



November 20, 2002

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

RECEIVED

NOV 26 2002

COMMISSION ON  
STATE MANDATES

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:

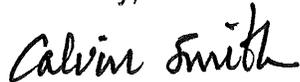
- Assist in defining telephone, walk-in or written requests,
- Write and logging requests
- Research of the requests
- Notifications to requestors of availability
- Indicate date and time record will be available
- When availability is unknown consult with specialized personnel
- Document findings
- 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,

A handwritten signature in cursive script that reads "Calvin Smith".

S. Calvin Smith  
Program Budget Manager

Attachment

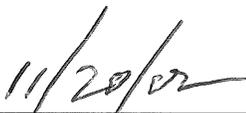
Attachment A

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.



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

Mandate Resource Services  
Attention: Harmeet Barkschat  
5325 Elkhorn Boulevard #307  
Sacramento, CA 95842

Cost Recovery Systems  
Attention: Annette Chinn  
705-2 East Bidwell Street #294  
Folsom, CA 95630

SixTen & Associates  
Attention: Keith B. Peterson, President  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

MAXIMUS  
Attention: Pam Stone, Legal Counsel  
4320 Auburn Boulevard, Suite 2000  
Sacramento, CA 95841

Centration, Inc.  
Attention: Andy Nichols  
12150 Tributary Point Drive, Suite 140  
Gold River, CA 95670

B-8

State Controller's Office  
Division of Accounting & Reporting  
Attention: Michael Havey, Bureau Chief  
3301 C Street, Room 500  
Sacramento, CA 95816

Mandated Cost Systems, Inc.  
Attention: Steve Smith, CEO  
11130 Sun Center Drive, Suite 100  
Rancho Cordova, CA 95670

County of Los Angeles  
Office of Auditor-Controller's Office  
Attention: Leonard Kaye  
222 West Temple Street, Room 603  
Los Angeles, CA 90012

Riverside County Sheriff's Office  
Attention: Mark Sigman, Accountant II  
4095 Lemon Street PO Box 512  
Riverside, CA 92502

David Wellhouse & Associates, Inc.  
Attention: David Wellhouse  
9175 Kiefer Boulevard, Suite 121  
Sacramento, CA 95826

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<br>20263) J. Lombard | Date<br>8/24/01    | Program Budget Manager<br>S. Calvin Smith | Date<br>8/24/01   |
| <i>Robert D. Miyashiro</i>             |                    | <i>Rona Martinez for</i>                  |   |
| Department Deputy Director             | Original signed by | Robert D. Miyashiro                       | Date<br>AUG 24 2001   |
| Governor's Office:                     | By:<br>AR          | Date:<br>8/24/01                          | Position Noted<br>Position Approved <input checked="" type="checkbox"/><br>Position Disapproved |
| BILL ANALYSIS                          |                    |   | Form DF-43 (Rev 03/95 Buff)   |

**BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)**

**Form DF-43**

**AUTHOR**

**AMENDMENT DATE**

**BILL NUMBER**

L. Papan

August 23, 2001

AB 1014

| Code/Department<br>Agency or Revenue<br>Type | SO       | (Fiscal Impact by Fiscal Year) |    |                 |                    |           |  |      | Fund<br>Code |
|--|----------|--------------------------------|----|-----------------|--------------------|-----------|--|------|--------------|
|  | LA       | (Dollars in Thousands)         |    |                 |                    |           |  |      |              |
|  | CO<br>RV | PROP<br>98                     | FC | 2001-2002<br>FC | 2002-2003<br>FC    | 2003-2004 |  |      |              |
| 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<br>(0263) J. Lombard | Date      | Program Budget Manager<br>S. Calvin Smith | Date    |
| <i>J. Lombard</i>                      | 8/10/2000 | <i>J.W. Miller</i>                        | 8-10-00 |
| Department Deputy Director             |           |   | Date    |

|                    |     |       |                            |
|--------------------|-----|-------|----------------------------|
| Governor's Office: | By: | Date: | Position Noted _____       |
|                    |     |       | Position Approved _____    |
|                    |     |       | Position Disapproved _____ |

BILL ANALYSIS

Form DF-43 (Rev 03/95 Buff)

**BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)**

**Form DF-43**

**AUTHOR**

**AMENDMENT DATE**

**BILL NUMBER**

K. Shelley, et al.

July 6, 2000

AB 2799

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 accessible to the public.

| Code/Department<br>Agency or Revenue<br>Type | SO | (Fiscal Impact by Fiscal Year) |    |                                |    |           |    | Fund<br>Code |      |
|--|----|--------------------------------|----|--------------------------------|----|-----------|----|--------------|------|
|  | LA | (Dollars in Thousands)         |    |                                |    |           |    |              |      |
|  | CO | PROP                           |    |                                |    |           |    |              |      |
|  | RV | 98                             | FC | 2000-2001                      | FC | 2001-2002 | FC | 2002-2003    |      |
| 9901/Var Depts                               | SO | No                             |    |                                |    |           |    |              | 0001 |
|  |    |                                |    | ----- See Fiscal Summary ----- |    |           |    |              |      |

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 (0213) M. Caballin Date 8-16-02 Program Budget Manager S. Calvin Smith Date 8-16-02

*for* *Frank Mancera* 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   L   Position Disapproved \_\_\_\_\_

BILL ANALYSIS Form DF-43 (Rev 03/95 Buff)

**BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)**

**Form DF-43**

**AUTHOR**

**AMENDMENT DATE**

**BILL NUMBER**

D. Hollingsworth

August 5, 2002

AB 1962

| Code/Department<br>Agency or Revenue<br>Type | SO | (Fiscal Impact by Fiscal Year) |    |                                |    |           |    | Fund<br>Code |
|--|----|--------------------------------|----|--------------------------------|----|-----------|----|--------------|
|  | LA | (Dollars in Thousands)         |    |                                |    |           |    |              |
|  | CO | PROP                           |    |                                |    |           |    |              |
|  | RV | 98                             | FC | 2002-2003                      | FC | 2003-2004 | FC | 2004-2005    |
| 0250/Judiciary                               | SO | No                             |    |                                |    |           |    |              |
|  |    |                                |    | ----- See Fiscal Summary ----- |    |           |    | 0001         |