



**COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER**

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April 18, 2011

Mr. Drew Bohan  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, California 95814

Dear Mr. Bohan:

**LOS ANGELES COUNTY'S REVIEW  
COMMISSION STAFF DRAFT ANALYSIS  
CALIFORNIA PUBLIC RECORDS ACT TEST CLAIMS (02-TC-10, 02-TC-51)**

The County of Los Angeles respectfully submits its review of the Commission staff draft analysis of the California Public Records Act test claims.

If you have any questions, please contact Leonard Kaye at (213) 974-9791 or [lkaye@auditor.lacounty.gov](mailto:lkaye@auditor.lacounty.gov).

Very truly yours,

A handwritten signature in black ink that reads "Wendy L. Watanabe".

Wendy L. Watanabe  
Auditor-Controller

WLW:JN:CY:lk

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Enclosure

Los Angeles County's Review  
Commission Staff Draft Analysis  
California Public Record Act Test Claims (02-TC-10, 02-TC-51)

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Executive Summary

On March 30, 2011, Commission staff issued their draft analysis of the California Public Records Act (CPRA) test claims filed by the County of Los Angeles (County) and Riverside School District (District). The County concurs with the Commission staff findings that reimbursable activities include:

“(1) providing copies of public records with portions exempted from disclosure redacted; (2) notifying a person making a public records request whether the requested records are disclosable; (3) assisting members of the public to identify records and information that are responsive to the request or the purpose of the request; (4) making disclosable public records in electronic formats available in electronic formats; and (5) removing an employee’s home address and home telephone number from any mailing list maintained by the agency when requested by the employee.”

However, the County maintains that reimbursement should also be provided for court costs and attorney fees as these are legal costs necessarily incurred in the course of providing CPRA services. Commission staff disagree and find that these legal costs are a consequence of the County failing to provide requested information ... failing to provide a CPRA service. But the County contends that not providing requested information when legally prohibited from doing so is also a CPRA service... and so, legal costs are reimbursable.

The County agrees with the Commission staff findings that the ballot initiative and fee authority funding disclaimers do not bar reimbursement for otherwise allowable costs. As staff note, the ballot initiative funding disclaimer is not applicable as the test claim legislation was not available or necessary in implementing Proposition 59; and, the fee authority funding disclaimer is not applicable as the CPRA fee authority is insufficient to recover all costs mandated by the state.

Finally, as cities and other public local agencies are mandated to provide CPRA services, the Commission staff analysis should refer to all public local agencies, not just counties, as eligible claimants.

## Local Agencies

The California Public Records Act (CPRA) requires public local agencies to provide the CPRA services claimed herein. Consequently, these public local agencies should be specified as eligible claimants in Commission's decision.

Specifically, a "public agency", which is subject to CPRA requirements, means "any state or local agency". (Government Code section 6252(d). A "public" "local agency" is further defined under section 6252(a) as including:

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

A legislative body of a public local agency includes those defined in Section 54952(c) as follows:

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

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

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

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

meeting requirements of this chapter by virtue of a change in status of the full voting member to a nonvoting member.”

A legislative body of a public local agency includes those defined in Section 54952(d) as follows:

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

It should also be noted that under Article XIII B, section 6 of the California Constitution, “local agencies” are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service such as those found by Commission staff in these CPRA test claims. An eligible claimant is a “local agency” as defined in Government Code Section 17518 as:

“Local agency” means any city, county, special district, authority, or other political subdivision of the state.”

Accordingly, for all of the above reasons, eligible local agency claimants should be specified as follows:

An eligible local agency claimant is any city, county, city and county; special district; or municipal corporation; or other political subdivision; or any board, commission or agency thereof; or other local public agency; joint powers authority or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Government Code Section 54952.”

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<sup>1</sup> The provisions of subdivision (p) of Section 32121 of the Health and Safety Code are found in Appendix I.

## Court Costs and Attorney Fees

The County maintains that reimbursement should be provided for court costs and attorney fees as these are legal costs necessarily incurred in the course of providing CPRA services. Commission staff disagree and find that these legal costs are a consequence of the County failing to provide requested information ... failing to provide a CPRA service. Specifically, staff indicate, on page 26 of their analysis, that:

“ ... the payment of court costs and reasonable attorney fees is not a program or service provided to the public. Instead, it is a consequence of failing to provide a legally required program or service, specifically the service of making public records open for inspection by the public or providing copies of public records to the public. Thus, staff finds that the provisions of Government Code section 6259 do not impose a reimbursable state-mandated new program or higher level of service subject to article XIII B, section 6 of the California Constitution.”

The County respectfully disagrees with the Commission staff notion that the only CPRA service is “... making public records open for inspection by the public or providing copies of public records to the public”. The County contends that there is a CPRA service in not “... making public records open for inspection by the public or providing copies of public records to the public” when legally prohibited from doing so.

Reimbursable CPRA services, as noted by Commission staff on page 1 of their analysis, require “notifying a person making a public records request whether the requested records are disclosable”. These CPRA service costs as well as court costs and attorney fees are incurred when requested information may not be provided. Yet, Commission staff maintain that notifications are reimbursable and court costs and attorney fees are not.

Further, even where the requested information is not disclosed, and such action is upheld by the courts, the local agency, in all but frivolous cases, must necessarily bear court costs and attorney fees pursuant to Government Code Section 6259(d):

“The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not

become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency."

In addition to reimbursement for court costs and attorney fees where the public agency's action are upheld in all but frivolous cases, such reimbursement is also required where the public agency's action is not expressly prohibited by CPRA. This reimbursement is required as the public agency is mandated to make a judgment in compliance with Government Code Section 6255(a) which requires that:

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

Not to make these judgments is not to provide CPRA services. Moreover, these judgments are required in order to provide notification as to whether requested information is disclosable, an activity found to be reimbursable by staff, as previously noted. In addition, the requirements to make these judgments are pervasive. Consider the following CPRA provisions:

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

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

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

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(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the

disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.”

Clearly, the mandated balancing and weighing of interests require legal analysis and, if necessary, litigation in the courts. Therefore, reimbursement of court costs and attorney fees in carrying out these CPRA services is required.

### Conclusion

Reimbursement for court costs and attorney fees should be provided as follows:

Court costs and attorney fees are reimbursable when the public agency prevails, in all but frivolous cases, and when the public agency does not prevail in cases where the public agency's actions are not expressly prohibited by the California Public Records Act.

An eligible local agency claimant is:

Any city, county, city and county; special district; or municipal corporation; or other political subdivision; or any board, commission or agency thereof; or other local public agency; joint powers authority; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Government Code Section 54952.

Appendix I  
Los Angeles County's Review  
Commission Staff Draft Analysis  
California Public Record Act Test Claims (02-TC-10, 02-TC-51)

Health and Safety Code Section 32121(p)

“Each local district shall have and may exercise the following powers:

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(p) (1) To transfer, at fair market value, any part of its assets to one or more corporations to operate and maintain the assets. A transfer pursuant to this paragraph shall be deemed to be at fair market value if an independent consultant, with expertise in methods of appraisal and valuation and in accordance with applicable governmental and industry standards for appraisal and valuation, determines that fair and reasonable consideration is to be received by the district for the transferred district assets. Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(2) To transfer, for the benefit of the communities served by the district, in the absence of adequate consideration, any part of the assets of the district, including, without limitation, real property, equipment, and other fixed assets, current assets, and cash, relating to the operation of the district's health care facilities to one or more nonprofit corporations to operate and maintain the assets.

(A) A transfer of 50 percent or more of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if all of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least five properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(ii) The transfer agreement provides that the hospital district shall approve all initial board members of the nonprofit corporation and any subsequent board members as may be specified in the transfer agreement.

(iii) The transfer agreement provides that all assets transferred to the nonprofit corporation, and all assets accumulated by the corporation during the term of the transfer agreement arising out of, or from, the operation of the transferred assets, are to be transferred back to the district upon termination of the transfer agreement, including any extension of the transfer agreement.

(iv) The transfer agreement commits the nonprofit corporation to operate and maintain the district's health care facilities and its assets for the benefit of the communities served by the district.

(v) The transfer agreement requires that any funds received from the district at the outset of the agreement or any time thereafter during the term of the agreement be used only to reduce district indebtedness, to acquire needed equipment for the district health care facilities, to operate, maintain, and make needed capital improvements to the district's health care facilities, to provide supplemental health care services or facilities for the communities served by the district, or to conduct other activities that would further a valid public purpose if undertaken directly by the district.

(B) A transfer of 10 percent or more but less than 50 percent of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if both of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(ii) The transfer agreement meets all of the requirements of clauses (iii) to (v), inclusive, of subparagraph (A).

(C) Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more nonprofit corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(D) Notwithstanding the other provisions of this paragraph, a hospital district shall not transfer any portion of its assets to a private nonprofit organization that is owned or controlled by a religious creed, church, or sectarian denomination in the absence of adequate consideration.

(3) If the district board has previously transferred less than 50 percent of the district's assets pursuant to this subdivision, before any additional assets are transferred, the board shall hold a public hearing and shall make a public determination that the additional assets to be transferred will not, in combination with any assets previously transferred, equal 50 percent or more of the total assets of the district.

(4) The amendments to this subdivision made during the 1991-92 Regular Session, and the amendments made to this subdivision and to Section 32126 made during the 1993-94 Regular Session, shall only apply to transfers made on or after the effective dates of the acts amending this subdivision. The amendments to this subdivision made during those sessions shall not apply to either of the following:

(A) A district that has discussed and adopted a board resolution prior to September 1, 1992, that authorizes the development of a business plan for an integrated delivery system.

(B) A lease agreement, transfer agreement, or both between a district and a nonprofit corporation that were in full force and effect as of September 1, 1992, for as long as that lease agreement, transfer agreement, or both remain in full force and effect.

(5) Notwithstanding paragraph (4), if substantial amendments are proposed to be made to a transfer agreement described in subparagraph (A) or (B) of paragraph (4), the amendments shall be fully discussed in advance of the district board's decision to adopt the amendments in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(6) Notwithstanding paragraphs (4) and (5), a transfer agreement described in subparagraph (A) or (B) of paragraph (4) that provided for the transfer of less than 50 percent of a district's assets shall be subject to the requirements of this subdivision when subsequent amendments to that transfer agreement would result in the transfer, in sum or by increment, of 50 percent or more of a district's assets to the nonprofit corporation.

(7) For purposes of this subdivision, a "transfer" means the transfer of ownership of the assets of a district. A lease of the real property or the tangible personal property of a district shall not be subject to this subdivision except as specified in Section 32121.4 and as required under Section 32126.

(8) Districts that request a special election pursuant to paragraph (1) or (2) shall reimburse counties for the costs of that special election as prescribed pursuant to Section 10520 of the Elections Code.

(9) (A) Nothing in this section, including subdivision (j), shall be construed to permit a local district to obtain or be issued a single consolidated license to operate a separate physical plant as a skilled nursing facility or an intermediate care facility that is not located within the boundaries of the district.

(B) Notwithstanding subparagraph (A), Eastern Plumas Health Care District may obtain and be issued a single consolidated license to operate a separate physical plant as a skilled nursing facility or an intermediate care facility that is located on the campus of the Sierra Valley District Hospital. This subparagraph shall have no application to any other district and is intended only to address the urgent need to preserve skilled nursing or intermediate care services within the rural County of Sierra.

(C) Subparagraph (B) shall only remain operative until the Sierra Valley District Hospital is annexed by the Eastern Plumas Health Care District. In no event shall

the Eastern Plumas Health Care District increase the number of licensed beds at the Sierra Valley District Hospital during the operative period of subparagraph (B).

(10) A transfer of any of the assets of a district to one or more nonprofit corporations to operate and maintain the assets shall not be required to meet paragraphs (1) to (9), inclusive, of this subdivision if all of the following conditions apply at the time of the transfer:

(A) The district has entered into a loan that is insured by the State of California under Chapter 1 (commencing with Section 129000) of Part 6 of Division 107.

(B) The district is in default of its loan obligations, as determined by the Office of Statewide Health Planning and Development.

(C) The Office of Statewide Health Planning and Development and the district, in their best judgment, agree that the transfer of some or all of the assets of the district to a nonprofit corporation or corporations is necessary to cure the default, and will obviate the need for foreclosure. This cure of default provision shall be applicable prior to the office foreclosing on district hospital assets. After the office has foreclosed on district hospital assets, or otherwise taken possession in accordance with law, the office may exercise all of its powers to deal with and dispose of hospital property.

(D) The transfer and all arrangements necessary thereto are discussed in advance of the transfer in at least one properly noticed open and public meeting in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code). The meeting referred to in this paragraph shall be noticed and held within 90 days of notice in writing to the district by the office of an event of default. If the meeting is not held within this 90-day period, the district shall be deemed to have waived this requirement to have a meeting.

(11) If a transfer under paragraph (10) is a lease, the lease shall provide that the assets shall revert to the district at the conclusion of the leasehold interest. If the transfer is a sale, the proceeds shall be used first to retire the obligation insured by the office, then to retire any other debts of the district. After providing for debts, any remaining funds shall revert to the district.

(12) A health care district shall report to the Attorney General, within 30 days of any transfer of district assets to one or more nonprofit or for-profit corporations, the type of transaction and the entity to whom the assets were transferred or leased.”



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**Declaration of Leonard Kaye**

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, Los Angeles County's [County] representative in this matter, have prepared the attached review.

I declare that I have met and conferred with local officials, claimants and experts in preparing the attached review.

I declare that it is my information and belief that claimed costs, including court costs and attorneys' fees as specified in the attached review, are reimbursable "costs mandated by the state" as defined in Government Code Section 17514.

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

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

April 12, 2011; Los Angeles, CA

Date and Place

Signature