code.

Acquired Immune Deficiency Syndrome, disclosure of results of HIV test, penalties, Section 120980, Health and Safety Code.

Acquired Immune Deficiency Syndrome, personal information, insurers tests, confidentiality of, Section 799, Insurance Code.

Acquired Immune Deficiency Syndrome, public safety and testing disclosure, Sections 121065 and 121070, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, production or discovery of records for use in criminal or civil proceedings against subject prohibited, Section 121100, Health and Safety Code.

Acquired Immune Deficiency Syndrome Public Health Records Confidentiality Act, personally identifying information confidentiality, Section 121025, Health and Safety Code.

Acquired Immune Deficiency Syndrome, test of criminal defendant pursuant to search warrant requested by victim, confidentiality of, Section 1524.1, Penal Code.

Acquired Immune Deficiency Syndrome, test results, disclosure to patient's spouse and others, Section 121015, Health and Safety Code.

Acquired Immune Deficiency Syndrome, test of person under Youth Authority, disclosure of results, Section 1768.9, Welfare and Institutions Code.

SEC. 12. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

MAINTENANCE OF CODES

CHAPTER 83

S.B. No. 966

AN ACT to amend Sections 2530.2, 2725.1, 4052, 4827, 10145, 10177, 10229, 10232, 11018.12, 17539.15, 17550.14, 17550.16, 17550.23, 17550.41, 19950.2, 21701.1, and 23104.2 of, and to amend and renumber Section 730 of, the Business and Professions Code, to amend Sections 1102.6c, 1739.7, 1793.22, 1815, and 3269 of the Civil Code, to amend Sections 631 and 1167.3 of the Code of Civil Procedure, to amend Sections 25102 and 28956 of the Corporations Code, to amend Sections 8927, 42238.95, 44259.3, 44403, 44579.4, 44731, 51201.5, 51554, 51555, 51871, 52122, 54745, 54748, 54761.3, 60603, 60640, 69621, and 89010 of the Education Code, to amend Sections 10262, 15112, and 15151 of the Elections Code, to amend Sections 4252, 4351, 4901, 6380, 7572, and 7575 of the Family Code, to amend Sections 6420 and 7151 of the Fish and Game Code, to amend Sections 221, 5852, 14651, 20797, and 31753 of the Food and Agricultural Code, to amend Sections 3517.65, 4560, 6253, 6505.5, 7073, 7260, 7262.5, 9359.01, 12652, 13965.2, 14838.5, 18523.3, 19141.3, 19175.6, 19576.5, 19582.3, 20068.2, 20677, 21028, 22200, 22209, 22754.5, and 54975 of, to amend the heading of Article 5 (commencing with Section 63043) of Chapter 2 of Division 1 of Title 6.7 of, to amend and renumber Sections 66400, 66401, 66402, and 66403 of, and to amend and renumber the heading of Chapter 6 (commencing with Section 66400) of Division 1 of Title 7 of, and to repeal Section 54953 of, the Government Code, to amend Sections 1206, 1261.5, 1261.6, 1300, 1351.2, 1357.09, 1357.50, 1357.51, 1367.24, 1442.5, 1502.6, 1522, 1746, 1771.9, 1797.191, 18020, 18025.5, 25989.1, 33392, 33492.22, 44015, 111940, 120440, 124980, and 129820 of, to amend and renumber Section 50518 of, and to repeal Section 33298 of, the Health and Safety Code, to amend Sections 1063.6, 1765.1, 10095, 10116.5, 10194.8, 10232.8, 10273.4, 10700, and 10841 of, and to amend and renumber Sections 12963.96 and 12963.97 of, the Insurance Code, to amend Sections 138.4, 201.5, 1771.5, 3716.2, 4707, and 5433 of the Labor Code, to amend Sections 136.2, 148.10, 290, 298, 299, 299.6, 350, 550, 594, 626.9, 653m, 790, 831.5, 1203.097, 1269b, 1347, 3003, 4536.5, 5066, 6051, 6065, 6126, 12071, 12085, 12086, 12370, 13515.55, and 13602 of the Penal Code, to amend Section 10218, 14575, and 33001 of the Public Resources Code, to amend Sections 64, 401.15, 995.2, 3772.5, 17275.6, 19057, 19141.6, 19271, 23038.5, 23610.5, 23701t, 23704, 24416.2, 41136, and 65004 of the Revenue and Taxation Code, to amend Section 1095 of the Unemployment Insurance Code, to amend Sections 2478, 2810, 4466, 11614, and 40000.15 of the Vehicle Code, to amend Section 1062 of the Water Code, to amend Sections 319, 366.26, 781, 1801, 5768.5, 6609.1, 10980, 11369, 11401, 12302.3, 16118, and 16501.1 of, to amend and renumber Sections 1790, 1791, 1792, 1793, and 11008.19 of, and to amend and repeal Section 17012.5 of, the Welfare and Institutions Code, and to amend Section 8.2 of Chapter 545 of the Statutes of 1943, Section 2 of Chapter 21 of the Statutes of 1998, Section 111 of Chapter 310 of the Statutes of 1998, Section 3 of Chapter 652 of the Statutes of 1998, Section 1 of Chapter 722 of the Statutes of 1998, Section 11 of Chapter 760 of the Statutes of 1998, Section 12 of Chapter 760 of the Statutes of 1998, and Section 10 of Chapter 969 of the Statutes of 1998, relating to maintenance of the codes.

[Filed with Secretary of State July 12, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 966, Committee on Judiciary. Maintenance of the codes.

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

This bill would restate existing provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature for consideration during 1999, and would not make any substantive change in the law.

The people of the State of California do enact as follows:

SECTION 1. Section 730 of the Business and Professions Code, as added by Chapter 400 of the Statutes of 1997, is amended and renumbered to read:

730.5. (a) It is unprofessional conduct * * * and a crime, as provided in Section 4935, for a physician and surgeon, osteopathic physician, dentist, or podiatrist to direct or supervise the

(d) * * * Existing state office buildings, at the discretion of the Director of General Services, may be retrofitted to accommodate a child care facility. State funds required for the retrofitting shall be subject to regular budgetary procedures and approvals.

(e) Space designed within a state-owned office building for the child care facility shall comply with the prevailing local and state safety building codes for child care facilities.

(f) The indoor area shall not exceed 2,100 square feet, nor be less than that required to accommodate 30 children, excluding space for restrooms, kitchen facilities, storage areas, and teacher offices. Outdoor play area space shall correspond with the indoor play area as * * * described in Title 22 of the California Code of Regulations.

(g) Utilization of the space shall be subject to terms and conditions * * * set forth by the Director of General Services. The terms shall include payment of rent, proof of financial responsibility, and maintenance of space. The space shall be made available to * * * employees who wish to establish child care facilities at a rate to be established by the Director of General Services based upon the actual cost to the state, the average cost of state-owned space in the area, or the statewide average cost of state-owned space, whichever is less. If, however, the director determines that a lower rent must be charged to ensure the viability of a child care facility, the director may charge a lower rate.

(h)(1) The * * * department or departments occupying the building * * * shall notify the employee-occupants in writing of the availability of space to be used for a child care facility no earlier than 180 days prior to the projected date of occupancy of a new building or space provided as the result of additions, alterations, or repairs to an existing state-owned building, and the additions, alterations, or repairs that both change and affect the use of 25 percent of the net square feet area of the building and include the addition to, alteration of, or repair of the first floor. If, within 30 days after full occupancy of a new office building or 30 days after the completion of additions, alterations, or repairs to an existing state-owned office building, the employee-occupants so desiring have not filed an application with the Secretary of State as a nonprofit corporation for the purpose of organizing a child care center, deposited two months' rent in a commercial or savings account, and entered into a contract with the Department of General Services, the space may be used for any other purpose, as long as no permanent alteration of the space occurs. Other purposes may include, but are not limited to, conference rooms, storage areas, or offices. The space for child care shall be held for the employee-occupants' nonprofit corporation only as long as they pay the monthly rent and meet the terms set forth in the contract. Payment of rent shall commence 30 days after full occupancy of a new office building or 30 days after completion of additions, alterations, or repairs, as specified in this section.

(2) If, at a later date, the employee-occupants so desiring (A) file an application with the Secretary of State as a nonprofit corporation for the purpose of organizing a child care facility, (B) deposit two months' rent in a commercial or savings account, and (C) notify the Director of General Services of those actions, then the space shall be reconverted for child care purposes within 180 days of the notice.

(i) Children * * * from families in which at least one parent or guardian is a state employee shall be given priority admission * * * over other children * * * to the child care facility.

(j) When a child care center within a state-owned office building has been operative for five years, the Director of General Services shall assess the child care needs of the state employees using the center and the office space needs of the building within which the center is located. If the assessment demonstrates a greater need for office space than for child care, the Director of General Services may close the child care center. Ninety days' written notice of the closure shall be given to the director or head teacher of the center * * *.

(k) This section does not apply to buildings that provide care or 24–hour residential care for patients, inmates, or wards of the state, such as state hospitals and correctional facilities.

SEC. 64. Section 6253 of the Government Code is amended to read:

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for

inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person * * * upon payment of fees covering direct costs of duplication, or a statutory fee * * * if applicable. Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(d) Nothing in this chapter shall be construed to permit an agency to obstruct the inspection or copying of public records. Any notification of denial of any request for records shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

SEC. 65. Section 6505.5 of the Government Code is amended to read:

6505.5. If a separate agency or entity is created by the agreement, the agreement shall designate the treasurer of one of the contracting parties, or in lieu thereof, the county treasurer of a county in which one of the contracting parties is situated, or a certified public accountant to be the depositary and have custody of all the money of the agency or entity, from whatever source.

The treasurer or certified public accountant so designated shall do all of the following:

(a) Receive and receipt for all money of the agency or entity and place it in the treasury of the treasurer so designated to the credit of the agency or entity.

(b) Be responsible, upon his or her official bond, for the safekeeping and disbursement of all agency or entity money so held by him * * * or her.

(c) Pay, when due, out of money of the agency or entity * * * held by him or her, all sums payable on outstanding bonds and coupons of the agency or entity.

(d) Pay any other sums due from the agency or entity from agency or entity money, or any portion thereof, only upon warrants of the public officer performing the functions of auditor or controller who has been designated by the agreement * * *.

(e) Verify and report in writing on the first day of July, October, January, and April of each year to the agency or entity and to the contracting parties to the agreement the amount of money he or she holds for the agency or entity, the amount of receipts since his or her last report, and the amount paid out since his or her last report.

The officer performing the functions of auditor or controller shall be of the same public agency as the treasurer designated as depositary pursuant to this section. However, where a certified public accountant has been designated as treasurer of the entity, the auditor of one

statewide election held on June 2, 1998, in which case Section 5 of this act shall not become operative and shall not be submitted to the voters.

SEC. 217. Section 12 of Chapter 760 of the Statutes of 1998 is amended to read:

Sec. 12. Sections 5 and 6 of this act affect an initiative statute and shall become effective only when submitted to, and approved by, the voters pursuant to subdivision (c) of Section 10 of Article II of the California Constitution and in accordance with the provisions of Section 11 of this act.

SEC. 218. Section 10 of Chapter 969 of the Statutes of 1998 is amended to read:

Sec. 10. All funds appropriated and positions created for support of the office of the Inspector General in Item 0550–001–0001 of the Budget Act of 1998 shall be transferred upon approval of the Department of Finance to the office of the Inspector General as established pursuant to Section 2 of this act.

SEC. 219. Any section of any act enacted by the Legislature during the 1999 calendar year that takes effect on or before January 1, 2000, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 1999 calendar year and takes effect on or before January 1, 2000, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

PUBLIC RECORDS—INSPECTION OR COPYING—DELAYS

CHAPTER 982

A.B. No. 2799

AN ACT to amend Sections 6253 and 6255 of, and to add Section 6253.9 to, the Government Code, relating to public records.

[Filed with Secretary of State September 30, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2799, Shelley. Public records: disclosure.

(1) The California Public Records Act provides that any person may receive a copy of any identifiable public record from any state or local agency upon payment of fees covering direct costs of duplication or a statutory fee if applicable. The act provides that it shall not be construed to permit an agency to obstruct the inspection or copying of public records and requires any notification of denial of any request for records pursuant to the act to set forth the names and titles or positions of each person responsible for the denial. The act also requires computer data to be provided in a form determined by the agency.

This bill would provide that nothing in the act shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. This bill would delete the requirement that computer data be provided in a form determined by the agency and would require any agency that has information that constitutes an identifiable public record not otherwise exempt from disclosure that is in an electronic format to make that information available in an electronic format when requested by any person. The bill would require the agency to make the information available in any electronic format in which it holds the information, but would not require release of a record in the electronic form in which it is held if its release would jeopardize or compromise the security or integrity of the original record or any proprietary software in which it is maintained. Because these requirements would apply to local agencies as well as state agencies, this bill would impose a state-mandated local program.

Regarding payment of fees for records released in an electronic format, the bill would require that the requester bear the cost of programming and computer services necessary to produce a record not otherwise readily produced, as specified.

(2) The act requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the act or that, on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

This bill would require a response to a written request for public records that includes a denial of the request in whole or in part to be in writing. By imposing this new duty on local public officials, the bill would create a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 6253 of the Government Code is amended to read:

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.* * *

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

SEC. 2. Section 6253.9 is added to the Government Code, to read:

6253.9. (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.

(c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

(d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.

(e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

SEC. 3. Section 6255 of the Government Code is amended to read:

6255. (a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record * * * clearly outweighs the public interest served by disclosure of the record.

(b) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

STATE AGENCIES—PUBLIC RECORDS—DISCLOSURE

CHAPTER 355

A.B. No. 1014

AN ACT to amend Section 6253 of, and to add Section 6253.1 to, the Government Code, relating to public records.

[Filed with Secretary of State September 27, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1014, Papan. California Public Records Act: disclosure procedures.

(1) Existing law, the California Public Records Act, requires state and local agencies to make public records available upon receipt of a request that reasonably describes an identifiable record not otherwise exempt from disclosure, and upon payment of fees to cover costs.

This bill would require, when a member of the public requests to inspect or to obtain a copy of a public record, that, in order to assist the individual to make a focused and effective request that reasonably describes an identifiable record, the agency shall assist the member of the public to identify records and information that may be responsive to a request, describe the information technology and physical location in which the records exist, and provide suggestions for overcoming any practical basis for denying access to the records or information sought. The bill would specify that these requirements to assist a member of the public do not apply if the agency makes available the requested records, determines that the request should be denied based solely on an express exemption listed in the act, or makes available an index of its records.

The act provides that, upon a request for a copy of records, an agency has 10 days to determine whether the request seeks disclosable public records and to notify the requester of this determination and the reasons therefor. The act further provides that, in unusual circumstances, as defined, the agency may extend this time limit by written notice, which shall specify the reasons for the extension and the date on which a determination is expected to be dispatched.

This bill would require that, when the agency dispatches the determination of whether the request seeks disclosable public records, it state the estimated date and time when the records will be made available.

By imposing additional duties and responsibilities upon local agencies in connection with requests for inspection of records, this bill constitutes a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that this act, which requires state and local agencies to assist in a specified manner members of the public in making requests for public records, will further the purposes of the California Public Records Act and will result in more efficient use of public resources.

SEC. 2. Section 6253 of the Government Code is amended to read:

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. <u>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</u>

records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

SEC. 3. Section 6253.1 is added to the Government Code, to read:

6253.1. (a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do all of the following, to the extent reasonable under the circumstances:

(1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.

(2) Describe the information technology and physical location in which the records exist.

(3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

(b) The requirements of paragraph (1) of subdivision (a) shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records.

(c) The requirements of subdivision (a) are in addition to any action required of a public agency by Section 6253.

(d) This section shall not apply to a request for public records if any of the following applies:

(1) The public agency makes available the requested records pursuant to Section 6253.

(2) The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Section 6254.

(3) The public agency makes available an index of its records.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

EXHIBIT 3
COPIES OF CODE SECTIONS CITED

§ 6253. Public records open to inspection; agency duties; time limits

(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

(Added by Stats.1998, c. 620 (S.B.143), § 5. Amended by Stats.1999, c. 83 (S.B.966), § 64; Stats.2000, c. 982 (A.B.2799), § 1; Stats.2001, c. 355 (A.B.1014), § 2.)

§ 6253.1. Assistance to members of the public regarding requests to inspect a public record or obtain a copy; duties of the public agency

(a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do all of the following, to the extent reasonable under the circumstances:

(1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.

(2) Describe the information technology and physical location in which the records exist.

(3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

(b) The requirements of paragraph (1) of subdivision (a) shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records.

(c) The requirements of subdivision (a) are in addition to any action required of a public agency by Section 6253.

(d) This section shall not apply to a request for public records if any of the following applies:

(1) The public agency makes available the requested records pursuant to Section 6253.

(2) The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Section 6254.

(3) The public agency makes available an index of its records.

(Added by Stats.2001, c. 355 (A.B.1014), § 3.)

§ 6253.5. Initiative, referendum, recall petitions, and petitions for reorganization of school districts or community college districts deemed not public records; examination by proponents

Notwithstanding Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions, petitions circulated pursuant to Section 5091 of the Education Code, petitions for the reorganization of school districts submitted pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, petitions for the reorganization of community college districts submitted pursuant to Part 46 (commencing with Section 74000) of the Education Code and all memoranda prepared by the county elections officials in the examination of the petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving the petitions or who are responsible for the preparation of that memoranda and, if the petition is found to be insufficient, by the proponents of the petition and the representatives of the proponents as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor. However, the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a school district or a community college district attorney, and a city attorney shall be permitted to examine the material upon approval of the appropriate superior court.

If the proponents of a petition are permitted to examine the petition and memoranda, the examination shall commence not later than 21 days after certification of insufficiency.

(a) As used in this section, "petition" shall mean any petition to which a registered voter has affixed his or her signature.

(b) As used in this section "proponents of the petition" means the following:

(1) For statewide initiative and referendum measures, the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he or she prepare a title and summary of the chief purpose and points of the proposed measure.

(2) For other initiative and referenda on measures, the person or persons who publish a notice of intention to circulate petitions, or, where publication is not required, who file petitions with the elections official.

(3) For recall measures, the person or persons defined in Section 343 of the Elections Code.

(4) For petitions circulated pursuant to Section 5091 of the Education Code, the person or persons having charge of the petition who submit the petition to the county superintendent of schools.

(5) For petitions circulated pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, the person or persons designated as chief petitioners under Section 35701 of the Education Code.

(6) For petitions circulated pursuant to Part 46 (commencing with Section 74000) of the Education Code, the person or persons designated as chief petitioners under Sections 74102, 74133, and 74152 of the Education Code.

(Added by Stats.1974, c. 1410, p. 3106, § 10; Stats.1974, c. 1445, p. 3155, § 10. Amended by Stats.1975, c. 678, p. 1483, § 26; Stats.1977, c. 556, p. 1782, § 4; Stats.1980, c. 535, § 1; Stats.1982, c. 163, p. 529, § 2; Stats.1985, c. 1053, § 1; Stats.1992, c. 970 (S.B.1260), § 22; Stats.1994, c. 923 (S.B.1546), § 32.)

§ 6253.9. Information in an electronic format; costs; application; availability

(a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.

(c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

(d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.

(e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

(Added by Stats.2000, c. 982 (A.B.2799), § 2.)

§ 6254.3. State, school district and county office of education employees; home address and phone number as public records; disclosure

(a) The home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

(1) To an agent, or a family member of the individual to whom the information pertains.

(2) To an officer or employee of another state agency, school district, or county office of education when necessary for the performance of its official duties.

(3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed.

(4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to state, school districts, and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

(b) Upon written request of any employee, a state agency, school district, or county office of education shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and an agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee.

(Added by Stats.1984, c. 1657, § 1. Amended by Stats.1992, c. 463 (A.B.1040), § 1, eff. Aug. 10, 1992.)

§ 6255. **Justification for withholding of records**

(a) The agency shall justify withholding any record by demonstrating that the record in question i exempt under express provisions of this chapter or that on the facts of the particular case the publi interest served by not disclosing the record * * * clearly outweighs the public interest served b disclosure of the record.

(b) A response to a written request for inspection or copies of public records that includes determination that the request is denied, in whole or in part, shall be in writing.

(Amended by Stats.2000, c. 982 (A.B.2799), § 3.)

§ 6259. Order of court; review; contempt; court costs and attorney fees

(a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

(c) In an action filed on or after January 1, 1991, an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

(Added by Stats.1968, c. 1473, p. 2948, § 39. Amended by Stats.1975, c. 1246, p. 3212, § 9; Stats.1984, c. 802, § 1; Stats.1990, c. 908 (S.B.2272), § 2; Stats.1993, c. 926 (A.B.2205), § 10.)

Exhibit E

STATE OF CALIFORNIA

CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE
2 Q STREET
SACRAMENTO, CA 95814-6511
(916) 445-8752
HTTP://WWW.CCCCO.EDU

March 11, 2004

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Test Claim: California Public Records Act (K-14), 02-TC-51

Dear Ms. Higashi:

The Department of Finance has exercised privilege on this mandate and has instructed us not to respond.

Sincerely,

Frederick E. Harris

FREDERICK E. HARRIS, Assistant Vice Chancellor
College Finance and Facilities Planning

Exhibit F

Nancy Patton

From: Harris, Fred [FHARRIS@CCCCO.edu]
ent: Thursday, March 25, 2004 12:19 AM
.o: Nancy Patton
Cc: 'kbpsixten@aol.com'; 'Duncan, William'; 'keith.gmeinder@dof.ca.gov'; 'mhavey@sco.ca.gov'; 'pminney@smymlaw.com'; 'steves@mcsed.com'; 'reynolds@reynolds-group.com'; 'CarolB@sscal.com'; 'apalkowi@mail.sandi.net'; 'steve@shieldscg.com'; 'bhunter@centration.com'; 'dscribner@smgjpa.org'; 'gshelton@cde.ca.gov'; 'billmcguire@cusd.com'; 'info@mcsed.com'; 'jill.bowers@doj.ca.gov'; 'lkaye@auditor.co.la.ca.us'; 'robert.dean@ccpoa.org'; 'pamstone@dmg.maxinc.com'; 'b.terkeurst@verizon.net'; 'mfine@rusd.k12.ca.us'; 'dhalpenny@sanjuan.edu'; 'marianne.omalley@lao.ca.gov'; 'Patton, Jerry'; 'Sharpe, Jon'; 'Temple, Bob'; 'Donner, Thomas'; 'AChinnCRS@aol.com'; 'Amann, Kathryn'; 'Dills, Debbie'; 'Podesto, Lynn'; 'Cervinka, Pete'; 'Todd, Thomas'; Turnage, Robert; Morrow, Victoria; Bruckman, Steve; Black, Ralph; 'harmeet@calsdrc.com'
Subject: Commission on State Mandate Test Claim 02TC51 re California Public Records Act (K-14)

Nancy, et.al. -

Please rescind the letter I previously sent on Test Claim 02TC51 that stated that the Department of Finance has exercised privilege on this mandate and has instructed us not to respond.

Upon further reflection and discussion, that is not accurate. The Chancellor's Office chooses not to respond to this test claim. We don't have anything to add to this issue, because the statute in question applies equally to all government entities and there's nothing unique to college districts that requires a response. Therefore, we defer to whatever analysis is provided to you by the Department of Finance.

Thanks,

fh

****
Frederick E. Harris, Assistant Vice Chancellor College Finance & Facilities Planning
Chancellor's Office, California Community Colleges

1102 Q Street, Fourth Floor
Sacramento, CA 95814-6511

fharris@cccco.edu
916/324-9508
916/323-8245 FAX
****

SixTen and Associates
Mandate Reimbursement Services

Exhibit G

KEITH B. PETERSEN, MPA, JD, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

April 30, 2004

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

RECEIVED
MAY 04 2004
COMMISSION ON
STATE MANDATES

Re: Test Claim 02-TC-51
Riverside Unified School District
California Public Records Act (K-14)

Dear Ms. Higashi:

I have received the comments of the Chancellor's Office of the California Community Colleges ("CCC") dated March 24, 2004, to which I now respond on behalf of the test claimant.

A. The Comments of CCC are Incompetent and Should be Excluded

Test claimant objects to the comments of CCC, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

> "...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief."

The comments of CCC do not comply with this essential requirement[1]. Since the Commission cannot use unsworn comments or comments unsupported by declarations, but must make conclusions based upon an analysis of the statutes and facts supported in the record, test claimant requests that the comments and assertions of CCC not be

[1] In fact, the comments of CCC were transmitted by an e-mail message which bore only the initials of the writer.

included in the Staff's analysis.

B. History of Response

The test claim was filed on June 23, 2003. By letter dated July 14, 2003, the Commission requested comments from public agencies.

By letter dated March 11, 2004[2], CCC advised the Commission that the Department of Finance had exercised some unexplained executive privilege on this mandate and had instructed CCC not to respond. A copy of that letter is attached hereto as Exhibit "A."

By e-mail transmission dated March 24, 2004, CCC advised the Commission that "[U]pon further reflection and discussion", its prior statement was "not accurate." Its comments went on to say:

> "The Chancellor's Office chooses not to respond to this test claim. We don't have anything to add to this issue, because the statute in question applies equally to all governmental entities and there's nothing unique to college districts that requires a response. Therefore, we defer to whatever analysis is provided to you by the Department of Finance."

C. These Comments Must Be Disregarded

The comment that the statute in question applies equally to all governmental entities is not one of the valid exceptions to mandate reimbursement set forth in Government Code Section 17556. Therefore, it must be disregarded.

If, by chance, CCC intended to object to the test claim on the grounds that the statute in question is a law of general application, that too must fail. As explained in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, the California Supreme Court explained:

> "Most private employers in the state already were required to provide unemployment protection to their employees. Extension of this requirement to local governments, together with the state government and nonprofit corporations, merely makes the local agencies 'indistinguishable in this respect from private employers.'" (Opinion, at page 67)

[2] The letter was actually transmitted by e-mail on March 16, 2004.

Therefore, a law of general application must make local agencies indistinguishable from private employers. The test claim statutes apply only to school districts, county offices of education and community college districts and not to private employers.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information or belief.

Sincerely,

Keith B. Petersen

C: Per Mailing List Attached

DECLARATION OF SERVICE

RE: California Public Records Act (K-14) 02-TC-51
CLAIMANT: Riverside Unified School District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of April 30, 2004 , addressed as follows:

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

FAX: (916) 445-0278

AND per mailing list attached

☒ **U.S. MAIL:** I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

☐ **OTHER SERVICE:** I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

(Describe)

☐ **FACSIMILE TRANSMISSION:** On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

☐ A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

☐ **PERSONAL SERVICE:** By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 4/30/04 , at San Diego, California.

D. Bramwell
Diane Bramwell

Original List Date: 7/14/2003
Last Updated:
List Print Date: 10/17/2003
Claim Number: 02-TC-51
Issue: California Public Records Act (K-14)

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Keith B. Petersen
SixTen & Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Claimant Representative
Tel: (858) 514-8605
Fax: (858) 514-8645

Mr. Michael H. Fine
Riverside Unified School District
3380 14th Street
Riverside, CA 92501

Claimant
Tel: (909) 788-1020
Fax:

Dr. Carol Berg
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

Tel: (916) 446-7517
Fax: (916) 446-2011

Mr. Paul Minney
Spector, Middleton, Young & Minney, LLP
7 Park Center Drive
Sacramento, CA 95825

Tel: (916) 646-1400
Fax: (916) 646-1300

Ms. Harmeet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Tel: (916) 727-1350
Fax: (916) 727-1734

Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
P.O. Box 987
Sun City, CA 92586

Tel: (909) 672-9964
Fax: (909) 672-9963

Mr. Steve Smith
Mandated Cost Systems, Inc.
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670
Tel: (916) 669-0888
Fax: (916) 669-0889

Mr. Arthur Palkowitz
San Diego Unified School District
4100 Normal Street, Room 3159
San Diego, CA 92103-8363
Tel: (619) 725-7565
Fax: (619) 725-7569

Mr. Michael Havey
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816
Tel: (916) 445-8757
Fax: (916) 323-4807

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816
Tel: (916) 454-7310
Fax: (916) 454-7312

Ms. Beth Hunter
Centration, Inc.
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730
Tel: (866) 481-2642
Fax: (866) 481-5383

Mr. Keith Gmeinder
Department of Finance (A-15)
915 L Street, 8th Floor
Sacramento, CA 95814
Tel: (916) 445-8913
Fax: (916) 327-0225

Mr. Gerald Shelton
California Department of Education (E-08)
Fiscal and Administrative Services Division
1430 N Street, Suite 2213
Sacramento, CA 95814
Tel: (916) 445-0554
Fax: (916) 327-8306

Mr. Thomas J. Nussbaum (G-01)
California Community Colleges
Chancellor's Office
1102 Q Street, Suite 300
Sacramento, CA 95814-6549
Tel: (916) 445-2738
Fax: (916) 323-8245

Ms. Jeannie Oropeza
Department of Finance (A-15)
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814
Tel: (916) 445-0328
Fax: (916) 323-9530

EXHIBIT "A"
LETTER DATED MARCH 11, 2004

STATE OF CALIFORNIA

CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE
1102 Q STREET
SACRAMENTO, CA 95814-6511
(916) 445-8752
HTTP://WWW.CCCCO.EDU

March 11, 2004

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Test Claim: California Public Records Act (K-14), 02-TC-51

Dear Ms. Higashi:

The Department of Finance has exercised privilege on this mandate and has instructed us not to respond.

Sincerely,

Frederick E. Harris

FREDERICK E. HARRIS, Assistant Vice Chancellor
College Finance and Facilities Planning

COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
NE: (916) 323-3562
.: (916) 445-0278
E-mail: csminfo@csm.ca.gov

EXHIBIT H

November 2, 2010

Mr. Leonard Kaye
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Mr. Keith Petersen
SixTen and Associates
3270 Arena Blvd., Suite 400-363
Sacramento, CA 95834

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

Re: NOTICE OF CONSOLIDATION AND REQUEST FOR COMMENTS
California Public Records Act: Disclosure Procedures; 02-TC-10
Government Code Sections 6252, 6253, 6253.1, 6253.9, and 6255
Statutes 2000, Chapter 982; Statutes 2001, Chapter 355; Statutes 2002, Chapter 945; and Statutes 2002, Chapter 1073.
Los Angeles County, Claimant

California Public Records Act (K-14); 02-TC-51
Government Code Sections 6253, 6253.1, 6253.5, 6253.9, 6254.3, 6255, and 6259;
Statutes 1975, Chapter 678; Statutes 1975, Chapter 1246; Statutes 1977, Chapter 556;
Statutes 1980, Chapter 535; Statutes 1982, Chapter 163; Statutes 1984, Chapter 802;
Statutes 1984, Chapter 1657; Statutes 1985, Chapter 1053; Statutes 1990, Chapter 908;
Statutes 1992, Chapter 463; Statutes 1992, Chapter 970; Statutes 1993, Chapter 926;
Statutes 1994, Chapter 923; Statutes 1998, Chapter 620; Statutes 1999, Chapter 83;
Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355.
Riverside Unified School District, Claimant

Dear Messrs. Kaye and Petersen:

After reviewing the *California Public Records Act: Disclosure Procedures* (02-TC-10) test claim and the *California Public Records Act (K-14)* (02-TC-51) test claim, Commission staff finds that they share common issues, allegations and involve some of the same statutes. Specifically, the test claims both address the California Public Records Act, which provides for the disclosure of public records kept by state and local agencies. For the sake of efficiency, the claims shall be consolidated pursuant to my authority under California Code of Regulations, title 2, section 1183.06, and effective 10 days from the service of this letter.

For future correspondence, the test claims will be designated *California Public Records Act* (02-TC-10 and 02-TC-51). A consolidated mailing list is enclosed.

As provided in the Commission's regulations this action and decision of the executive director may be appealed to the Commission for review. Please refer to California Code of Regulations, title 2, section 1181, subdivision (c).

Additionally, in 2004, California voters approved Proposition 59, which amended article I, section 3 of the California Constitution to include the right of public access to writings of government officials. In light of Proposition 59, it was determined that the *California Public Records Act: Disclosure Procedures* (02-TC-10) test claim and the *California Public Records Act (K-14)* (02-TC-51) test claim would require consideration of Government Code section 17556, subdivision (f). However, on March 13, 2007, Government Code section 17556, subdivision (f), was found unconstitutional by the superior court in *California School Boards Association (CSBA), et al. v. Commission on State Mandates, et al. [No. 06CS01335].* The court's judgment enjoined the Commission from taking any action to implement Government Code section 17556, subdivision (f). This decision was appealed, and as a result, the test claims were removed from the Commission's hearing calendar until a final court decision in *California School Boards Association, et al. v. Commission on State Mandates, et al.*

On March 9, 2009, the Third District Court of Appeal issued its decision in the *California School Boards Association* case (171 Cal.App.4th 1183). The court found part of Government Code section 17556, subdivision (f), unconstitutional. Specifically, the court found unconstitutional the part which provides that the Commission shall not find costs mandated by the state if the Commission finds "[t]he statute or executive order imposes duties that are ... *reasonably within the scope of* ... a ballot measure approved by the voters in a statewide election." However, the remaining language of Government Code section 17556, subdivision (f), was upheld as constitutional.

Statutes 2010, chapter 719 (Sen. Bill No. (SB) 856), removed the "reasonably within the scope of" language from Government Code section 17556, subdivision (f). As a result, Government Code section 17556, subdivision (f), provides that the Commission shall not find costs mandated by the state if the Commission finds:

> The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

In light of the Third District Court of Appeal's decision in *California School Boards Association* and the amendment made to Government Code section 17556, subdivision (f), the Commission requests comments from the claimants, interested parties, and affected state agencies, on Proposition 59's affect, if any, on the consolidated test claim, *California Public Records Act* (02-TC-10 and 02-TC-51). Please submit comments as soon as possible, but **not later than November 30, 2010**.

Please contact Kenny Louie at (916) 323-2611 if you have any questions or concerns regarding this matter.

Sincerely,

PAULA HIGASHI
Executive Director

J:mandates/2002/tc/02tc10/correspondence/consolidationltr110110

Original List Date: 7/14/2003
Last Updated: 10/5/2010
List Print Date: 11/02/2010
Claim Number: 02-TC-10 and 02-TC-51
Issue: California Public Records Act: Disclosure Procedures, California Public Records Act (K-14)

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Ms. Angie Teng State Controller's Office (B-08) Division of Accounting and Reporting 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: Email Fax:	(916) 323-0706 a.teng@sco.ca.gov
Mr. Dale Mangram Riverside County Auditor Controller's Office 4080 Lemon Street, 11th Floor Riverside, CA 92502	Tel: Email Fax:	(951) 955-3883 (951) 955-8133
Ms. Juliana F. Gmur MAXIMUS 2380 Houston Ave Clovis, CA 93611	Tel: Email Fax:	(916) 471-5513 julianagmur@msn.com (916) 366-4838
Mr. Jeff Carosone Department of Finance (A-15) 915 L Street, 8th Floor Sacramento, CA 95814	Tel: Email Fax:	(916) 445-8913 jeff.carosone@dof.ca.gov
Ms. Annette Chinn Cost Recovery Systems, Inc. 705-2 East Bidwell Street, #294 Folsom, CA 95630	Tel: Email Fax:	(916) 939-7901 achinncrs@aol.com (916) 939-7801
Ms. Jill Kanemasu State Controller's Office (B-08) Division of Accounting and Reporting 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: Email Fax:	(916) 322-9891 jkanemasu@sco.ca.gov
Mr. Jim Spano State Controller's Office (B-08) Division of Audits 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: Email Fax:	(916) 323-5849 jspano@sco.ca.gov (916) 327-0832
Mr. David Wellhouse David Wellhouse & Associates, Inc. 9175 Kiefer Blvd, Suite 121 Sacramento, CA 95826	Tel: Email Fax:	(916) 368-9244 dwa-david@surewest.net (916) 368-5723

Mr. Allan Burdick CSAC-SB 90 Service 2001 P Street, Suite 200 Sacramento, CA 95811	Tel: Email Fax:	(916) 443-9136 allan_burdick@mgtamer.com (916) 443-1766
Mr. Leonard Kaye Los Angeles County Auditor-Controller's Office 500 W. Temple Street, Room 603 Los Angeles, CA 90012	Tel: Email Fax:	(213) 974-9791 lkaye@auditor.lacounty.gov (213) 617-8106
Mr. Knoll Dorin City of Palmdale City Attorney's Office 38300 Sierra Highway Palmdale, CA 93550	Tel: Email Fax:	(661) 267-5108
Ms. Kimberley Nguyen MAXIMUS 3130 Kilgore Road, Suite 400 Rancho Cordova, CA 95670	Tel: Email Fax:	(916) 471-5516 kimberleynguyen@maximus.com (916) 366-4838
Ms. Evelyn Tseng City of Newport Beach 3300 Newport Blvd. P. O. Box 1768 Newport Beach, CA 92659-1768	Tel: Email Fax:	(949) 644-3127 tseng@city.newport-beach.ca.us (949) 644-3339
Mr. Jim Spano State Controller's Office (B-08) Division of Audits 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: Email Fax:	(916) 323-5849 jspano@sco.ca.gov (916) 327-0832
Mr. Michael H. Fine Riverside Unified School District Business Services & Government Relations 3380 Fourteenth Street Riverside, CA 92501	Tel: Email Fax:	(951) 778-7135 mfine@rusd.k12.ca.us (951) 778-5668
Mr. Jim Soland Legislative Analyst's Office (B-29) 925 L Street, Suite 1000 Sacramento, CA 95814	Tel: Email Fax:	(916) 319-8310 jim.soland@lao.ca.gov (916) 324-4281
Mr. Mike Brown School Innovations & Advocacy 11130 Sun Center Drive, Suite 100 Rancho Cordova, CA 95670	Tel: Email Fax:	(916) 669-5116 mbrown@sia-us.com (888) 487-6441
Mr. Robert Miyashiro Education Mandated Cost Network 1121 L Street, Suite 1060 Sacramento, CA 95814	Tel: Email Fax:	(916) 446-7517 robertm@sscal.com (916) 446-2011
Ms. Harmeet Barkschat Mandate Resource Services, LLC 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: Email Fax:	(916) 727-1350 harmeet@calsdrc.com (916) 727-1734
Ms. Sandy Reynolds Reynolds Consulting Group, Inc. P.O. Box 894059 Temecula, CA 92589	Tel: Email Fax:	(951) 303-3034 sandrareynolds_30@msn.com (951) 303-6607

Mr. Michael Johnston Clovis Unified School District 1450 Herndon Ave Clovis, CA 93611-0599	Tel: Email Fax:	(559) 327-9000 michaeljohnston@clovisusd.k12.ca.us (559) 327-9129
Mr. Steve Shields Shields Consulting Group, Inc. 1536 36th Street Sacramento, CA 95816	Tel: Email Fax:	(916) 454-7310 steve@shieldscg.com (916) 454-7312
Ms. Beth Hunter Centration, Inc. 8570 Utica Avenue, Suite 100 Rancho Cucamonga, CA 91730	Tel: Email Fax:	(866) 481-2621 bhunter@centration.com (866) 481-2682
Ms. Carol Bingham California Department of Education (E-08) Fiscal Policy Division 1430 N Street, Suite 5602 Sacramento, CA 95814	Tel: Email Fax:	(916) 324-4728 cbingham@cde.ca.gov (916) 319-0116
Mr. Frederick E. Harris California Community Colleges Chancellor's Office (G-01) 1102 Q Street Sacramento, CA 95814-6511	Tel: Email Fax:	(916) 324-9508 fharris@cccco.edu (916) 322-4783
Ms. Jeannie Oropeza Department of Finance (A-15) Education Systems Unit 915 L Street, 7th Floor Sacramento, CA 95814	Tel: Email Fax:	(916) 445-0328 jeannie.oropeza@dof.ca.gov (916) 323-9530
Mr. David E. Scribner Max8550 2200 Sunrise Boulevard, Suite 240 Gold River, California 95670	Tel: Email Fax:	(916) 852-8970 dscribner@max8550.com (916) 852-8978
Mr. Joe Rombold School Innovations & Advocacy 11130 Sun Center Drive, Suite 100 Rancho Cordova, CA 95670	Tel: Email Fax:	(916) 669-5116 joer@sia-us.com (888) 487-6441
Mr. David Cichella California School Management Group 3130-C Inland Empire Blvd. Ontario, CA 91764	Tel: Email Fax:	(209) 834-0556 dcichella@csmcentral.com (209) 834-0087
Mr. Jay Lal State Controller's Office (B-08) Division of Accounting & Reporting 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: Email Fax:	(916) 324-0256 JLal@sco.ca.gov (916) 323-6527
Ms. Susan Geanacou Department of Finance (A-15) 915 L Street, Suite 1280 Sacramento, CA 95814	Tel: Email Fax:	(916) 445-3274 susan.geanacou@dof.ca.gov (916) 449-5252
Ms. Jolene Tollenaar MGT of America 2001 P Street, Suite 200 Sacramento, CA 95811	Tel: Email Fax:	(916) 443-9136 jolene_tollenaar@mgtamer.com (916) 443-1766

Mr. Keith B. Petersen
SixTen & Associates
3270 Arena Blvd., Suite 400-363
Sacramento, CA 95834

Tel: (916) 419-7093
Email kbpsixten@aol.com
Fax: (916) 263-9701

EXHIBIT I

DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. ▪ GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

January 14, 2011

RECEIVED
JAN 20 2010
COMMISSION ON STATE MANDATES

Mr. Drew Bohan
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Mr. Bohan:

As requested in your letter of November 2, 2010, the Department of Finance (Finance) reviewed the consolidated test claims "California Public Records Act: Disclosure Procedures," (02-TC-10 and 02-TC-51) and provides the following comments regarding the effect of Proposition 59:

Proposition 59 provides a constitutional right of public access to meetings of government bodies, and writings of government officials for public scrutiny. The underlying requirement of Proposition 59 requires public entities to provide access to information about the conduct of the people's business.

Finance attests that subdivision (f) of Government Code Section 17556 applies and the Commission should find there are no costs mandated by the state because the test claim statutes are necessary to implement Proposition 59. Applying the holding in *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859 to determine when duties imposed by a test claim statute are "necessary to implement a ballot measure" under subdivision (f) of Government Code section 17556, Finance asserts the following:

(1) Local agencies and school districts are mandated by a ballot measure, Proposition 59, to perform a duty. They must ensure that writings of public officials and agencies are open to public scrutiny, and that the people have the right of access to information concerning the conduct of the people's business.

(2) The Legislature enacted the statutes to implement the purpose of the ballot measure—to further the public's right to access government records. It is of no consequence under Government Code section 17556, subdivision (f), that the test claim statutes were enacted before the ballot measure was approved by the voters in 2004.

(3) Absent the test claim statutes, local agencies and school districts are still required to comply with the duties mandated by the ballot measure—to provide the right of access to the records and writings (and meetings) of government officials; and

(4) The requirements imposed by the test claim statutes are not reimbursable, but are considered part and parcel to the underlying ballot measure mandate. The requirements are intended to implement (i.e., are incidental to) the ballot measure mandate, and the costs are, in context, de minimis.

Based on the information provided, Finance believes that the test claim statutes are necessary to implement Proposition 59 and the Commission should find that there are no costs mandated by the state.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied your November 2, 2010 letter have been provided with copies of this letter via either United States Mail, e-mail, or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Lorena Romero, Associate Finance Budget Analyst at (916) 445-8913.

Sincerely,

Nona Martinez

NONA MARTINEZ
Assistant Program Budget Manager

Enclosure

Enclosure A

DECLARATION OF LORENA ROMERO
DEPARTMENT OF FINANCE
CLAIM NO. CSM—02-TC-10/02-TC-51

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

January 14, 2011
at Sacramento, CA

Lorena Romero

PROOF OF SERVICE

Test Claim Name: California Public Records Act
Test Claim Number: CSM--02-TC-10/02-TC-51

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8 Floor, Sacramento, CA 95814.

On 01.14.2011, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8 Floor, for Interagency Mail Service, addressed as follows:

A-16
Mr. Drew Bohan, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

SB 90 Service
C/O David M. Griffiths & Associates
Attention: Allan Burdick
4320 Auburn Boulevard, Suite 200
Sacramento, CA 95841

County of Los Angeles
Department of Auditor-Controller
Kenneth Hahn Hall of Administration
Attention: Leonard Kaye
500 West Temple Street, Suite 525
Los Angeles, CA 90012

County of San Bernardino
Office of Auditor / Controller / Recorder
Attention: Marcia Faulkner
222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415 - 0018

Wellhouse and Associates
Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on 01.14.2011 at Sacramento, California.

Tamara Johnson

Received
January 18, 2011
Commission on
State Mandates

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-3873
PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE
AUDITOR-CONTROLLER

MARIA M. OMS
CHIEF DEPUTY

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JUDI E. THOMAS

January 18, 2011

Mr. Drew Bohan
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Mr. Bohan:

LOS ANGELES COUNTY'S REVIEW
THE BALLOT INITIATIVE FUNDING DISCLAIMER'S APPLICATION
CALIFORNIA PUBLIC RECORDS ACT TEST CLAIMS (02-TC-10, 02-TC-51)

The County of Los Angeles respectfully submits its review of the ballot initiative funding disclaimer's application to the California Public Records Act test claims.

If you have any questions, please contact Leonard Kaye at (213) 974-9791 or lkaye@auditor.lacounty.gov.

Very truly yours,

Wendy L. Watanabe
Auditor-Controller

WLW:MMO:JN:CY:lk
H:\SB90\A Public Records Act Test Claim 11 10 10/Pub Rec. test claim response/Pub Rec test claim letter 1 13 11.doc

Enclosure

Received
January 18, 2011
Commission on
State Mandates

Los Angeles County's Review
The Ballot Initiative Funding Disclaimer's Application
California Public Record Act Test Claims (02-TC-10, 02-TC-51)

Executive Summary

This review addresses the question asked by Commission staff on "Proposition 59's affect, if any, on the consolidated test claim, *California Public Records Act*".

In 2002, the County of Los Angeles (County) and the Riverside School District (District) filed test claims to recover the costs for providing public record act services which were not required under prior law.

In 2004, voters approved Proposition 59 in order to place a brief and general declaration about the fundamental rights of access to public records in the California Constitution. Previously this declaration was found only in the 1968 California Public Records Act. Application of the ballot initiative funding disclaimer at the time required that test-claimed provisions be expressly included in the initiative. This was not the case here. Consequently, Proposition 59 had no affect on the test claims.

In 2005, the legislature (in Chapter 72 (AB 138)) added a second basis for applying the ballot initiative funding disclaimer. It was now sufficient to apply this disclaimer in cases where (test-claimed) duties are 'reasonably within the scope of a ballot measure'. Subsequently, in 2007, the Commission removed the County's test claim from the hearing calendar pending the outcome of a law suit challenging the new ballot initiative funding disclaimer's 'reasonably within' standard.

In 2009, the ballot initiative funding disclaimer provision declaring that no reimbursement is necessary for "duties that are reasonably within the scope of a ballot measure" was struck down by the courts. In 2010, the Legislature, in Chapter 719 (SB 856), replaced the "reasonably within" standard with a "necessary to implement" standard.

The test claim legislation was enacted long after the advent of the declaration of rights in the 1968 California Public Records Act and was not available, let alone necessary, for the implementation of those rights, subsequently incorporated in Proposition 59.

Accordingly, the ballot initiative funding disclaimer is not applicable here and reimbursement is required as claimed herein.

Received
January 18, 2011
Commission on
State Mandates

This review addresses an issue recently raised by Commission staff regarding the affect, if any, of the 2004 (Proposition 59) California public record ballot initiative, in disqualifying reimbursement for public record services claimed by the County of Los Angeles (County) and the Riverside Unified School District (District) in 2002.

The County maintains that the ballot initiative funding disclaimer, found in Government Code Section 17556(f) is not applicable to the test claims being adjudicated here.

Section 17556(f), as amended on October 19, 2010 by the Statutes of 2010, Chapter 719 (S.B. 856) requires, in pertinent part, that:

> "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following:
>
> – – –
>
> (f) The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters."

The funding disqualification based on the test-claimed duties being 'expressly included in a ballot measure' is clearly not applicable here. Proposition 59 did not include any of the test-claimed duties.

Proposition 59

Regarding public records, Proposition 59 only contained a brief declaration of fundamental rights of public access to writings of public officials and agencies. This declaration was added to the California Constitution under Article 1 (Declaration of Rights), Section 3 (b)(1) and provides that:

> "The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."

Received
January 18, 2011
Commission on
State Mandates

As may be seen, the (above) language added by Proposition 59 was not lengthy or specific. It was a general and brief statement of the people's right of access to information concerning the conduct of the people's business and public scrutiny of the writings of public officials and agencies. This brief declaration of fundamental rights was nothing more than a declaration and was appropriately added to the Constitution, under Article 1 (Declaration of Rights).

Proposition 59's language (above), does not address or include any of the public record service duties added by the test claim legislation. For example, absent from Proposition 59, is any reference to the duties (included in the test claim legislation) which were imposed by Government Code Section 6253.1, added by Statutes of 2001, Chapter 355 (A.B. 1014):

> "(a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist a member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do all of the following, to the extent reasonable under the circumstances:
>
> (1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.
>
> (2) Describe the information technology and physical location in which the records exist.
>
> (3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.
>
> (b) The requirements of paragraph (1) of subdivision (a), shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying from the requestor that will help identify the record or records.
>
> (c) The requirements of subdivision (a) are in addition to any action required of a public agency by Section 6253."

The duties imposed by Government Code Section 6253.1, in 2001 were in addition to those required under prior law, including the California Public Records Act of 1968. Consequently, this and the other test claim provisions were not available, let alone necessary, to implement prior law including the (above) declaration of rights in the California Public Records Act of 1968 and Proposition 59.

Received
January 18, 2011
Commission on
State Mandates

It should be noted that arguably the public record duties claimed herein may meet the standard of being 'reasonably within the scope of' Proposition 59. However, this standard was found to be impermissibly broad, as it allows for denial of reimbursement when reimbursement is constitutionally required. California School Boards Ass'n v. State (App. 3 Dist. 2009) 90 Cal.Rptr.3d 501, 171 Cal.App.4th 1183.

Accordingly, the test-claimed duties may arguably be 'reasonably within the scope of' actualizing the (above) fundamental rights found in Proposition 59, but this occurrence is not sufficient to invoke the current version of the ballot initiative funding disclaimer. What is required now is that the test-claimed duties be 'necessary to implement' the Proposition 59 ballot initiative.

However, the County's test claim legislation was first enacted in 2000, decades after the advent of the declaration of rights in the 1968 California Public Records Act (Act). Therefore, this test claim legislation was not available, let alone necessary, to implement the fundamental rights of access to information concerning the conduct of the people's business and public scrutiny of the writings of public officials and agencies found in the 1968 Act and Proposition 59.

Accordingly, the test claim legislation is not subject to the ballot initiative funding disclaimer and reimbursement is required as claimed herein.

Supplemental Duties

It should be noted that the County has submitted substantial evidence that the test-claimed duties are in addition to those found under prior law. In this regard, the County's 2002 test claim filing includes declarations and schedules prepared by Commander Richard L. Castro and Captain Michael R. McDermott with the County Sheriff's department and J. Tyler McCauley, the County's Auditor-Controller. Their declarations and schedules detail and document the new public records act requirements and compliance costs imposed upon the County.

Also, the County's 2002 test claim filing includes a "Public Records Act Manual" prepared by the County's Office of the County Counsel in 2002. This manual details many of the new public records duties claimed herein.

In addition, this filing includes a declaration prepared by Captain Shaun Mathers in the Risk Management Bureau of the County Sheriff's department. Captain Mathers has analyzed the County Sheriff's additional or supplemental public record act

Received
January 18, 2011
Commission on
State Mandates

work load imposed by the test claim legislation and prepared two schedules ("Public Records Act Requests" and "Public Records Act Processing") which detail the types, numbers and costs of public record requests.

Conclusion

The County has provided substantial evidence that the public records act requirements included in the test claim legislation were in addition to those found in prior law and were not available or necessary in implementing the (above) declaration of fundamental rights in the California Public Records Act of 1968 and Proposition 59. In addition, the test claim legislation was not expressly included in Proposition 59.

Accordingly, the County finds that the test claim legislation did not impose duties that are necessary to implement, or are expressly included in, the Proposition 59 ballot measure approved by the voters. Consequently, the ballot initiative funding disclaimer cannot be applied to disqualify reimbursement of the County's costs as claimed herein.

Received
January 18, 2011
Commission on
State Mandates

Los Angeles County's Review
The Ballot Initiative Funding Disclaimer's Application
Supplemental California Public Record Act Requirements
California Public Record Act Test Claims (02-TC-10, 02-TC-51)

Declaration of Shaun Mathers

Shaun Mathers makes the following declaration and statement under oath:

I, Shaun Mathers, Captain, in the Risk Management Bureau of the Los Angeles County Sheriff's Department, declare that I have served thirty (30) years in law enforcement and the past eight (8) years in the Risk Management Bureau where I am responsible for handling public record act requests for the Sheriff's department.

I declare that I have read the November 2, 2010 letter prepared by Ms. Paula Higashi, Executive Director of the Commission on State Mandates (Commission) regarding "Proposition 59's affect, if any" in nullifying reimbursement for implementing supplemental California Public Record Act requirements under current law.

I declare that it is my information or belief that the current standard for applying the ballot initiative funding disclaimer in Government Code section 17556, subdivision (f) was recently adopted by the Legislature, as noted by Ms. Higashi on page 2 of her November 2, 2010 letter:

> "Statutes 2010, chapter 719 (Sen. Bill No. (SB) 856), removed the "reasonably within the scope of language" from Government Code section 17556, subdivision (f). As a result Government Code section 17556, subdivision (f), provides that the Commission shall not find costs mandated by the state if the Commission finds:
>
> > The statute of executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters."

Received
January 18, 2011
Commission on
State Mandates

I declare that it is my information and belief that Proposition 59 placed in the California Constitution fundamental rights guaranteeing public scrutiny of governmental conduct and did not expressly include the additional or supplemental requirements in the test claim legislation, such as those found in Government Code Section 6253.1, added by Statutes of 2001, Chapter 355 (Assembly Bill 1014):

> "(a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist a member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do all of the following, to the extent reasonable under the circumstances:
>
> (1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.
> (2) Describe the information technology and physical location in which the records exist.
> (3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.
>
> (b) The requirements of paragraph (1) of subdivision (a), shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying from the requestor that will help identify the record or records.
>
> (c) The requirements of subdivision (a) are in addition to any action required of a public agency by Section 6253."

I declare that it is my information or belief that the public records act requirements identified (above) were in addition or supplementary to the fundamental rights set forth in the California Public Records Act of 1968 and subsequently in Proposition 59.

I declare that it is my information and belief that the test claim legislation was not expressly included in Proposition 59.

I further declare that it is my information and belief that the test claim legislation was not necessary to implement the fundamental rights set forth in the California

Received
January 18, 2011
Commission on
State Mandates

Public Records Act of 1968 and subsequently in Proposition 59, as the California Public Records Act was implemented in 1968, well before the advent of the County's initial test claim statute in 2000.

I declare that it is my information or belief that the ballot initiative funding disclaimer is not applicable to the County's claim as the test claim legislation was not expressly included in Proposition 59 and not required to implement fundamental rights set forth in the California Public Records Act of 1968 and subsequently in Proposition 59.

I therefore declare that it is my information or belief that reimbursement of the County's additional or supplemental public record act duties is required as claimed herein.

I declare that I have analyzed the County Sheriff's additional or supplemental public record act work load and attach two schedules ("Public Records Act Requests" and "Public Records Act Processing") which detail the types, numbers and costs of requests.

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

1/11/11 COMMERCE, CA
Date and Place

Signature

Received
January 18, 2011
Commission on
State Mandates

PUBLIC RECORDS ACT REQUESTS
2004 - 2010

	2004	2005	2006	2007	2008	2009	2010*	Total
Total Requests	111	151	101	204	276	284	312	1439

Listed, below, are the main topic areas tracked during 2009 and 2010.

Not all requests are reflected, as they might lie outside the main categories.

	2004	2005	2006	2007	2008	2009	2010*	Total
Appellate Project						0	10	10
Audio 9-1-1						15	28	43
Booking Photos						4	3	7
Calls for Service						39	33	72
Contracts						7	16	23
Crime Statistics						10	18	28
Evidence Preservation						0	5	5
Incarceration						34	36	70
Miscellaneous						57	95	152
Personnel						5	4	9

* 2010 to date

The categories of Audio 9-1-1, Booking Photos, Calls for Service, Contracts, Crime Statistics, Incarceration, Personnel and a myriad of queries within Miscellaneous category, involve researching via a wide variety of databases, spreadsheets, and electronic systems, etc.

Some of the documents can be presented as printed, while others require labor-intensive redactions to be in compliance with privacy laws, security concerns, and/or policies regulating release of information. Depending on the nature and complexity of the request, some requests can require multiple man-hours of labor to generate the end-product as requested.

Examples of some recent time-intensive requests:

- 36 months of 9-1-1 calls for each station, by each Contract City and County area, for routine, priority and emergency response and the corresponding response times.
- Copies of Contracts for each of the City Contracts, Phase I and II Contracts for Maywood and Cudahy, and for any other cities from July 2005 to present.
- Requests for archival records related to the deployment and response of Department personnel at the Station Fire event.
- Crime stats within a 2 mile radius of a crime scene over a stated period of time - for use in a civil trial.
- A complex 4-page ACLU request for data, statistics, documents, from 2005 to present about our Mira Loma Facility, providing contracted services, etc., for housing Federal detainees.
- SEIU requesting personnel and demographic data on multiple payroll titles.
- Media requests for Rubén Salazar shooting archives.

Received
January 18, 2011
Commission on
State Mandates

PUBLIC RECORDS ACT PROCESSING

Public Records Act requests are received by the Discovery Unit via e-mail, facsimile, in person, incoming phone call, and forwarded from Stations, Bureaus, and Units within the Sheriff's Department, and from other County Departments.

- Track receipt of all Public Records Act requests.
- Determine whether the request falls within the jurisdiction of the Los Angeles Sheriff's Department (as we border many other jurisdictions).
- Determine whether the request reasonably describes any identifiable record(s).
  - Contact with the requesting party to clarify the request, as needed.
- Determine where the records(s) reside within the Department. This may entail research and coordination with a variety of entities that have oversight and/or ownership of the requested data/information.
  - Contact the appropriate Station, Bureau and/or Unit to initiate the acquisition of the record(s),
    - Ascertain an estimated time frame for producing the requested record(s).
      - Generate a 14-day extension letter, as needed.
      - Follow-up contacting the Station, Bureau, and/or Unit, as needed, for timely compliance.
    - Consult with County Counsel to clarify any legal concerns.
    - Send previously identified topic-specific requests to specialized personnel for processing external to the Discovery Unit's Public Records Act staff.
- Access the appropriate database to obtain the identified record(s).
- Assemble the requested record(s).
  - Review for content that must be redacted.
  - Redact the record(s) as required.
- Prepare outgoing correspondence to accompany the record(s).
  - Obtain supervisory approval and signature on outgoing correspondence.
- Copy and scan all documents.
- Obtain postage (metered) and take to the post office if it is after the daily US Mail delivery.
- Track the sending of all Public Records Act responses.

Personnel Assigned to Public Records Act Processing		Monthly	Yearly (2010)
Operations Assistant III	(Full Time)	$ 5,685.36	$ 68,224.32
Administrative Services Manager II	($ 7,457.09 [10% Time])	$ 754.70	$ 9,056.40
Lieutenant	($ 12,300.27 [10% Time])	$1,230.03	$ 14,760.36
Total		$ 7,670.09	$ 92,041.08

Received
January 18, 2011
Commission on
State Mandates

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-3873
PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE
AUDITOR-CONTROLLER

MARIA M. OMS
CHIEF DEPUTY

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JUDI E. THOMAS

Los Angeles County's Review
The Ballot Initiative Funding Disclaimer's Application
California Public Records Act Test Claims (02-TC-10, 02-TC-51)

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, Los Angeles County's [County] representative in this matter, have prepared the attached review.

I declare that I have met and conferred with state and local officials, claimants and experts in preparing the attached review.

I declare that it is my information and belief that the ballot initiative funding disclaimer, in Government Code Section 17556(f), is not applicable to the above captioned test claims.

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information and belief, and as to those matters I believe them to be true.

1/13/11; Los Angeles, CA
Date and Place

Signature