Hearing Date: January 25, 2013
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# ITEM 5
# PROPOSED PARAMETERS AND GUIDELINES

# AND

# STATEMENT OF DECISION

Government Code Sections 6253, 6253.1, 6253.5, 6253.9, 6254.3, and 6255

Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982
AB 2799); and Statutes 2001, Chapter 355 (AB 1014)

*California Public Records Act*

02-TC-10 and 02-TC-51

County of Los Angeles and
Riverside Unified School District, Co-Claimants

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**Exhibit K**

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

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| IN RE TEST CLAIM ON:<br><br>Government Code Sections 6252, 6253, 6253.1, 6253.5, 6253.9, 6254.3, 6255, and 6259<br><br>Statutes 1975, Chapters 678 and 1246; Statutes 1977, Chapter 556; Statutes 1980, Chapter 535; Statutes 1982, Chapter 163; Statutes 1984, Chapters 802 and 1657; Statutes 1985, Chapter 1053; Statutes 1990, Chapter 908; Statutes 1992, Chapters 463 and 970; Statutes 1993, Chapter 926; Statutes 1994, Chapter 923; Statutes 1998, Chapter 620; Statutes 1999, Chapter 83; Statutes 2000, Chapter 982; Statutes 2001, Chapter 355; and Statutes 2002, Chapters 945 and 1073<br><br>Filed on October 15, 2002 (02-TC-10), and June 26, 2003 (02-TC-51)<br><br>By County of Los Angeles and Riverside Unified School District, Claimants. | Case No.: 02-TC-10 and 02-TC-51<br><br>*California Public Records Act*<br><br>STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5. ARTICLE 7<br><br>(Adopted May 26, 2011, Corrected December 17, 2012) (Served December 17, 2012) |

**NOTICE OF CORRECTED STATEMENT OF DECISION**

The attached is a corrected statement of decision prepared in accordance with Title 2, California Code of Regulations section 1188.2(b). The corrections made to the statement of decision correct the following clerical errors:

> The statement of decision expressly states that Government Code section 6254.3 only applies to "state employees, school districts and county offices of education." However, the statement of decision inadvertently used "K-14 district" instead of "K-12 school district" when further addressing Government Code section 6254.3. As a result, "K-14 district" is replaced with "K-12 school district" on pages 3, 4, 5, 18, 19, and 28 of the corrected statement of decision.

HEATHER HALSEY

12/17/12
Date

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

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| IN RE TEST CLAIM ON:<br><br>Government Code Sections 6252, 6253, 6253.1, 6253.5, 6253.9, 6254.3, 6255, and 6259<br><br>Statutes 1975, Chapters 678 and 1246; Statutes 1977, Chapter 556; Statutes 1980, Chapter 535; Statutes 1982, Chapter 163; Statutes 1984, Chapters 802 and 1657; Statutes 1985, Chapter 1053; Statutes 1990, Chapter 908; Statutes 1992, Chapters 463 and 970; Statutes 1993, Chapter 926; Statutes 1994, Chapter 923; Statutes 1998, Chapter 620; Statutes 1999, Chapter 83; Statutes 2000, Chapter 982; Statutes 2001, Chapter 355; and Statutes 2002, Chapters 945 and 1073<br><br>Filed on October 15, 2002 (02-TC-10), and June 26, 2003 (02-TC-51)<br><br>By County of Los Angeles and Riverside Unified School District, Claimants. | Case No.: 02-TC-10 and 02-TC-51<br><br>*California Public Records Act*<br><br>STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5. ARTICLE 7<br><br>*(Adopted on May 26, 2011, Corrected on December 17, 2012)* |

**STATEMENT OF DECISION**

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on May 26, 2011. Keith Petersen appeared on behalf of Riverside Unified School District. Leonard Kaye and Lieutenant Judy Gerhardt appeared on behalf of Los Angeles County and Los Angeles County Sheriff's Department. Donna Ferebee appeared on behalf of the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis at the hearing by a vote of 6-0 to partially approve this test claim.

**Summary of Findings**

This consolidated test claim filed by County of Los Angeles and Riverside Unified School District addresses activities associated with the California Public Records Act (CPRA) (Gov. Code, § 6250 et seq.), which provides for the disclosure of public records kept by state, local agencies, kindergarten through 12th grade school districts and community college districts (K-14

districts), and county offices of education. These 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.

In 2004, California voters approved Proposition 59, to incorporate the right of public access to information contained in the CPRA and other open meetings and public records laws, into the California Constitution.

The Commission makes the following findings regarding the test claim statutes:

Public records open to inspection (Gov. Code, §§ 6252, 6253, and 6253.9)

Section 6253 sets forth the right of every person to inspect any public record with exceptions, and the duties of public agencies that receive a request to inspect public records. Section 6253.9 addresses the form of disclosure of public records that are in an electronic format, and sets limits on the costs charged to the requester of information in an electronic format.

Some of the activities imposed by sections 6253 and 6253.9 are not new activities. However, sections 6253 and 6253.9 do impose state-mandated new programs or higher levels of service on local agencies and K-14 districts.

Assistance to members of the public (Gov. Code, § 6253.1)

Section 6253.1 addresses the duty of a public agency to assist members of the public that request to inspect a public record. Section 6253.1 imposes a state-mandated new program or higher level of service on local agencies and K-14 districts.

Initiative, referendum, recall petitions, and petitions for reorganization of K-14 districts (Gov. Code, § 6253.5)

Section 6253.5 excludes initiatives, referenda, recall petitions, petitions for reorganization of K-14 districts, and any memoranda prepared by the county elections officials in the examination of the petitions indicating which registered voters have signed particular petitions from being deemed public records and provides that such records shall not be open to inspection. Section 6253.5 also provides exceptions to the exclusion, in which specified individuals are permitted to examine such records.

The plain language of section 6253.5 does not impose any activities on K-14 districts. In addition, K-14 districts are not required to seek permission to examine the documents addressed in section 6253.5, and as a result, section 6253.5 does not impose a state-mandated new program or higher level of service.

Disclosure of home addresses and phone numbers of school district and county office of education employees (Gov. Code, § 6254.3)

Section 6254.3 provides that 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 prohibits such records from being open to public inspection.

Section 6254.3 authorizes the state, school districts, and county offices of education, to make such information open to public inspection in limited circumstances.

Section 6254.3 imposes a state-mandated new program or higher level of service on ~~K-14~~K-12 school districts and county offices of education to remove the home address and telephone number of an employee from any mailing lists that the ~~K-14~~K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-14 district or county office of education to contact the employee.

Justification for withholding of records (Gov. Code, § 6255)

Section 6255 requires local agencies and K-14 districts to provide a justification for withholding records for which a public records request was made, but providing a justification for withholding records is not a new requirement.

Section 6255 imposes a state-mandated new program or higher level of service to respond in writing 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.

Court costs and attorney fees (Gov. Code § 6259)

Section 6259 addresses the orders of the court in proceedings brought by a person seeking to enforce his or her right to inspect or to receive a copy of any public record or class of public records that a public agency has refused to disclose. Section 6259 requires the court to award court costs and attorney fees to a plaintiff that prevails in litigation alleging the improper withholding of public records by a public agency.

The payment of court costs and attorney fees is not a service to the public. Instead it is a consequence for failing to provide a service to the public when required by law, and as a result, does not constitute a program within the meaning of article XIII B, section 6 of the California Constitution.

Also, the language of section 6259 does not require local agencies or K-14 districts to engage in litigation. Even if the requirement were read into section 6259, section 6259 has not changed, as relevant to this discussion, since 1968. As a result, engaging in litigation is not a state-mandated new program or higher level of service imposed by section 6259.

Costs mandated by the state

Government Code section 17556, subdivision (f), prohibits the Commission from finding costs mandated by the state for duties that are necessary to implement or expressly included in a ballot measure approved by the voters in a state-wide or local election. In addition, Government Code section 17556, subdivision (d), prohibits the Commission from finding costs mandated by the state where a 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.

Neither subdivision (f) or (d), preclude the Commission from finding costs mandated by the state because there is no evidence in the law or in the record that the state-mandated activities are necessary to implement Proposition 59, and there is insufficient fee authority to cover the costs of all state-mandated activities. The fee authority applies only to the direct costs of providing an electronic copy to a person pursuant to Government Code section 6254.3, or the direct cost plus the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record if: (1) 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; or (2) the request would require data compilation, extraction, or programming to produce the record. Under article XIII B, section 6, all costs mandated by the state, including direct and indirect costs, are reimbursable. However, the fee authority provided by the CPRA constitutes offsetting revenue that will be identified in the parameters and guidelines.

For the reasons discussed above, the Commission finds that Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255 impose reimbursable state-mandated programs on local agencies and K-14 districts within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514, for the following specific new activities:

1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic 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. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)
2. Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)
3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)
4. When a member of the public requests to inspect a public record or obtain a copy of a public record:
    a. 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;
    b. describe the information technology and physical location in which the records exist; and
    c. provide suggestions for overcoming any practical basis for denying access to the records or information sought.

    These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)
5. For ~~K-14~~K-12 school districts and county offices of education only, redact or withhold the home address and telephone number of employees of ~~K-14~~K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) 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 (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to ~~K-14~~K-12 school district 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. (Gov. Code, § 6254.3, subd. (a) (Stats. 1992, ch. 463).)

6. For ~~K-14~~K-12 school districts and county offices of education only, remove the home address and telephone number of an employee from any mailing lists that the ~~K-14~~K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the ~~K-14~~K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3, subd. (b) (Stats. 1992, ch. 463).)
7. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).)

In addition, the Commission concludes that the fee authority set forth in Government Code section 6253.9, subdivisions (a)(2) and (b), as added by Statutes 2000, chapter 982, is offsetting revenue and shall be deducted from the costs of providing a copy of a disclosable electronic record in the electronic format requested.

Finally, the Commission finds that any other test claim statutes and allegations not specifically approved above, do not impose a reimbursable state mandated program subject to article XIII B, section 6 of the California Constitution.

## BACKGROUND

This test claim addresses activities associated with the California Public Records Act (CPRA) (Gov. Code, § 6250 et seq.), which provides individuals in California access to information concerning the conduct of the people's business. Prior to the adoption of the CPRA in 1968, the law governing disclosure of public records consisted of a "hodgepodge of statutes and court decisions."[1] The CPRA was adopted in order to more clearly define what constitutes a "public record" open to inspection and what information can be or is required to be withheld from disclosure. Since the 1968 adoption of the CPRA there have been numerous amendments to the CPRA; some of these amendments are the subject of this test claim.

On October 15, 2002 the County of Los Angeles filed the *California Public Records Act: Disclosure Procedures* (02-TC-10) test claim seeking reimbursement for costs associated with the procedures used by counties for responding to public records requests. The County of Los Angeles alleges reimbursable costs for activities such as: (1) assisting members of the

[1] *Los Angeles Unified School Dist. v. Superior Court* (2007) 151 Cal.App.4th 759, 765.

public to identify records and information that are responsive to the request or the purpose of the request; (2) estimate a date and time when the disclosable records will be made available; (3) respond in writing to a written request for inspection or copies of public records when the request is denied in whole or in part; (3) make information that constitutes an identifiable public record kept in electronic format available in the electronic format which it is held; and (4) include as a writing that can constitute a "public record" any photocopy, transmission by electronic mail or facsimile, and any record thereby created, regardless of the manner in which the record has been stored.[2]

On June 26, 2003, Riverside Unified School District filed the *California Public Records Act* (02-TC-51) test claim, which similarly seeks reimbursement for costs associated with complying with the CPRA. Riverside Unified School District alleges reimbursable state-mandated costs for K-14 districts and county offices of education to engage in activities including: (1) providing redacted copies of requested documents deleting portions exempted by law; (2) providing copies of public records to the public, including the determination and collection of the fee; (3) 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 records; and (4) removing an employee's home address and home telephone number from any mailing list maintained by the agency when requested by that employee.[3]

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), which provided 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, reasonably within the scope of, or 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.[4]

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, on August 2, 2007 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 Court of Appeal found Government Code section 17556, subdivision (f), constitutional except for the language "reasonably within the scope of." As a result of the

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[2] 02-TC-10 test claim, *supra*, pgs. 1-9.

[3] 02-TC-51 test claim, *supra*, pgs. 26-28.

[4] Government Code section 17556, subdivision (f), as amended by Statutes 2006, chapter 538.

court's decision, 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 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.[5]

On November 2, 2010 the Commission consolidated the *California Public Records Act: Disclosure Procedures* (02-TC-10) and *California Public Records Act (K-14)* (02-TC-51) test claims to form the consolidated *California Public Records Act* (02-TC-10 and 02-TC-51) test claim.

**A. Claimants' Position**

The claimants allege that the test claim statutes impose reimbursable state-mandated activities. Activities which are alleged to have resulted in reimbursable costs include: assisting members of the public in making an effective public records request, disclosing records in an electronic format, redacting information exempt from disclosure, limiting disclosure of K-14 district employees' home address and telephone numbers, removing a K-14 district employee's home address and telephone numbers when requested by the employee, and paying attorney fees to a prevailing plaintiff that brought suit against a K-14 district for improperly withholding public records.[6]

On March 25, 2004, the California Community Colleges Chancellor's Office (Chancellor's Office) indicated that it would defer to the analysis of the Department of Finance (Finance) regarding the test claim, because the CPRA applies equally to all government entities, and as a result, there is nothing unique to the college districts that requires a response from the Chancellor's Office. Interpreting this as a comment that districts are not entitled to reimbursement, the school district claimant, Riverside Unified School District, argues that the Chancellor's Office comments must be disregarded. The claimant states:

> The comment that the statute in question applies equally to all government 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. [¶] . . . . [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.[7]

On January 18, 2011 the County of Los Angeles submitted comments in response to the Commission's request for comments regarding the effect of Proposition 59 on the consolidated

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[5] Government Code section 17556, subdivision (f), as amended by Statutes 2010, chapter 719.

[6] 02-TC-10 Test Claim, *supra*, 02-TC-51 Test Claim Filing, *supra*.

[7] Claimant response to the Chancellor's Office Comments, dated April 30, 2004.

*California Public Records Act* (02-TC-10 and 02-TC-25) test claim. The County of Los Angeles argues:

> [T]he 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 . . . 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 . . . .[8] (Original underline.)

On April 18, 2011 both claimants submitted comments in response to the draft staff analysis, which will be addressed in the discussion below.[9]

**B. Department of Finance's Position (Finance)**

On November 20, 2002, Finance submitted comments in response to the unconsolidated *California Public Records Act: Disclosure Procedures* (02-TC-10) test claim. Finance found that a portion of the test claim may be a state mandate. Finance states:

> 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 [*sic*] 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.[10]

On January 14, 2011, Finance submitted comments in response to the Commission's request for comments regarding the effect of Proposition 59 on the consolidated *California Public Records Act* (02-TC-10 and 02-TC-51) test claim. Finance argues that the Commission should find that there are no costs mandated by the state because the test claim statutes are necessary to implement Proposition 59.

On April 19, 2011, Finance submitted comments in response to the draft staff analysis, which echo the arguments made in Finance's January 14, 2011 comments.[11]

**C. Chancellor's Office Position**

[8] Claimant comments in response to request for comments, dated January 18, 2011.

[9] Claimants' responses to draft staff analysis, *supra*.

[10] Finance comments on 02-TC-10, *supra*.

[11] Finance comments on draft staff analysis, *supra*.

On March 25, 2010, the Chancellor's Office submitted comments in response to the unconsolidated *California Public Records Act (K-14)* (02-TC-51) test claim. The Chancellor's Office states in relevant part:

> 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.[12]

## COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[13] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[14] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[15] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[16] In addition, the required activity or task must be new, constituting a "new program," and it must create a "higher level of service" over the previously required level of service.[17]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state

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[12] Chancellor's Office comments on 02-TC-51 test claim, dated March 25, 2004.

[13] California Constitution, article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

[14] *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th727, 735 (*Kern High School Dist*.).

[15] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[16] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[17] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist*.); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

policy, but does not apply generally to all residents and entities in the state.[18] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[19] A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."[20] Finally, the newly required activity or increased level of service must impose costs mandated by the state.[21]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[22] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[23]

### A. Some of the test claim statutes impose state-mandated new programs or higher levels of service subject to article XIII B, section 6 of the California Constitution

The following discussion will introduce each test claim statute or groups of test claim statutes with a header that describes the content of the statutes. The discussion will then analyze whether each statute or groups of statutes under the header impose state-mandated new programs or higher levels of service.

Public records open to inspection (Gov. Code, §§ 6252, 6253, and 6253.9)

Section 6252 sets forth the definitions of terms used in the CPRA. Section 6253 sets forth the right of every person to inspect any public record, with exceptions, and the duties of public agencies, state and local, and K-14 districts that receive a request to inspect public records. Section 6253.9 addresses the form of disclosure of public records that are in an electronic format, and sets limits on the costs charged to the requester of information in an electronic format.

Interpreting statutes begins with examining the statutory language, giving the words their ordinary meaning, and if the words are unambiguous the plain meaning of the language

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[18] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*Los Angeles I*); *Lucia Mar, supra,* 44 Cal.3d 830, 835).

[19] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[20] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 877.

[21] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[22] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[23] *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

governs.[24] The plain language of Government Code sections 6253 and 6253.9 require local agencies and K-14 districts to engage in the following activities:

1. Make public records open to inspection at all times during the office hours of the local agency or K-14 district, by every person, except for public records exempted from disclosure or prohibited from disclosure. (Gov. Code, § 6253, subd. (a) (Stats. 2001, ch. 982); and Gov. Code, § 6253.9, subd. (a)(1) (Stats. 2000, ch. 982).)
2. Make any reasonably segregable portion of a record available for inspection after the deletion of the portions that are exempted by law. (Gov. Code, § 6253, subd. (a) (Stats. 2001, ch. 982).)
3. Provide a copy, or exact copy unless impractical, of disclosable records, upon request for a copy or exact copy of records that reasonably describes an identifiable record or records. (Gov. Code, § 6253, subd. (b) (Stats. 2001, ch. 982).)
4. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic 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. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)
5. Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)
6. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district, due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

The Commission finds that the above activities are mandated by the state.

In addition, the claimants argue that the provision of a copy of disclosable records pursuant to Government Code section 6253, subdivision (b), includes "the determination and collection of the fee" that local agencies and K-14 districts are authorized to charge for duplication of public records.[25] Subdivision (b) provides in relevant part:

> 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 a payment of fees covering direct costs of duplication, or a statutory fee if applicable.

[24] *Estate of Griswold* (2001) 25 Cal.4th 904, 910-911.

[25] 02-TC-51 test claim, *supra*, p. 26.

The claimants argue, "The unambiguous plain meaning of this Section is that collection of the fee is a condition precedent to providing the records, so it is a necessary activity to comply with the mandate to provide the records. Furthermore, to collect the fee, the amount must be determined." However, the plain language of subdivision (b) does not require public agencies to determine or collect a fee. Instead, it speaks to the timing of the mandated activity of providing a copy of a public record. In addition, under Government Code section 6253, subdivision (e), which allows local agencies and K-14 districts to adopt requirements that provide greater access to records, local agencies and K-14 districts can waive fees, and thus, the collection and determination of a fee is not a necessary activity to comply with the mandate to provide public records.[26] As a result, the Commission finds that local agencies and K-14 districts are not mandated to determine or collect fees for the duplication of public records.

The Commission further finds that the above state-mandated activities carry out the governmental function of providing a service to the public by providing access to information regarding the business of the public, and as a result, constitute a program within the meaning of article XIII B, section 6 of the California Constitution. Although the above activities constitute "programs" it is necessary to determine whether they are new in comparison with the legal requirements in effect immediately before the enactment of the test claim legislation. The following discussion will address each activity in the order listed above.

Since 1968, local agencies and K-14 districts were required to make public records open to inspection at all times during the office hours of the local agencies and K-14 districts, by every person, except for public records exempted from disclosure or prohibited from disclosure.[27] However, the claimants argue that "public records" that are required to be open for inspection did not include records made by "photocopying, transmitting by electronic mail or facsimile [or]. . . . any record thereby created, regardless of the manner in which the record has been stored," until the definition of "writing" as used in the CPRA was amended in 2002 to specifically include these methods of keeping information.[28] Thus, the claimants assert that publicly disclosing information kept in these formats is a new activity.

However, in 1970 the Legislature defined "public records" to include:

> [A]ny 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*.[29] (Italics added.)

"Writing" as used in the CPRA was defined to include:

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[26] *North County Parents Organization v. Dept. of Education* (4th. Dist. 1994) 23 Cal.App.4th 144, 148. The court, in discussing former Government Code section 6253.1 (currently Government Code section 6253, subdivision (e)) found that, "This section gives an agency power to 'adopt requirements for itself which allow greater access to records than prescribed by the minimum standards set forth in this chapter.' The trial court apparently concluded that this provision permits an agency to waive or reduce its fees. We agree. A reduction in copy fee permits 'greater access' to records."

[27] Former Government Code section 6253 (Stats. 1968, ch.1473).

[28] 02-TC-10 test claim, *supra*, p. 8, citing to Statutes, 2002, chapter 945.

[29] Former Government Code section 6252, subdivision (d).

> [H]andwriting, 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*.[30] (Italics added.)

The above language indicates that the Legislature intended public records to include every conceivable kind of record that is involved in the governmental process. To find otherwise would conflict with the purpose and focus of the CPRA, which is to make disclosable *information* open to the public, not simply the documents prepared, owned, used, or retained by a public agency.[31] This interpretation is consistent with the court's discussion of what constitutes a public record in *San Gabriel Tribune v. Superior Court*, which included in its discussion the following description by the Assembly Committee on Statewide Information Policy:

> This definition [of what constitutes a public record] is intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record-keeping instrument as it is developed.[32]

As a result, the Commission finds that making public records open to inspection by every person at all times during the office hours of the local agency and K-14 district does not constitute a new program or higher level of service regardless of the form which the public records are kept.

The claimants also argue that prior to 1981 state and local agencies and K-14 districts were not required to provide redacted copies of requested documents.[33] In 1981, the CPRA was specifically amended to provide, "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."[34] However, this amendment only codified the interpretation of the CPRA accorded to it by case law. Prior to the 1981 amendment courts already held that the CPRA requires segregation of exempt materials from nonexempt materials contained in a single document and to make the nonexempt materials open for inspection and copying.[35] In 1979, after noting that the focus of the CPRA is information and not documents the court in *Nor. Cal. Police Practices Project v. Craig* concluded:

> [W]here nonexempt materials are not inextricably intertwined with exempt materials and are otherwise reasonably segregable therefrom, segregation is

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[30] Former Government Code section 6252, subdivision (e).

[31] *Nor Cal. Police Practices* (1979) 90 Cal.App.3d 116, p. 123-124.

[32] *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 774, citing to Volume 58 Opinions of the Attorney General 629, 633-634 (1975), which cites to Assembly Committee on Statewide Information Policy California Public Records Act of 1968 (1 Appendix to Journal of Assembly 7, Reg. Sess. (1970), See also AG opinion 53 Ops.Cal.Atty.Gen. 136, 140-143).

[33] 02-TC-51, *supra*, pgs. 11 and 26, citing to Statutes 1981, chapter 968.

[34] Former Government Code section 6257 (Stats. 1981, ch. 968).

[35] *Nor Cal. Police Practices* (1979) 90 Cal.App.3d 116, p. 123-124.

> required to serve the objective of the [CPRA] to make public records available for public inspection and copying unless a particular statute makes them exempt.[36]

As a result, the Commission finds that the general duty to make any reasonably segregable portion of a record available for inspection after the deletion of the portions that are exempted by law does not constitute a new program or higher level of service subject to articles XIII B, section 6 of the California Constitution.

In regard to providing copies or exact copies of public records upon a request that reasonably describes an identifiable record, public agencies have been required to engage in this activity since the 1968 enactment of the CPRA. Former Government Code sections 6256 and 6257 provided:

> 6256. Any person may receive a copy of any identifiable public record or shall be provided with a copy of all information contained therein. Computer data shall be provided in a form determined by the agency.
>
> 6257. A request for a copy of an identifiable public record or information produced therefrom, or 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.[37]

A "certified copy" is a duplicate of an original document, certified as an exact reproduction of the original.[38] Thus, since 1968 public agencies were required to provide copies or exact copies of public records upon a request of identifiable public records. As a result, the Commission finds that providing a copy, or exact copy unless impractical, of disclosable records, upon request for a copy or exact copy of records that reasonably describes an identifiable record, does not constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Although the Commission has found that making public records, including records in an electronic format, *open to inspection* at all times does not constitute a new program or higher level of service, *providing an electronic copy* of a public record kept in an electronic format does constitute a new program or higher level of service. Prior to 2000, public agencies were not required to provide the public with an *electronic* copy of a public record kept in an electronic format. Instead, public agencies were given discretion to provide "[c]omputer data . . . in a form determined by the agency."[39] One of the purposes for enacting section 6253.9, and requiring public agencies to provide an electronic copy, was to substantially increase the availability of public records to the public and to reduce the cost and inconvenience to the public associated

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[36] *Ibid*. This interpretation of the CPRA is retroactive to the initial enactment of the CPRA in 1968 as it involves no novel or unforeseeable judicial expansion of the statutory language in question. For retroactivity of judicial statutory interpretation see *County of San Diego v. State Bd. of Control* (1984) 161 Cal.App.3d 868, 870.

[37] Former Government Code sections 6256 and 6257 (Stats. 1968, ch. 1473).

[38] Black's Law Dictionary (Seventh Ed. 1999) p. 337.

[39] Former Government Code section 6253, subdivision (b) (Stats. 1998, ch. 620).

with large volumes of paper records.[40] In essence, the intent was to provide a higher level of the service of providing public records to the public. As a result, the Commission finds that the requirement to provide an electronic copy of a public record kept in an electronic format constitutes a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

The claimants have pled the activities mandated by Government Code section 6253, subdivision (c), relating to providing a person making a public records request notice of the determination of whether records are disclosable and whether an extension is needed by the public agency to make a determination, as added in 1981.[41] Immediately prior to 1981, public agencies were not required to engage in these activities. As a result, the Commission finds that the activities mandated by Government Code section 6253 constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

In summary, the Commission finds the following activities constitute state-mandated new programs or higher levels of service subject to article XIII B, section 6 of the California Constitution.

1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic 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. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)
2. Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district, and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)
3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

Assistance to members of the public (Gov. Code, § 6253.1)

Section 6253.1 addresses the duty of a public agency to assist members of the public that request to inspect a public record. The Commission finds that section 6253.1 mandates local agencies and K-14 districts to engage in the following activities:

[40] Assembly Committee on Governmental Organization, third reading analysis of AB 2799 (1999-2000 Regular Session) as amended July 6, 2000. See also, Senate Rules Committee, Office of Senate Floor Analyses, third reading analysis of AB 2799 (1999-2000 Regular Session) as amended July 6, 2000.

[41] 02-TC-51 test claim, *supra*, pgs. 11 and 26-27. Statutes 1981, chapter 968.

When a member of the public requests to inspect a public record or obtain a copy of a public record:

a. 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;

b. describe the information technology and physical location in which the records exist; and

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

This duty is not triggered if: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

The claimants pled Government Code section 6253.1 as added in 2001.[42] Immediately before 2001, local agencies and K-14 districts were not required to engage in the activities mandated by section 6253.1. In addition, the above activities are unique to public agencies and implement the state policy of increasing access to information regarding the people's business.[43] As a result, the Commission finds that the activities mandated by Government Code 6253.1 constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Initiative, referenda, recall petitions, and petitions for reorganization of K-14 districts (Gov. Code, § 6253.5)

Section 6253.5 excludes initiatives, referenda, recall petitions, petitions for reorganization of K-14 districts, and any memoranda prepared by the county elections officials in the examination of the petitions indicating which registered voters have signed particular petitions from being deemed public records and provides that such records shall not be open to inspection. Section 6253.5 also provides exceptions to the exclusion, in which specified individuals are permitted to examine such records.

The claimants assert that section 6253.5 requires K-14 districts to engage in the following activity:

> [W]hen necessary, [examine] 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.[44]

However, section 6253.5 does not impose any requirements on K-14 districts. As described above, section 6253.5 prohibits disclosure of petitions, and provides exceptions to this

[42] Statutes 2001, chapter 355.

[43] Government Code section 6250, which states that access to information concerning the people's business is a fundamental and necessary right of every person in this state.

[44] 02-TC-51 test claim, *supra*, p. 28.

prohibition. One of the exceptions allows a K-14 district attorney to review a petition upon the approval of the appropriate superior court. This exception does not require K-14 districts to seek this approval. As a result, the Commission finds that Government Code section 6253.5 does not impose any state-mandated new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Disclosure of home addresses and phone numbers of school district and county office of education employees (Gov. Code, § 6254.3)

Section 6254.3 only applies to state employees, school districts, and county offices of education. Section 6254.3 provides that 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 prohibits such records from being open to public inspection. Section 6254.3 authorizes the state, school districts, and county offices of education, to make such information open to public inspection in limited circumstances.

Specifically, section 6254.3 provides:

> (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.

Although, the language of subdivision (a) is prohibitory in nature, section 6254.3 must be read in the context of the whole statutory scheme and not as individual parts or words standing alone.[45] As discussed above, section 6253 of the CPRA requires the redaction of information that is

[45] *Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 218.

exempted or prohibited from disclosure from records that contain disclosable information. Section 6254.3 prohibits the disclosure of the home address and telephone number of employees of K-14 school districts and county offices of education. Thus, if a record that contains disclosable information also contains the addresses and telephone numbers of employees of K-14 school districts and county offices of education, the addresses and telephone numbers must be redacted from the record, except in the limited circumstances listed in section 6254.3, subdivisions (a)(1)-(4), in which ~~K-14~~K-12 school districts and county offices of education have the discretion to release this information.

Pursuant to the plain language of the statute read in light of the whole CPRA, the Commission finds that section 6254.3 requires ~~K-14~~K-12 school districts and county offices of education to engage in the following activities:

1. Redact or withhold the home address and telephone number of employees of ~~K-14~~K-12 school districts and county offices of education from records that contain disclosable information.

   This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) 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 (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to ~~K-14~~K-12 school district 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.

2. Remove the home address and telephone number of an employee from any mailing list maintained by the ~~K-14~~K-12 school district or county office of education if requested by the employee, except for lists used exclusively by the ~~K-14~~K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3, subd. (b) (Stats. 1992, ch. 463).)

In order to determine whether the activity required by section 6254.3 constitutes a state-mandated activity it is necessary to look at the underlying program to determine if the claimant's participation in the underlying program is voluntary or legally compelled.[46] Here, ~~K-14~~K-12 school districts and county offices of education are required to remove the home address and telephone number of an employee from *any* mailing list maintained by the ~~K-14~~K-12 school districts or county offices of education if requested by the employee. "Any mailing list" includes mailing lists that ~~K-14~~K-12 school districts and county offices of education are legally required to maintain and those voluntarily maintained by the ~~K-14~~K-12 school districts or county offices of education. In regard to mailing lists that ~~K-14~~K-12 school districts and county offices of education voluntarily maintain, the requirement to remove from the mailing list the home address and telephone number of an employee that requests the removal is triggered by the decision by ~~K-14~~K-12 school districts and county offices of education to voluntarily maintain a mailing list.

[46] *Kern High School Dist., supra*, 30 Cal.4th 727, 743.

As a result, the Commission finds in regard to voluntarily maintained mailing lists, the activity required by section 6254.3 is not a state-mandated activity. However, the Commission finds that the following requirements do constitute state-mandated activities:

1. For ~~K-14~~K-12 school districts and county offices of education only, redact or withhold the home address and telephone number of employees of ~~K-14~~K-12 school districts and county offices of education from records that contain disclosable information.

   This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) 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 (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to ~~K-14~~K-12 school district 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. (Gov. Code, § 6254.3, subd. (a) (Stats. 1992, ch. 463).)

2. For ~~K-14~~K-12 school districts and county offices of education only, remove the home address and telephone number of an employee from any mailing lists that the ~~K-14~~K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the ~~K-14~~K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3, subd. (b) (Stats. 1992, ch. 463).)

The claimants have pled section 6254.3 as last amended in 1992.[47] Immediately prior to the 1992 amendment, section 6254.3 only applied to state employers and state employees.[48] In addition, although the general duty to redact information that is exempt or prohibited from disclosure existed prior to the adoption of section 6254.3, the specific duty to redact the home address and telephone number of an employee of a ~~K-14~~K-12 school district or county office of education did not exist. Thus, the scope of what must be withheld from disclosure, and as a result, redacted from records containing disclosable information increased. As a result, the state-mandated activities imposed by section 6254.3 are new.

In addition, these mandates impose requirements that are unique to public agencies and implement the state policy of increasing access to information regarding the people's business while being mindful of the right of individuals to privacy.[49] As a result, the Commission finds

[47] Statutes 1992, chapter 463.

[48] Government Code section 6254.3 as added by Statutes 1984, chapter 1657.

[49] Government Code section 6250, which states, "In enacting [the CPRA], 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."

that Government Code section 6254.3 imposes state-mandated new programs or higher levels of service subject to article XIII B, section 6 of the California Constitution:

Justification for withholding of records (Gov. Code, § 6255)

Section 6255 addresses the provision of a justification for withholding records for which a public records request was made. The Commission finds that section 6255 mandates local agencies and K-14 districts to engage in the following activities:

1. 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. (Gov. Code, § 6255, subd. (a).)
2. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b).)

The claimants pled section 6255 as last amended in 2000.[50] Since 1968, section 6255 required the justification of withholding records by demonstrating that the record in question is exempt or that the public interest served by not disclosing the record outweighs the public interest served by disclosing the record. As a result, that state-mandated activity does not constitute a new program or higher level of service.

However, immediately prior to the amendment of section 6255 in 2000, districts were not required to respond to written requests *in writing* that includes a determination that the request is denied. In addition, this mandate imposes requirements that are unique to public agencies and implement the state policy of increasing access to information regarding the people's business.[51] As a result, the Commission finds that Government Code section 6255, subdivision (b), imposes the following state-mandated new program or higher level of service subject to article XIII B, section 6 of the California Constitution:

> If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).)

Court costs and attorney fees (Gov. Code § 6259)

In 1968 Government Code section 6259 was enacted as part of the CPRA.[52] Since its original enactment in 1968, section 6259 has addressed the orders of the court in proceedings brought by a person seeking to enforce his or her right to inspect or to receive a copy of any public record or class of public records that a public agency has refused to disclose. Specifically, since 1968 the court has been required to order the officer or person charged with withholding the requested records to disclose the public record or show cause why he or she should not disclose the

[50] Statutes 2000, chapter 982.

[51] Government Code section 6250, which states that access to information concerning the people's business is a fundamental and necessary right of every person in this state.

[52] Statutes 1968, chapter 1473.

record.[53] If the court determines that the public official was not justified in refusing to disclose the record, the court is required to order the public official to make the record public.[54]

In 1975, section 6259 was amended to add the provisions that a court is required to award court costs and reasonable attorney fees to the plaintiff if public records are disclosed as a result of the plaintiff filing suit.[55] In addition, if the court finds that the plaintiff's case is clearly frivolous, the court is required to award court costs and reasonable attorney fees to the public agency.[56] In 1984 section 6259 was amended to add the procedure for appealing a decision by a court.[57]

The K-14 district claimant argues that section 6259 imposes the following reimbursable state-mandated new program or higher level of service:

> [W]hen ordered by a court, [pay] to a prevailing plaintiff his or her court costs and reasonable attorney fees.[58]

Thus, the K-14 district claimant alleges that payment of court costs and reasonable attorney fees is a reimbursable state-mandated new program or higher level of service. However, 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 disclosable public records open for inspection by the public or providing copies of the disclosable public records to the public.

The K-14 district claimant disagrees with this characterization and argue that the "court's determination is not a finding of a failure to implement the mandate to disclose or not to disclose the records, but instead, it is a conclusion as to whether the justification for the action was reasonable."[59] However, if a court finds that a local agency or K-14 district was unjustified in its

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[53] Former Government Code section 6259, as amended by Statutes 1968, chapter 1473. Currently Government Code section 6259, subdivision (a), as amended by Statutes 1993, chapter 926.

[54] Former Government Code section 6259, as amended by Statutes 1968, chapter 1473. Currently Government Code section 6259, subdivision (b), as amended by Statutes 1993, chapter 926.

[55] Former Government Code section 6259, as amended by Statutes 1975, chapter 1246. Currently, Government Code section 6259, subdivision (d), as amended by Statutes 1993, chapter 926. See also, *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1390-1391, in which the court defines "prevail," as used in Government Code section 6259, as a situation when the plaintiff files an action which results in the defendant releasing a copy of a previously withheld document. The court further finds that an action results in the release of previously withheld document if the lawsuit motivated the defendants to produce the documents.

[56] *Ibid.*

[57] Government Code section 6259, subdivision (c).

[58] 02-TC-51 test claim, *supra*, p. 28.

[59] Claimant (Riverside Unified School District) response to draft staff analysis, dated April 18, 2011, p. 4-5.

decision not to disclose a public record, and thus failed to disclose public records as mandated by the CPRA, the consequence is the payment of court costs and attorney fees. Thus, the Commission finds that payment of court costs and attorney fees pursuant to Government Code section 6259 is not a state-mandated new program or higher level of service subject to article XIII B, section 6 of the California Constitution.[60]

In response to the draft staff analysis, the K-14 district claimant expands its allegation to provide that the various duties resulting from the CPRA (including those stemming from a statute that was not pled in this test claim), in conjunction with section 6259, mandate *litigation as a whole*, as opposed to only paying court costs and reasonable attorney fees pursuant to section 6259 as pled in the test claim.[61] Similarly, the county claimant expands its allegations to provide that litigation costs, including possible court costs and attorney fees, are reimbursable state-mandated costs.[62]

The claimants' responses to the draft staff analysis do not allege that Government Code section 6259 specifically requires local agencies or K-14 districts to engage in litigation. Rather, the claimants' responses provide that local agencies and K-14 districts are generally required to disclose public records by section 6253, local agencies and K-14 districts have an affirmative duty not to disclose information described in section 6254 (which was not pled), local agencies and K-14 districts are required to provide a written justification of why a public record is withheld pursuant to section 6255, that nondisclosure of a public record and justifications provided pursuant to sections 6254 and 6255 are heavily litigated, and section 6259 requires a court to award court costs and attorney fees to a plaintiff if a local agency or K-14 district unjustifiably refused to disclose a public record.[63] From this the claimants argue:

> The litigation costs incurred by the public agency are a necessary and reasonable consequence of its statutory duty to comply with Sections 62253 [*sic*], 6254, and 6255. Therefore, to the extent that the subject matter of the litigation pertains to information not to be disclosed pursuant to legislation enacted after December 31, 1974, the cost and fees incurred by the public agency to respond to

[60] The County of Los Angeles argues in its response to the draft staff analysis that attorney costs associated with any legal analyses needed to determine whether to release a public record is a reimbursable state-mandated cost (See Claimant (County of Los Angeles) response to draft staff analysis, dated April 18, 2011, pgs. 4-6). However, the findings made in this section of the analysis *only* address court costs and attorney fees as awarded by a court pursuant to Government Code section 6259. They do not address attorney costs associated with any state-mandated new program or higher level of service found to be imposed by the CPRA in this test claim.

[61] Claimant (Riverside Unified School District) response to draft staff analysis, dated April 18, 2011, pgs. 4-5. In the claimant's response, the claimant cites to Government Code section 6254, which was not pled in this test claim, as being a source of the requirement to engage in litigation.

[62] Claimant (County of Los Angeles) response to draft staff analysis, *supra*, pgs. 4-6.

[63] Claimant (Riverside Unified School District) response to draft staff analysis, *supra*, pgs. 4-5. Claimant (County of Los Angeles) response to draft staff analysis, *supra*, pgs. 4-6.

the writ and the court are reimbursable, as well as any award assessed against the public agency.[64]

Pursuant to the claimants' argument Government Code section 6254 is part of the basis upon which the activity of engaging in litigation arises from. As a result, the Commission would be required to make specific findings on section 6254. However, the claimants have not pled section 6254, and thus, the Commission does not have jurisdiction to make any findings on section 6254.[65]

In regard to Government Code sections 6255 and 6259, these sections, read together or separately, do not require local agencies and K-14 districts to engage in litigation. Instead, as described above, section 6255 requires local agencies and K-14 districts to provide a justification of why a public record is being withheld, and section 6259 sets forth the duties of a court when a lawsuit is brought under the CPRA. In addition, even if litigation were implied from the duties imposed on local agencies and K-14 districts to provide a justification for withholding a public record and a court's duties when litigation is initiated, these duties have been present since the original enactment of the CPRA in 1968, and as a result, the implied duty to engage in litigation would have been present since 1968.

Since 1968, section 6255 has required local agencies and K-14 districts to justify withholding any record.[66] The only substantive change that has occurred since 1968 was the addition of the requirement to provide the justification in writing when the public records request was made in writing. This additional requirement does not create a new duty to engage in litigation. Similarly, since 1968, section 6259 sets forth the duties of the court when litigation is initiated.[67] The only substantive changes to section 6259 are the addition of the requirement on the court to award court costs and attorney fees to a prevailing plaintiff, and the procedures to appeal a court's decision. Neither of these additions creates a new duty to engage in litigation. As a result, the Commission finds that Government Code sections 6255 and 6259 do not impose a state-mandated new program or higher level of service to engage in litigation.

**B. The state-mandated new programs or higher levels of service impose costs mandated by the state on counties, K-14 districts, county offices of education within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556**

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[64] Claimant (Riverside Unified School District) response to draft staff analysis, dated April 18, 2011, pgs. 4-5.

[65] Pursuant to former Government Code section 17557, subdivision (c), as amended by Statutes 1998, chapter 681, which was in effect at the time of the filing of this test claim, a claimant may amend a test claim at "any time prior to a commission hearing on the claim without affecting the original filing date as long as the amendment substantially relates to the original test claim."

[66] Former Government Code section 6255, as added by Statutes 1968, chapter 1473.

[67] Former Government Code section 6259, as added by Statutes 1968, chapter 1473.

In order for the test claim statutes to impose a reimbursable state-mandated program under the California Constitution, the test claim statutes must impose costs mandated by the state.[68] Government Code section 17514 defines "cost mandated by the state" as follows:

> [A]ny 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.

"Any increased costs" for which claimants may seek reimbursement include both direct and indirect costs.[69]

The claimants estimated that they "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"[70] to implement all duties alleged by the claimants to be mandated by the state. Thus, the claimants have met the minimum burden of showing costs necessary to file a test claim pursuant to Government Code section 17564.

However, pursuant to Government Code section 17556, subdivision (f), Finance argues that the claimants are not entitled to reimbursement for the state-mandated new program or higher levels of service imposed by Government Code sections 6253, 6253.9, 6253.1, 6254.3, and 6255, because the activities mandated by the code sections are necessary to implement a ballot measure approved by voters.[71] In addition, under Government Code section 6253.9, the claimants have fee authority for the costs of producing electronic copies of public records kept in an electronic format. Thus, it is also necessary to determine whether the claimants are precluded from reimbursement pursuant to the "ballot measure" and "fee authority" exceptions to reimbursement found in Government Code section 17556, subdivisions (f) and (d).

Ballot measure exception

Government Code section 17556, subdivision (f), prohibits a finding of costs mandated by the state for duties that are necessary to implement or expressly included in a ballot measure approved by the voters in a state-wide or local election.[72] The prohibition applies regardless of whether the statute was enacted before or after the date on which the ballot measure was approved by voters.

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[68] *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

[69] Government Code section 17564.

[70] 02-TC-51 test claim, Exhibit 1 Declarations of Michael H. Fine, of Riverside Unified School District, and Cheryl Miller of Santa Monica Community College District.

[71] Finance Comments in Response to Request for Comments, dated January 14, 2011. Finance Response to Draft Staff Analysis, dated April 20, 2011.

[72] Government Code section 17556, subdivision (f). See *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, finding that the language, "reasonably within the scope of," to be violative of the California Constitution.

The claimants argue that the ballot measure exception to reimbursement in Government Code section 17556, subdivision (f), does not apply here because the test claim statutes were "enacted long after the advent of the declaration of rights in the 1968 California Public Records Act and [were] not available, let alone necessary, for the implementation of those rights, subsequently incorporated in Proposition 59."[73] In addition, the claimants note that Proposition 59 does not expressly include the activities mandated by the test claim statutes.

In 2004, California voters approved Proposition 59 to incorporate the right of access to information concerning the people's business that was already provided by various state laws, including the CPRA, into article I, section 3 of the California Constitution. The amendment to the Constitution provides in relevant part:

> 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.

The purpose of Proposition 59 was to "create a constitutional right for the public to access government information. As a result, a government entity would have to demonstrate to a somewhat greater extent than under current law why information requested by the public should be kept private."[74]

None of the state-mandated new programs or higher levels of service imposed by the test claim statutes are expressly included in the Proposition 59. As a result, it is necessary to determine whether the state-mandated activities are "necessary to implement" Proposition 59.

The court in *California School Boards Association v. State of California*, found that duties imposed by a test claim statute or executive order that are not expressly included in a ballot measure approved by the voters in a statewide or local election are "necessary to implement" the ballot measure pursuant to Government Code section 17556, subdivision (f), when the additional requirements imposed by the state are intended to implement the ballot measure mandate, and the costs are, in context, de minimis such that the requirements are considered part and parcel of the underlying ballot measure mandate.[75] The court also makes a distinction between activities that are "necessary to implement" a ballot measure, and those that are "reasonably within the scope of" a ballot measure. In essence, for an activity to be necessary to implement a ballot measure, it must be more narrowly related to the ballot measure than an activity that simply has anything to do with the subject matter of the ballot measure.[76]

The court borrowed this analysis from the California Supreme Court's decision in *San Diego Unified School Dist*. which addressed whether state imposed procedural requirements that exceeded federal due process requirements constituted a federal mandate. The court found that the state requirements were designed to make the underlying federal due process right

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[73] Claimant Comments in Response to Request for Comments, dated January 18, 2011.

[74] Ballot Pamphlet, General Election (November 2, 2004) Proposition 59 at <http://library.uchastings.edu/cgi-bin/starfinder/26556/calprop.txt> [as of March 21, 2011].

[75] *California School Boards Association v. State of California, supra*, 171 Cal.App.4th at p. 1217.

[76] *Id*. at pgs. 1213-1216.

enforceable and to set forth procedural details that were not expressly articulated in the case law establishing the respective due process rights. Thus, the state requirements were merely incidental to fundamental federal due process requirements and viewed singly or cumulatively they did not significantly increase the costs of compliance with the federal mandate.[77]

Here, because Proposition 59 incorporated the fundamental right of access to information present in the CPRA into the constitution, and the provisions of the CPRA are intended to implement the right of access to public information set forth in the CPRA, it could be argued that the provisions of the CPRA also are intended to implement the ballot measure mandate (i.e. providing open access to information concerning the conduct of the people's business). However, unlike in *San Diego Unified School Dist*., the state-mandated activities imposed by the test claim statutes, such as providing electronic copies to the public, assisting members of the public to make a request, and providing a written denial to a written request for public records, are not merely incidental to the right of access to information concerning the conduct of the people's business. Instead they impose additional requirements unnecessary to enforce the general right to access information regarding the people's business, and are not narrowly tailored to fit the definition of "necessary to implement."

Finding that the state-mandated activities are necessary to implement Proposition 59 would suggest that any activity that has anything to do with open government would be necessary to implement Proposition 59. In addition, there is no concrete evidence in the law or in record that the costs of the state-mandated activities, singly or cumulatively, do not significantly increase the cost of complying with the ballot measure mandate.[78] [79] As a result, the Commission finds that the record supports the finding of costs mandated by the state and that the Government Code section 17556, subdivision (f), exception does not apply to deny these activities.

Fee authority exception

Government Code section 17556, subdivision (d), prohibits a finding of costs mandated by the state where a 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. In addition, the court in *Clovis Unified School Dist. v. Chiang* notes that to the extent that a local agency or school district has the authority to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost.[80]

In regard to providing electronic copies of disclosable public records kept in an electronic format, Government Code section 6253.9, subdivision (a)(2), gives fee authority to local agencies and K-14 districts for the "direct costs" of producing a record in an electronic format.

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[77] *San Diego School Dist*., *supra*, 33 Cal.4th at p. 889.

[78] *California School Boards Association v. State of California, supra*, 171 Cal.App.4th at p. 1217. See also, *Dept. of Finance v. Commission on State Mandates* (*POBRA*) (2009) 170 Cal.App.4th 1355, regarding a concrete showing of evidence.

[79] Pursuant to Government Code section 17564, the claimants estimated under the penalty of perjury that they "incurred more than $1,000 in staffing and other costs, annually," in order to meet the burden of showing costs necessary to file a test claim.

[80] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812, citing to *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 401.

The fee authority that public agencies have under subdivision (a)(2) is limited to the direct cost of producing an electronic copy. The fee authority does not attach to the indirect costs such as the inspection of and handling of the file. Under article XIII B, section 6, all costs mandated by the state, including direct and indirect costs, are reimbursable.[81] As a result this fee authority is insufficient to preclude a finding of costs mandated by the state pursuant to Government Code section 17556, subdivision (d).

Government Code section 6253.9, subdivision (b), expands a public agency's fee authority to include the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record if: (1) 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; or (2) the request would require data compilation, extraction, or programming to produce the record. This increased fee authority, however, is not expanded to *all costs*, both direct *and indirect*. As a result, the Commission finds that the fee authority under Government Code section 6253.9, subdivision (b), is insufficient to preclude a finding of costs mandated by the state pursuant to Government Code section 17556, subdivision (d).

Government Code section 6253.9, subdivisions (a)(2) and (b), however, provides offsetting revenue for the mandated activity of providing an electronic copy of disclosable public records kept in an electronic format and will be identified in the parameters and guidelines.

Pursuant to the above discussion, the Commission finds that the state-mandated new programs or higher levels of service impose costs mandated by the state on local agencies and K-14 districts within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556.

## CONCLUSION

The Commission concludes that Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255 impose reimbursable state-mandated programs on local agencies and K-14 districts within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514, for the following specific new activities:

1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic 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. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)
2. Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)
3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the

[81] Government Code section 17564.

reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

4. When a member of the public requests to inspect a public record or obtain a copy of a public record:

    a. 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;

    b. describe the information technology and physical location in which the records exist; and

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

    These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

5. For ~~K-14~~K-12 school districts and county offices of education only, redact or withhold the home address and telephone number of employees of ~~K-14~~K-12 school districts and county offices of education from records that contain disclosable information.

    This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) 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 (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to ~~K-14~~K-12 school district 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. (Gov. Code, § 6254.3, subd. (a) (Stats. 1992, ch. 463).)

6. For ~~K-14~~K-12 school districts and county offices of education only, remove the home address and telephone number of an employee from any mailing lists that the ~~K-14~~K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the ~~K-14~~K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3, subd. (b) (Stats. 1992, ch. 463).)

7. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).)

In addition, the Commission concludes that the fee authority set forth in Government Code section 6253.9, subdivisions (a)(2) and (b), as added by Statutes 2000, chapter 982, is offsetting

revenue and shall be deducted from the costs of providing a copy of a disclosable electronic record in the electronic format requested.

Finally, the Commission finds that any other test claim statutes and allegations not specifically approved above, do not impose a reimbursable state mandated program subject to article XIII B, section 6 of the California Constitution.

Received
June 23, 2011
Commission on
State Mandates

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

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June 22, 2011

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

Dear Mr. Bohan:

**LOS ANGELES COUNTY'S PROPOSED PARAMETERS AND GUIDELINES**
**CALIFORNIA PUBLIC RECORDS ACT TEST CLAIMS (02-TC-10, 02-TC-51)**

Exhibit B

The County of Los Angeles respectfully submits its parameters and guidelines for the California Public Records Act reimbursement program.

If you have any questions, please contact Leonard Kaye at (213) 974-9791 or via e-mail at lkaye@auditor.lacounty.gov.

Very truly yours,

John Naimo FOR

Wendy L. Watanabe
Auditor-Controller

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Enclosure

Received
June 23, 2011
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Los Angeles County's Proposed Parameters and Guidelines
California Public Records Act Test Claims (02-TC-10, 02-TC-51)

## Executive Summary

On May 26, 2011, the Commission on State Mandates (Commission) adopted a landmark decision. For the first time in California, local agencies and schools could receive State reimbursement for performing California Public Records Act (CPRA) services.

The parameters and guidelines (Ps&Gs) proposed by Los Angeles County (County) include only the local agency CPRA's services found to be reimbursable by the Commission. These services require local agencies to:

(1) Provide copies of disclosable electronic records,

(2) Determine if requested records are disclosable and notify the requestor within 10 days of the determination and reasons for the determination.

(3) If the 10-day time limit is extended by a local agency due to "unusual circumstances", to provide written notice to the person making the request which includes reasons of the extension and the date on which a determination is expected.

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

(5) If a request is denied, in whole or in part, prepare or review a written response to a written request for inspection or copies of public records that includes a determination that the request is denied.

As is permitted under Government Code section 17557(a), the County's CPRA Ps&Gs include reimbursable activities which are 'reasonably necessary' in implementing the (above stated) mandates. The inclusion of these activities is based on the declarations of four County experts with long-standing experience in the provision of CPRA services. Accordingly, there is substantial evidence that the proposed 'reasonably necessary' activities are reimbursable as specified herein.

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'Reasonably Necessary' Activities

The use of 'reasonably necessary' activities in further defining what may be allowable or reimbursable in implementing broadly-stated statutory provisions is well established and permitted under California law. Specifically, reimbursement for 'reasonably necessary' activities is permitted by Government Code section 71557(a) which provides in pertinent part that:

> "The proposed Ps&Gs may include proposed reimbursable activities that are reasonably necessary for the performance of the state mandated program."

County experts with long-standing experience in the provision of CPRA services were consulted and asked to opine on activities they felt would be reasonably necessary in performing the specific CPRA services found to be reimbursable by the Commission. Their declarations are attached as Exhibits 1 – 4.

Diane C. Reagan

Exhibit 1 contains the declaration of Diane C. Reagan, Principal Deputy County Counsel assigned to respond to CPRA requests and work with the Board of Supervisors' staff as well as staff from the Animal Care and Control, Auditor-Controller, Health Services, Public Health, and Public Social Services departments and Office of the Chief Executive officer.

In addition, Ms. Reagan has been assigned to work with one CPRA requestor in responding to voluminous requests for public records. In this regard, Ms. Reagan provides an Attachment B, on page 10 of Exhibit 1, which catalogs 20 such requests during the January 1, 2011- June 17, 2011 period. In this regard, she notes on pages 3-4 that she spent 48 hours responding to this one requestor during the first five months of 2011 at a billing rate of $226.07 per hour. In Attachment C, found in Exhibit 1, pages 21-31, Ms. Reagan further illustrates the work that this assignment has involved by including 21 pages of correspondence in responding to just two of these requests.

Also, Ms. Reagan has prepared an Attachment A to her declaration (on pages 5-9) which details those activities that are 'reasonably necessary' in implementing the CPRA statutory provisions found to be reimbursable by the Commission.

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Nancy Takade

Exhibit 2 contains the declaration of Nancy Takade, Principal Deputy County Counsel assigned to work as "office coordinator" of matters related to the CPRA. Since 2003 she has provided guidance and assistance to other County attorneys providing legal CPRA services to the Board of Supervisors, 37 County departments and the County's "numerous agencies, commissions, boards and committees".

Ms. Takade describes the importance of CPRA legal advice and/or assistance. On page 1 of Exhibit 2, she indicates that:

> "This is particularly true when a request is worded in an extremely broad or general manner, covers a number of years, requires referral to and/or coordination with numerous County departments, requires extraction and compilation of electronic information, impacts privacy rights, relates to matters that are exempt from disclosure, or any combination thereof. In such instances, a staff attorney assigned to the Client Department will assist department staff in understanding the request, locating and identifying potentially responsive records, determining whether records are disclosable or exempt from disclosure, providing appropriate responses to the requests, and any other necessary assistance."

Also, Ms. Takade has prepared an Attachment A to her declaration (on pages 4-8 of Exhibit 2) which details those activities that are 'reasonably necessary' in implementing the CPRA statutory provisions found to be reimbursable by the Commission.

Rick Brower

Exhibit 3 contains the declaration of Rick Brouwer, Principal Deputy County Counsel. Mr. Brouwer supervises the Sheriff's Department Advocacy Unit with 6 lawyers and six support staff and has done so for the past 13 years. Among other things, his unit provides legal CPRA services to the Sheriff's Department. He has been personally responsible for providing CPRA assistance.

Also, Mr. Brouwer has prepared an Attachment A to his declaration (on pages 4-11 of Exhibit 3) which details those activities that are 'reasonably necessary' in implementing the CPRA statutory provisions found to be reimbursable by the Commission.

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Shaun Mathers

Exhibit 4 contains the declaration of Shaun Mathers, a Captain in the Risk Management Bureau of the County Sheriff's Department. Captain Mathers has 30 years of experience in law enforcement and has handled CPRA requests for his department for the past 8 years.

On pages 12-13 of Exhibit 4, Captain Mathers details the number and types of CPRA requiring a focused and effective search. He further illustrates some "recent time-intensive requests" by providing examples on page 12. In addition, on page 13, he details CPRA processing steps that he and his staff uses in providing CPRA services and computes the cost of providing such services to be $92,041.08 for the 2010 calendar year.

Also, Captain Mathers has prepared an Attachment A to his declaration (on pages 4-11 of Exhibit 4) which details those activities that are 'reasonably necessary' in implementing the CPRA statutory provisions found to be reimbursable by the Commission.

Attorney General

Literature from the California Attorney Generals Office (AG) provided insight into the provision of CPRA services which are pertinent to the County's proposed Ps&Gs. Exhibit 6 contains the AG's "Summary of the California Public Records Act (2004) and is useful in understanding the implementation of CPRA. For example, on pages 3-4 in Exhibit 6, this summary report address the concept of "identifiable information" in responding to CPRA requests as follows:

> "In order to invoke the CPRA, the request for records must be both specific and focused. The requirement for clarity must be tempered by the reality that a requestor, having no access to agency files or their scheme of organization, may be unable to precisely identify the documents sought. Thus writings may be described by their content.
>
> To the extent reasonable, agencies are generally required to assist members of the public in making focused and effective requests for identifiable records."

Further, the summary reports notes on page 4 of Exhibit 6 that:

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"When an oral request is received, the agency may wish to consider confirming the request in writing in order to eliminate any confusion regarding the request."

Therefore, the AG appears to be confirming the County's position that providing CPRA services may at times require considerable effort in assisting members of the public in making focused and effective requests for identifiable records.

Californians Aware

As noted by Californians Aware in their publication "Top 10 Points to Remember about the California Public Records Act", included on pages 3-5 of Exhibit 7, some CPRA disclosure exemptions are not clear cut. In some cases, invoking these exemptions may require considerable legal analysis --- as is provided for in the County's proposed Ps&Gs. For example, The Top 10 publication indicates, on page 3 of Exhibit 7, that:

"1. Most CPRA exemptions are discretionary.

2. Exemptions are waived by selective disclosure."

Therefore, the County's CPRA Ps&Gs include 'reasonably necessary' activities to meet the requirements to assist members of the public in making a focused and effective search for requested documents which may be lawfully disclosed.

Reimbursable Activities

For all of the above reasons, the County's CPRA Ps&Gs include the following 'reasonably necessary' activities (*italized* below) in Section IV. Reimbursable Activities:

1. *To develop policies, protocols, manuals and procedures for implementing following reimbursable California Public Record Act (CPRA) provisions:*

a. Determining whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)

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b. Within 10 days, determining whether records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable; and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination. ((Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

c. When an extension of time is required in complying with the 10 day requirement, developing or reviewing language providing a legal basis for the extension. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

d. Identifying litigation, claims, and related records which may be disclosable and may be responsive to the request or to the purpose of the request, if stated; and provide suggestions for overcoming any practical basis for denying access to the records or information sought. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

e. If a request is denied, in whole or in part, preparing or reviewing a written response to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).

2. *To develop data base software or manual system(s) for tracking and processing public records request actions to implement reimbursable test claim provisions (as stated above).*

3. *To purchase or lease computers to monitor and document public records request actions to implement reimbursable test claim provisions (as stated above). (Use for other purposes is not reimbursable.)*

4. *To develop or update web site(s) for public record act requests to implement reimbursable test claim provisions (as stated above).*

5. *Annual training programs on implementing reimbursable test claim provisions, including reimbursement for trainee and trainer participation, curriculum development, equipment and supplies*

6. Determining whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such

records are disclosable. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)

a. *Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests for electronic public records.*

b. *Determining whether the electronic public records request falls within the agency's jurisdiction.*

c. *Determining whether the request reasonably describes any identifiable electronic records(s) and conferring with the requestor if clarification is needed.*

d. *Meeting and/or conferring with specialized systems and/or other local agency staff to identify access to pertinent electronic records. If external public entities have oversight and/or ownership of the requested electronic data or information, meeting and/or conferring with those entities to provide the requested electronic data or information.*

e. *Conducting legal reviews, research and analysis of the requested electronic record(s) to determine if the requested electronic record(s) or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the associated costs of legal data base services.*

f. *Processing the requested electronic record(s) or parts thereof that are disclosable.*

g. *Reviewing the electronic record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions.*

h. *Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested electronic record(s).*

i. *Copying or saving electronic record(s) and accompanying correspondence.*

j. *Sending or transmitting the electronic records to the requestor.*

k. *Tracking the shipment of requested CPRA electronic records.*

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7. Within 10 days, determining whether records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable; and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination. ((Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

*a. Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests to comply with the 10 day time limit to notify the requestor if the requested record(s) or parts thereof are disclosable and the reason for the determination.*

*b. Determining whether the public record(s) request falls within the agency's jurisdiction.*

*c. Determining whether the request reasonably describes any identifiable records(s) and conferring with the requestor if clarification is needed.*

*d. Meeting and/or conferring with local agency staff to identify access to pertinent records. If external public entities have oversight and/or ownership of the requested data or information, meeting and/or conferring with those entities to provide the requested data or information.*

*e. Conducting legal reviews, research and analysis of the requested records to determine if the requested electronic record(s) or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the costs of legal data base services.*

*f. Within 10 days of receipt of the public record(s) request, developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination.*

*g. Processing and reviewing the record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions*

*h. Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested record(s).*

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*i. Copying or saving record(s) and accompanying correspondence.*

*j. Sending or transmitting the records to the requestor.*

*k. Tracking the shipment of requested CPRA records.*

8. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

*a. Reviewing the following "unusual circumstances" (in Government Code section 6253, subdivision (c)(1)-(4)) to determine which are relevant in justifying an extension of the 10 day time limit in providing the requested document(s).*

(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.

*b. Meeting and/or conferring with local agency staff, including legal staff, to determine the date on which a determination is expected to be dispatched to the person making the request. If other establishments have oversight and/or ownership of the requested data or information,*

*meeting and/or conferring with those staff to ascertain an expected determination date.*

c. *Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched.*

d. *Preparing, and obtaining agency head, or his or her designee, approval and signature of, the extension notice and accompanying correspondence.*

e. *Copying or saving the extension notice and accompanying correspondence.*

f. *Sending or transmitting the notice and accompanying correspondence to the requestor.*

g. *Tracking delivery of the notice and accompanying correspondence. to the requestor.*

9. When a member of the public requests to inspect a public record or obtain a copy of a public record:

a. 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;

b. describe the information technology and physical location in which the records exist; and

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

*To implement Sections (9) a., b., c. (above):*

*(i) Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests to comply with public requests to inspect a public record or obtain a copy of a public record.*

*(ii) Determining whether the public record(s) request falls within the agency's jurisdiction.*

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*(iii) Determining whether the request reasonably describes any identifiable records(s) and conferring with the requestor if clarification is needed.*

*(iv) Meeting and/or conferring with local agency staff to identify access to pertinent records. If external public entities have oversight and/or ownership of the requested data or information, meeting and/or conferring with those entities to provide the requested data or information.*

*(v) Conducting legal reviews, research and analysis of the requested records to determine if the requested record(s) or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the costs of legal data base services.*

*(vi) Identifying litigation, claims, and related record(s) which may be disclosable and may be responsive to the request or to the purpose of the request, if stated; and provide suggestions for overcoming any practical basis for denying access to the records or information sought.*

*(vii) Developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination.*

*(viii) Processing and reviewing the record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions.*

*(ix) Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested record(s).*

*(x) Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested record(s).*

*(xi) Copying or saving record(s) and accompanying correspondence.*

*(xii) Sending or transmitting the records to the requestor.*

*(xiii) Sending or transmitting the records to the requestor.*

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency

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makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

h. Analyzing practical problems in providing access to the records or information sought and developing suggestions for overcoming any practical basis for denying access to the records or information sought.

9. If a request is denied, in whole or in part, preparing or reviewing a written response to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).

*If a written request for inspection or copies of public records is denied in whole or in part:*

*a. Meeting and/or conferring with staff, including but not limited to legal staff, to review and finalize the analysis, findings and conclusions providing the basis for the denial determination.*

*b. Drafting and editing a written response that includes a determination that the request is denied.*

*c. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the denial response and accompanying correspondence.*

*d. Copying or saving the written denial response and accompanying correspondence.*

*e. Copying or saving the denial response and accompanying correspondence.*

*f. Sending the denial response and accompanying correspondence to the requestor.*

*g. Tracking delivery of the denial response and accompanying correspondence to the requestor.*

Accordingly, the (above) statutory provisions and related 'reasonably necessary" activities are included in Section IV. (REIMBURSABLE ACTIVITIES) of the County's proposed CPRA Ps&Gs that follow on the next page.

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Los Angeles County's Proposed Parameters and Guidelines
California Public Records Act Test Claims (02-TC-10, 02-TC-51)

## I. SUMMARY OF THE MANDATE

This consolidated test claim filed by County of Los Angeles and Riverside Unified School District addresses activities associated with the California Public Records Act (CPRA) (Gov. Code, § 6250 et seq.), which provides for the disclosure of public records kept by state, local agencies, kindergarten through 12th grade school districts and community college districts (K-14 districts), and county offices of education. These 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.

## II. ELIGIBLE CLAIMANTS

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; and, any kindergarten through 12th grade school districts and community college districts (K-14 districts), and county offices of education.

## III. PERIOD OF REIMBURSEMENT

Government Code section 17557, as amended by Statutes of 1998, Chapter 681 (which became effective on September 22, 1998), states that a test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.

On October 10, 2002, the County of Los Angeles filed the subject test claim and therefore the reimbursement period is considered to have begun on July 1, 2001 for those statutory provisions then in effect.

Actual costs for one fiscal year shall be included in each claim. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement

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of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If the total costs for a given year do not exceed $1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

## IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed

Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records, including time survey forms, time logs, sign-in sheets, and, invoices, receipts and unit cost studies using source documents.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

Claimants may use time studies to support labor [salary, benefit and associated indirect] costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office. The reimbursable time recorded on each time survey form must be for specific reimbursable activities as detailed herein. An employees reimbursable time is totaled and then multiplied by their productive hourly rate, as that term is defined in the State Controller's Office annual claiming instruction manual, found on www.sco.ca.gov. If a time study sample is used to claim time for 4 through 9 staff, at least 2 staff should be time surveyed. If 10 or more staff are claimed, a 20% sample, rounded to the nearest whole number of cases, should be taken.

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Scope of Reimbursable Activities

The claimant is only allowed to claim, and be reimbursed for, increased costs for reimbursable activities identified below. Increased cost are limited to the costs of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

1. To develop policies, protocols, manuals and procedures for implementing following reimbursable California Public Record Act (CPRA) provisions:

a. Determining whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)

b. Within 10 days, determining whether records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable; and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination. ((Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

c. Within 10 days, determining whether records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable; and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination. ((Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

d. When an extension of time is required in complying with the 10 day requirement, developing or reviewing language providing a legal basis for the extension. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

e. Identifying litigation, claims, and related records which may be disclosable and may be responsive to the request or to the purpose of the request, if stated; and provide suggestions for overcoming any practical basis for denying access to the records or information sought. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

f. If a request is denied, in whole or in part, preparing or reviewing a written response to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).

2. To develop data base software or manual system(s) for tracking and processing public records request actions to implement reimbursable test claim provisions (as stated above).

3. To purchase or lease computers to monitor and document public records request actions to implement reimbursable test claim provisions (as stated above). (Use for other purposes is not reimbursable.)

4. To develop or update web site(s) for public record act requests to implement reimbursable test claim provisions (as stated above).

5. Annual training programs on implementing reimbursable test claim provisions, including reimbursement for trainee and trainer participation, curriculum development, equipment and supplies

6. Determining whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)

    a. Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests for electronic public records.

    b. Determining whether the electronic public records request falls within the agency's jurisdiction.

    c. Determining whether the request reasonably describes any identifiable electronic records(s) and conferring with the requestor if clarification is needed.

    d. Meeting and/or conferring with specialized systems and/or other local agency staff to identify access to pertinent electronic records. If external public entities have oversight and/or ownership of the requested electronic data or information, meeting and/or conferring with those entities to provide the requested electronic data or information.

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e. Conducting legal reviews, research and analysis of the requested electronic record(s) to determine if the requested electronic record(s) or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the associated costs of legal data base services.

f. Processing the requested electronic record(s) or parts thereof that are disclosable.

g. Reviewing the electronic record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions.

h. Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested electronic record(s).
i. Copying or saving electronic record(s) and accompanying correspondence.\
j. Sending or transmitting the electronic records to the requestor

k. Sending or transmitting the electronic records to the requestor.

l.Tracking the shipment of requested CPRA electronic records.

7.Within 10 days, determining whether records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable; and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination. ((Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

a. Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests to comply with the 10 day time limit to notify the requestor if the requested record(s) or parts thereof are disclosable and the reason for the determination.

b. Determining whether the public record(s) request falls within the agency's jurisdiction.

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c. Determining whether the request reasonably describes any identifiable records(s) and conferring with the requestor if clarification is needed.

d. Meeting and/or conferring with local agency staff to identify access to pertinent records. If external public entities have oversight and/or ownership of the requested data or information, meeting and/or conferring with those entities to provide the requested data or information.

e. Conducting legal reviews, research and analysis of the requested records to determine if the requested electronic record(s) or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the costs of legal data base services.

f. Within 10 days of receipt of the public record(s) request, developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination.

g. Processing and reviewing the record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions

h. Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested record(s).

i. Copying or saving record(s) and accompanying correspondence.

j. Sending or transmitting the records to the requestor.

k. Tracking the shipment of requested CPRA records.

l. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

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a. Reviewing the following "unusual circumstances" (in Government Code section 6253, subdivision (c)(1)-(4)) to determine which are relevant in justifying an extension of the 10 day time limit in providing the requested document(s).

(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.

a. Meeting and/or conferring with local agency staff, including legal staff, to determine the date on which a determination is expected to be dispatched to the person making the request. If other establishments have oversight and/or ownership of the requested data or information, meeting and/or conferring with those staff to ascertain an expected determination date.

b. Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched.

c.Preparing, and obtaining agency head, or his or her designee, approval and signature of, the extension notice and accompanying correspondence.

d.Copying or saving the extension notice and accompanying correspondence.

e. Sending or transmitting the notice and accompanying correspondence to the requestor.

f. Tracking delivery of the notice and accompanying correspondence to the requestor.

9. When a member of the public requests to inspect a public record or obtain a copy of a public record:

a. 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;

b. describe the information technology and physical location in which the records exist; and

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

To implement Sections (9) a., b., c. (above):

(i) Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests to comply with public requests to inspect a public record or obtain a copy of a public record.

(ii) Determining whether the public record(s) request falls within the agency's jurisdiction.

(iii) Determining whether the request reasonably describes any identifiable records(s) and conferring with the requestor if clarification is needed.

(iv) Meeting and/or conferring with local agency staff to identify access to pertinent records. If external public entities have oversight and/or ownership of the requested data or information, meeting and/or conferring with those entities to provide the requested data or information.

(v) Conducting legal reviews, research and analysis of the requested records to determine if the requested record(s) or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the costs of legal data base services.

(vi) Identifying litigation, claims, and related record(s) which may be disclosable and may be responsive to the request or to the purpose of the request, if stated; and provide suggestions for overcoming any practical basis for denying access to the records or information sought.

(vii) Developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination.

(viii) Processing and reviewing the record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions.

(ix) Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested record(s).

(x) Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested record(s).

(xi) Copying or saving record(s) and accompanying correspondence.

(xii) Sending or transmitting the records to the requestor.

(xiii) Sending or transmitting the records to the requestor.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

g. Analyzing practical problems in providing access to the records or information sought and developing suggestions for overcoming any practical basis for denying access to the records or information sought.

9. If a request is denied, in whole or in part, preparing or reviewing a written response to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).

If a written request for inspection or copies of public records is denied in whole or in part:

a. Meeting and/or conferring with staff, including but not limited to legal staff, to review and finalize the analysis, findings and conclusions providing the basis for the denial determination.

b. Drafting and editing a written response that includes a determination that the request is denied.

c. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the denial response and accompanying correspondence.

d. Copying or saving the written denial response and accompanying correspondence.

e. Copying or saving the denial response and accompanying correspondence.

f. Sending the denial response and accompanying correspondence to the requestor.

g. Tracking delivery of the denial response and accompanying correspondence to the requestor.

## V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

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2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Capital Assets and Equipment

Report the purchase price paid for capital assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the capital asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

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Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect

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costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

## VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

## VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and

school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

## IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

## X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

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**DECLARATION OF DIANE C. REAGAN**

I, Diane C. Reagan, declare as follows:

1. I am a licensed, practicing attorney in the State of California. I have been a member of the California Bar since 1981; my state bar number is 98709. Immediately before beginning my employment with the Office of the Los Angeles County Counsel in 1994, I was engaged in an estate planning and probate private practice, and prior to that, I was employed by the State of California Department of Corporations, in the Securities Regulation Division, as Senior Corporations Counsel. I am a Principal Deputy County Counsel in the Office of the Los Angeles County Counsel, attorneys of record for the County of Los Angeles. I have represented many County departments and several commissions during my seventeen (17) year tenure with this office. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. Among other assignments in the Health Services Division, my primary responsibility is provide advice, transactional and litigation services to the Department of Animal Care and Control. Currently, I am also the County Counsel attorney designated to respond to Public Record Act requests from a specific requestor, which includes working with the Board of Supervisors' staff, and several other County departments, including, but not limited to, the Office of the Chief Executive Officer, the Auditor/Controller, the Health Services Department, the Department of Public Health, the Department of Public Social Services, and the Sheriff Department. I have represented the Department of Animal Care and Control ("DACC") as its general counsel for over twelve (12) years. During that time period, I have been personally responsible for assisting DACC in responding to requests for public records under the California Public Records Act (CPRA).

3. I declare that I have read the conclusion of the Commission on State Mandates' California Public Records Act decision, issued on May 31, 2011, finding that the following local agency services are reimbursable:

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a. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic 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. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)

b. Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

c. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

d. When a member of the public requests to inspect a public record or obtain a copy of a public record:

i. 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;

ii. describe the information technology and physical location in which the records exist; and

iii. provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that

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determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

e. Not applicable to the County of Los Angeles.

f. Not applicable to the County of Los Angeles.

g. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).)

4. I have analyzed the activities that I have been doing to assist DACC and other County departments to comply with the Public Record Act requirements set forth above.

5. It is my information and belief that the legal activities performed by me on behalf of the County are reasonably necessary in the implementation of the above provisions of the California Public Record Act.

6. I have reviewed Attachment A which includes and summarizes County Counsel's statutory and reasonably necessary activities for inclusion in Los Angeles County's proposed parameters and guidelines as reimbursable service components.

7. On occasion, I have acted as the County designated responder to frequent requesters who make frequent requests for public records over a period of months, or even years. Often, such requests lack specificity, are misdirected to the wrong department or person, involve voluminous records or are records that must be culled from databases. Frequently, requests for public records are buried within long e-mails or letters. These type of requests are extremely time consuming to respond to, and often require research, meetings, phone calls and e-mail exchanges to determine an appropriate response. For example, Attachment B is a listing of responses to one frequent requestor relating to public records requests and related requests for the first six months of 2011. Attachment C includes two examples of responses to that requestor. I declare on information and belief that between January 31, 2011 and May 31, 2011, I spent forty-eight (48) hours performing tasks relating to correspondence from the frequent requestor referenced in Attachments B and C. Most of the tasks performed to respond to the

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correspondence were performed to comply with the reimbursable public record requirements set forth above and in Attachment A. My hourly billing rate is $226.07 per hour.

8. 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.

Executed on June ~~20~~ 21, 2011, at Los Angeles, California.

Diane C. Reagan

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**Attachment A to Declaration of Diane C. Reagan**

**Los Angeles County's Proposed Parameters and Guidelines**
**Statutorily Required and 'Reasonably Necessary' [Govt. Code § 17557(a)] Activities**
**California Public Record Act Test Claims (02-TC-10, 02-TC-51)**

1. To assist the Department of Animal Care and Control to develop and update policies, protocols, manuals and procedures for implementing following reimbursable California Public Record Act (CPRA) provisions:

   a. Determining whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)

   b. Within 10 days, determining whether records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable; and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination. ((Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

   c. When an extension of time is required in complying with the 10 day requirement, developing or reviewing language providing a legal basis for the extension. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

   d. When a member of the public requests to inspect a public record or obtain a copy of a public record:

      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; and

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

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

   e. If a request is denied, in whole or in part, preparing or reviewing a written response to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).

2. On-going training to implement reimbursable test claim provisions, including reimbursement for policy guidelines.

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3. Determining whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)

   a. Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests for electronic public records.

   b. Determining whether the electronic public records request falls within the agency's jurisdiction.

   c. Determining whether the request reasonably describes any identifiable electronic records(s) and conferring with the requestor if clarification is needed.

   d. Meeting and/or conferring with specialized systems and/or other local agency staff to identify access to pertinent electronic records. If external public entities have oversight and/or ownership of the requested electronic data or information, meeting and/or conferring with those entities to provide the requested electronic data or information.

   e. Conducting legal reviews, research and analysis of the requested electronic record(s) to determine if the requested electronic record(s) or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the associated costs of legal data base services.

   f. Processing the requested electronic record(s) or parts thereof that are disclosable.

   g. Reviewing the electronic record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions.

   h. Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested electronic record(s).

   i. Copying or saving electronic record(s) and accompanying correspondence.

   j. Sending or transmitting the electronic records to the requestor.

   k. Tracking the shipment of requested CPRA electronic records.

4. Within 10 days, determining whether records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable; and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination. ((Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

   a. Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests to comply with the 10 day time limit to notify the requestor if the requested record(s) or parts thereof are disclosable and the reason for the determination.

   b. Determining whether the public record(s) request falls within the agency's jurisdiction.

c. Determining whether the request reasonably describes any identifiable records(s) and conferring with the requestor if clarification is needed.

d. Meeting and/or conferring with local agency staff to identify access to pertinent records. If external public entities have oversight and/or ownership of the requested data or information, meeting and/or conferring with those entities to provide the requested data or information.

e. Conducting legal reviews, research and analysis of the requested records to determine if the requested electronic record(s) or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the costs of legal data base services.

f. Within 10 days of receipt of the public record(s) request, developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination.

g. Processing and reviewing the record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions.

h. Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested record(s).

i. Copying or saving record(s) and accompanying correspondence.

j. Sending or transmitting the records to the requestor.

k. Tracking the shipment of requested CPRA records.

5. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

   a. Reviewing the following "unusual circumstances" (in Government Code section 6253, subdivision (c)(1)-(4)) to determine which are relevant in justifying an extension of the 10 day time limit in providing the requested document(s).

      (i) 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.

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

      (iii)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.

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

b. Meeting and/or conferring with local agency staff, including legal staff, to determine the date on which a determination is expected to be dispatched to the person making the request. If other establishments have oversight and/or ownership of the requested data or information, meeting and/or conferring with those staff to ascertain an expected determination date.

c. Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched.

d. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the extension notice and accompanying correspondence.

e. Copying or saving the extension notice and accompanying correspondence.

f. Sending or transmitting the notice and accompanying correspondence to the requestor.

g. Tracking delivery of the notice and accompanying correspondence to the requestor.

6. When a member of the public requests to inspect a public record or obtain a copy of a public record:

a. 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;

b. describe the information technology and physical location in which the records exist; and

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

To implement Sections (6) a., b., c. (above):

(i) Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests to comply with public requests to inspect a public record or obtain a copy of a public record.

(ii) Determining whether the public record(s) request falls within the agency's jurisdiction.

(iii) Determining whether the request reasonably describes any identifiable records(s) and conferring with the requestor if clarification is needed.

(iv) Meeting and/or conferring with local agency staff to identify access to pertinent records. If external public entities have oversight and/or ownership of the requested

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data or information, meeting and/or conferring with those entities to provide the requested data or information.

(v) Conducting legal reviews, research and analysis of the requested records to determine if the requested record(s) or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the costs of legal data base services.

(vi) Identifying litigation, claims, and related record(s) which may be disclosable and may be responsive to the request or to the purpose of the request, if stated; and provide suggestions for overcoming any practical basis for denying access to the records or information sought.

(vii) Developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination.

(viii)Processing and reviewing the record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions.

(ix) Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested record(s).

(x) Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested record(s).

(xi) Copying or saving record(s) and accompanying correspondence.

(xii) Sending or transmitting the records to the requestor.

(xiii)Sending or transmitting the records to the requestor.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

# Attachment B

## List of 2011 County Correspondence/Relevant Documents Regarding [redacted] Public Record Act Requests/Claims

| Tab No. | Date | Author | Description of Response |
|---|---|---|---|
| 1 | 1/4/11 | Diane Reagan | Letter responding to e-mails of 12/31/10 and 1/3/11. |
| 2 | 1/6/11 | Diane Reagan | Letter responding to e-mail of 1/4/11. |
| 3 | 1/14/11 | Diane Reagan | Letter responding to Recent Correspondence of 1/4/11, 1/6/11, 1/10/11 and 1/12/11. |
| 4 | 1/27/11 | Diane Reagan | Letter responding to various communications to County officials and employees of 1/20/11, 1/21/11 and 1/25/11. |
| 5 | 2/4/11 | Diane Reagan | Letter responding to various communications to County officials and employees of 1/25/11, 1/28/11 and 2/3/11. |
| 6 | 2/14/11 | Diane Reagan | Letter responding to various communications to County officials and employees of 2/3/11, 2/8/11 and 2/11/11. |
| 7 | 2/28/11 | Diane Reagan | Letter responding to various communications to County officials and employees of 2/15/11, 2/18/11 and 2/23/11. |
| 8 | 3/17/11 | Diane Reagan | Letter responding to various communications to County officials and employees of 2/24/11, 3/7/11, 3/10/11 – 3/16/11 and 3/11/11. |
| 9 | 4/4/11 | Diane Reagan | Letter responding to various communications to County officials and employees of 3/22/11 and 3/25/11. |
| 10 | 5/13/11 | Diane Reagan | Letter responding to various communications to County officials and employees of 5/6/11, 5/7/11 and 4/5/11. |
| 11 | 5/16/11 | Richard Mason | E-mail responding to e-mail of 5/13/11. |
| 12 | 5/18/11 | Diane Reagan | Letter |
| 13 | 5/18/11 | Richard Kudo | E-mail responding to e-mail of 5/17/11. |
| 14 | 5/27/11 | Diane Reagan | Letter responding to E-mail to County officials and employees of 5/18/11. |
| 15 | 6/1/11 | Katherine Medina | E-mail regarding review of claims. |
| 16 | 6/3/11 | Diane Reagan | Response to Recent e-mails to County officials/employees of 5/25/11. |
| 17 | 6/7/11 | Jackie Lacey Chief Deputy District Attorney | Response to Mr. [redacted] request for a meeting with District Attorney Steve Cooley. |
| 18 | 6/10/11 | Diane Reagan | Letter responding to various communications to County officials/employees of 5/31/11 and 6/7/11. |
| 19 | 6/13/11 | Katherine Medina | E-mail regarding BOS meeting minutes. |
| 20 | 6/17/11 | Diane Reagan | Letter responding to various communications to County officials/employees of 6/6/11, 6/7/11, 6/10/11 and 6/11/11. |
| 21 | | | |
| 22 | | | |
| 23 | | | |
| 24 | | | |

**Attachment C**



COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL
648 KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012-2713

TELEPHONE
(213) 974-1868
FACSIMILE
(213) 680-2165
TDD
(213) 633-0901

ANDREA SHERIDAN ORDIN
County Counsel

June 17, 2011

VIA E-MAIL & U.S. MAIL

[redacted]

**Re: Response to various communications to County officials and employees**

Dear Mr. [redacted]

This is in response to your requests for records under the Public Records Act (Govt. Code § 6250 et seq.) and for other information, received on June 6, June 7, June 10 and June 11, 2011, addressed to various County officials and employees.

1. Enclosed fax request of June 6, 2011 to Ms. Hamai asking for a copy of County Counsel's response to the Board of Supervisors' March 8, 2011 request relating to the dangerous dog ordinance:

Any response to the Board of Supervisors from County Counsel on this subject is privileged under the attorney-client privilege, and is therefore, exempt from disclosure under Government Code § 6254(k).

2. Enclosed e-mail and fax request dated June 7, 2011 entitled: "Supervisorial Trips to Washington, D.C. by the {LA County Board of Supervisors}":

We have begun to gather the information you requested relating to the Board's trips to Washington, D.C. for the years 2008-2011. Please be advised that we are extending the time to respond by an additional fourteen (14) days, under Government Code § 6253 subd. (c) due to the existence of unusual circumstances arising from the broad scope of your request. These unusual circumstances include the need to consult with other county departments and to search for, collect and review records from several years in order to identify responsive, non-

exempt records. You will be provided with a determination on or before July 1, 2011, as to whether or not we are able to identify any disclosable public records responsive to the terms of your request. At that time, we will also give you an estimate of when these records will be available.

Please note, however, that some of the disclosable records may need to be redacted, or may be exempt from disclosure under the following authority: Government Code Sec. 6254 (k); Government Code Sec. 6255 and protections relating to the right to privacy under Art.1 sec.1 of the California Constitution and California common law.

In addition, item numbers 3, 4 and 8 in your list of 8 items, are not requests for public records under the Public Records Act. If you have a request for a public record relative to the statements made under those items, please identify the record(s) requested.

3. Enclosed e-mail dated June 10, 2011 to the Executive Office regarding a landscaping project in Cudahy:

The questions regarding the landscaping project are not a request for public records under the Public Records Act. Accordingly, your inquiries will be forwarded to the Department of Public Works for response.

4. Enclosed e-mail dated Saturday, June 11, 2011 (deemed received on June 13, 2011) to Richard Kudo stating that "PRA requests below have still not been fulfilled:"

Your request is vague and ambiguous as to what request for public records has not been fulfilled. Please identify with specificity the public record(s) sought.

In accordance with your mother's and Mr. Bowen's request, we will not copy them on our correspondence with you. You may forward any further written questions to me.

Very truly yours,

ANDREA SHERIDAN ORDIN
County Counsel

By Diane C. Reagan
DIANE C. REAGAN
Principal Deputy County Counsel
Health Services Division

DCR:vn
Enclosures

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To: Sachi Hamai 213-620-7636

Fr: [redacted]
CRD3

Re link on Re website of Transcripts & statement of proceedings for March 8, 2011 - only contained Re attached 4 pages. Please attach Re response to Mr. Antonovich.

Thnk you.

# COUNTY OF LOS ANGELES
# BOARD OF SUPERVISORS

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 383
LOS ANGELES, CALIFORNIA 90012
(213) 974-1411 • FAX (213) 620-0636

SACHI A. HAMAI
EXECUTIVE OFFICER



March 9, 2011

TO: Andrea Sheridan Ordin
County Counsel

FROM: Sachi A. Hamai
Executive Officer

SUBJECT: PUBLIC COMMENT REVIEW AND RESPONSE

At the Board of Supervisors' meeting held March 8, 2011, during the Public Comment portion of the meeting, [redacted] addressed the Board regarding issues of clarity in the current County Code relating to the time frame for an agent to petition a judge when an animal is seized. During the discussion, Supervisor Antonovich requested you to review [redacted] testimony, and report back to the Board.

Enclosed is a "Request to Address the Board" form filled out by [redacted] and a copy of the transcript to assist you in preparing your report.

SAH:ct

Enclosure

c: Each Supervisor
Director of Animal Care and Control

09030811 adminmemo_[redacted]

MOUNTAINS. AND THEY FALL, TOO. AND ALL OF THIS CATACLASMIC DESTRUCTION THROUGHOUT LOS ANGELES COUNTY ALONG WITH THE GREAT NUMBER OF LARGE BUILDINGS THAT COLLAPSED INTO RUINS SUCH AS THE OLD COUNTY HOSPITAL ON MISSION MORENO IN LOS ANGELES AND OLD BUILDING DOWNTOWN L.A. WILL CREATE SMOKE, DUST DIRT AND DEBRIS THAT WILL QUICKLY RISE INTO THE ATMOSPHERE AND ENTER INTO THE DARK THUNDER CLOUDS AND WILL WORK WITH THE STORM TO BLOCK OUT THE SUNLIGHT WHILE ALSO PROVIDING A SUDDEN GIANT AMOUNT OF CONDENSATION NUCLEI FOR THE GIANT STORM CAUSING HEAVY HAIL. AL-QAEDA IS SATANIC. SATANIC AL-QAEDA TERRORISTS ATTACK THE USA ON 9/11/01 AND AFTER THE WORLD TRADE CENTERS FELL, GIANT SMOKE, DUST, DIRT AND DEBRIS FILLED THAT MANHATTAN. LOOK AT THE ARCHIVAL FOOTAGE FOR YOURSELF. WHEN IT HAPPENS IN MAY, WHOLE MOUNTAIN SIPPEDZ WILL COME CRASHING DOWN AND ENTIRE CITIES WILL BE DESTROYED CAUSING.

**MIKE ANTONOVICH, MAYOR:** OKAY. NOW YOU CRASHED. THANK YOU. MR. [redacted]

**SPEAKER:** [redacted]AND I AM THE COUNTY RESIDENT FROM DISTRICT 3. AND MAYOR ANTONOVICH, I KNOW YOU ARE A DOG NOT JUST OWNER BUT A BIG FAN OF THE DOGS BECAUSE YOU'RE FREQUENTLY HANDLING THEM AT THE BEGINNING OF THIS TELECAST. I THINK IT'S A GREAT MESSAGE AND SERVICE THAT YOU'RE PROVIDING BY OFFERING THESE ADOPTED ANIMALS OFF TO THE PEOPLE OF LOS ANGELES. I THINK YOU

KNOW THAT WE'VE HAD A RUN-IN WITH THE LOS ANGELES COUNTY COUNTY COUNSEL AND THE DEPARTMENT OF ANIMAL CARE AND CONTROL BECAUSE THEY DID TAKE OUR ANIMALS AND HELD THEM FOR SIX MONTHS IN AN UNLAWFUL MANNER WITHOUT A HEARING. NOW, YOU'VE HEARD MANY TIMES, I'M NOT GOING TO BORE YOU WITH HOW UPSETTING THAT WAS. WE TRIED NOT TO MAKE THAT SUPER EMOTION. I DIDN'T COME DOWN HERE WITH PICTURES OF A BEAUTIFUL STORY. BUT WHY I'M HERE IS BECAUSE I NOW FEEL -- AND I MENTIONED THIS TO MS. ORDER INA NUMBER OF TIMES IN WRITING, THAT THERE IS SOMETHING WRONG WITH THE CURRENT COUNTY CODE. THE CODE DOES NOT REQUIRE THAT WHEN AN ANIMAL IS SEIZED THAT THE AGENTS PETITION A JUDGE IN A TIME PERIOD. SO IT'S LEFT OPEN TO THEM, WHICH IS OF COURSE HARSHLY DESIRABLE. BUT THERE NEEDS TO BE SOME LIMIT ON THAT TIME FRAME SO THAT THINGS LIKE OCCURRED WITH MY MOM'S DOGS CAN NEVER HAPPEN AGAIN. AND I BELIEVE THAT THE ABSENCE OF THAT LANGUAGE IN THE LAW, MS. ORDERREN MAKES IT UNCONSTITUTIONAL ON ITS FACE. AND I'VE BEEN LOOKING INTO THE REMEDIES FOR SOLVING THAT AND IT'S NOT THAT EASY. I THINK THE FIRST STEP, WHICH IS MY SECOND TIME BRINGING IT TO YOUR ATTENTION IN THIS FORUM, IS FOR YOU TO VOLUNTARILY AMEND THAT LAW SO THAT IT REQUIRES A REASONABLE TIME FRAME SO THAT A LIEUTENANT REAL WHO IN THIS CASE DIDN'T DO ANYTHING, OR TERRY DIDN'T DO ANYTHING BUT IN FACT WERE COMPELLED TO GATHER THEIR EVIDENCE, CONCLUDE THEIR INVESTIGATION BECAUSE THE NOTION THAT THE INVESTIGATION WENT ON FOR SIX MONTHS IS FLATLY ABSURD, AS ANYONE COULD SEE. I

MEAN, EVEN THEY SORT OF ACKNOWLEDGED IT. THAT'S WHY DIANE REAGAN RELEASED THE ANIMALS. SO I'M HOPEFUL THAT THERE'S SOME WAY THAT WE CAN WORK ON THAT WITHOUT HAVING TO, YOU KNOW -- I WAS LOOKING INTO HOW YOU HAVE TO DO IT LEGALLY. IT'S A BIG JOB FOR NONLAWYERS. WE'RE NOT INTERESTED IN A LAWSUIT. I'VE SAID THAT BEFORE. OBVIOUSLY WE KNOW ABOUT THE TIME LIMIT THERE. BUT I WOULD BE OPEN TO YOU GUYS VOLUNTARILY LOOKING AT THAT LAW. I KNOW THAT YOU WOULD NEVER WANT YOUR ANIMALS TAKEN, EVEN IF THERE WAS SOME ALLEGATIONS THAT WERE TRUE OR FALSE. IN OUR CASE THEY WERE COMPLETELY FALSE. THE ANIMALS WERE INVOLVED IN A SCUFFLE WITH OTHER DOGS. AND THE OTHER DOGS WERE TRESPASSING. NONE OF THE DOGS WERE HURT. AND IT RESULTED IN THIS HORRIFYING THING. SO, YOU KNOW, MR. KNABE, DO YOU HAVE ANYTHING TO SAY ABOUT THAT? YOU'RE NOT REALLY -- I KNOW MR. RIDLEY-THOMAS, WHO I DIDN'T REQUEST RESPOND TO OUR ONE PAGE DOCUMENT --

**MIKE ANTONOVICH, MAYOR:** THANK YOU. WE WILL ASK THE DEPARTMENT IF THERE ARE ANY NEED TO CHANGE THE REPORTING TIME.

**SPEAKER:** I APPRECIATE THAT. MR. SACHS? YOU'RE ON. YOU'RE ALWAYS ON. YOU'VE BEEN ON ALL DAY. ALL AFTERNOON.

**ARNOLD SACHS:** THANK YOU. ESTIMATES I'M OFF -- SOMETIMES I'M OFF. ONE SECOND ONE MONTH I'M OFF. CONSISTENTLY.

**CONSTITUENT**

**From:** [redacted]

**Sent:** Tuesday, June 07, 2011 8:45 AM

**To:** CONSTITUENT

**Subject:** Supervisorial Trips to Washington D.C. by the {LA County Board of Supervisors} Via Facsimile: (213) 626-5427

Please provide timely responses to the following reasonable questions about the annual pattern of supervisorial trips to Washington.
In this unprecedented time of belt-tightening, we the residents, feel that we must be vigilant as to the manner in which each and every cent is deployed by our trusted leaders. Efforts to understand the nature of the meetings in D.C. were ignored or responded to insufficiently. The below request will provide some transparency.

Please confirm receipt of this document and indicate when those responses will be provided according to the Public Records act.

1) Please provide a copy of the complete roster of County employees who travelled to Washington, D.C. in 2008, 2009, 2010 and recently in May of 2011. [During the 'Supervisors trip to Washington', as defined by the period when the regularly scheduled board meeting is delayed, cancelled, or held in Washington]

2) Please provide a comprehensive list of the meeting schedules and itineraries for each of the supervisors who were acting on our behalf as our county representatives in the nation's capital.

3) The County website, indicates that there was only one meeting scheduled as a matter of official business and that it was with Senator Dianne Feinstein of California in the Hart building.

4) Apparently, Supervisor Molina was absent from that May 4, 2011 meeting, as indicated on the Statement of proceedings.

5) Please provide a copy of each of the expense reports [or travel allowances issued] for individual County employees who travelled to Washington, D.C. in 2008, 2009, 2010 and recently in May of 2011.

6) Please provide a copy of the hotel bills for each of the County employees who travelled to Washington, D.C. in 2008, 2009, 2010 and recently in May of 2011.

7) Please provide a copy of all airline tickets, including cost detail, for the supervisors trip to washington or in the alternative any invoice(s) for use of a non-commercial aircraft.

8) Please clarify that any frequent flier miles for flights to and from Washington, that were payed for with County funds for County employees, are accrued into a separate account for the County; supervisors should not accrue mileage at taxpayer expense.

June 4, 2011

# Fighting Words

*Gov.* Chris Christie *of* New Jersey, *a Republican who has won attention for preaching belt-tightening, faced criticism himself last week after he took a state helicopter to see his son play a high school baseball game and then flew to a meeting of political supporters. (Mr. Christie later paid $2,151 for the cost of flights he took to his son's games; the State* Republican Party *reimbursed the state $1,232 for the flight to meet with supporters.)*

"Leaving in the fifth inning to meet with wealthy Iowa political donors says something about the governor's priorities. Perhaps his presidential courters can help him foot the bill so our taxpayers aren't on the hook for such perks when he is calling for sacrifice."
**— Assemblywoman Valerie Vainieri Huttle**, Democrat of Bergen County

"She should really be embarrassed at what a jerk she is."
**— Mr. Christie**

Supervisorial Trips to Washington D.C. by the {LA County Board of Supervisors} Via Facsimile: (213) 626-5427 6/7/11 8:45 AM

**From:** [redacted]
**To:** constituent@auditor.lacounty.gov
**Subject:** Supervisorial Trips to Washington D.C. by the {LA County Board of Supervisors} Via Facsimile: (213) 626-5427
**Date:** Tue, Jun 7, 2011 8:45 am

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June 4, 2011

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"Leaving in the fifth inning to meet with wealthy Iowa political donors says something about the governor's priorities. Perhaps his presidential courters can help him foot the bill so our taxpayers aren't on the hook for such perks when he is calling for sacrifice."
— **Assemblywoman Valerie Vainieri Huttle**, Democrat of Bergen County

"She should really be embarrassed at what a jerk she is."
— **Mr. Christie**

Received
June 23, 2011
Commission on
State Mandates

**Reagan, Diane**

**From:** Reagan, Diane
**Sent:** Tuesday, June 14, 2011 12:23 PM
**To:** Reagan, Diane
**Subject:** FW: Query RE: Project in Cudahy (CRD3)

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**From:** [redacted]
**Sent:** Friday, June 10, 2011 2:48 PM
**To:** ExecutiveOffice
**Subject:** Fwd: Query RE: Project in Cudahy (CRD3)

Please respond appropriately in accordance with the PRA.
-----Original Message-----
From: ExecutiveOffice <ExecutiveOffice@bos.lacounty.gov>
To: [redacted]
Sent: Thu, May 19, 2011 9:30 am
Subject: RE: Query RE: Project in Cudahy (CRD3)

Thank you for visiting the County of Los Angeles, Board of Supervisors' website. In response, the following e-mail has been forwarded to each of the Five Supervisorial Districts.

---

**From:** [redacted]
**Sent:** Thursday, May 19, 2011 9:01 AM
**To:** ExecutiveOffice
**Cc:** Michael D. Antonovich
**Subject:** Query RE: Project in Cudahy (CRD3)

This bike path landscaping project in Cudahy is going out to bids in June. The residents are curious:

Clearly, the bid number is $215,000, plus a $32,000 contingency,
please explain the $299,000 in county management costs?
[ $25,000 in quality control inspections...?! Your taxpaying residents do not like the sound
of that very much. ]

Also, what is the length of this bikepath and the wood composite deck and bench?
What is the distance from this proposed recreation area and CLARA PARK ?

What is the distance from this proposed recreation area and CUDAHY CITY PARK ?

What is the distance from this proposed recreation area and PRITCHARD FIELD ?

What is the distance from this proposed recreation area and CITY OF BELL GARDENS JOHN ANSON FORD PARK?

In light of those distances (please disclose them) does this seem like a good use of more than half a million dollars? I know from the budget hearing that Mayor Antonovich is concerned about funding Probation and Sheriff. And he was worried that the unconstitutional conduct was being permitted...he used a very disturbing example, but we knew what he meant.

http://documents.latimes.com/la-county-supervisors-meeting-transcripts/

## Reagan, Diane

**From:** Reagan, Diane
**Sent:** Tuesday, June 14, 2011 12:35 PM
**To:** Reagan, Diane
**Subject:** FW: [redacted]et al. v. County of Los Angeles et al. CV--2340
**Attachments:** 10_20_[redacted]S_CLAIM_-_AND_THE_RETRIBUTIVE_LEGAL_ACTION_THAT_FOLLOWED9.pdf; 9_13_Fwd__Claim_of_[redacted]_-_10-1081147_001.pdf; 10_22_[redacted]CLAIM_&_R[redacted]_2ND_CLAIM.pdf; 10_25_Re__County_of_Los_Angeles_v._P[redacted]_LASC_-_Case_No._[redacted]Demand_to_withdraw_subpoena.pdf

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**From:** [redacted]
**Sent:** Saturday, June 11, 2011 6:43 PM
**To:** Kudo, Richard
**Cc:** [redacted]
**Subject:** Fwd: [redacted]et al. v. County of Los Angeles et al. CV--2340

What is the time frame on our case CV 11-2340 according to your understanding, if you have one? RESPOND

Has Judicial officer Block indicated a date on which he would publish something? RESPOND
We have not heard back from your clients regarding the last settlement proposal.

Did you share it with them? RESPOND
To be clear, please show us the document you circulated with that proposal
so we know you complied. We have told you about our suspicion that you are not even remotely paying attention and will simply attempt to wear down our resolve through the clumsy time consuming, energy and resource tapping judicial process. Ask Richard Mason about it. He loves the long drawn out litigation, more than some love poetry. It's funny how nice people get caught up in a weird business and wind up defending odd positions that make no sense and squander precious resources. I remember when he told me in an email that he would never settle, because he disagreed with us about the law... I asked him what he was talking about...we wanted reimbursement for the illegal impoundment of our virtual love ones. He reminded me that he had an old dog that died... I asked what six months of life-extension would be worth to him. You know his pension is quite robust because he's an old timer. He confessed, alot. It was a human moment. We don't get why someone doesn't organize the motion to settle under 913.2 -- I know, Diane would be embarassed but still, it's the way to go.

Please respond on Monday before 10am so that we can adjust our schedule.

* Also, the PRA requests below have still not been fulfilled. Ms. Jenkins has taken a new job in case you did not know, as Supervisor Ridley-Thomas's chief of staff. We were concerned that maybe you dropped another ball and wanted to be sure PRA fulfillment would be forthcoming.... in good faith, we will not seek legal action, as we hear you are struggling at trial these days ... but take the time to read this down and provide what has been appropriately requested.

And refrain, from future tampering of documents, such as the Lt. Real (post dated) bite report that is a bald faced lie
In County ink.

Thank you, Richard. Am I required to copy Nedra and Andrea on this? RESPOND

[redacted]

-----Original Message-----
From: [redacted]
To: aordin@counsel.lacounty.gov
Sent: Fri, Apr 8, 2011 5:09 pm
Subject: Fwd: [redacted] et al. v. County of Los Angeles et al. CV--2340

fyi
-----Original Message-----
From: [redacted]
To: njenkins@counsel.lacounty.gov
Cc: [redacted]
Sent: Fri, Apr 8, 2011 5:02 pm
Subject: [redacted] et al. v. County of Los Angeles et al. CV--2340

Nedra:

Awkwardly, we have not heard from you regarding our desire to meet and confer re: amending the complaint. Therefore, we will wait for your motion and respond with as much vigor as we can possibly muster, at the appropriate time. Hopefully, the Judicial officer will understand that we are not lawyers and look more closely and carefully at the facts than you have.

1) Are you aware of any relationship between your client, Alonso Real and Judge Manuel Real, the presiding judge in this matter? Pls Respond.

2) We are very concerned that instead of making any effort to settle our good claim, your actions and inactions have already increased the settlement demand and thus constitute a further squandering of limited County resources during a time when many critical services are in serious jeopardy. The motion that you proposed and then threatened, the other day, will burden the judge, increase the costs for all concerned, and cause more unwanted delay to an already protracted matter.

3) Unless you are sure that the defect in our complaint cannot be corrected by amendment, or some absolute bar to relief appears on the face of the complaint, we suggest that you refrain from taking such an action for the aforementioned as well as following reasons.

4) The Court will very likely deny a Rule 12 (b) 6 motion. Even if you ultimately obtain a dismissal with prejudice, it may not hold up... because we understand that dismissals for failure to state a claim have a high reversal rate on appeal.

5) You have refused to meet and confer or pass along your concerns in writing, thus we, in Pro per, do not understand the manner in which you want us to amend our complaint. For instance you verbally questioned Mr. Bowen's standing on some but not all of our claims. What about [redacted] standing? [redacted] standing? We asked you to provide this information in writing so we could understand what specifically you had in mind, and you said you were only obliged to speak to us individually, but then you failed to do that and never provided your confusing questions in writing.

6) The Court must decide whether the facts alleged in the complaint, if true, would entitle plaintiffs to some form of legal remedy. Unless the answer is unequivocally "no" any motion you file must be denied. Thus a Rule 12 (b) 6 dismissal is proper only where there is either a "lack of cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable theory." A cognizable claim or controversy is one that meets the basic criteria of viability for being tried or adjudicated before a particular tribunal. The term means that the claim or controversy is within the power or jurisdiction of a particular court to adjudicate.

7) "A suit should not be dismissed if it is possible to hypothesize facts, consistent with the complaint, that would make out a claim."

8) Normally, plaintiff is not required to anticipate in his or her complaint defenses that my be raised in the answer.

9) We urge you to speak to all your clients, as you are obliged to do, and then arrange to meet and confer on Monday.

10) You have asserted that settlement is 'premature.' We disagree. We think it is in fact long overdue. Please feel free to serve the documents you intend to file on we the plaintiffs at the Board Meeting on Tuesday. We will only be there until the meeting's end. If you agree to waive any concern re: one of us accepting on behalf of the other two of us, we approve that method of service, in the interest of avoiding the expenditure of a single additional penny of the taxpayers money in this kafka-esque waste of time. We are still awaiting information about the budget of this matter that Mr. Estabrook indicated accompany all litigations (that we loathe). And we still want to know why you sent a messenger to Malibu, without picking up the telephone, and at what cost?

11) Mediation? (third request)

12) We firmly believe that the factual contentions in our complaint have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

14) We have made numerous good faith efforts to obtain relevant information from Los Angeles County that clearly should have already been provided under the Public Records Act. The County Counsel's frequent, unreasonable with holding of information is beyond intolerable. To be very specific we are still waiting for all the Animal Control records that were requested formally in writing on October 20, 2010. (attached)

15) We believe that all law abiding residents who live on a road in California are permitted to be informed about and included in meetings or hearings with residents about their animals. We intend to bring the members of our community forward at the appropriate time, voluntarily, to testify about such meetings that we know took place on October 13, 2010 and other dates. As you know, those meetings, it is alleged, were critical in the the drafting and manufacturing of evidence for the vile and repugnant search and seizure warrant that was based on the insidious and nakedly malicious and retributive motives of your clients. Ask [redacted] or Joe Heath or Maria Chong-Castillo and many others. The attorneys who put forth the strategy of retaliation - that failed - are guilty of an egregious violation of the Rules of Professional conduct 8.4 or worse.

16) Any sanction imposed under rule 11 must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. Yet, Counselor Jenkins, you have refused to explain what you want to sanction plaintiffs for or about. You have ignored entreaties to meet and confer intended to ease the burden on the Court entirely. Counselor Jenkins, when you poked the plaintiffs in the chest with the threat of sanctions, as some form of threat, you undercut your own credibility. It is both preposterous and insulting to think that we, the moving parties in this grievous matter, should be sanctioned for declining to, as you put it, "walk away."

Have a nice weekend.

COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL
648 KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012-2713

Received
June 23, 2011
Commission on
State Mandates

TELEPHONE
(213) 974-1868
FACSIMILE
(213) 680-2165
TDD
(213) 633-0901

ANDREA SHERIDAN ORDIN
County Counsel

June 10, 2011

VIA E-MAIL & U.S. MAIL

[redacted]

**Re: Response to various communications to County officials and employees**

Dear [redacted]

This is in response to your requests for records under the Public Records Act (Govt. Code § 6250 et seq.) and for other information, received on May 31, 2011 and June 7, 2011, addressed to County officials and employees.

1. Enclosed e-mail request of May 31, 2011 to Ms. Logan regarding meetings of the Board of Supervisors:

a. Since I have been designated to be the contact person with respect to your non-litigation inquiries, Ms. Hamai respectfully declines your request for her to call you.

b. Meetings begin at approximately the time stated on the agenda; records of exact meeting beginning and ending times are not available.

c. Public comments are generally taken before closed session items are heard. The Board room was available for public comment prior to the beginning of the 10 am closed session on May 31, 2011. Another public comment period was available during the regular meeting which began at approximately 1 p.m. Any items a member of the public wishes to comment on may be noted on the form completed by each speaker.

d. You may access the County Code through the County website at http://lacounty.gov/wps/portal/lac. Click on "Public Information" in the top right corner of the page, then go to "County Code." When you reach the County Code page, you will find a search box, permitting you to type in a code section.

2. Enclosed e-mail request dated May 31, 2011 to various County officials and employees regarding ethics training:

Please note that Mr. Chu's December 29, 2010 letter was sent in response to the following question: "What documents on ethics are circulated to all county employees who deal with Risk? Please provide a copy."

Mr. Chu's statement that "The requested documents will not be produced because they do not exist" was responsive to your vague and ambiguous question, and did not contemplate your current follow-up question relating to training records and materials.

Your May 31, 2011 request is vague as to the time frame of the records requested. It is also vague and ambiguous as to who is meant by "the individuals who they have deputized to handle County claims under their delegated quasi-judicial authority."

The County has conducted over fifty AB 1234 Ethics instructor-led training sessions since September 2006 and also offers a web-based course through the Los Angeles County Learning Net. In accordance with AB 1234, the training is offered to elected County officials, members of certain County commissions, and employees designated by the County to receive such training. In addition, training is offered through the Fair Political Practices Commission and other local agencies.

In response to your request, we have attached electronic copies of our most recent training materials and the most recent certificates for the Board of Supervisors to our e-mail with this letter. You may print the training materials at your own expense, if you wish to do so.

3. Enclosed e-mail dated June 7, 2011 to Katherine Medina regarding three years of claims that have been held for your review for over six months:

As Ms. Medina advised you on June 1, 2011, you have only reviewed three months of the three years of claims (2007-2009) that you requested to review in January 2011. The claims will be returned to storage on June 15, 2011. You may review these claims prior to that date. If you cannot review them by June 15, 2011, you may request some of the records from storage at some point in the future when you are ready to resume your review.

You may forward any further written questions to me.

Very truly yours,

ANDREA SHERIDAN ORDIN
County Counsel

By Diane C. Reagan

DIANE C. REAGAN
Principal Deputy County Counsel
Health Services Division

DCR:vn
Enclosures (training materials and certificates by e-mail only)

c: [redacted]

Received
June 23, 2011
Commission on
State Mandates

**Reagan, Diane**

**From:** Reagan, Diane
**Sent:** Wednesday, June 08, 2011 12:31 PM
**To:** Reagan, Diane
**Subject:** FW: Meeting Schedule

**From:** [redacted]
**Sent:** Tuesday, May 31, 2011 11:49 AM
**To:** Logan, Janet
**Cc:** ExecutiveOffice
**Subject:** Meeting Schedule

1) Please ask Ms. Hamaii to give me a call. Thank you.

2) How long was this mornings closed session? I'm sure there will be a recap of any actions taken etc. What time did the supervisors go in and come out?

Also, I am confused by the following:From county website:**NOTE: A Special Meeting will be held on Tuesday, May 31, 2011 at 10:00 a.m. for the Purpose of meeting in Closed Session. The Special Agenda is attached to the Regular Meeting Agenda.**

From the 10:00am agenda:**"Opportunity for members of the public to address the Board on items of interest that are within the subject matter jurisdiction of the Board."**

3) How can members of the public address the board on only closed-session items?

We may need an opinion on that.

In any case, all of the items on the agenda should be available at 1:00pm since only some closed-session items were

scheduled for this morning. Public Comment should be up first, as a courtesy to the public.

4) Finally, please provide in connection with the PRA a clear link to the text of **County Code Section 3.100.030A -**

I have had trouble finding it.

**Reagan, Diane**

**From:** Reagan, Diane
**Sent:** Wednesday, June 08, 2011 12:28 PM
**To:** Reagan, Diane
**Subject:** FW: ETHICS IN LA COUNTY GOV'T --

---

**From:** [redacted]]
**Sent:** Tuesday, May 31, 2011 5:16 PM
**To:** Kapur, Leela; jsnyder@da.lacounty.gov; njenkins@bos.lacounty.gov; lmilhiser@ceo.lacounty.gov
**Subject:** ETHICS IN LA COUNTY GOV'T --

Deputy Kapur:

As you know we are very interested in Ethics in local government. All of our numerous inquiries about the manner in which our local county officials have been trained on ethics have been responded to in one sentence written by Brian Chu on December 29, 2010:

*"The requested documents [on ethics] will not be produced because they do not exist."*

Cities, counties and special districts in California are required by law (AB 1234, Chapter 700, Stats. of 2005) to provide ethics training to their local officials. A free on-line ethics training course is available to satisfy the local government ethics training requirement.

Government Code section 53235.2 requires local agency officials to maintain records that indicate both the dates of training and the entity that provided the training. These records are disclosable public records and must be maintained for five years after the training.

Please provide these records and the training materials for the Board of Supervisors and the individuals who they have deputized to handle County claims under their delegated quasi-judicial authority.

AB 1234 Ethics Training for Local Officials

Other training courses may be made available from commercial enterprises, nonprofit organizations and a local agency's own legal counsel. Persons preparing ethics training courses should review the Attorney General's guidelines.

[redacted]

**Reagan, Diane**

**From:** Reagan, Diane
**Sent:** Wednesday, June 08, 2011 12:33 PM
**To:** Reagan, Diane
**Subject:** FW: Public Records Request for Claims 2007-2009

**From:** [redacted]
**Sent:** Tuesday, June 07, 2011 9:08 AM
**To:** Medina, Katherine
**Subject:** Re: Public Records Request for Claims 2007-2009

I have different records about which records I have reviewed. I admit it is a lot of material but I still feel that I have the right to review those records and will continue as my schedule permits.
It would go much faster if the Board were able to help resolve the parking validation issue.
The issue of parking so far has been unresolved and thus, I will discuss it with the Board of Supervisors.

Only the Board can accommodate the residents regarding research projects of any kind involving attorney work product. Thank you for your patience.

Please continue to provide the as needed records on Tuesdays until further notice.

[redacted]
CRD3

-----Original Message-----
From: Medina, Katherine <KMedina@bos.lacounty.gov>
To: [redacted]
Sent: Wed, Jun 1, 2011 4:25 pm
Subject: Public Records Request for Claims 2007-2009

Dear [redacted]:

You submitted a request on January 4, 2011 to review claims for the years 2007 through 2009. You have reviewed three months of the three years worth of claims to date. We will maintain the following claims for your review in our office for two more weeks:

January 2007 through December 2009

If you have not completed your review by June 15, 2011, we shall return the records to storage.

Katherine Medina
Customer Service Center
Executive Office, Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 W. Temple Street
Los Angeles, CA 90012
213 974-1411

Received
June 23, 2011
Commission on
State Mandates

**Los Angeles County's Proposed Parameters and Guidelines**
**California Public Record Act Test Claims (02-TC-10, 02-TC-51)**

**Declaration of Nancy Takade**

I, Nancy Takade, state and declare as follows:

Since December 1990, I have been an attorney licensed to practice in the State of California. I am currently employed by the County of Los Angeles, as a Principal Deputy County Counsel in the Office of the County Counsel. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief, which I believe to be true. If called as a witness, I could and would competently testify to the matters stated herein.

The Office of County Counsel ("Office") is administratively divided into divisions ("Divisions") such as Law Enforcement, Social Services, Health Services, Labor and Employment, Government Services, etc. The Divisions provide legal advice and support to the Board of Supervisors, the County's thirty-seven departments and the County's other numerous agencies, commissions, boards, and committees ("Client Departments").

I have been a staff attorney in the Government Services Division for nearly fourteen (14) years. As is the case with many staff attorneys in the Office, my assignments include providing assistance to various Client Departments in responding to California Public Records Act ("CPRA"). In addition, since 2003, I have acted as "office coordinator" of matters relating to the CPRA. The office coordinator provides guidance and assistance to other staff attorneys advising the Client Departments on matters relating to the CPRA.

Upon receiving a CPRA request, a Client Department will often require legal advice and/or assistance. This is particularly true when a request is worded in an extremely broad or general manner, covers a number of years, requires referral to and/or coordination with numerous County departments, requires extraction and compilation of electronic information, impacts privacy rights, relates to matters that are exempt from disclosure, or any combination thereof. In such instances, a staff attorney assigned to the Client Department will assist department staff in understanding the request, locating and identifying potentially responsive records, determining whether records are disclosable or exempt from disclosure, providing appropriate responses to the requests, and any other necessary assistance.

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I have read the conclusion of the Commission on State Mandates' California Public Records Act decision ("Commission Decision"), issued on May 31, 2011, finding that the following local agency services are reimbursable:

> "1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic 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. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)
>
> "2. Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)
>
> "3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)
>
> "4. When a member of the public requests to inspect a public record or obtain a copy of a public record:
>
> > "a. 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;
> >
> > "b. describe the information technology and physical location in which the records exist; and
> >
> > "c. provide suggestions for overcoming any practical basis for denying access to the records or information sought.
>
> "These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set

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forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

"5. [Not applicable to counties.]

"6. [Not applicable to counties.]

"7. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).)"

I have reviewed Attachment A which describes and summarizes the reasonably necessary activities for inclusion in Los Angeles County's proposed parameters and guidelines as reimbursable service components. These reasonably necessary activities include the services that the attorneys in this Office currently provide and will continue to provide to Client Departments to assist them in performing the reimbursable CPRA activities described in the Commission Decision.

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

Executed on June 21, 2011, at Los Angeles, California.

Nancy Takade

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## Attachment A

### *'Reasonably Necessary' Activities* [1]
### Los Angeles County's Proposed Parameters and Guidelines
### California Public Record Act Test Claims (02-TC-10, 02-TC-51)

**A.** ***One-time Activities (Local Agencies)***

1. To develop policies, protocols, manuals and procedures for implementing following reimbursable California Public Record Act (CPRA) activities:

   a. Providing a copy of electronic records exist in the electronic format requested if the format is one used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9, subd. (a)(2).)

   b. Within 10 days from receipt of a request for a copy of records, determining whether the request, in whole or in part, seeks copies of disclosable records in the possession of the local agency and notifying the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c).)

   c. If the 10 day time limit must be extended by the local agency due to "unusual circumstances" as defined in Government Code § 6253, subd. (c)(1)-(4), providing written notice to the requester, setting forth the reasons for the extension and the date on which a determination is expected to be provided. (Gov. Code, § 6253, subd. (c).)

   d. When a member of the public requests to inspect or obtain a copy of a public record, and the request is not focused and effective nor reasonably describes an identifiable record or records:

      (1) assisting 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) 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.

      (Gov. Code, § 6253.1, subds. (a) and (d).)

   e. If a request is denied, in whole or in part, providing a written response to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b).)

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[1] Indicated in *italics*.

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2. To develop data base software or manual system(s) for tracking and processing public records request actions to implement reimbursable test claim provisions (as stated above).

3. To purchase or lease computers to monitor and document public records request actions to implement reimbursable test claim provisions (as stated above). (Use for other purposes is not reimbursable.)

4. To develop or update web site(s) for public record act requests to implement reimbursable test claim provisions (as stated above).

***B. Continuing Activities (Local Agencies)***

1. Annual training programs on implementing reimbursable test claim provisions, including reimbursement for trainee and trainer participation, curriculum development, equipment and supplies.

2. Determining within 10 days of receipt of request as to whether there are any disclosable records responsive to the request, and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination, including:

   a. Receiving, logging and tracking oral (in-person or telephone) or written (hand delivered, mailed, e-mail and fax requests) to monitor compliance with the 10 day time period.

   b. Determining whether the agency would have custody or control of the records sought by the requester.

   c. Determining whether the request reasonably describes any identifiable records(s) and conferring with the requester if clarification is needed.

   d. Meeting and/or conferring with local agency staff to identify location of and access to potentially responsive records. If multiple departments have oversight and/or custody of the requested data or information, meeting and/or conferring with those entities to determine coordination of efforts, as appropriate.

   e. Conducting legal and factual review, research and analysis to determine whether the requested record(s) or parts thereof are disclosable or exempt from disclosure. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the costs of legal data base services.

   f. Developing and reviewing language to notify the requester of the determination on the request and where appropriate, the reasons for the determination.

   g. Reviewing the record(s) prior to transmission to the requester to ensure that responsive disclosable records are provided by the agency.

   h. Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested record(s).

i. Copying or saving record(s) and accompanying correspondence.

j. Sending or transmitting the records to the requester.

k. Tracking the shipment of requested CPRA records.

3. Determining when the 10-day response period Government Code section 6253 must be extended due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c), and the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. Activities include:

   a. Determining the existence of the "unusual circumstances" (in Government Code section 6253, subdivision (c) to justify an extension of the 10 day time limit in providing the requested document(s), which include:

      (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.

   b. Meeting and/or conferring with local agency staff, including legal staff, to determine the date on which a determination is expected to be dispatched to the person making the request.

   c. Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched.

   d. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the extension notice and accompanying correspondence.

   e. Copying or saving the extension notice and accompanying correspondence.

   f. Sending or transmitting the notice and accompanying correspondence to the requester.

g. Tracking delivery of the notice and accompanying correspondence to the requester.

4. Determining when a request of a member of the public requests to inspect a public record or obtain a copy of a public record is neither focused and effective nor reasonably describes an identifiable record or records, and performing the following activities to the extent reasonably necessary:

a. assisting 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;

b. describing the information technology and physical location in which the records exist; and

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

5. To implement Section (4) a., b., and c, above:

a. Receiving, logging and tracking oral (in-person or telephone) or written (hand delivered, mailed, e-mail and fax requests) to monitor compliance with the 10 day time period.

b. Determining whether the agency would have custody or control of the records sought by the requester.

c. Determining whether the request reasonably describes any identifiable records(s) and conferring with the requester if clarification is needed.

d. Meeting and/or conferring with local agency staff to identify location of and access to potentially responsive records. If multiple departments have oversight and/or custody of the requested data or information, meeting and/or conferring with those entities to determine coordination of efforts, as appropriate

e. Conducting legal and factual review, research and analysis to determine whether the requested record(s) or parts thereof are disclosable or exempt from disclosure. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the costs of legal data base services.

f. Identifying litigation, claims, and related record(s) which may be disclosable and responsive to the request or to the purpose of the request, if stated.

g. Developing and reviewing language to notify the requester of the determination on the request and where appropriate, the reasons for the determination.

h. Reviewing the record(s) prior to transmission to the requester to ensure that responsive disclosable records are provided by the agency.

i. Preparing, and obtaining supervisory approval and signature of,

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correspondence accompanying the requested record(s).

j. Copying or saving record(s) and accompanying correspondence.

k. Sending or transmitting the records to the requestor.

l. Tracking the shipment of requested CPRA records.

6. These activities do not include when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

7. When a request is denied, in whole or in part, preparing or reviewing a written response to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982):

a. Meeting and/or conferring with staff, including but not limited to legal staff, to review the basis for the determination to deny a request in whole or in part.

b. Drafting, reviewing, and editing a written response that includes a determination that the request is denied.

c. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the denial response and accompanying correspondence.

d. Copying or saving the written denial and accompanying correspondence.

e. Sending the written denial and accompanying correspondence to the requester.

f. Tracking delivery of the written denial and accompanying correspondence to the requester.

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**Los Angeles County's Proposed Parameters and Guidelines**
**California Public Record Act Test Claims (02-TC-10, 02-TC-51)**

**Declaration of Rick Brouwer**

I, Rick Brouwer, make the following declaration and statement under oath:

I am a licensed, practicing attorney in the State of California. I have been practicing law since 1992 and my State Bar No. is 162220. I am currently employed by the County of Los Angeles, in the Office of the County Counsel as a Principal Deputy County Counsel.

As a Principal Deputy County Counsel my primary job responsibility is to supervise the Los Angeles County Sheriff's Department's Advocacy Unit. The Advocacy Unit has six (6) lawyers and six (6) support staff and is responsible for handling all peace officer related matters including labor and employment litigation, advice, document requests, subpoena's and other legal matters for the Sheriff's Department. The Advocacy Unit is stationed in the Sheriff's Department.

I declare that I have supervised the Advocacy Unit for the Sheriff's Department for thirteen (13) years. During that time period, I have been personally responsible for assisting the Sheriff's department in responding to public record act requests pursuant to the California Public Records Act (CPRA).

I declare that I have read the conclusion of the Commission on State Mandates' California Public Records Act decision, issued on May 31, 2011, finding that the following local agency services are reimbursable:

"1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic 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. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)

2. Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

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3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

4. When a member of the public requests to inspect a public record or obtain a copy of a public record:

a. 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;

b. describe the information technology and physical location in which the records exist; and

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

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

5. Not applicable to local agencies.

6. Not applicable to local agencies.

7. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).)

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I declare that I have analyzed the activities that I have been doing in assisting the Los Angeles County Sheriff's department to comply with the additional or supplemental public record act requirements set forth above.

I declare that it is my information and belief that the legal activities performed by the County Counsel Unit stationed at the Los Angeles County Sheriff's department are reasonably necessary in the Sheriff's implementation of the above provisions of the California Public Record Act.

I declare that I have reviewed Attachment A which includes and summarizes County Counsels' reasonably necessary activities for inclusion in Los Angeles County's proposed parameters and guidelines as reimbursable service components.

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.

6/13/2011
Date and Place

Signature

**Attachment A**

**Declaration of Rick Brouwer**

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## Attachment A

## Declaration of Rick Brouwer

## 'Reasonably Necessary' *(Italicized)* Activities
## Los Angeles County's Proposed Parameters and Guidelines
## California Public Record Act Test Claims (02-TC-10, 02-TC-51)

A. ***One-time Activities (Local Agencies)***

1. ***To develop policies, protocols, manuals and procedures for implementing following reimbursable California Public Record Act (CPRA) provisions***:

   a. Determining whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)

   b. Within 10 days, determining whether records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable; and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination. ((Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

   c. When an extension of time is required in complying with the 10 day requirement, developing or reviewing language providing a legal basis for the extension. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

   d. When a member of the public requests to inspect a public record or obtain a copy of a public record:

      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; and

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

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

e. If a request is denied, in whole or in part, preparing or reviewing a written response to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).

***(1) To develop data base software or manual system(s) for tracking and processing public records request actions to implement reimbursable test claim provisions (as stated above).***

***(2) To purchase or lease computers to monitor and document public records request actions to implement reimbursable test claim provisions (as stated above). (Use for other purposes is not reimbursable.)***

***(3) To develop or update web site(s) for public record act requests to implement reimbursable test claim provisions (as stated above).***

*B.* ***Continuing Activities (Local Agencies)***

***1. Annual training programs on implementing reimbursable test claim provisions, including reimbursement for trainee and trainer participation, curriculum development, equipment and supplies.***

2. Determining whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)

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*a. Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests for electronic public records.*
*b. Determining whether the electronic public records request falls within the agency's jurisdiction.*
*c. Determining whether the request reasonably describes any identifiable electronic records(s) and conferring with the requestor if clarification is needed.*
*d. Meeting and/or conferring with specialized systems and/or other local agency staff to identify access to pertinent electronic records. If external public entities have oversight and/or ownership of the requested electronic data or information, meeting and/or conferring with those entities to provide the requested electronic data or information.*
*e. Conducting legal reviews, research and analysis of the requested electronic record(s) to determine if the requested electronic record(s) or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the associated costs of legal data base services.*
*f. Processing the requested electronic record(s) or parts thereof that are disclosable.*
*g. Reviewing the electronic record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions.*
*h. Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested electronic record(s).*
*i. Copying or saving electronic record(s) and accompanying correspondence.*
*j. Sending or transmitting the electronic records to the requestor.*
*k. Tracking the shipment of requested CPRA electronic records.*

3. Within 10 days, determining whether records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable; and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination. ((Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

*a. Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests to comply with the 10 day time*

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***limit to notify the requestor if the requested record(s) or parts thereof are disclosable and the reason for the determination.***

b. ***Determining whether the public record(s) request falls within the agency's jurisdiction.***
c. ***Determining whether the request reasonably describes any identifiable records(s) and conferring with the requestor if clarification is needed.***
d. ***Meeting and/or conferring with local agency staff to identify access to pertinent records. If external public entities have oversight and/or ownership of the requested data or information, meeting and/or conferring with those entities to provide the requested data or information.***
e. ***Conducting legal reviews, research and analysis of the requested records to determine if the requested electronic record(s) or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the costs of legal data base services.***
f. ***Within 10 days of receipt of the public record(s) request, developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination.***
g. ***Processing and reviewing the record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions***
h. ***Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested record(s).***
i. ***Copying or saving record(s) and accompanying correspondence.***
j. ***Sending or transmitting the records to the requestor.***
k. ***Tracking the shipment of requested CPRA records.***

4. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

a. ***Reviewing the following "unusual circumstances" (in Government Code section 6253, subdivision (c)(1)-(4)) to determine which are***

*relevant in justifying an extension of the 10 day time limit in providing the requested document(s).*

*(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.*

*b. Meeting and/or conferring with local agency staff, including legal staff, to determine the date on which a determination is expected to be dispatched to the person making the request. If other establishments have oversight and/or ownership of the requested data or information, meeting and/or conferring with those staff to ascertain an expected determination date.*

*c. Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched.*

*d. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the extension notice and accompanying correspondence.*

*e. Copying or saving the extension notice and accompanying correspondence.*

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*f. Sending or transmitting the notice and accompanying correspondence to the requestor.*

*g. Tracking delivery of the notice and accompanying correspondence.*
*to the requestor.*

(5) When a member of the public requests to inspect a public record or obtain a copy of a public record:

a. 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;

b. describe the information technology and physical location in which the records exist; and

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

To implement Sections (5) a., b., c. (above):

*1. Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests to comply with public requests to inspect a public record or obtain a copy of a public record.*

*2. Determining whether the public record(s) request falls within the agency's jurisdiction.*

*3. Determining whether the request reasonably describes any identifiable records(s) and conferring with the requestor if clarification is needed.*

*4. Meeting and/or conferring with local agency staff to identify access to pertinent records. If external public entities have oversight and/or ownership of the requested data or information, meeting and/or conferring with those entities to provide the requested data or information.*

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5. ***Conducting legal reviews, research and analysis of the requested records to determine if the requested record(s) or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the costs of legal data base services.***

6. ***Identifying litigation, claims, and related record(s) which may be disclosable and may be responsive to the request or to the purpose of the request, if stated; and provide suggestions for overcoming any practical basis for denying access to the records or information sought.***

7. ***Developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination.***

8. ***Processing and reviewing the record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions***

9. ***Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested record(s).***

10. ***Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested record(s).***

11. ***Copying or saving record(s) and accompanying correspondence.***

12. ***Sending or transmitting the records to the requestor.***

13. ***Sending or transmitting the records to the requestor.***

14. ***Tracking the shipment of requested CPRA records.***

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

6.If a request is denied, in whole or in part, preparing or reviewing a written response to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).

***If a written request for inspection or copies of public records is denied in whole or in part:***

a. ***Meeting and/or conferring with staff, including but not limited to legal staff, to review and finalize the analysis, findings and conclusions providing the basis for the denial determination.***

b. ***Drafting and editing a written response that includes a determination that the request is denied.***

c. ***Preparing, and obtaining agency head, or his or her designee, approval and signature of, the denial response and accompanying correspondence.***

d. ***Copying or saving the written denial response and accompanying correspondence.***

e. ***Copying or saving the denial response and accompanying correspondence.***

f. ***Sending the denial response and accompanying correspondence to the requestor.***

g. ***Tracking delivery of the denial response and accompanying correspondence to the requestor.***

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**Los Angeles County's Proposed Parameters and Guidelines**
**California Public Record Act Test Claims (02-TC-10, 02-TC-51)**

**Declaration of Shaun Mathers**

I, Shaun Mathers, make 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 conclusion of the Commission on State Mandates' California Public Records Act decision, issued on May 31, 2011, finding that the following local agency services are reimbursable:

"1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic 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. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)

2. Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

4. When a member of the public requests to inspect a public record or obtain a copy of a public record:

a. 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;

b. describe the information technology and physical location in which the records exist; and

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

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

5. Not applicable to local agencies.

6. Not applicable to local agencies.

7. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).)

I declare that I have analyzed the activities that I and Risk Management Bureau staff of the Los Angeles County Sheriff's Department are performing to comply with the additional or supplemental public record act requirements set forth above.

I declare that it is my information and belief that the activities that I and Risk Management Bureau staff of the Los Angeles County Sheriff's Department perform to comply with the additional or supplemental public record act requirements set forth above are reasonably necessary in the Sheriff's implementation of the above provisions of the California Public Record Act.

I declare that I have reviewed Attachment A which includes and summarizes reasonably necessary activities to comply with the additional or supplemental

public record act requirements set forth above for inclusion in Los Angeles County's proposed parameters and guidelines as reimbursable service components.

I declare that I have prepared Attachment B which includes examples and costs of reasonably necessary activities performed by myself and Risk Management Bureau staff of the Los Angeles County Sheriff's Department to comply with the additional or supplemental public record act requirements set forth above

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.

6/16/11 Los Angeles, CA

Date and Place

Signature

## Attachment A

### 'Reasonably Necessary' *(Italicized)* Activities
### Los Angeles County's Proposed Parameters and Guidelines
### California Public Record Act Test Claims (02-TC-10, 02-TC-51)

A. ***One-time Activities (Local Agencies)***

1. ***To develop policies, protocols, manuals and procedures for implementing following reimbursable California Public Record Act (CPRA) provisions:***

   a. Determining whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)

   b. Within 10 days, determining whether records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable; and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination. ((Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

   c. When an extension of time is required in complying with the 10 day requirement, developing or reviewing language providing a legal basis for the extension. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

   d. When a member of the public requests to inspect a public record or obtain a copy of a public record:

      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; and

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

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

e. If a request is denied, in whole or in part, preparing or reviewing a written response to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).

***(1) To develop data base software or manual system(s) for tracking and processing public records request actions to implement reimbursable test claim provisions (as stated above).***

***(2) To purchase or lease computers to monitor and document public records request actions to implement reimbursable test claim provisions (as stated above). (Use for other purposes is not reimbursable.)***

***(3) To develop or update web site(s) for public record act requests to implement reimbursable test claim provisions (as stated above).***

***B. Continuing Activities (Local Agencies)***

***1. Annual training programs on implementing reimbursable test claim provisions, including reimbursement for trainee and trainer participation, curriculum development, equipment and supplies.***

2. Determining whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)

*a. Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests for electronic public records.*
*b. Determining whether the electronic public records request falls within the agency's jurisdiction.*
*c. Determining whether the request reasonably describes any identifiable electronic records(s) and conferring with the requestor if clarification is needed.*
*d. Meeting and/or conferring with specialized systems and/or other local agency staff to identify access to pertinent electronic records. If external public entities have oversight and/or ownership of the requested electronic data or information, meeting and/or conferring with those entities to provide the requested electronic data or information.*
*e. Conducting legal reviews, research and analysis of the requested electronic record(s) to determine if the requested electronic record(s) or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the associated costs of legal data base services.*
*f. Processing the requested electronic record(s) or parts thereof that are disclosable.*
*g. Reviewing the electronic record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions.*
*h. Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested electronic record(s).*
*i. Copying or saving electronic record(s) and accompanying correspondence.*
*j. Sending or transmitting the electronic records to the requestor.*
*k. Tracking the shipment of requested CPRA electronic records.*

3. Within 10 days, determining whether records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable; and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination. ((Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

*a. Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests to comply with the 10 day time*

***limit to notify the requestor if the requested record(s) or parts thereof are disclosable and the reason for the determination.***

b. ***Determining whether the public record(s) request falls within the agency's jurisdiction.***
c. ***Determining whether the request reasonably describes any identifiable records(s) and conferring with the requestor if clarification is needed.***
d. ***Meeting and/or conferring with local agency staff to identify access to pertinent records. If external public entities have oversight and/or ownership of the requested data or information, meeting and/or conferring with those entities to provide the requested data or information.***
e. ***Conducting legal reviews, research and analysis of the requested records to determine if the requested electronic record(s) or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the costs of legal data base services.***
f. ***Within 10 days of receipt of the public record(s) request, developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination.***
g. ***Processing and reviewing the record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions***
h. ***Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested record(s).***
i. ***Copying or saving record(s) and accompanying correspondence.***
j. ***Sending or transmitting the records to the requestor.***
k. ***Tracking the shipment of requested CPRA records.***

4. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

   a. ***Reviewing the following "unusual circumstances" (in Government Code section 6253, subdivision (c)(1)-(4)) to determine which are***

***relevant in justifying an extension of the 10 day time limit in providing the requested document(s).***

***(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.***

***b. Meeting and/or conferring with local agency staff, including legal staff, to determine the date on which a determination is expected to be dispatched to the person making the request. If other establishments have oversight and/or ownership of the requested data or information, meeting and/or conferring with those staff to ascertain an expected determination date.***

***c. Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched.***

***d. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the extension notice and accompanying correspondence.***

***e. Copying or saving the extension notice and accompanying correspondence.***

*f. Sending or transmitting the notice and accompanying correspondence to the requestor.*

*g. Tracking delivery of the notice and accompanying correspondence.*
*to the requestor.*

(5) When a member of the public requests to inspect a public record or obtain a copy of a public record:

a. 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;

b. describe the information technology and physical location in which the records exist; and

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

To implement Sections (5) a., b., c. (above):

*1. Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests to comply with public requests to inspect a public record or obtain a copy of a public record.*

*2. Determining whether the public record(s) request falls within the agency's jurisdiction.*

*3. Determining whether the request reasonably describes any identifiable records(s) and conferring with the requestor if clarification is needed.*

*4. Meeting and/or conferring with local agency staff to identify access to pertinent records. If external public entities have oversight and/or ownership of the requested data or information, meeting and/or conferring with those entities to provide the requested data or information.*

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5. ***Conducting legal reviews, research and analysis of the requested records to determine if the requested record(s) or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the costs of legal data base services.***

6. ***Identifying litigation, claims, and related record(s) which may be disclosable and may be responsive to the request or to the purpose of the request, if stated; and provide suggestions for overcoming any practical basis for denying access to the records or information sought.***

7. ***Developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination.***

8. ***Processing and reviewing the record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions***

9. ***Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested record(s).***

10. ***Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested record(s).***

11. ***Copying or saving record(s) and accompanying correspondence.***

12. ***Sending or transmitting the records to the requestor.***

13. ***Sending or transmitting the records to the requestor.***

14. ***Tracking the shipment of requested CPRA records.***

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

6.If a request is denied, in whole or in part, preparing or reviewing a written response to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).

***If a written request for inspection or copies of public records is denied in whole or in part:***

a. ***Meeting and/or conferring with staff, including but not limited to legal staff, to review and finalize the analysis, findings and conclusions providing the basis for the denial determination.***

b. ***Drafting and editing a written response that includes a determination that the request is denied.***

c. ***Preparing, and obtaining agency head, or his or her designee, approval and signature of, the denial response and accompanying correspondence.***

d. ***Copying or saving the written denial response and accompanying correspondence.***

e. ***Copying or saving the denial response and accompanying correspondence.***

f. ***Sending the denial response and accompanying correspondence to the requestor.***

g. ***Tracking delivery of the denial response and accompanying correspondence to the requestor.***

# ATTACHMENT B
# PUBLIC RECORDS ACT REQUESTS
# 2004 - 2010

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| | 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.

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**Exhibit 4 – Page 13**

# 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 |

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COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
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LOS ANGELES, CALIFORNIA 90012-3873
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WENDY L. WATANABE
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ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JAMES L. SCHNEIDERMAN
JUDI E. THOMAS

**Los Angeles County's Proposed Parameters and Guidelines**
**California Public Records Act Test Claims (02-TC-10, 02-TC-51)**

**Declaration of Leonard Kaye**

I, Leonard Kaye, make the following declaration and statement under oath:

I, Leonard Kaye, Los Angeles County's [County] representative in this matter, have prepared the attached parameters and guidelines (Ps&Gs) which detail reimbursement provisions for local agency implementation of the California Public Records Act (CPRA) State mandates found to be reimbursable by the Commission on State Mandates (Commission) on May 26, 2011.

I declare that I drafted a list of statutory requirements and 'reasonably necessary' activities (under Government Code section 17557(a)) in implementing the (above stated) reimbursable CPRA State mandates.

I declare that I provided County staff responsible for implementing CPRA with the Commission's CPRA reimbursement decision and the (above stated) statutory requirements and 'reasonably necessary' activities; and, that I incorporated their declarations in the County's proposed CPRA Ps&Gs.

I declare that it is my information and belief that the County's proposed CPRA Ps&Gs comply with funding requirements under article XIIIB, section 6 of the California Constitution and Government Code section 17500 et seq. and that reimbursement is required as claimed in the County's proposed CPRA Ps&Gs.

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.

Los Angeles CA 6/20/11
Date and Place

Leonard Kaye
Signature

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# Summary of the California Public Records Act 2004

*California Attorney General's Office*

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# SUMMARY
# CALIFORNIA PUBLIC RECORDS ACT
# GOVERNMENT CODE SECTION[1] 6250 ET SEQ.
**August, 2004**

## I

## OVERVIEW

Legislation enacting the California Public Records Act (hereinafter, "CPRA") was signed in 1968, culminating a 15-year-long effort to create a general records law for California. Previously, one was required to look at the law governing the specific type of record in question in order to determine its disclosability. When the CPRA was enacted, an attempt was made to remove a number of these specific laws from the books. However, preexisting privileges such as the attorney-client privilege have been incorporated by reference into the provisions of the CPRA.

The fundamental precept of the CPRA is that governmental records shall be disclosed to the public, upon request, unless there is a specific reason not to do so. Most of the reasons for withholding disclosure of a record are set forth in specific exemptions contained in the CPRA. However, some confidentiality provisions are incorporated by reference to other laws. Also, the CPRA provides for a general balancing test by which an agency may withhold records from disclosure, if it can establish that the public interest in nondisclosure clearly outweighs the public interest in disclosure.

There are two recurring interests that justify most of the exemptions from disclosure. First, several CPRA exemptions are based on a recognition of the individual's right to privacy (e.g., privacy in certain personnel, medical or similar records). Second, a number of disclosure exemptions are based on the government's need to perform its assigned functions in a reasonably efficient manner (e.g., maintaining confidentiality of investigative records, official information, records related to pending litigation, and preliminary notes or memoranda).

If a record contains exempt information, the agency generally must segregate or redact the exempt information and disclose the remainder of the record. If an agency improperly withholds records, a member of the public may enforce, in court, his or her right to inspect or copy the records and receive payment for court costs and attorney's fees.

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1. All section references are to the Government Code unless otherwise indicated.

II

## PUBLIC ACCESS v. RIGHTS OF PRIVACY

### A. Right To Monitor Government

In enacting the CPRA, the Legislature stated that access to information concerning the conduct of the public's business is a fundamental and necessary right for every person in the State.[1] Cases interpreting the CPRA also have emphasized that its primary purpose is to give the public an opportunity to monitor the functioning of their government.[2] The greater and more unfettered the public official's power, the greater the public's interest in monitoring the governmental action.[3]

### B. The Right Of Privacy

Privacy is a constitutional right and a fundamental interest recognized by the CPRA.[4] Although there is no general right to privacy articulated in the CPRA, the Legislature recognized the individual right to privacy in crafting a number of its exemptions. Thus, in administering the provisions of the CPRA, agencies must sometimes use the general balancing test to determine whether the right of privacy in a given circumstance outweighs the interests of the public in access to the information. If personal or intimate information is extracted from a person (e.g., a government employee or appointee, or an applicant for government employment/appointments a precondition for the employment or appointment), a privacy interest in such information is likely to be recognized.[5] However, if information is provided voluntarily in order to acquire a benefit, a privacy right is less likely to be recognized.[6] Sometimes, the question of disclosure depends upon whether the invasion of an individual's privacy is sufficiently invasive so as to outweigh the public interest in disclosure.

III

## SCOPE OF COVERAGE

### A. Public Record Defined

#### 1. Identifiable Information

The public may inspect or obtain a copy of identifiable public records.[7] Writings held by state or local government are public records.[8] A writing includes all forms of recorded information that currently exist or that may exist in the future. [9] The essence of the CPRA is to provide access to information, not merely documents and files.[10] However, it is not enough to provide extracted information to the requestor, the document containing the information must be provided. In order to invoke the CPRA, the request for records must be both specific and focused. The requirement of clarity must be tempered by the reality that

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a requester, having no access to agency files or their scheme of organization, may be unable to precisely identify the documents sought. Thus, writings may be described by their content.[11]

To the extent reasonable, agencies are generally required to assist members of the public in making focused and effective requests for identifiable records.[12] One legislatively-approved method of providing assistance is to make available an index of the agency's records.[13] A request for records may be made orally or in writing.[14] When an oral request is received, the agency may wish to consider confirming the request in writing in order to eliminate any confusion regarding the request.

### 2. Computer Information

When a person seeks a record in an electronic format, the agency shall, upon request, make the information available in any electronic format in which it holds the information.[15] Computer software developed by the government is exempt from disclosure.[16]

## B. Agencies Covered

All state and local government agencies are covered by the CPRA.[17] Non-profit and for-profit entities subject to the Ralph M. Brown Act are covered as well.[18] The CPRA is not applicable to the Legislature, which is instead covered by the Legislative Open Records Act.[19] The judicial branch is not bound by the CPRA, although most court records are disclosable as a matter of public rights of access to courts.[20] Federal government agencies are covered by the Federal Freedom of Information Act.[21]

## C. Member Of The Public

The CPRA entitles natural persons and business entities as members of the public to inspect public records in the possession of government agencies.[22] Persons who have filed claims or litigation against the government, or who are investigating the possibility of so doing, generally retain their identity as members of the public.[23] Representatives of the news media have no greater rights than members of the public.[24] Government employees acting in their official capacity are not considered to be members of the public.[25] Individuals may have greater access to records about themselves than public records, generally. [26]

## D. Right To Inspect And Copy Public Records

Records may be inspected at an agency during its regular office hours.[27] The CPRA contains no provision for a charge to be imposed in connection with the mere inspection of records. Copies of records may be obtained for the direct cost of duplication, unless the Legislature has established a statutory fee.[28] The direct cost of duplication includes the pro rata expense of the duplicating equipment utilized in making a copy of a record and, conceivably, the pro rata expense in terms of staff time (salary/benefits) required to produce the copy. [29] A staff

person's time in researching, retrieving and mailing the record is not included in the direct cost of duplication. By contrast, when an agency must compile records or extract information from an electronic record or undertake programming to satisfy a request, the requestor must bear the full cost, not merely the direct cost of duplication.[30] The right to inspect and copy records does not extend to records that are exempt from disclosure.

## IV

## REQUEST FOR RECORDS AND AGENCY RESPONSE

### A. Procedures

A person need not give notice in order to inspect public records at an agency's offices during normal working hours. However, if the records are not readily accessible or if portions of the records must be redacted in order to protect exempt material, the agency must be given a reasonable period of time to perform these functions.

When a copy of a record is requested, the agency shall determine within ten days whether to comply with the request, and shall promptly inform the requester of its decision and the reasons therefor.[31] Where necessary, because either the records or the personnel that need to be consulted regarding the records are not readily available, the initial ten-day period to make a determination may be extended for up to fourteen days.[32] If possible, records deemed subject to disclosure should be provided at the time the determination is made. If immediate disclosure is not possible, the agency must provide the records within a reasonable period of time, along with an estimate of the date that the records will be available. The Public Records Act does not permit an agency to delay or obstruct the inspection or copying of public records.[33] Finally, when a written request is denied, it must be denied in writing. [34]

### B. Claim Of Exemption

Under specified circumstances, the CPRA affords agencies a variety of discretionary exemptions which they may utilize as a basis for withholding records from disclosure. These exemptions generally include personnel records, investigative records, drafts, and material made confidential by other state or federal statutes. In addition, a record may be withheld whenever the public interest in nondisclosure clearly outweighs the public interest in disclosure. When an agency withholds a record because it is exempt from disclosure, the agency must notify the requester of the reasons for withholding the record. However, the agency is not required to provide a list identifying each record withheld and the specific justification for withholding the record.[35]

### C. Segregation Of Exempt From Nonexempt Material

When a record contains exempt material, it does not necessarily mean that the entire record may be withheld from disclosure. Rather, the general rule is that the exempt material may be withheld but the remainder of the record must be disclosed.[36] The fact that it is time consuming to segregate exempt material does not obviate the requirement to do it, unless the burden is so onerous as to clearly outweigh the public interest in disclosure.[37] If the information which would remain after exempt material has been redacted would be of little or no value to the requester, the agency may refuse to disclose the record on the grounds that the segregation process is unduly burdensome.[38] The difficulty in segregating exempt from nonexempt information is relevant in determining the amount of time which is reasonable for producing the records in question.

### D. Waiver Of Exemption

Exempt material must not be disclosed to any member of the public if the material is to remain exempt from disclosure.[39] Once material has been disclosed to a member of the public, it generally is available upon request to any and all members of the public. Confidential disclosures to another governmental agency in connection with the performance of its official duties, or disclosures in a legal proceeding are not disclosures to members of the public under the CPRA and do not constitute a waiver of exempt material.[40]

## V

## EXEMPTION FOR PERSONNEL, MEDICAL OR SIMILAR RECORDS
(Gov. Code, § 6254(c))

### A. Records Covered

A personnel, medical or similar record generally refers to intimate or personal information which an individual is required to provide to a government agency frequently in connection with employment.[41] The fact that information is in a personnel file does not necessarily make it exempt information.[42] Information such as an individual's qualifications, training, or employment background, which are generally public in nature, ordinarily are not exempt.[43]

Information submitted by license applicants is not covered by section 6254(c) but is protected under section 6254(n) and, under special circumstances, may be withheld under the balancing test in section 6255.[44]

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### B. Disclosure Would Constitute An Unwarranted Invasion Of Privacy

If information is intimate or personal in nature and has not been provided to a government agency as part of an attempt to acquire a benefit, disclosure of the information probably would constitute a violation of the individual's privacy. However, the invasion of an individual's privacy must be balanced against the public's need for the information. Only where the invasion of privacy is unwarranted as compared to the public interest in the information does the exemption permit the agency to withhold the record from disclosure. If this balancing test indicates that the privacy interest outweighs the public interest in disclosure, disclosure of the record by the government would appear to constitute an unwarranted invasion of privacy.

Courts have reached different conclusions regarding whether the investigation or audit of a public employee's performance is disclosable.[45] The gross salary and benefits of high-level state and local officials are a matter of public record. However, a recent case indicated that absent a showing that the name of a particular civil service employee is important in monitoring government performance, civil service employees have an expectation of privacy in individually identifiable salary information.[46]

## VI

## EXEMPTION FOR PRELIMINARY NOTES, DRAFTS AND MEMORANDA
(Gov. Code, § 6254(a))

Under this exemption, materials must be (1) notes, drafts or memoranda (2) which are not retained in the ordinary course of business (3) where the public interest in nondisclosure clearly outweighs the public interest in disclosure. This exemption has little or no effect since the deliberative process privilege was clearly established under the balancing test in section 6255 in 1991, but is mentioned here because it is in the Act.[47]

## VII

## EXEMPTION FOR INVESTIGATIVE RECORDS AND INTELLIGENCE INFORMATION
(Gov. Code, § 6254(f))

### A. Investigative Records

Records of complaints, preliminary inquiries to determine if a crime has been committed, and full-scale investigations, as well as closure memoranda are investigative records.[48] In addition, records that are not inherently investigatory may be covered by the exemption where they pertain to an enforcement proceeding that has become concrete and definite.[49]

Investigative and security records created for law enforcement, correctional or licensing purposes also are covered by the exemption from disclosure. The term "law enforcement" agency refers to traditional criminal law enforcement agencies.[50] Records created in connection with administrative investigations unrelated to licensing are not subject to the exemption. The exemption is permanent and does not terminate once the investigation has been completed.[51]

Even though investigative records themselves may be withheld, section 6254(f) mandates that law enforcement agencies disclose specified information about investigative activities.[52] However, the agency's duty to disclose information pursuant to section 6254(f) only applies if the request is made contemporaneously with the creation of the record in which the requested information is contained.[53] This framework is fundamentally different from the approach followed by other exemptions in the Public Records Act and in federal law, in which the records themselves are disclosable once confidential information has been redacted.

Specifically, section 6254(f) requires that basic information must be disclosed by law enforcement agencies in connection with calls for assistance or arrests, unless to do so would endanger the safety of an individual or interfere with an investigation.[54] With respect to public disclosures concerning calls for assistance and the identification of arrestees, the law restricts disclosure of address information to specified persons.[55] However, section 6254(f) expressly permits agencies to withhold the analysis and conclusions of investigative personnel. Thus, specified facts may be disclosable pursuant to the statutory directive, but the analysis and recommendations of investigative personnel concerning such facts are exempt.

### B. Intelligence Information

Records of intelligence information collected by the Attorney General and state and local police agencies are exempt from disclosure. Intelligence information is related to criminal activity but is not focused on a concrete prospect of enforcement.

## VIII

## EXEMPTIONS FOR LITIGATION AND ATTORNEY RECORDS
(Gov. Code, § 6254 (b), (k))

### A. Pending Claims And Litigation

Section 6254(b) permits documents specifically prepared in connection with filed litigation to be withheld from disclosure.[56] The exemption has been interpreted to apply only to documents created after the commencement of the litigation.[57] For example, it does not apply to the claim that initiates the administrative or court process. Once litigation is

resolved, this exemption no longer protects records from disclosure, although other exemptions (e.g., attorney-client privilege) may be ongoing.[58]

Nonexempt records pertaining to the litigation are disclosable to requestors, including prospective or actual parties to the litigation.[59] Generally, a request from actual or prospective litigants can be barred only where an independent statutory prohibition or collateral estoppel applies. If the agency believes that providing the record would violate a discovery order, it should bring the matter to the attention of the court that issued the order.[60]

In discovery during civil litigation unrelated to the Public Records Act, Evidence Code section 1040 (as opposed to the Act's exemptions) governs.[61]

### B. Attorney-Client Privilege

The attorney-client privilege covers confidential communications between an attorney and his or her client. The privilege applies to litigation and nonlitigation situations.[62] The privilege appears in section 954 of the Evidence Code and is incorporated into the CPRA through section 6254(k). The privilege lasts forever unless waived. However, the privilege is not waived when a confidential communication is provided to an opposing party where to do so is reasonably necessary to assist the parties in finalizing their negotiations.[63]

### C. Attorney Work Product

The attorney work product rule covers research, analysis, impressions and conclusions of an attorney. This confidentiality rule appears in section 2018 of the Code of Civil Procedure and is incorporated into the CPRA through section 6254(k). Records subject to the rule are confidential forever. The rule applies in litigation and nonlitigation circumstances alike.[64]

## IX

## OTHER EXEMPTIONS

### A. Official Information

Information gathered by a government agency under assurances of confidentiality may be withheld if it is in the public interest to do so. The official information privilege appears in Evidence Code section 1040 and is incorporated into the CPRA through section 6254(k). The analysis and balancing of competing interests in withholding versus disclosure is the same under Evidence Code section 1040 as it is under section 6255.[65] When an agency is in litigation, it may not resist discovery by asserting exemptions under the CPRA; rather, it must rely on the official information privilege.[66]

## B. Trade Secrets

Agencies may withhold confidential trade secret information pursuant to Evidence Code section 1060 which is incorporated into the CPRA through section 6254(k). However, with respect to state contracts, bids and their resulting contracts generally are disclosable after bids have been opened or the contracts awarded.[67] Although the agency has the obligation to initially determine when records are exempt as trade secrets, a person or entity disclosing trade secret information to an agency may be required to assist in the identification of the information to be protected and may be required to litigate any claim of trade secret which exceeds that which the agency has asserted.

## C. Other Express Exemptions

Other express exemptions include records relating to: securities and financial institutions;[68] utility, market and crop reports;[69] testing information;[70] appraisals and feasibility reports;[71] gubernatorial correspondence;[72] legislative counsel records;[73] personal financial data used to establish a license applicant's personal qualifications;[74] home addresses;[75] and election petitions.[76]

The exemptions for testing information and personal financial data are of particular interest to licensing boards which must determine the competence and character of applicants in order to protect the public welfare.

# X

# THE PUBLIC INTEREST EXEMPTION
(Gov. Code, § 6255)

## A. The Deliberative Process Privilege

The deliberative process privilege is intended to afford a measure of privacy to decision makers. This doctrine permits decision makers to receive recommendatory information from and engage in general discussions with their advisors without the fear of publicity. As a general rule, the deliberative process privilege does not protect facts from disclosure but rather protects the process by which policy decisions are made.[77] Records which reflect a final decision and the reasoning which supports that decision are not covered by the deliberative process privilege. If a record contains both factual and deliberative materials, the deliberative materials may be redacted and the remainder of the record must be disclosed, unless the factual material is inextricably intertwined with the deliberative material. Under section 6255, a balancing test is applied in each instance to determine whether the public interest in maintaining the deliberative process privilege outweighs the public interest in disclosure of the particular information in question.[78]

## B. Other Applications Of The Public Interest Exemption

In order to withhold a record under section 6255, an agency must demonstrate that the public's interest in nondisclosure clearly outweighs the public's interest in disclosure. A particular agency's interest in nondisclosure is of little consequence in performing this balancing test; it is the public's interest, not the agency's that is weighed. This "public interest balancing test" has been the subject of several court decisions.

In a case involving the licensing of concealed weapons, the permits and applications were found to be disclosable in order for the public to properly monitor the government's administration of concealed weapons permits.[79] The court carved out a narrow exemption where disclosure would render an individual vulnerable to attack at a specific time and place. The court also permitted withholding of psychiatric information on privacy grounds.

In another case, a city sought to maintain the confidentiality of names and addresses of water users who violated the city's water rationing program. The court concluded that the public's interest in disclosure outweighed the public's interest in nondisclosure since disclosure would assist in enforcing the water rationing program.[80] The court rejected arguments that the water users' interests in privacy and maintaining freedom from intimidation justified nondisclosure.

The names, addresses, and telephone numbers of persons who have filed noise complaints concerning the operation of a city airport are protected from disclosure where under the particular facts involved, the court found that there were less burdensome alternatives available to serve the public interest.[81]

In a case involving a request for the names of persons who, as a result of gifts to a public university, had obtained licenses for the use of seats at an athletic arena, and the terms of those licenses, the court found that the university failed to establish its claim of confidentiality by a "clear overbalance." The court found the university's claims that disclosure would chill donations to be unsubstantiated. It further found a substantial public interest in such disclosure to permit public monitoring and avoid favoritism or discrimination in the operation of the arena.[82]

XI

## LITIGATION UNDER THE ACT

A requester, but not a public agency, may bring an action seeking mandamus, injunctive relief or declaratory relief under sections 6258 or 6259.[83] To assist the court in making a decision, the documents in question may be inspected at an in-camera hearing (i.e. a private hearing with a judge). An in-camera hearing is held at the court's discretion, and the parties have no right to such a hearing. Prevailing plaintiffs shall be awarded court costs and attorney's fees. A plaintiff need not obtain all of the requested records in order to be the prevailing party in litigation.[84] A plaintiff is also considered the prevailing party if the lawsuit ultimately motivated the agency to provide the requested records.[85] Prevailing defendants may be awarded court costs and attorney fees only if the requestor's claim is clearly frivolous. There is no right of appeal, but the losing party may bring a petition for extraordinary relief to the court of appeal.

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Deputy Attorney General Ted Prim, Editor
Special thanks to Neil Gould, Senior Staff Counsel, Department of Water Resources, for his assistance.

1. Government Code section 6250.

2. *U.S. Dept. of Justice v. Reporters Committee for Freedom of Press* (1989) 489 U.S. 749; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325; *CBS, Inc. v. Block* (1986) 42 Cal.3d 646.

3. *New York Times Co. v. Superior Court* (1997) 52 Cal.App.4th 97, involving public's rights to acquire names of officers using deadly force; *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, involving public's right to monitor Sheriff's unfettered power to award concealed weapons permits.

4. Article 1, section 1 of the California Constitution; Government Code sections 6254(c), 6254(k), and 6255; *New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579.

5. *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136; *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, but see *Braun v. City of Taft, supra,* 154 Cal.App.3d at p. 344, where disclosure of personal information was not found to constitute invasion of privacy; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 777.

6. *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, where information provided to government in order to obtain concealed weapon permit; *Register Div. Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 902, where litigant submitted medical information to induce settlement of law suit; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 781, where contractor sought to modify existing contract.

7. Government Code section 6253.

8. Government Code section 6252(e).

9. Government Code section 6252(f); 71 Ops.Cal.Atty.Gen. 235, 236 (1988).

10. *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 774; *Cook v. Craig* (1976) 55 Cal.App.3d 773, 782.

11. *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159; *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469.

12. Government Code section 6253.1.

13. Government Code section 6253.1(d)(3).

14. *Los Angeles Times v. Alameda Corridor Transp. Auth.* (2001) 88 Cal.App.4th 1381, 1392.

15. Government Code section 6253.9.

16. Government Code section 6254.9.

17. Government Code section 6252(a) and (b); *Michael J. Mack v. State Bar of California* (2001) 92 Cal.App.4th 957, 962, CPRA inapplicable to State Bar.

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18. Government Code section 6252(b) as amended by AB 2937, Stats. 2002, Ch. 1073. A nongovernmental auxiliary association is not a state agency; *California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 829; 85 Ops.Cal.Atty.Gen. 55 (2002). A nonprofit corporation designated by a city to provide programming to a cable television channel set aside for educational purposes is subject to the Public Records Act because it qualifies as a local legislative body under the Brown Act.

19. Government Code section 9071.

20. *Estate of Hearst v. Leland Lubinski, et al.* (1977) 67 Cal.App.3d 777.

21. 5 U.S.C. 552.

22. Government Code sections 6252(c), (e) and 6253; *Connell v. Superior Court* (1997) 56 Cal.App.4th 601.

23. *Wilder v. Superior Court* (1998) 66 Cal.App.4th 77; *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414.

24. *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 774.

25. Government Code section 6252(g).

26. Civil Code section 1798 (Information Practices Act), which applies to persons referenced in state government records.

27. Government Code section 6253(a).

28. Government Code section 6253(b).

29. *North County Parents Organization v. Department of Education* (1994) 23 Cal.App.4th 144, 148; Informal opinion from Attorney General to Senator Gary K. Hart, dated April 11, 1991.

30. Government Code section 6253.9(b)(2).

31. Government Code section 6253(c).

32. Government Code section 6253(c).

33. Government Code section 6253(c).

34. Government Code section 6255(b).

35. *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1074-1075.

36. Government Code section 6253(a); *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 447; *Connell v. Superior Court* (1997) 56 Cal.App.4th 601; *State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1187.

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37. *State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1190, fn. 14.

38. *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 447.

39. Government Code section 6254.5; *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645.

40. Government Code section 6254.5(b) and (e).

41. *Register Div. of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d, 893; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762.

42. *New York Times Co. v. Superior Court* (1997) 52 Cal.App.4th 97, 103.

43. *Eskaton Monterey Hospital v. Myers* (1982) 134 Cal.App.3d 788.

44. *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, applied the balancing test to protect certain privacy information in concealed weapons permits from disclosure. Protection for the particular information exempted by the Court in that decision was later codified in section 6254, subdivision (u).

45. *Bakersfield City School District v. Superior Court* 2004 WL 1120036 (Cal.App. 5 Dist.); *Payton v. City of Santa Clara* (1982) 132 Cal.App.3d 152, disciplinary records were not disclosable unless the state could demonstrate a compelling interest in disclosure; *AFSCME v. Regents of University of California* (1978) 80 Cal.App.3d 913, performance audit was disclosable unless charges were found to be groundless.

46. Government Code section 6254.8; *Teamsters Local 856 v. Priceless, LLC* (2003) 112 Cal.App.4th 1500; 68 Ops.Cal.Atty.Gen.73 (1985).

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

48. *Haynie v. Superior Court* (2001) 26 Cal.4th 1061; *Rackauckas v. Superior Court* (2002) 104 Cal.App.4th 169.

49. *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1068-1072.

50. *State of California ex rel. Division of Industrial Safety v. Superior Court* (1974) 43 Cal.App.3d 778.

51. *Dick Williams v. Superior Court* (1993) 5 Cal.4th 337, 354-362.

52. *Dick Williams* v. *Superior Court* (1993) 5 Cal.4th 337, 348-354.

53. *County of Los Angeles* v. *Superior Court (Kusar)* (1993) 18 Cal.App.4th 588.

54. 86 Ops.Cal.Atty.Gen. 132 (2003), release of mug shot is one way for a law enforcement agency to fulfill its obligation to provide information.

55. *Los Angeles Police Dept.* v. *United Reporting Publishing Corp.*, 528 U.S. 32 (1999).

56. *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414; *City of Hemet v. Superior Court (Press-Enterprise)* (1995) 37 Cal.App.4th 1411.

57. *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414; 71 Ops.Cal.Atty.Gen. 235 (1988).

58. *City of Los Angeles v. Superior Court (Axelrad)* (1996) 41 Cal.App.4th 1083.

59. *County of Los Angeles v. Superior Court (Axelrad II)* (2000) 82 Cal.App.4th 819, 826; *Wilder v. Superior Court* (1998) 66 Cal.App.4th 77; *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414; *City of Hemet v. Superior Court (Press-Enterprise)* (1995) 37 Cal.App.4th 1411, 1420-1421, fn. 11; but see dicta in *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 372.

60. *County of Los Angeles v. Superior Court (Axelrad II)* (2000) 82 Cal.App.4th 819, 830.

61. *Marylander v. Superior Court* (2000) 81 Cal.App.4th 1119, 1124-25.

62. *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 371.

63. *STI Outdoor v. Superior Court* (2001) 91 Cal.App.4th 334, 341.

64. *County of Los Angeles v. Superior Court (Axelrad II)* (2000) 82 Cal.App.4th 819, 833.

65. *California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 832.

66. *Michael P. v. Superior Court* (2001) 92 Cal.App.4th 1036, 1042; *Marylander v. Superior Court* (2000) 81 Cal.App.4th 1119, 1125.

67. Public Contract Code sections 10305 and 10342.

68. Government Code section 6254(d).

69. Government Code section 6254(e).

70. Government Code section 6254(g).

71. Government Code section 6254(h).

72. Government Code section 6254(l); *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.

73. Government Code section 6254(m).

74. Government Code section 6254(n).

75. State employees, Government Code section 6254.3; Registered voters, Government Code section 6254.4; Persons appearing in records of DMV, Government Code section 6254.1(b).

76. Government Code section 6253.5.

77. *Times Mirror* and *First Amendment Coalition*, established this general principle but, in light of special circumstances, an agency may withhold information that is essentially factual in nature.

78. The California Supreme Court's decision in *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325 is the source of the above information concerning deliberative process privilege. See also *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469.

79. *CBS, Inc. v. Block* (1986) 42 Cal.3d 646.

80. *New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579; but see Government Code section 6254.16 adopted subsequently.

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

82. *California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 834-835.

83. *Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 423.

84. *Los Angeles Times v. Alameda Corridor Transp. Auth.* (2001) 88 Cal.App.4th 1381, 1391-1392.

85. *Roberts v. City of Palmdale* (1993) 19 Cal.App.4th 469, 482; *Belth v. Garamendi* (1991) 232 Cal.App.3d 896, 898.

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# Top 10 Points to Remember about Making a California Public Records Act Request

**1. The agency has the burden of justifying the denial of access.**

Perhaps the most fundamental rule in the California Public Records Act (CPRA) is the presumption of public access. Requesters do not have to prove or even state a "need to know" to justify access. On the contrary, the government agency must justify *not* providing the information by citing the law: a statute or a case interpreting a statute. "In other words, all public records are subject to disclosure unless the Legislature has expressly provided to the contrary." *Williams v. Superior Court*, 5 Cal. 4th 337 (1993) "It's not our policy" or "We never give that out" is not a legally sufficient response to a public records request, nor is anything else short of citing the law that bars or excuses the agency from providing access.

**2. The request need not be in writing.**

A written request often has advantages for the requester as well as the agency. Practically, it may be necessary where an oral request has been turned down for what appear to be inadequate or misinformed reasons, or where the kind or number of documents being sought needs detailed description. Legally, a written request sent by e-mail, fax or registered postal mail provably records the date on which certain response deadlines are set, and also entitles the requester to a written response from the agency giving the reasons and legal authority for withholding all or part of the requested records. But, as observed by the California Court of Appeal, "It is clear from the requirements for writings in the same and other provisions of the Act that when the Legislature intended to require a writing, it did so explicitly. The California Public Records Act plainly does not require a written request." *Los Angeles Times v. Alameda Corridor Transportation Authority*, 88 Cal.App.4th 1381 (2001)

**3. The request need not identify the requester.**

Likewise, nothing in the law precludes an anonymous request, and the CPRA requires identification (by a signed affirmation or declaration, respectively) only when the requester is seeking information about pesticides (Government Code §6254.2) or seeking the addresses of persons arrested or crime victims (Government Code §6254, subd. (f), par. (3)). Practically, it may be mutually convenient for a requester to provide a name and contact information if the request cannot be fulfilled immediately or if copying will take some time, but the requester's option is to keep checking back on his or her own initiative. Legally, apart from the two situations noted above, an agency may not insist that the requester be identified.

**4. The request need not state the requester's purpose.**

Demanding to know the purpose of the request or the intended use of the information is, again, not something the agency may do, apart from the pesticide and address provisions noted in (2) above. The CPRA states, in Government Code §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."

**5. The scope of the request must be reasonably clear.**

"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. (The CPRA) 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 requester, having no access to agency files, may be unable to precisely identify the documents sought. Thus, writings may be described by their content. The agency must then determine whether it has such writings under its control and the applicability of any exemption. An agency is thus obliged to search for records based on criteria set forth in the search request." *California First Amendment Coalition v. Superior Court*, 67 Cal.App.4th 159 (1998)

**6. The agency need not compile lists or write reports.**

The rights provided in the law are to "inspect" (look at words, symbols or images; listen to sounds) public records and/or to "obtain a copy" of those records, not to compel the agency to create lists or reports in response to questions. In only one instance is the agency required to generate a record that does not already exist, and that is if the information sought is distributed in computerized form in a database or otherwise and must be assembled in a single record. As provided in Government Code §6253.9, if the agency cannot "produce" or "construct" the record sought without special programming, the requester must pay for that work.

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**7. The agency must do its best to help the requester succeed.**

Government Code Section 6253.1 states:

(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."

These assistance requirements do not apply, obviously, if the agency fully grants the request, or denies access based on one of the exemptions in Government Code §6254. Also, if the agency has an index to its records and makes it available, no further help in refining the request is required.

**8. Fees are for the costs of copying, not for those of inspection.**

As noted by the Attorney General in an opinion concluding that counties may charge a fee "reasonably necessary" to recover wider costs for copying public records—costs beyond the strict "direct cost of duplication"—inspection is free: "In any event, a 'reasonably necessary' fee for a copy of a public record would have no effect upon the public's right of access to and inspection of public records free of charge." (Opinion No 01-605, November 1, 2002). Moreover, the "direct cost of duplication" that, pursuant to Government Code §6253, subd. (b), may be charged to the requester by agencies other than counties may not include overhead. "The direct cost of duplication is the cost of running the copy machine, and conceivably also 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 v. Department of Education*, 23 Cal.App.4th 146 (4th Dist. 1994)

**9. Prompt access is required for clearly public records.**

Delay is allowed only to resolve good faith doubts as to whether all or part of a record is accessible by the public. So, for example, if the requester asks to see the minutes of public meetings, there is no need to make the "determination" as to whether or not they are public, since minutes of public meetings are, without question, public records. That being the case, access is to be provided "promptly," not put off for 10 days (Government Code §6253, subd. (b)); to underscore this point, subd. (d) states that "Nothing in (the CPRA) shall be construed to permit an agency to delay or obstruct the inspection or copying of public records." And while the 10-day period is not a legal deadline for producing the records, the date of production should not lag the 10-day (or, if extended with notice to the requester, up to 14 days more) "determination" point by much, because in most if not all cases, *the person making the determination will have already had to assemble and review the records in order to do so*. Once the determination has been made, in other words, actual release of the records in question should not take much time to accomplish.

**10. Journalists and other people have the same rights of access.**

Journalists' rights to inspect and copy public records are the same under the CPRA as those of any other person—no worse and, despite the free press guarantees of the state and federal constitutions, no better. "No California or federal judicial decision has ever attributed accessibility to public records upon First Amendment freedoms of speech or press." *Register Division of Freedom Newspapers v. County of Orange*, 158 Cal.App.3d 893 (1984) And while we often speak of "citizens" having the access rights, one need not be a California resident or even a U.S. citizen to inspect or copy state or local public records. "(W)hen section 6253 declares every person has a right to inspect any public record, when section 6257 commands state and local agencies to make records promptly available to any person on request, and when section 6258 expressly states any person may institute proceedings to enforce the right of inspection, they mean what they say." *Connell v. Superior Court*, 56 Cal.App.4th 601 (1997)

CALIFORNIANS AWARE
THE CENTER FOR PUBLIC FORUM RIGHTS

# Top 10 Points to Remember about Exemptions from the California Public Records Act

**1. Most CPRA exemptions are discretionary.**

The main exemption section in the Act, for example—Government Code §6254—does not prohibit disclosure of the records it lists, but simply provides that "nothing in this chapter shall be construed to *require* disclosure" of them. Accordingly officials misstate the law in many cases when they say, "We can't give that out." It depends on the particular rule governing particular types of information. They may have the discretion to decide in favor of disclosure in the public interest.

**2. Exemptions are waived by selective disclosure.**

Generally, once a particular record has been provided to a "member of the public," access may not be denied to others, even though an exemption might have otherwise applied (Government Code §6254.5). A member of the public is anyone other than a governmental officer, employee or agent receiving the record in his or her official capacity. So, for example, an inspection, audit or investigation report shared with the subject investigated would, in all but a handful of cases, be a public record although, if not shared with the subject, it might have been exempt from public disclosure (see 7 below).

**3. An exempt part does not justify withholding the whole.**

Pursuant to Government Code §6253, subd. (a), any non-exempt (public) part of a record must be made available after any exempt information has been redacted (removed or obliterated). This rule applies unless redaction is impossible because the public and confidential material are so tightly interwoven as to be "inextricably intertwined" *Northern California Police Practices Project v. Craig*, 90 Cal. App. 3d 116 (1979), or unless multiple redactions applied to a large number of requested records would leave them so bereft of substantive information relevant to the requester's purpose that the benefit to him or her would be "marginal and speculative." *American Civil Liberties Union Foundation of Northern California Inc. v. Deukmejian*, 32 Cal. 3d 440 (1982).

**4. Drafts are not inherently and entirely exempt.**

The word "draft," even if accurately descriptive of a document, does not exempt it from disclosure. Government Code §6254, subd. (a) applies only to "preliminary" drafts, notes or memos "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." Moreover, the exemption applies only if the record was created to inform or advise a particular administrative or executive decision. Also, the document must be of the kind customarily disposed of: "If preliminary materials are not customarily discarded or have not in fact been discarded as is customary they must be disclosed." *Citizens for A Better Environment v. Department of Food and Agriculture*, 171 Cal. App. 3d 704 (1985)

Finally, the exemption applies only to the "recommendatory opinion" of its author, making a judgment or offering advice as a conclusion based on a set of facts. Those facts, however, remain accessible to the public, and only the author's conclusion is protected (see *Citizens* above).

**5. Litigation documents may be withheld while the case is alive.**

Government Code §6254, subd. (b) exempts "Records pertaining to pending litigation to which the public agency is a party, or to claims ..., until the pending litigation or claim has been finally adjudicated or otherwise settled." This exemption includes communications between the agency and its attorney, which are privileged in any event as long as the agency wishes to assert the privilege (see 8 below). Otherwise, "a document is protected from disclosure only if it was specifically prepared for use in litigation." *City of Hemet v. Superior Court*, 37 Cal.App.4th 1411 (1995) The claim itself is not exempt. *Poway Unified School District v. Superior Court*, 62 Cal.App.4th 1496 (1998) And when a case



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has been fully adjudicated (no appeal possible) or settled, records covered by this exemption that are not communications between the agency and its attorney—for example, communications between the agency and the other party—become accessible to the public.

**6. Personal information may be withheld if release would unjustifiably invade privacy.**

The CPRA allows withholding of "Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy" (Government Code §6254, subd. (c)). The rule covers more than "personnel" files and reaches any information in government records linked to an identified or readily identifiable individual. But it allows withholding only where the person in question has an objectively reasonable expectation of privacy, which would not apply, for example, to resume-type "information as to the education, training, experience, awards, previous positions and publications" of a public employee. *Eskaton Monterey Hospital v. Myers,* 134 Cal.App.3d 788 (1982) Even when a privacy expectation would be normally reasonable, disclosure may be justified—"warranted"— and required if the public interest in having it known outweighs the public interest to the contrary.

For example, when a public official denied taking an unlawful personnel action, "access to records proving it then became in the public interest." *Braun v. City of Taft*, 154 Cal. App. 3d 332 (1984) Likewise, the actual pay of a non-contract public employee is not automatically public, but disclosure may be warranted depending on the extent to which it would "shed light on the public agency's performance if its duty" *Teamsters Local 856 v. Priceless, LLC*, 112 Cal.App.4th 1500 (2003) But pay and other particulars in police and other peace officers' personnel files are made confidential under Penal Code §§ 832.5-832.8, and are not accessible under the CPRA. *City of Hemet v. Superior Court*, 37 Cal.App.4th 1411 (1995) Complaints about the performance of public employees other than peace officers are public if they lead to disciplinary action, *AFSCME v. Regents*, 80 Cal. App. 3d 913 (1978). or even, discipline or not, if they are "well-founded" or reasonably reliable in terms, for instance, of their substance, frequency and/or sources *Bakersfield City School District v. Superior Court*, 118 Cal.App.4th 1041 (2004).

**7. Law enforcement investigative files may be withheld, but not the basic facts.**

With respect to police and other criminal justice law enforcement agencies, Government Code §6254, subd. (f) applies to records that "encompass only those investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred. If a violation or potential violation is detected, the exemption also extends to records of investigations conducted for the purpose of uncovering information surrounding the commission of the violation and its agency." *Haynie v. Superior Court*, 26 Cal.4th 1061 (2001) But the exemption also applies to "any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes," including investigations by state or local regulatory agencies. If the investigation does not have one of these purposes, the exemption does not apply. *Register Division of Freedom Newspapers Inc. v. County of Orange*, 158 Cal. App. 3d 893 (1984). The exemption may be asserted no matter how old and dead the investigation may be. *Williams v. Superior Court*, 5 Cal. 4th 337 (1993) But unless disclosure would threaten the successful completion of an investigation or the safety of a person involved, an agency must disclose the basic "who/what/where/when" facts in crime, incidents and arrest reports, including requests for assistance, at least with respect to "contemporaneous police activity" rather than attempts to obtain information about an officer's long-term performance that would otherwise be confidential (see 6 above) *County of Los Angeles v. Superior Court*, 18 Cal.App.4th 588 (1993).

**8. Information that is privileged or confidential otherwise is exempt.**

Numerous other laws outside the CPRA either prohibit disclosure of certain information, limit its disclosure to certain persons, purposes or both, or give the agency discretion over release. Moreover, the Evidence Code contains a number of privileges that allow information to be withheld even from a court proceeding. The CPRA incorporates these laws and privileges as exemptions from disclosure (Government Code §6254, subd. (k)). The attorney-client privilege, for example, allows communications between a public agency and its lawyers to be kept confidential (see 5 above). But a federal court has

observed that "the identity of the client, the amount of the fee, the identification of payment by case file name, and the general purpose of the work performed are usually not protected" *(Clarke v. American Commerce National Bank*, 974 F.2d 127 (1992)). The official information privilege allows a public official to withhold information submitted to him or her in confidence, until and unless it has been expressly relied upon in the making of a decision, if the public interest in such secrecy outweighs the public interest in disclosure. *San Gabriel Valley Tribune v. Superior Court*, 143 Cal.App.3d 762 (1983). Government agencies may acquire business or industry information protected by the trade secret privilege, but to be protected, the formula, pattern, compilation, process, device, method, etc. must derive independent value from not being known to the public or a competitor, and must be subject to reasonable efforts to maintain its secrecy otherwise (Civil Code §3426.1, subd. (d)).

**9. The "balancing test" may justify non-disclosure in well-defined instances.**

Even if no specific exemption in the CPRA applies, information may be withheld "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." As the wording suggests, this exemption is applicable on a case-by-case basis, and in particular a targeted request for a particular record will be circumstantially easier to justify in the public interest than a wholesale request for a large volume of records. *American Civil Liberties Union Foundation v. Deukmejian*, 32 Cal.3d 440 (1986), *Times Mirror Co. v. Superior Court*, 53 Cal.3d 1325 (1991).

**10. The deliberative process privilege may apply to pre-decisional records.** While the deliberative process privilege originates with the common law and is not codified in California statutes, its policy has been recognized as supporting, in certain circumstances, a withholding of access under the "balancing test" (see 9 above). Its rationale is the same as that underlying the draft exemption (see 4 above), namely the need of government officials and their advisors to discuss policy options freely and frankly in the course of developing a decision, without fear of political recrimination upon disclosure. But unlike the draft exemption with its limited application, the privilege invoked under the balancing test applies to documents that are not preliminary drafts or memos but that otherwise would impede or chill candid pre-decisional deliberation. Cases so far have applied the privilege in a balancing test to deny disclosure, concluding that:

- The pragmatic chill on candor and effectiveness of the governor's consultations with visitors resulting from wholesale disclosure of his appointment calendars, and risk to his security posed by wholesale disclosure of his travel itineraries, outweigh the arguable public interest in understanding patterns of access to and influences affecting state's chief executive. *Times Mirror Co. v. Superior Court*, 53 Cal.3d 1325 (1991)
- With respect to a request filed during the pendency of an appointive decision, avoiding the interference with the governor's exercise of his or her prerogative to make appointments to fill vacancies on boards of supervisors that would result from disclosing information submitted by applicants for appointment—and thus deterring the full and candid flow of information supporting that decision—outweighs the voters' interest in knowing who is applying for the normally elective position and what qualifications they are citing in their favor. *California First Amendment Coalition v. Superior Court*, 67 Cal.App.4th 159 (1998)
- With respect to a request for such records filed five months after the governor made the appointive decision, the same factors outweigh the voters' interest in an appointment to the board of a county emerging from bankruptcy. *Wilson v. Superior Court*, 51 Cal.App.4th 1136 (1997).
- Disclosing the telephone numbers of persons with whom a city council member has spoken over a year's time equates to revealing the substance or direction of the member's judgment and mental process, and the inhibiting intrusion posed by such disclosures outweighs the public interest in learning which private citizens are influencing the member's decisions, especially where no misuse of public funds or other improprieties are alleged. *Rogers v. Superior Court*, 19 Cal.App.4th 469 (1993).

Exhibit C


# SixTen and Associates
## Mandate Reimbursement Services

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Fax: (858) 514-8645
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Sacramento, CA 95834-0430
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June 15, 2011

Drew Bohan, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: CSM 02-TC-10 County of Los Angeles
CSM 02-TC-51 Riverside Unified School District
California Public Records Act

Dear Mr. Bohan:

I have received your letter dated May 31, 2011, directing the test claimants to submit proposed parameters and guidelines for the above referenced adopted test claim.

This letter transmits the parameters and guidelines proposed by the school district test claimant. A separate response will be submitted for the local agencies by their representative.

Sincerely,

Keith B. Petersen

C: Commission electronic service list

Received
June 15, 2011
Commission on
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Parameters and Guidelines Drafted by:
Keith B. Petersen
SixTen and Associates

**(School District) CLAIMANT'S PROPOSED PARAMETERS AND GUIDELINES**

Statutes of 1992, Chapter 463;
Statutes of 2000, Chapter 982; and,
Statutes of 2001, Chapter 355

Government Code Sections:
6253 subdivision (c)
6253.1 subdivisions (a) and (d);
6253.9;
6254.3 subdivisions (a) and (b);
6255 subdivision (b); and,
6253.9, subdivisions (a)(2) and (b)

**CALIFORNIA PUBLIC RECORDS ACT**

CSM 02-TC-10 and CSM 02-TC-51

**(Beginning Fiscal Year 2001-02)**

## I. SUMMARY OF THE MANDATE

Per Statement of Decision

## II. ELIGIBLE CLAIMANTS

Local agencies as defined by Government Code section 17518. School districts as defined by Government Code section 17519, which included school districts, county superintendents of schools (county offices of education), and community college districts.

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## III. PERIOD OF REIMBURSEMENT

Per Commission boilerplate language.

Reimbursement begins July 1, 2001.

## IV. REIMBURSABLE ACTIVITIES

The preamble per Commission boilerplate language.

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LOCAL AGENCIES AND SCHOOL DISTRICTS

A. Records Access Assistance

~~4.~~ When a member of the public requests to inspect a public record or obtain a copy of a public record: ~~a.~~ (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; ~~b.~~ (2) describe the information technology and physical location in which the records exist; and, ~~c.~~ (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are records open to public inspection made available to the member of the public through the procedures set forth in Government Code section 6253, subdivision (a); (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Government Code, § 6253.1, subdivisions (a) and (d) (Statutes 2001, Chapter 355).)

B. 10-day Disclosure Determination

~~2.~~ Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the request of the determination and the reasons for the determination. (Government. Code, § 6253, subdivision (c) (Statutes. ~~2001~~ 2000, Chapter 982).)

~~3.~~ If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Statutes ~~2001~~ 2000, Chapter 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subdivision (c) (Statutes ~~2001~~ 2000, Chapter 982).)

C. Justification for Denial of Access

~~7.~~ If a request is denied, in whole or in part, respond in writing to a written request

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for inspection or copies of public records that includes a determination that the request is denied. (Government Code § 6255, subdivision (b) (Statutes 2000, Chapter 982).)

D. Electronic Records

~~1.~~ If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic 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. (Government Code, § 6253.9, subdivision (a)(2) (Statutes of 2000, Chapter 982).)

~~In addition, the Commission concludes that~~ (T)he fee authority set forth in Government Code section 6253.9, subdivisions (a)(2) and (b), as added by Statutes 2000, chapter 982, is offsetting revenue and shall be deducted from the costs of providing a copy of a disclosable electronic record in the electronic format requested.

SCHOOL DISTRICTS ONLY

E. Redaction of Employee Information

~~5.~~ For K-14 districts and county offices of education only, redact or withhold the home address and telephone number of employees of K-14 districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) 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 (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-14 district 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. (Government Code § 6254.3, subdivision (a) (Statutes 1992, Chapter 463).)

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F. Removal of Employee Information

~~6.~~ For K-14 districts and county offices of education only, remove the home address and telephone number of an employee from any mailing lists that the K-14 district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-14 district or county office of education to contact the employee. (Government Code, § 6254.3, subdivision (b) (Statutes 1992, Chapter 463).)

V. CLAIM PREPARATION AND SUBMISSION

The preamble per Commission boilerplate language.

A. Direct Cost Reporting

Per Commission boilerplate (e.g., the Mandate Reimbursement Process 2 parameters and guidelines adopted May 26, 2011)

B. Indirect Cost Reporting

Per Commission boilerplate (e.g., the Mandate Reimbursement Process 2 parameters and guidelines adopted May 26, 2011)

VI. RECORD RETENTION

Per Commission boilerplate language.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Per Commission boilerplate language.

In addition, the Commission concludes that the fee authority set forth in Government Code section 6253.9, subdivisions (a)(2) and (b), as added by Statutes 2000, chapter 982, is offsetting revenue and shall be deducted from the costs of providing a copy of a disclosable electronic record in the electronic format requested.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Per Commission boilerplate language.

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IX. REMEDIES BEFORE THE COMMISSION

Per Commission boilerplate language.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

Per Commission boilerplate language.

# JOHN CHIANG

California State Controller

Division of Accounting and Reporting

July 22, 2011

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

Re: Proposed Parameters and Guidelines
*California Public Records Act, 02-TC-10 and 02-TC-51*
Government Code Section 6252, et al.
Los Angeles County and Riverside Unified School District, Claimants

Dear Mr. Bohan:

We have reviewed the proposed Parameters and Guidelines (P's & G's) for the California Public Records Act program submitted by the County of Los Angeles and Riverside Unified School District. Below are our comments and recommendations.

We found that the reimbursable activities listed under the "Scope of Reimbursable Activities" were numbered incorrectly, included several duplications, and were incomplete. Furthermore, the reimbursable activities listed were confusing, not specific, and needed clarification. These conclusions were established after comparing the proposed P's & G's with reimbursable activities listed in both the adopted Statement of Decision (SOD) and the reimbursable activities laid out in the Test Claim.

In order to reduce confusion, we recommend that the proposed P's & G's be redrafted to incorporate the seven reimbursable activities listed in the SOD or use the reimbursable activities laid out in the Test Claim attachments of Michael R. McDermott and Richard L. Castro. This would give the claimant a clearer understanding of what specific cost information is required when reporting "One-Time Activities" versus "Ongoing Activities".

Should you have any questions regarding the above, please contact Steve Purser at (916) 324-5729, or e-mail to spurser@sco.ca.gov.

Sincerely,

JAY LAL, Manager
Local Reimbursement Sections

Enclosures

**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

**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

DEPARTMENT OF FINANCE
EDMUND G. BROWN JR. • GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

July 25, 2011

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

**Proposed Parameters & Guidelines 02-TC-10 and 02-TC-51 "California Public Records Act—Los Angeles County."**

Dear Mr. Bohan:

The Department of Finance (Finance) has reviewed the proposed Parameters and Guidelines (Ps & Gs) for the California Public Records Act mandate submitted by Los Angeles County (claimant). We have a number of concerns with the content of the proposed Ps & Gs and associated activities including, but not limited to, the following:

- The non-italicized portions submitted by the claimant do not clearly match up with the Commission's Statement of Decision (SOD) and appear to add to the activities found reimbursable by the Commission.
- Many of the italicized activities, including, but not limited to, developing data base software for tracking and processing public records requests appear to be outside of the scope of the SOD as these were likely already required and utilized before this mandate and for purposes other than complying with this mandate.
- Many of the italicized activities listed are duplicative and repetitious or are too vague and general and therefore lack sufficient specificity.
- Many of the italicized activities, including, but not limited to, logging and tracking requests and tracking and shipment of records do not appear to be reasonably necessary to comply with the mandate, are inconsistent with the SOD, and additive in nature.
- Several of the italicized activities submitted by the claimant could be performed by lower-level staff than what is referenced in the proposed Ps & Gs.
- We recommend that Commission staff apply the *Clovis Unified School District v. Chiang* (2010) 188 Cal.App.4th 794 case and offset any and all applicable costs for specified activities in the Ps & Gs to the extent of the fee authority provided by law.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents e-filed with the Commission need not be otherwise served on persons that have provided an e-mail address for the mailing list."

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July 25, 2011
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If you have any questions regarding this letter, please contact Jeff Carosone, Principal Program Budget Analyst at (916) 445-8913.

Sincerely,

NONA MARTINEZ
Assistant Program Budget Manager

Enclosure

Enclosure A

DECLARATION OF JEFF CAROSONE
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.

7-25-11
at Sacramento, CA

Jeff Carosone

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

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JAMES L. SCHNEIDERMAN
JUDI E. THOMAS

August 30, 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 OF STATE AGENCY COMMENTS
REVISED PARAMETERS AND GUIDELINES
CALIFORNIA PUBLIC RECORDS ACT REIMBURSEMENT PROGRAM**

The County of Los Angeles respectfully submits its review of State agency comments and its revised parameters and guidelines for the California Public Records Act reimbursement program.

If you have any questions, please contact Leonard Kaye at (213) 974-9791 or via e-mail at lkaye@auditor.lacounty.gov.

Very truly yours,

Wendy L. Watanabe
Auditor-Controller

WLW:JN:CY:lk
H:\SB90\A CPRA 08 25 11 Final Ps&Gs\CPRA PsGs State Comments Review 2 Cover Letter.doc

Enclosure

Received
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Los Angeles County's
Review of State Agency Comments and Revised Parameters and Guidelines
California Public Records Act Reimbursement Program (02-TC-10, 02-TC-51)

## Executive Summary

The County of Los Angeles (County) has reviewed State agency comments on its proposed parameters and guidelines (Ps&Gs) for the California Public Records Act (CPRA) reimbursement program and found many to be useful.

The State Controller's Office (SCO) commented that "... the reimbursable activities listed were .... not specific and needed clarification" and recommended that the Ps&Gs could be redrafted using "... the reimbursable activities laid out in the test claim attachments of Michael R. McDermott and Richard L. Castro". Consequently, the County has included these activities in its revised Ps&Gs.

The State Department of Finance (Finance) commented that the County's recital of activities found to be reimbursable does "... not clearly match up with the Commission's Statement of Decision (SOD) and appear(s) to add to the activities found reimbursable by the Commission". Here, the Ps&Gs were modified to include the same descriptions of reimbursable activities found in the CPRA SOD.

Finance also comments that several reimbursable activities proposed by the County "... could be performed by lower-level staff than what is referenced in the proposed Ps&Gs". However, Finance provided no examples. So, the County has made no changes.

Further, the County respectfully disagrees with Finance's conclusion that "... logging and tracking requests ... do not appear to be reasonably necessary to comply with the mandate". Here, the alternative is to trust compliance to memory... an unacceptable alternative for County staff with personal knowledge of this matter.

Legal services have been retained in the CPRA Ps&Gs. Its importance is undisputed. Indeed, Commissioner Ken Alex stated that "... the idea that you need some legal advice on how to proceed initially is pretty clear".

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In sum, the County has revised its CPRA Ps&Gs after considering State agency comments requesting clarification and further specification of reimbursable activities.

SCO's Comments

On July 22, 2011, Mr. Jay Lal, a manager of the Local Reimbursement Section of the State Controller's Office (SCO) wrote the Commission and indicated that "... the reimbursable activities listed (by the County) were confusing, not specific and needed clarification".

To reduce confusion, Mr. Lal recommended that the County could redraft its Ps&Gs by using "... the reimbursable activities laid out in the (County's 2002) test claim attachments of (Captain) Michael R. McDermott and (Commander) Richard L. Castro (of the Los Angeles County Sheriff's Department)". These activities are:

"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.

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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 – e.g. PC maintenance

IV. Travel "

The (above) reimbursable activities were developed for the County's 2002 test claim and found to be acceptable by SCO for use in the CPRA Ps&Gs. And so the County has included them in its revised CPRA Ps&Gs.

It should be noted that legal services have been retained in the County's revised CPRA Ps&Gs. Its inclusion in the CPRA Ps&Gs is undisputed by SCO. Also, as will be seen its inclusion is undisputed by Finance. Indeed, Commissioner Ken Alex stated that "... the idea that you need some legal advice on how to proceed initially is pretty clear"[1].

Finance's Comments

On July 25, 2011, Ms. Nona Martinez, Assistant Program Budget Manager wrote the Commission and identified a number of concerns. First of these is Finance's contention that the specific activities found to be 'reasonably necessary' by the County in implementing reimbursable CPRA provisions "... do not clearly match up with the Commission's Statement of Decision (SOD) and appear to add to the activities found reimbursable by the Commission".

The County maintains that it has not added reimbursable activities to the CPRA SOD, but merely specified those "reasonably necessary' to implement it. In this regard, the County has provided four supporting declarations of those with personal knowledge of this matter. Finance has none.

[1] Commissioner's Alex statement is found in the transcript excerpt of the Commission's hearing of the CPRA test claim on May 26, 2011, attached as Exhibit 3, on page 59.

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Finance also notes that "... developing data base software for tracking and processing public records requests appear to be outside the scope of the SOD". Finance further opines that "... these activities were likely already required and utilized before this mandate and for purposes other than complying with this mandate".

The County contends otherwise. The purpose of the test claim legislation was precisely to ensure the fulfillment of CPRA requests by tracking them from inception to completion. Under prior law, it appears that requests were not tracked and seldom completed. In this regard, the AB 1014 Bill Analysis (attached as Exhibit 2) indicates on page 3 that:

> "In the fall of 2000, the California First Amendment Coalition and the Society of Professional Journalists performed an audit of local agency compliance with the CPRA. The audit, conducted by university journalism students (USC, UC Berkeley, CSU Fullerton, CSU Northridge, Chapman University) under the supervision of their respective professors, covered records at more than 130 local government agencies in the San Francisco Bay Area and in Los Angeles, Orange, and San Bernardino Counties. The findings, entitled "State of Denial, Roadblocks to Democracy" were published in the Stockton Record on December 17 and 18, 2000. The findings document that local agencies initially reject or ignore legitimate public record requests 77% of the time, on the average. Cities and police departments initially refused legitimate public records requests 79% of the time (declining to 60 to 64% when oral requests were followed by formal written requests citing state disclosure mandates), and schools initially failed to comply 72% of the time (similarly declining to 33%).
>
> The results of the audit, the CNPA states, definitively document what has been fact for decades after the CPRA was first enacted: that public agencies routinely ignore the Act, or abuse their powers to the detriment of the free flow of information to the public that is the basis of this democracy."

Therefore, tracking and processing public records act requests to ensure timely compliance of CPRA provisions are found to be reimbursable. Without such systems, the status of requests would be left to memory --- easily ignored as in the past.

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In addition, Finance points out that many of the County's proposed reimbursable activities "... duplicative and repetitious or are too vague and general and therefore lack sufficient specificity".

The County finds this comment similar to SCO's comment (discussed above) that "... the reimbursable activities listed (by the County) were confusing, not specific and needed clarification". To address this type of concern, the County, as previously indicated, follows SCO's recommendation and incorporates the activities proposed by Captain McDermott and Commander Castro in its revised CPRA Ps&Gs.

Finance also comments that "... logging and tracking requests and tracking and shipment of records do not appear to be reasonably necessary to comply with the mandate, are inconsistent with the SOD, and additive in nature".

However, the County can find no prohibition in the CPRA SOD denying reimbursement for logging and tracking of requests or tracking and shipment of records. Further, the alternative to not logging and tracking CPRA compliance is to trust compliance to memory... an unacceptable alternative for County staff with personal knowledge of this matter.

Importantly, Finance's current position in this matter is inconsistent with its previous position. Specifically, on November 20, 2002, S. Calvin Smith, Program Budget Manager, for Finance writes to the Commission to point out that:

"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
- Notification 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. (Emphasis added.)

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Mr. Smith concludes that:

"The tests 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."

Here, the County agrees with Finance's Mr. Smith and continues to retain the logging and tracking of requests and the shipment of records in its CPRA Ps&Gs.

Next, Finance comments that several of the reimbursable activities "... submitted by the claimant could be performed by lower-level staff than what is referenced in the proposed Ps&Gs".

The County did not find this comment to be useful in revising the CPRA Ps&GS as Finance never identified which activities they were discussing. So no staff changes were made.

Finally, Finance recommends "... that Commission staff apply the *Clovis Unified School District v. Chiang* (2010) 188 Cal. App.4th 794 case and offset any and all applicable costs for specified activities in the Ps&Gs to the extent of the fee authority provided by law".

However, the County is not presented with Finance's analysis of the facts or law pertaining to the *Clovis* case, so it is not possible for the County to assess the validity of Finance's changes to fee authority language found in the Commission's CPRA SOD. Therefore, the County relies on fee authority language in Commission's CPRA SOD and incorporates Commission's language in the revised CPRA Ps&Gs as follows:

> "The fee authority set forth in Government Code section 6253.9, subdivisions (a)(2) and (b), as added by Statutes 2000, chapter 982, is offsetting revenue and shall be deducted from the costs of providing a copy of a disclosable electronic record in the electronic format requested".

Further, the County CPRA PS&Gs fee authority section also provides that:

> "Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In

addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim".

Therefore, the fee authority language (specified in the above two paragraphs) is included in section VII. (Offsetting Savings and Reimbursements) of the County's revised CPRA Ps&Gs.

Reimbursable Activity Revisions

The reimbursable activities found in Section IV. of the County's revised CPRA Ps&Gs have been reformatted and clarified in light of State agency comments. Separate sections are provided for reimbursement of one-time activities, annual activities and continuing activities. The continuing activity section is further broken down into five claiming categories:

1. Record Production
2. Electronic Records
3. Determination Notification
4. Extension Notification
5. Denial Notification

Each claiming category is first described using language found in Commission's CPRA SOD. This is followed by specific activities found to be 'reasonably necessary' in implementing the (above) five types of CPRA services. The language for the 'reasonably necessary' activity sections was taken from the declarations of the following four County experts with long-standing experience in the provision of CPRA services.

Diane C. Reagan

Diane C. Reagan, Principal Deputy County Counsel is assigned to respond to CPRA requests and work with the Board of Supervisors' staff as well as staff from the Animal Care and Control, Auditor-Controller, Health Services, Public Health, and Public Social Services departments and Office of the Chief Executive officer.

Nancy Takade

Nancy Takade, Principal Deputy County Counsel is assigned to work as "office coordinator" of matters related to the CPRA. Since 2003 she has provided

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guidance and assistance to other County attorneys providing legal CPRA services to the Board of Supervisors, 37 County departments and the County's numerous agencies, commissions, boards and committees.

Rick Brower

Rick Brouwer, Principal Deputy County Counsel, supervises the Sheriff's Department Advocacy Unit with six lawyers and six support staff and has done so for the past 13 years. Among other things, his unit provides legal CPRA services to the Sheriff's Department. He has been personally responsible for providing CPRA assistance.

Shaun Mathers

Shaun Mathers is a Captain in the Risk Management Bureau of the County Sheriff's Department. Captain Mathers has 30 years of experience in law enforcement and has handled CPRA requests for his department for the past 8 years.

Accordingly, the reimbursable activities now included in the County's revised CPRA Ps&Gs are stated as follows:

"For each eligible claimant, employee, contract service, material, supply, equipment and travel costs are reimbursable when incurred in performing the following activities:

A. One-time Activities (Local Agencies)

1. To develop policies, protocols, manuals and procedures for implementing reimbursable California Public Record Act (CPRA) provisions.
2. To develop data base software or manual system(s) for tracking and processing public records request actions to implement reimbursable CPRA provisions.
3. To purchase computers to monitor and document public records request actions to implement reimbursable CPRA provisions. (Use for other purposes is not reimbursable.)
4. To develop or update web site(s) for public record act requests to implement reimbursable CPRA provisions.

B. Annual Activities (Local Agencies)

1. Annual training programs on implementing reimbursable CPRA provisions, including reimbursement for trainee and trainer participation, curriculum development, equipment and supplies

C. Continuing Activities (Local Agencies)

Record Production Services

When a member of the public requests to inspect a public record or obtain a copy of a public record:

a. 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;
b. describe the information technology and physical location in which the records exist; and
c. provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

Specific reimbursable activities that are reasonably necessary in performing record production services are:

1. Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests for public records.

2. Determining whether the public records requests fall within the agency's jurisdiction.

3. Determining whether the request reasonably describes any identifiable records and conferring with the requestor if clarification is needed.

4. Meeting and/or conferring with specialized systems and/or other local agency staff to identify access to records. If external public entities have oversight and/or ownership of the requested data or information,

meeting and/or conferring with those entities to provide the requested data or information.

5. Conducting legal reviews, research and analysis of the requested records to determine if the requested records or parts thereof are subject to statutory and case law disclaimers i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the associated costs of legal data base services.

6. Processing the requested records or parts (including the redaction of records) thereof that are disclosable.

7. Reviewing the records to be sent to the requestor to ensure compliance with statutory and case law exemptions.

8. Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested records.

9. Copying or saving records and accompanying correspondence.

10. Sending or transmitting the records to the requestor.

11. Tracking the shipment of requested CPRA records

Electronic Records Services

If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic 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. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)

Additional reimbursable activities that are reasonably necessary in performing electronic records services are:

12. Meeting and/or conferring with specialized systems and/or other local agency staff to identify access to pertinent electronic records. If external public entities have oversight and/or ownership of the requested electronic data or information, meeting and/or conferring

with those entities to provide the requested electronic data or information.

Determination Notification Services

Within 10 days, determining whether records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable; and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination. ((Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

Additional reimbursable activities that are reasonably necessary in performing determination notification services are:

13. Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests to comply with the 10 day time limit to notify the requestor if the requested record(s) or parts thereof are disclosable and the reason for the determination.

14. Within 10 days of receipt of the public record(s) request, developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination.

15. Sending or transmitting the determination notice to the requestor.

Extension Notification Services

If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

Additional reimbursable activities that are reasonably necessary in performing extension notification services are:

16. Meeting and/or conferring with local agency staff, including legal staff, to determine the date on which a determination is expected to be dispatched to the person making the request. If other establishments

have oversight and/or ownership of the requested data or information, meeting and/or conferring with those staff to ascertain an expected determination date.

17. Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched.

18. Sending or transmitting the extension notice to the requestor

Denial Notification Services

If a request is denied, in whole or in part, preparing or reviewing a written response to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).

Additional reimbursable activities that are reasonably necessary in performing denial notification services are:

19. Meeting and/or conferring with staff, including but not limited to legal staff, to review and finalize the analysis, findings and conclusions providing the basis for the denial determination.

20. Drafting and editing a written response that includes a determination that the request is denied.

21. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the denial response and accompanying correspondence.

22. Sending the denial response and accompanying correspondence to the requestor. "

In conclusion, the County's CPRA Ps&Gs have been revised in light of State agency comments and closely follow the Commission's Statement of Decision. Specific activities which County CPRA experts maintain are reasonably necessary in performing reimbursable CPRA services are included.

A complete copy of the County's revised CPRA Ps&Gs is attached in the pages that follow.

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Los Angeles County's Revised Parameters and Guidelines
California Public Records Act Test Claims (02-TC-10, 02-TC-51)

## I. SUMMARY OF THE MANDATE

This consolidated test claim filed by County of Los Angeles and Riverside Unified School District addresses activities associated with the California Public Records Act (CPRA) (Gov. Code, § 6250 et seq.), which provides for the disclosure of public records kept by state, local agencies, kindergarten through 12th grade school districts and community college districts (K-14 districts), and county offices of education. These 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.

## II. ELIGIBLE CLAIMANTS

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; and, any kindergarten through 12th grade school districts and community college districts (K-14 districts), and county offices of education.

## III. PERIOD OF REIMBURSEMENT

Government Code section 17557, as amended by Statutes of 1998, Chapter 681 (which became effective on September 22, 1998), states that a test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.

On October 10, 2002, the County of Los Angeles filed the subject test claim and therefore the reimbursement period is considered to have begun on July 1, 2001 for those statutory provisions then in effect.

Actual costs for one fiscal year shall be included in each claim. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement

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of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If the total costs for a given year do not exceed $1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

## IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed

Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records, including time survey forms, time logs, sign-in sheets, and, invoices, receipts and unit cost studies using source documents.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

Claimants may use time studies to support labor [salary, benefit and associated indirect] costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office. The reimbursable time recorded on each time survey form must be for specific reimbursable activities as detailed herein. An employees reimbursable time is totaled and then multiplied by their productive hourly rate, as that term is defined in the State Controller's Office annual claiming instruction manual, found on www.sco.ca.gov. If a time study sample is used to claim time for 4 through 9 staff, at least 2 staff should be time surveyed. If 10 or more staff are claimed, a 20% sample, rounded to the nearest whole number of cases, should be taken.

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Scope of Reimbursable Activities

The claimant is only allowed to claim, and be reimbursed for, increased costs for reimbursable activities identified below. Increased cost are limited to the costs of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, labor, contract service, material, supply, equipment and travel costs are reimbursable when incurred in performing the following activities:

A. One-time Activities (Local Agencies)

1. To develop policies, protocols, manuals and procedures for implementing reimbursable California Public Record Act (CPRA) provisions.

2. To develop data base software or manual system(s) for tracking and processing public records request actions to implement reimbursable CPRA provisions.

3. To purchase computers to monitor and document public records request actions to implement reimbursable CPRA provisions. (Use for other purposes is not reimbursable.)

4. To develop or update web site(s) for public record act requests to implement reimbursable CPRA provisions.

B. Annual Activities (Local Agencies)

1. Annual training programs on implementing reimbursable CPRA provisions, including reimbursement for trainee and trainer participation, curriculum development, equipment and supplies

C. Continuing Activities (Local Agencies)

Record Production Services

When a member of the public requests to inspect a public record or obtain a copy of a public record:

a. 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;

b. describe the information technology and physical location in which the records exist; and

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

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

Specific reimbursable activities that are reasonably necessary in performing record production services are:

1. Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests for public records.

2. Determining whether the public records requests fall within the agency's jurisdiction.

3. Determining whether the request reasonably describes any identifiable records and conferring with the requestor if clarification is needed.

4. Meeting and/or conferring with specialized systems and/or other local agency staff to identify access to records. If external public entities have oversight and/or ownership of the requested data or information, meeting and/or conferring with those entities to provide the requested data or information.

5. Conducting legal reviews, research and analysis of the requested records to determine if the requested records or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the associated costs of legal data base services.

6. Processing the requested records or parts (including the redaction of records) thereof that are disclosable.

7. Reviewing the records to be sent to the requestor to ensure compliance with statutory and case law exemptions.

8. Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested records.

9. Copying or saving records and accompanying correspondence.

10. Sending or transmitting the records to the requestor.

11. Tracking the shipment of requested CPRA records

Electronic Records Services

If requested by a person making a public records request for a public record kept in an e lectronic format, provide a copy of a disclosable electronic record in the electronic 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. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)

Additional reimbursable activities that are reasonably necessary in performing electronic records services are:

12. Meeting and/or conferring with specialized systems and/or other local agency staff to identify access to pertinent electronic records. If external public entities have oversight and/or ownership of the requested electronic data or information, meeting and/or conferring with those entities to provide the requested electronic data or information.

Determination Notification Services

Within 10 days, determining whether records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable; and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination. ((Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

Additional reimbursable activities that are reasonably necessary in performing determination notification services are:

13. Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests to comply with the 10 day time limit to notify the requestor if the requested record(s) or parts thereof are disclosable and the reason for the determination.

14. Within 10 days of receipt of the public record(s) request, developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination.

15. Sending or transmitting the determination notice to the requestor.

Extension Notification Services

If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

Additional reimbursable activities that are reasonably necessary in performing extension notification services are:

16. Meeting and/or conferring with local agency staff, including legal staff, to determine the date on which a determination is expected to be dispatched to the person making the request. If other establishments have oversight and/or ownership of the requested data or information, meeting and/or conferring with those staff to ascertain an expected determination date.

17. Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched.

18. Sending or transmitting the extension notice to the requestor

Denial Notification Services

If a request is denied, in whole or in part, preparing or reviewing a written response to a written request for inspection or copies of public records that

includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).

Additional reimbursable activities that are reasonably necessary in performing denial notification services are:

19. Meeting and/or conferring with staff, including but not limited to legal staff, to review and finalize the analysis, findings and conclusions providing the basis for the denial determination.

20. Drafting and editing a written response that includes a determination that the request is denied.

21. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the denial response and accompanying correspondence.

22. Sending the denial response and accompanying correspondence to the requestor.

## V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

### A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

#### 1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

#### 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Capital Assets and Equipment

Report the purchase price paid for capital assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the capital asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs

may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is

used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

## VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

The fee authority set forth in Government Code section 6253.9, subdivisions (a)(2) and (b), as added by Statutes 2000, chapter 982, is offsetting revenue and shall be deducted from the costs of providing a copy of a disclosable electronic record in the electronic format requested.

## VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

## IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

## X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

EXHIBIT 1

**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

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JAMES L. SCHNEIDERMAN
JUDI E. THOMAS

Los Angeles County's
Review of State Agency Comments and Revised Parameters and Guidelines
California Public Records Act Reimbursement Program (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 of State agency comments and revised parameters and guidelines.

I declare that I have met and conferred with local officials, claimants and experts in preparing the attached review of State agency comments and revised parameters and guidelines.

I declare that it is my information and belief that claimed costs, including legal services 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.

August 25, 2011; Los Angeles, CA
Date and Place

Leonard Kaye
Signature

| | | |
|---|---|---|
| SENATE RULES COMMITTEE<br>Office of Senate Floor Analyses<br><br>1020 N Street, Suite 524<br><br>(916) 445-6614 Fax: (916)<br><br>327-4478 | AB 1014 | **EXHIBIT TWO**<br>**Page 1** |

THIRD READING

Bill No: AB 1014
Author: Papan (D)
Amended: 8/23/01 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE : 6-1, 8/21/01
AYES: Escutia, Ackerman, Kuehl, O'Connell, Peace, Sher
NOES: Haynes

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

ASSEMBLY FLOOR : 64-2, 5/30/01 - See last page for vote

SUBJECT : California Public Records Act: disclosure procedures

SOURCE : California Newspaper Publishers Association

DIGEST : This bill requires a public agency, when it dispatches a determination that a public records request seeks disclosable public records, to notify the requestor of the estimated time and date when the records will be made available.

This bill also requires a public agency to assist a member of the public who requests to inspect or obtain a copy of a public record to make a focused and effective request, by doing the following actions "to the extent reasonable under the circumstances;" with specified exceptions:

1. identify records and information that are responsive to

CONTINUED

the request or to the purpose of the request, if stated;

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 requested.

ANALYSIS : Existing law, the California Public Records Act (CPRA), governs the procedure for members of the public to request, and public agencies to provide access to, disclosable public information. Specifically, the CPRA requires a public agency, upon a request for public records and within 10 days from the receipt of the request, to determine whether the public records requested are disclosable public records and to promptly notify the requestor of the determination and reasons for the decision. The time period in which the determination must be made may be extended for no more than 14 days in unusual circumstances, as specified in the statute, and upon written notice by the head of the agency or by a designee as to the reason for the extension and the date on which the determination is expected to be dispatched. (Section 6253 of the Government Code.)

This bill would require that when the determination is dispatched, and the agency has determined that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available.

This bill also would require a public agency when a member of the public requests to inspect or obtain a copy of a public record, to the extent reasonable under the circumstances, to do all of the following in order to assist a member of the public make a focused and effective request that reasonably describes an identifiable public record or records:

1. Assist the requestor in identifying the records and information responsive to the request or to the purpose of the request, if stated by the requestor;

2. Describe the technology or physical location in which the records exist; and

3. Provide suggestions for overcoming any practical basis for a denial of access to the records or information sought.

The above requirements are deemed to have been met and 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.

This bill would make this requirement inapplicable when the public agency either makes the records available as requested, makes the determination that the records sought are exempt from disclosure under the CPRA or makes available an index of its records.

Prior legislation :

SB 48 (Sher) and SB 2027 (Sher), passed the Senate Floor 40-0, 9/9/2000 - both vetoed by Governor Davis. See background for details.

Background:

The California Newspaper Publishers Association, sponsor of AB 1014, was also the sponsor of two bills dealing with the California Public Records Act (CPRA), SB 48 (Sher, 1999) and SB 2027 (Sher, 2000), both of which were vetoed by Governor Davis. SB 48 and SB 2027 were introduced, according to the CNPA, to provide an expedited and less expensive review of a denial of access to public records by a public agency, to be conducted by the Attorney General prior to court review. The bills also would have provided for a daily penalty for a wrongful denial of access to public records.

The Governor's veto message on SB 48 focused on the inherent conflict of interest arising from the Attorney General's review of an agency decision to deny access, when the Attorney General is charged with the responsibility of representing the public agency. The Governor's veto message on SB 2027, while contending that the review process involving the Attorney General would be too costly and yet not achieve the purpose of the bill, recognized the need for public agencies to be fully responsive to legitimate public record requests. The Governor directed the Secretary of State and Consumer Services Agency "to conduct a review of all state agencies' performance in responding to PRA requests and to make recommendations on appropriate procedures to ensure timely response."

In the fall of 2000, the California First Amendment Coalition and the Society of Professional Journalists performed an audit of local agency compliance with the CPRA. The audit, conducted by university journalism

students (USC, UC Berkeley, CSU Fullerton, CSU Northridge, Chapman University) under the supervision of their respective professors, covered records at more than 130 local government agencies in the San Francisco Bay Area and in Los Angeles, Orange, and San Bernardino Counties. The findings, entitled "State of Denial, Roadblocks to Democracy" were published in the Stockton Record on December 17 and 18, 2000. The findings document that local agencies initially reject or ignore legitimate public record requests 77% of the time, on the average. Cities and police departments initially refused legitimate public records requests 79% of the time (declining to 60 to 64% when oral requests were followed by formal written requests citing state disclosure mandates), and schools initially failed to comply 72% of the time (similarly declining to 33%).

The results of the audit, the CNPA states, definitively document what has been fact for decades after the CPRA was first enacted: that public agencies routinely ignore the Act, or abuse their powers to the detriment of the free flow of information to the public that is the basis of this democracy.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT : (Verified 8/27/01)

California Newspaper Publishers Association (source)
Consumer Attorneys of California

OPPOSITION : (Verified 8/27/01)

California Law Enforcement Association of Records supervisors
California Association of Resource Conservation Districts (CARCD)
County Sanitation Districts of Los Angeles County
California Municipal Utilities Association
California Assessor's Association
Association of California Water Agencies (ACWA)
California Association of Sanitation Agencies (CASA)
Los Angeles County District Attorney's Office

ARGUMENTS IN SUPPORT : According to the sponsor, AB 1014 is intended "to fundamentally alter the relationship between public agencies and the citizens they serve." The bill contains a legislative declaration of intent that the CPRA specifically require public agencies to assist members of the public in a specified manner in making requests for public records.

The author cites both the referenced audit conducted by university students, and an investigation conducted by the Stockton Record that showed, in the latter case, public agencies delivered properly requested information 53% of the time, and rejected, partially answered, or left unanswered the rest. Additionally, the sponsor provided anecdotal evidence, reported in various newspapers, of frustrations experienced by citizens trying to get public information from public agencies (state and local). There is certainly a need, the author states, to give citizens a helping hand in obtaining access to information to which they are entitled under the CPRA.

ARGUMENTS IN OPPOSITION : Opponents have stated that in small special districts where staff turnover is often and big, the bill would mandate them to "train new employees to be knowledgeable regarding ALL old business records and how to find them - a mostly unrealistic burden for any agency, particularly districts that receive no direct funding from state or local sources." [California Association of Resource Conservation Districts (CARCD) letter dated May 15, 2001.] The CARCD has suggested exempting from this bill all non-enterprise (or non-fee generating) special districts such as resource conservation districts.

ASSEMBLY FLOOR :
AYES: Aanestad, Aroner, Bates, Bogh, Calderon, Bill Campbell, Cardenas, Cedillo, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Firebaugh, Florez, Frommer, Goldberg, Harman, Hollingsworth, Horton, Jackson, Keeley, Kehoe, Kelley, Koretz, Leslie, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Migden, Nation, Negrete McLeod, Oropeza, Robert Pacheco, Rod Pacheco, Papan, Pavley, Pescetti, Reyes, Richman, Runner, Salinas, Shelley, Simitian, Steinberg, Strickland, Strom-Martin, Thomson, Vargas, Wesson, Wiggins, Wright, Wyman, Zettel, Hertzberg
NOES: Dickerson, La Suer

RJG:jk 8/27/01 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

# PUBLIC HEARING

# COMMISSION ON STATE MANDATES

TIME: 9:30 a.m.

DATE: Thursday, May 26, 2011

PLACE: Department of Finance
915 L Street, Redwood Room
Sacramento, California

## REPORTER'S TRANSCRIPT OF PROCEEDINGS

Reported by:
Daniel P. Feldhaus
California Certified Shorthand Reporter #6949
Registered Diplomate Reporter, Certified Realtime Reporter

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CHAIR REYES: It's been moved and seconded. Take the roll call, please.

MR. BOHAN: Mr. Alex?

MEMBER ALEX: Yes.

MR. BOHAN: Mr. Chivaro?

MEMBER CHIVARO: Yes.

MR. BOHAN: Mr. Lujano?

MEMBER LUJANO: Aye.

MR. BOHAN: Ms. Olsen?

MEMBER OLSEN: Aye.

MR. BOHAN: Mr. Worthley?

MEMBER WORTHLEY: Aye.

MR. BOHAN: And finally, Chair Reyes?

CHAIR REYES: Aye.

MR. BOHAN: The motion carries, 6-0.

CHAIR REYES: And without objection, can we take the same roll call on Item 4?

Thank you. Item 4, that shall be the order.

Moving on to Item 5.

MR. LOUIE: Item 5 is the *California Public Records Act* test claim. This addresses various activities associated with providing public access to public records.

MR. PETERSEN: Actually, we're on the decision; aren't we?

MEMBER ALEX: He just zipped through it.

MEMBER OLSEN: We just substituted the roll call.

MR. PETERSEN: I'm sorry, my fault. I apologize.

It's this room, lack of oxygen.

Thank you very much. Sorry.

I'm on the next one, too.

MR. LOUIE: Okay, so once again, Item 5 is the *California Public Records Act* test claim.

This test claim addresses various activities associated with providing public access to public information, activities such as providing electronic copies or assisting individuals in searching for specific information.

We have approved some of the activities and denied some of the activities.

So I guess the only real major issue in dispute other than individual findings of denial for reimbursement, Finance argues that the test-claim statutes are necessary to implement a ballot measure; and as a result, reimbursement should be denied.

Will the parties and witnesses state their names for the record?

MR. PETERSEN: Keith Petersen, representing

Riverside Unified School District, the test claimant.

MS. FEREBEE: Donna Ferebee, Department of Finance.

LT. GERHARDT: Judy Gerhardt, Los Angeles County Sheriff's Department.

MR. KAYE: Leonard Kaye, Los Angeles County.

CHAIR REYES: Thank you.

MR. BOHAN: Chairman, before we begin, Mr. Petersen has indicated to us that he wasn't sworn in. He had stepped out of the room. So if you will, I'll just swear him quickly.

CHAIR REYES: Please.

MR. BOHAN: Mr. Petersen, do you solemnly swear or affirm that the testimony which you are about to give is true and correct based on your personal knowledge, information or belief?

MR. PETERSEN: Yes, I do.

MR. BOHAN: Thank you.

CHAIR REYES: Okay, thank you.

The floor is yours, sir.

MR. PETERSEN: I'm going to defer to Mr. Kaye.

CHAIR REYES: Okay.

MR. KAYE: Thank you.

Good morning. It's good to see you all this morning.

We agree with Commission staff analysis. And we do have one small exception, and that is regarding legal services. And we feel that, in plain language, without legal services, you only have the tip of the iceberg.

And as we speak, throughout California, hundreds, if not thousands, of attorneys are involved in drafting various determinations denying Public Records Act requests. We feel this is a reasonable and necessary component, and should be reimbursable under the terms and the conditions of the parameters and guidelines. However, we recognize that this hearing this morning deals merely with the Statement of Decision and the reimbursable activities as defined by Commission staff. However, many times, it's been my experience over the years, that sometimes if things are not included formally in the Statement of Decision, they may be forgotten during the parameters and guidelines phase.

So, therefore, we merely ask that right after Item 7 -- and Item 7 has to do with providing a written response to a request for a Public Records Act which has been denied. And that written response also has to include a determination.

Now, we toyed with the idea of adjusting that language to include a legal determination of whether or

not to make other things. But I think at this point, because we've waited nine years for this decision, we certainly don't want to delay or defer it, so that we can go back and do a lot of further analysis.

We think a lot of factual analysis will be required to develop appropriate parameters and guidelines.

So, therefore, we recommend that a simple sentence after the last item, 7, to the effect of the scope of legal services reasonably necessary in drafting written responses and determinations when a Public Records Act request is denied can be addressed in the parameters and guidelines phase. So that would put everyone on notice, so to speak, that these requirements could be not fully disclosing the extent of the reimbursable activities to follow in the parameters and guidelines. So I thank you for that.

CHAIR REYES: Before I go to Finance, does anybody -- Mr. Louie, do you have off-the-cuff comments or thoughts on this?

MR. LOUIE: It can be handled in the P's & G's stage, to the extent that, I guess, to repeat the sentence that you were looking for, is that the scope of legal services that are reasonably necessary for the denial are not precluded or are included in the activity?

MR. KAYE: Well, they'll be addressed.

MR. LOUIE: Addressed in the P's & G's stage?

MR. KAYE: Addressed in the P's & G's stage. We recognize that at this moment, I think it would take a lot of discussion, a lot of understanding, a lot of fact-gathering to determine the exact scope of legal services.

I have been talking to --

CHAIR REYES: So you're asking that we defer to that and take care of that at the P's & G's -- work it out in the P's & G's?

MR. KAYE: Right. But we recognize that it is coming; that the Statement of Decision that is before you today doesn't include any sort of understanding or disclosure that this very large area of discussion is coming for resolution in the P's & G's phase.

All we ask for is a simple sentence indicating that.

CHAIR REYES: Okay --

MEMBER WORTHLEY: Mr. Chairman?

CHAIR REYES: Yes -- Ms. Shelton?

MS. SHELTON: I need to get a clarification because there is a finding in this decision that says that these statutes don't create a new mandated duty to litigate. And so if you adopt this analysis --

CHAIR REYES: It opens it up?

MS. SHELTON: No, that's the finding. There is no state-mandated duty to litigate.

Okay, I'm not sure what Mr. Kaye is suggesting. If he is suggesting legal services is part of making the determination whether or not a document can be disclosed --

MR. KAYE: Yes.

MS. SHELTON: -- that's a different issue, and that is an issue for parameters and guidelines.

MR. KAYE: Yes.

MS. SHELTON: But the litigation of the decision is denied under this analysis.

MR. LOUIE: Right. And that's been noted in the footnote of the analysis.

CHAIR REYES: Right.

MR. KAYE: Okay. And all I'm saying is, I didn't use the term litigation, court costs, attorney's services, or anything like that.

I recognize and respect the Commission's analysis. We don't necessarily agree with it, but we understand it. And we think it would take quite a bit of argument and analysis and so forth to go ahead and challenge that part.

But what we are very, very aware of is that --

and Lieutenant Gerhardt can testify to this -- that we, as well as hundreds, if not thousands of public agencies throughout California are confronted with trying to make legally cognizable determinations in our written denials. And many times, it's actually written into the requirements before sometimes determinations can be made and the written justification that we must consult with our County counsel and so forth.

And these activities are reasonably necessary -- in many cases, absolutely required in order to do that. As a matter of fact, it's inconceivable that we couldn't do that. So that's all I'm asking.

I'm not saying it's part of this or that and so forth. I'm leaving in a tiny crack so that we can define -- you know, get our arms around this and say what it is in the parameters and guidelines phase.

MS. SHELTON: And those issues to determine -- you know, the verb here "to determine whether or not a document can be made public" can be reserved for the P's & G's stage. You can make that decision later.

MR. LOUIE: Okay, I don't think it's necessary to add a sentence to keep that open.

CHAIR REYES: Because the notes will memorialize the fact that this was part of the conversation for the P's & G's?

MS. SHELTON: Right. And I would urge you not to make a ruling on that, because your issue today is whether, as a matter of law, these are state-mandated duties.

CHAIR REYES: Yes, parameters…

MS. SHELTON: You don't have at this point jurisdiction until you adopt a Statement of Decision to determine whether something is reasonably necessary.

CHAIR REYES: Okay, so, point taken.

Lieutenant, did you want to add something?

LT. GERHARDT: Thank you for having me.

I'll just add that I'm the fortunate one of 20,000 members in our department that oversees the Public Records Act desk.

CHAIR REYES: My sympathies.

LT. GERHARDT: Thank you. I need that from somebody.

Particularly in the Sheriff's Department in LA County, obviously, it's a huge endeavor when somebody asks for a record from us because we are so large. And so searching for those records, the type of records being requested from our agency are usually very complex.

Because of the nature of our business, we have to go through them with a fine-toothed comb for redaction, both from the personnel side and the security

side. So it is a burdensome, complex process that we try very hard to make sure it's accurate.

CHAIR REYES: Thank you.

Mr. Petersen, you had raised your hand earlier, and then waved it off. I'm not sure where you are.

MR. PETERSEN: I didn't mean to wave it off. I'm sorry.

Mr. Kaye said he wanted to open a small crack here to embrace the concept of reasonable necessary activities. I'd like to wedge that open a little bit further.

Regarding section 6259, the legal costs, I think the staff analysis is framed inappropriately. It says that one of the bases for the decision is that districts are not required to engage in litigation. That's not how this works. The staff analysis finds that providing the written justification is necessary as a matter of law and reimbursable.

The written justification requires the analysis of the records being requested, and that analysis is run against a list of records you cannot disclose to the public. In other words, the public agency has a duty to make sure certain things are not released, especially regarding peace officers and that sort of thing.

If the person requesting those records is

dissatisfied, they can file a petition in court.

The public agency does not engage in litigation. A public agency cannot file a petition to rule itself out of order in replying to the petition. The standing is for the person requesting the records to file a petition. The District -- excuse me, the local agency has no standing to engage, start, commence any litigation on this issue.

It's up to the requesting party. Therefore, it's out of the hands of the local agency.

Once the requesting party files a petition, the public agency has a duty to defend itself. And that would seem to be obviously reasonable and necessary. And I want to make sure that that carries over to the parameters-and-guidelines discussion, notwithstanding the staff's analysis.

CHAIR REYES: The staff's analysis is contrary to that.

Mr. Louie --

MR. LOUIE: That would preclude that activity. In terms of engaging in litigation, the staff analysis would preclude that.

CHAIR REYES: Whether you are doing the litigant, the defense or the plaintiff, right?

MR. PETERSEN: What does "engaging" mean?

MR. LOUIE: Yes.

MR. BOHAN: True, true. And it couldn't be fixed in the P's & G's.

MR. LOUIE: It's not something that can be addressed in the P's and G's.

CHAIR REYES: Right.

MR. BOHAN: If you adopt the staff analysis, that's precluded, clearly.

MR. PETERSEN: I guess that leaves us, Mr. Chair, with the concept of what does "engaging" mean.

Any defending? Responding? Anything?

CHAIR REYES: Staff?

MR. LOUIE: It's essentially based off of, if litigation is brought pursuant to 6258, which was -- I don't believe it was pled -- or 6259.

And the duties that the court has to engage in based on 6259, any response from that would be "engaging." Based off the language of 6259, there's no duty to engage in litigation.

MR. PETERSEN: I still don't understand what that means, Mr. Chair.

MR. LOUIE: There's no duty to participate. There's no -- I guess the activity that you are asking for is not found in 6259.

MR. PETERSEN: There is no duty to respond to

a lawsuit in the California courts?

MR. LOUIE: Not from 6259. Not from the statutes that have been pled in the test claim.

MR. PETERSEN: I understand that.

Thank you.

CHAIR REYES: Finance?

MS. FEREBEE: Well, I would also -- I guess I would like to be clear on exactly what the proposal was. I think I'm a little bit confused.

Is it the portion of the analysis that begins on page 27, "court costs and attorney fees"?

The other thing that I would like to observe is -- first of all, I think we agree with the staff analysis as to this point. We thought it was well analyzed, and should be -- if the Commission is so inclined to adopt this proposed decision as it is, we think that should be included.

But I also wanted to ask, there is a portion in the middle of page 29 that notes that litigation has been present, duties to litigate have been present since the original enactment of the CPRA in 1968, and would have been present since 1968.

And I'm not sure, in light of that, how...

MR. PETERSEN: Okay, Can I --

CHAIR REYES: Okay, let her finish her thought,

and then Mr. Petersen, and then Mr. Kaye.

Go ahead.

MS. FEREBEE: I'm not sure, in light of that, that seems to be one additional reason, and this analysis seems to have more than one reason why, and as Mr. Louie has stated why, that should not be allowed.

But I guess back to my first statement: I'm not quite clear on exactly what the proposal was to extract out of this analysis and to bump over into the P's & G's.

CHAIR REYES: Ms. Shelton?

MS. SHELTON: Let me try to make that clear.

What Mr. Kaye is suggesting is something different than what Mr. Petersen is suggesting. That is number one.

What Mr. Kaye is suggesting, if you look at the conclusion on pages 34 and 35, and Activity No. 7 is based on Government Code section 6255, and that activity is, "If a request is denied in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied."

So in order to comply with that activity, Mr. Kaye wants to discuss during the parameters-and-guidelines phase, maybe getting the Commission to

consider whether legal assistance in writing that letter would be a reimbursable state-mandated activity -- or, rather, that it would be reimbursable.

MS. FEREBEE: Oh, I see.

MS. SHELTON: As reasonably necessary.

And that would be one separate issue. And I think that would be allowable under this present proposal.

Mr. Petersen is asking for litigation under 6259 and 6258, I think. And the analysis that is presented is recommending a denial on that because it's not a mandated new duty imposed on local government.

MS. FEREBEE: Okay.

MR. KAYE: Okay, and thank you.

And my point in all of this, if there is confusion here now today with the concept of what we are requesting or what LA -- what I'm suggesting here, is I think it's super important, too, for those that aren't privy to this discussion, or don't have the opportunity to read the transcript in a timely fashion, to try and figure out what is what.

I really, strongly recommend that we insert some phrase or sentence or thought, that the scope of legal services reasonably necessary in drafting written responses and determinations when a Public

Records Act request is denied can be addressed in the parameters-and-guidelines phase, to alert everyone that this is something that at this point we think is possibly allowable in the P's & G's; and we're not cutting it off at the Statement of Decision level.

CHAIR REYES: Let me go to Ms. Olsen and to Mr. Kaye's point before it goes to Mr. Petersen.

MEMBER OLSEN: Mr. Chair, it seems to me that this is an issue that comes up, if not routinely, then fairly regularly here about what folks would like addressed in the P's & G's that might not be specifically included in the decision.

And I think what Mr. Kaye is suggesting is sort of a P's & G's Post-It note be inserted in this decision. And I just would like staff's response on the sort of general issue of that versus just having it reflected in the record in minutes.

How does that -- if it's reflected just in the record in minutes of this meeting, does that then go into your thinking as you're going forward on the P's & G's? Or do you really -- do we really need to start inserting Post-It notes?

MS. SHELTON: No, you don't need it, because when we do parameters and guidelines, we have the full test-claim record available, and we do review that in

order to draft P's & G's.

When you're doing a test claim, you're basing it on the language used in the statutes and regs, and you're not considering how something is implemented, necessarily. So you're just basing it as a question of law, what is mandated by the State.

My hesitation with the language that Mr. Kaye wants to insert into this analysis, is that I'm not sure, sitting here today, if it's too broad or if it's narrow enough to encompass only section 6255. And I don't feel comfortable, necessarily, adding your language.

When, by law, you're allowed to -- when you propose your P's & G's, allowed to include any activity that you're asserting is reasonably necessary; and you have to put the evidence in to show why it is.

MR. BOHAN: You also run the risk of having decisions with lots of Post-It notes all over them.

CHAIR REYES: I'm more inclined to support the notion that this is in the minutes, memorialized by the transcript. It's memorialized by the minutes. It will be incorporated into the discussion.

And then at the time that the P's & G's, Mr. Kaye will participate in that and bring back a copy of the minutes and the transcript, saying we talked about it, we didn't quite put it into the box that you wanted,

because we're not there yet. We haven't done the analysis. And we can sit here for the next ten hours and try to come with the verbiage that everybody's going to be happy with. And I'm not inclined to go there. I would rather keep it at the higher level.

MEMBER ALEX: Let me observe, having spent many hours on Public Records Act requests, which also applies to state agencies, that the idea that you need some legal advice on how to proceed initially is pretty clear. And I don't think that this is going to be lost in translation. So I think you made your point. And I don't think anybody here would disagree with it.

MR. KAYE: Okay, except for the litigation phase.

MS. SHELTON: Right, that part is denied.

MR. BOHAN: It's different.

CHAIR REYES: And now I think we've addressed your issue.

Now, we can go back to Mr. Petersen.

MR. PETERSEN: Well, based on the comment from Finance, it appears there is still some confusion on the duty-to-litigate thing. I never asserted a duty to litigate.

She referenced a 1968 statute, and Commission staff said, "Even if litigation were implied, the 1968

statute was the source of it."

I never asserted, and it's clear from the plain language in the statute, that the public agency, under this statute, cannot commence litigation on its written justification to deny access; only the person who requested the documents.

So I'm not asserting that the public agency should be reimbursed for commencing litigation; only the reasonable and necessary fact that they have to defend themselves when the petition is filed against them.

The related concern is two sentences that start on the bottom of page 27. And this occurs frequently, but I would like to mention it one more time.

The last paragraph starts, "Thus, the K-14 District claimant alleges that payment of court costs and fees is reimbursable."

The next sentence, "However, the payment of court costs and fees is not a program or service. Instead, it is a consequence of failing to provide a legally required program or service, specifically the service of making disclosable public records open for inspection by the public or providing copies."

I believe that's the fundamental misunderstanding of the law.

Public agencies are required to either provide

the documents requested or provide a written justification of why they were not provided. The mandate, which the staff says is reimbursable, is to provide that written justification. That's the duty. There is no duty to be correct about that justification. It's a matter of opinion; and legal opinions vary. And the court will have the final say. By coming up with the wrong judgment is not a failure to implement the mandate; it's coming up with the wrong conclusion.

So the fact that it goes to court doesn't mean there was a failure in performing the mandate. And I believe that's the fundamental problem with this test claim and many other test claims, that reimbursement is based on outcomes rather than process.

CHAIR REYES: Thank you.

MS. FEREBEE: Can I? I'd like to --

CHAIR REYES: Yes.

MS. FEREBEE: Well, if I still do have a chance, I would just like to say that Finance concurs with the analysis as to the court costs and attorney fees.

However, I do want to say, as Mr. Louie pointed out in his opening remarks, that Finance has filed written comments objecting, sort of a big objection, that Government Code section 17556,

subdivision (f), applies to this claim. And because of that, the Commission should find that there are no costs mandated by the State because the test-claim statutes are necessary to implement Proposition 59. We outlined our argument in our written comments of January 14th, 2011, and continue to maintain that as so.

But I wanted to make sure that I got that in the record. But as to the points that have just been made about the court costs, attorney fees, we concur with the staff analysis.

Thank you.

CHAIR REYES: Thank you.

Okay, any additional questions from any members?

MEMBER WORTHLEY: Just a comment.

CHAIR REYES: Mr. Worthley?

MEMBER WORTHLEY: I think it's a little unfortunate that the analysis indicated -- the portion that was read by Mr. Petersen -- I think it should have simply ended with saying that -- going back to the last paragraph on page 27, "However, the payment of court costs or reasonable attorneys fees is not a program or service provided to the public." I think it should have ended there. The statement that, "Instead, it is a consequence of failing to provide a legally required

program or service" is an assumption which is not necessarily true. I mean, because you could be sued -- you could be absolutely right in your determination that this should not be disclosed, and still be sued by the person requesting it.

This would indicate that that -- that on the basis of the fact that the only reason that you're being sued is because you failed to provide something, well, that is true. But if you have a legal obligation not to provide it, then this is assuming that every time you're sued, it's because of the failure you've made. And oftentimes, you may not have failed at all, but you're being sued because you have an unhappy litigant, and so they're going to sue you.

CHAIR REYES: Mr. Louie?

MR. LOUIE: That statement was more towards the payment of attorneys' fees which only occurs when a court has found that you should have provided the document.

MEMBER WORTHLEY: Oh, okay, in that instance? Okay.

MR. BOHAN: Mr. Chairman, would it be helpful to go into this a little deeper? I mean, we've thought through some of the issues that are being raised. We haven't really responded. We'd be pleased to, or not.

MEMBER WORTHLEY: Personally, I don't have a

problem going forward today.

I understand Mr. Petersen's objection, and I understand it. But I know we were under this wall of what the law allows us to do. And I think when you look, Mr. Petersen's argument is one of: Isn't it reasonably expected that if you're going to be sued, you're going to respond to it? Absolutely, you're going to respond to it. But then you get to the very strict constraints under which we operate, and that becomes our constraint.

It's not about whether it makes sense, oftentimes, unfortunately; it's about what we're allowed to do legally.

CHAIR REYES: Our parameters, right.

MEMBER WORTHLEY: And I think that's kind of where we are.

CHAIR REYES: Mr. Louie?

MS. SHELTON: Well, we can go around and around about this.

I think that there were couple of things. One, who is making the decision to respond? Is that the State or is that the local agency? And that's one of the issues.

The other issue is that they have been litigating these issues since 1968. So it's not a new duty.

MR. BOHAN: That's really the major point. This has been around. They've been sued, and they have had that since the beginning of the Act. The same statutes didn't add to that.

So it's true that when you get sued, you may need to respond. You may be right, but that's been there forever.

CHAIR REYES: And Mr. Petersen's point is that back in '68, there were ten causes for you to be sued, now we have 120.

MS. SHELTON: Right.

CHAIR REYES: You still have cause to react. But now, the number of opportunities to have to react have increased.

MS. SHELTON: Right.

MR. PETERSEN: Plus, there's never been an affirmative duty for the public agency to litigate.

The way you phrased your response seems to indicate you still think there was a duty to litigate. The public agency never had a duty to commence litigation, and they have no legal standing to use this code section.

CHAIR REYES: Okay. So in the absence of additional comments from Board members, is there a motion?

MEMBER LUJANO: Move approval.

CHAIR REYES: Move approval of staff's recommendation.

Is there a second?

MEMBER OLSEN: Second.

CHAIR REYES: It's been moved and seconded.

Any additional comments from the public?

*(No response)*

CHAIR REYES: Any additional comments from Board members?

*(No response)*

CHAIR REYES: Please call the roll.

MR. BOHAN: Mr. Alex?

MEMBER ALEX: Yes.

MR. BOHAN: Mr. Chivaro?

MEMBER CHIVARO: Yes.

MR. BOHAN: Mr. Lujano?

MEMBER LUJANO: Aye.

MR. BOHAN: Ms. Olsen?

MEMBER OLSEN: Aye.

MR. BOHAN: Mr. Worthley?

MEMBER WORTHLEY: Yes.

MR. BOHAN: And Mr. Reyes?

CHAIR REYES: Aye.

MR. BOHAN: The motion carries, 6-0.

CHAIR REYES: Thank you.

And consistent with what I have done before, if we can substitute the roll call on Item 6 without objection?

MR. BOHAN: Yes.

CHAIR REYES: Thank you. That will be the order.

Item 7, *School Bus Safety*.

MR. LOUIE: Item 7 is the *School Bus Safety III* test claim. It addresses various activities imposed on school districts in regards to providing school bus transportation. This includes providing safety notices to students, purchasing school buses that are equipped with seat belts, things of that nature.

Consistent with a prior court case and prior Commission findings, we found that school bus transportation is not a required activity; and all of the activities imposed by the statutes are triggered by that provision of school bus transportation. As a result, we've denied -- we're recommending denial of the whole test claim.

CHAIR REYES: Thank you.

Go ahead.

MR. LOUIE: Will the parties state their names for the record?

Received
February 21, 2013
Commission on
State Mandates

Cost Recovery Systems, Inc.

February 21, 2013

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

RE: Proposed Parameters and Guidelines
California Public Records Act (02-TC-10 and 02-TC-51)

Dear Ms. Halsey,

I have reviewed the Proposed Parameters and Guidelines (Ps and Gs) for the California Public Records Act program and have several comments for your consideration.

The major problem with the staff's proposed Ps and Gs is that it directly contradicts the original, Commission approved, Statement of Decision (SOD). The first page of the proposed Ps and Gs list the specific commissions-approved activities. However the list of reimbursable activities on subsequent pages do not resemble these approved activities in the least and indeed, proceed to nullify each of these to the point of non-recognition.

This is justified by arguing that the original 1968 Public Records Act (PRA) already required many of the same activities, making them ineligible. However if this was the case – should that not have been argued earlier and reflected in the SOD? The plain language of the SOD lists specific activities that staff is now saying in ineligible. It is almost as if staff has changed its mind and has decided to re-write the SOD. As the SOD is a legally binding document, this appears to violate regulations. Either the SOD is in error or the proposed Ps and Gs are in error.

Also, I believe that if the legislature decided to re-mandate similar or the same activities, the more current language would trump or supersede the older requirements and still constitute a reimbursable activity.

This being said, if the Commission decides to contradict its original SOD approved in May, 2011 and adopt staff's recommend Ps and Gs, I request that the following items be addressed to better clarify instructions to local agencies.

Ongoing Activities:

1) Item 1 is confusing and contradictory. The first words under eligible activities say "Provide a copy of a disclosable electronic record..." yet paragraph three directly contradicts this sentence by stating that this activity does NOT include sending (instructions may just as well say "providing" to eliminate confusion) the record to the requestor. Why state it in the very first sentence under Eligible Ongoing Activities if it is just going to be taken away in the next section?

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Since every activity a rational person would assume to be included in that wording of "providing" a record is apparently NOT eligible, I suggest that the entire first paragraph be omitted and skip straight to the second section addressing computer programming: bullet points a. and b. where some eligible activities exist.

By doing this, the need for the third paragraph is eliminated, since its sole purpose is to nullify the first.

I also recommend clarifying the limits of reimbursement in this section to state that only "indirect" costs are eligible under this component. Section VII states that direct costs are not eligible as fee authority exists for these costs.

That raises the question as to what constitutes indirect costs. Departmental and city wide overhead are obvious, but what about employee benefits? What about non direct staff involved in the request - such as supervisory and administrative review and approval? Is this considered direct or indirect?

2) Item 2, second paragraph, "This activity includes developing and reviewing language to notify the requestor..." is confusing.

The use of the word "language" is ambiguous. If I understand this correctly, I suggest that the same wording proposed in the Ps and Gs for section 3 also be used in section 2 for clarity and consistency. My recommendation would be:

"This activity includes:

a. Drafting, editing, and reviewing a written notice to the person making the request, setting forth the reasons for the reasons for the determination. If notice is provided verbally in lieu of written notification, the time for staff to contact and communicate this information to the requestor.

b. Preparing and obtaining agency head, or his or her designee, approval and signature of the notification to the requestor.

c. Sending or transmitting the notice to the requestor."

Also, it might be helpful to include a brief explanation as to why all the eligible activities listed on the first page of the claiming instruction are really NOT eligible for reimbursement, as many local agencies filing their claims may be justifiably confused and not know to read the Draft Staff Analysis for clarification. The clearer the instructions, the less likely that there will be IRCs and issues later.

Thank you for the opportunity to comment on this draft staff analysis.

Sincerely,

Annette Chinn
President
Cost Recovery Systems

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

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Received
March 5, 2013
Commission on
State Mandates

March 5, 2013

Ms. Heather Halsey
Executive Director
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Sacramento, California 95814

Dear Ms. Halsey:

**LOS ANGELES COUNTY REVIEW—**
**COMMISSION STAFF ANALYSIS AND**
**PROPOSED PARAMETERS AND GUIDELINES**
**CALIFORNIA PUBLIC RECORDS ACT PROGRAM (02-TC-10, 02-TC-51)**

We submit our review of the Commission staff analysis and proposed parameters and guidelines (Ps&Gs) for the California Public Records Act (CPRA) program and our revised CPRA Ps&Gs.

If you have any questions, please contact Leonard Kaye at (213) 974-9653 or via e-mail at lkaye@auditor.lacounty.gov.

Very truly yours,

Wendy L. Watanabe
Auditor-Controller

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Enclosures

Los Angeles County's
Review of Commission Staff Analysis and Proposed Parameters and Guidelines
California Public Records Act Reimbursement Program (02-TC-10, 02-TC-51)

## Executive Summary

The County of Los Angeles (County) has reviewed the Commission on State Mandates (Commission) draft staff analysis of the County's proposed California Public Records Act (CPRA) parameters and guidelines (Ps&Gs).

Commission staff find that the County has "... ordered and categorized the proposed reasonably necessary activities under the headings that approximate the language of the reimbursable activities in the test claim statement of decision" but that some of the County's proposed activities "... are beyond the scope of what was approved in the test claim statement of decision, or are not new".

The County respectfully disagrees with some of the Commission staff findings that the County requests reimbursement for activities which are not new or go beyond the scope of what was approved in the Commission's decision.

Specifically, the County finds that the Commission staff rejection of the County's proposed reimbursement for CPRA training is wrong. The County claims that reimbursement is required for training on implementing only the new CPRA requirements which do not include prior (1968) CPRA provisions. Accordingly, the County has added clarifying language to the CPRA Ps&Gs.

Further, the County finds that the Commission's decision does not deny reimbursement for all legal services. There is no prohibition against reimbursing the services of attorneys or for tht matter engineers, physicians or any other types of professionals. Commission's decision only denies reimbursement for legal service when performed to determine whether the requested records are disclosable. Indeed, as Commissioner Ken Alex stated at the Commission's CPRA hearing "... the idea that you need some legal advice on how to proceed initially is pretty clear".

Importantly, the County has added a provision to the Commission staff CPRA Ps&Gs indicating that time-studies are an acceptable actual-cost claiming methodology. This methodology reduces claimants' costs by not having to file voluminous reimbursement claims as well as the State's costs in reviewing them.

New Declarations

On August 30, 2011 the County filed four declarations of County staff currently implementing CPRA provisions. Commission staff from them to be 'anemic'. On page 12 of their analysis, staff state that one declarant "... does not state on her own information and belief that the activities in Attachment A are necessary to implement the mandate. Staff also state, on page 12, that two other declarants "do not expressly endorse its (Attachment A's) contents".

Three of the four former declarants were available to redo their declarations to address the (above cited) concerns of Commission staff. And did so. Also declarants developed a new Attachment A which included all the activities found by Commission staff to be reasonably necessary as well as other activities personally found by the declarants to be reasonably necessary.

Accordingly, the evidence that County declarants now provide on their own information and belief on what is necessary to implement CPRA provisions found reimbursable by the Commission is on the record. It should be afforded great weight considering the long-standing CPRA experience of the declarants.

Diane C. Reagan

Exhibit 1 contains the declaration of Diane C. Reagan, Principal Deputy County Counsel assigned to respond to CPRA requests and work with the Board of Supervisors' staff as well as staff from the Animal Care and Control, Auditor-Controller, Health Services, Public Health, and Public Social Services departments and Office of the Chief Executive officer.

In addition, Ms. Reagan has been assigned to work with one CPRA requestor in responding to voluminous requests for public records. In this regard, Ms. Reagan has provided an Attachment B, on page 10 of Exhibit 1, of her previous declaration filed with the Commission on August 30, 2011, which catalogs 20 such requests during the January 1, 2011- June 17, 2011 period.

Ms. Reagan, based on her extensive experience in implementing CPRA services which were found to be reimbursable by the Commission on May 26, 2011, declares under penalty of perjury, that:

> "... it is my information and belief that the Commission staff fairly state the activities reasonably necessary in implementing new CPRA

services except for the changes I recommend which are found (highlighted) in Attachment A.

... it is my information and belief that the changes recommended to Commission staffs' reimbursable activities are required because the provision of new CPRA services, including those to assist CPRA requestors in making a focused and effective search, must be tracked, processed and provided to the requestor in a timely and cost-efficient manner."

Therefore, Ms. Reagan adds substantial evidence to the record supporting a Commission decision to adopt CPRA Ps&Gs which include the County's revisions as described in her declaration's Attachment A.

Rick Brouwer

Exhibit 2 contains the declaration of Rick Brouwer, Principal Deputy County Counsel. Mr. Brouwer supervises the Sheriff's Department Advocacy Unit with 6 attoneys and six support staff and has done so for the past 17 years. Among other things, his unit provides legal CPRA services to the Sheriff's Department. He has been personally responsible for providing CPRA assistance.

Mr. Brouwer, based on his extensive experience in implementing CPRA services which were found to be reimbursable by the Commission on May 26, 2011, declares under penalty of perjury, that:

"... it is my information and belief that the Commission staff fairly state the activities reasonably necessary in implementing new CPRA services except for the changes I recommend which are found (highlighted) in Attachment A.

... it is my information and belief that the changes recommended to Commission staffs' reimbursable activities are required because the provision of new CPRA services, including those to assist CPRA requestors in making a focused and effective search, must be tracked, processed and provided to the requestor in a timely and cost-efficient manner."

Therefore, Mr. Brouwer adds substantial evidence to the record supporting a Commission decision to adopt CPRA Ps&Gs which include the County's revisions as described in his declaration's Attachment A.

Shaun Mathers

Exhibit 3 contains the declaration of Shaun Mathers, a Captain in the Risk Management Bureau of the County Sheriff's Department. Captain Mathers has 30 years of experience in law enforcement and has handled CPRA requests for his department for the past 10 years.

Captain Mathers, based on his extensive experience in implementing CPRA services which were found to be reimbursable by the Commission on May 26, 2011, declares under penalty of perjury, that:

> "... it is my information and belief that the Commission staff fairly state the activities reasonably necessary in implementing new CPRA services except for the changes I recommend which are found (highlighted) in Attachment A.
>
> ... it is my information and belief that the changes recommended to Commission staffs' reimbursable activities are required because the provision of new CPRA services, including those to assist CPRA requestors in making a focused and effective search, must be tracked, processed and provided to the requestor in a timely and cost-efficient manner."

Therefore, Captain Mathers adds substantial evidence to the record supporting a Commission decision to adopt CPRA Ps&Gs which include the County's revisions as described in his declaration's Attachment A.

Accordingly, substantial evidence has been provided by three County declarants supporting a Commission decision to adopt the Commission staff CPRA Ps&Gs as revised by the County. But there is more.

State Controller Office

The State Controller's Office (SCO) in reviewing the County's initial version of its proposed CPRA Ps&Gs filed on June 23, 2011 provided guidance on developing a more effective version.

Specifically, on July 22, 2011, Mr. Jay Lal, a manager of the Local Reimbursement Section of the State Controller's Office (SCO) wrote the Commission and indicated that "... the reimbursable activities listed (by the County) were confusing, not specific and needed clarification".

To reduce confusion, Mr. Lal recommended that the County could redraft its Ps&Gs by using "... the reimbursable activities laid out in the (County's 2002) test claim attachments of (Captain) Michael R. McDermott and (Commander) Richard L. Castro (of the Los Angeles County Sheriff's Department)".[1]

Commander Castro has declared under penalty of perjury that it is "... my information or belief (that) 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". Commander Castro's list of reasonably necessary activities is as follows:

"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.

[1] The declarations of Commander Castro and Captain McDermott are found in exhibits 5 and 6 respectively.

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 "

It should be noted that Commander Castro's list of reasonably necessary activities is detailed and not explicitly specified in CPRA statutes. The Commission's May 26, 2011 CPRA decision, like most Commission decisions, was limited to statutory provisions and did not include any of Commander Castro's reasonably necessary activities.

It is only during the Ps&Gs phase of the Commission's CPRA proceedings that Commander Castro's list of reasonably necessary activities which are not specified in statute can be entered into evidence. So, that is done now to provide further evidence that the changes recommended to Commission staffs' reimbursable activities are required because the provision of <u>new</u> CPRA services, including those to assist CPRA requestors in making a focused and effective search, must be tracked, processed and provided to the requestor in a timely and cost-efficient manner.

Further, Commander Castro, like the County's current declarants, finds that conducting training on implementing the test claim legislation is a reasonably necessary activity.

<u>Training</u>

Commission staff find that even one-time CPRA training is not reasonably necessary in implementing only CPRA's provisions found to be reimbursable by the Commission. Staff explain, on page 17 of their analysis, that "there is no

evidence that the initial training of government employees could not include CPRA".

The County maintains that the State should pay for CPRA training only on the new CPRA requirements found reimbursable by the Commission and only for those government employees responsible for implementing those provisions.

The County has provided substantial evidence in the attached declarations supporting a finding that limited one-time training is reimbursable. There is no evidence supporting a contrary conclusion.

Therefore, the County adds the following training language to the one-time activities of "Section IV. REIMBURSABLE ACTIVITES" proposed by Commission staff:

> *One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section "IV. REIMBURSABLE ACTIVITIES" of these parameters and guidelines. This training activity does not include and reimbursement is not required for implementing all of the California Public Records Act or instruction regarding making a determination whether a record is disclosable.*

On-going Activities

The County maintains that, based on the County's declarations previously discussed, the changes recommended to Commission staffs' reimbursable on-going activities are required because the provision of new CPRA services, including those to assist CPRA requestors in making a focused and effective search, must be tracked, processed and provided to the requestor in a timely and cost-efficient manner.

Regarding on-going legal services necessary to implement CPRA provisions found to be reimbursable by the Commission, Commission staff are in error in indicating that all legal services are not reimbursable. Staff can point to no finding in Commission's CPRA decision to this effect.

Further, the County finds that the Commission's decision does not deny reimbursement for the services of attorneys, engineers, physicians or any other professionals. In fact, the Commission's decision did not address an occupation but a function … the function of determining whether the requested records are

disclosable. So legal services not pertinent to the disclosure function are reimbursable. Indeed, as Commissioner Ken Alex stated at the Commission's CPRA hearing "... the idea that you need some legal advice on how to proceed initially is pretty clear".

The County does agree with Commission staff that those legal services conducted for the purpose of determining whether a record or parts thereof are disclosable are not reimbursable. The County only adds this reimbursement limitation language where Commission staff language indicates or suggests that all legal services are not reimbursable.

The County has also limited reimbursement for other on-going activities but not always to the extent proposed by Commission staff. The County's limitations are based on evidence provided by their declarants as previously discussed.

The County therefore makes the following (highlighted) revisions to the Commission staff list of reimbursable on-going CPRA activities:

1 Provide a copy of a disclosable electronic record in the electronic 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. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).

This activity includes:

a. Computer programming, extraction, or compiling necessary to produce disclosable records, including the pro rata costs of purchasing and installing software systems permitting key word searches for those requests requiring assistance to the requestor in making a focused and effective search, and

b. Producing a copy of an electronic record that is otherwise produced only at regularly scheduled intervals.

This activity does not include, and reimbursement is not required for the costs of determining whether the record is disclosable; receiving public records act requests not requiring assistance to the requestor in making a focused and effective search; tracking requests not requiring assistance to the requestor in making a focused and effective search; processing requests not requiring assistance to the requestor in making a focused and effective search; ~~determining whether a request describes reasonably identifiable records and identifying access to those records~~; ~~retrieving records, or sending the records to the requestor.~~

Fee authority discussed in section VII. of these parameters and guidelines is available to be applied to the costs of this activity, and may fully offset the reimbursable costs of this activity. The Controller is authorized to reduce reimbursement for this activity to the extent of fee authority, as described in section VII.

2. Within 10 days from receipt of a request for a copy of records, notify the person making the request of the disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982)).

This activity includes: ~~developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination.~~

a. Drafting, editing, and reviewing a written notice to the person making the request, setting forth the reasons for the determination. If notice is provided verbally in lieu of written notification, the time for staff to contact and communicate this information to the requestor.

b. Preparing and obtaining agency head, or his or her designee, approval and signature of the notification to the requestor.

c. Sending or transmitting the notice to the requestor.

This activity does not include, and reimbursement is not required for the activities of making the determination whether a record is disclosable , receiving the request for records not requiring assistance to the requestor in making a focused and effective search, determining whether the request not requiring assistance to the requestor in making a focused and effective search, falls within the agency's jurisdiction, ~~determining whether the request describes reasonably identifiable records, identifying access to records,~~ conducting legal reviews to determine whether records are disclosable, processing the records not requiring assistance to the requestor in making a focused and effective search, obtaining supervisory review in processing records not requiring assistance to the requestor in making a focused and effective search, or sending and tracking the records not requiring assistance to the requestor in making a focused and effective search;.

3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 school district due to "unusual circumstances" as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a

determination is expected to be dispatched. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982)).

This activity includes:

a. Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched.

b. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the extension notice.

c. Sending or transmitting the notice to the requestor.

4. When a member of the public requests to inspect a public record or obtain a copy of a public record: the local agency or K-14 school district shall (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; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d) (Stats. 2001, ch. 355)).

This activity includes:

a. Conferring with the requestor if clarification is needed to identify records requested.

b. Identifying record(s) and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.

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

Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records not requiring assistance to the requestor in making a focused and effective search, determining whether the request not requiring assistance to the requestor in making a focused and effective search, falls within the agency's jurisdiction, ~~determining whether the request describes reasonably identifiable records, identifying access to records,~~ conducting legal reviews to determine whether records are disclosable, processing the records not requiring assistance to the requestor in making a focused and effective search, obtaining supervisory review in processing records not requiring assistance to the requestor in making a focused and effective search, or sending and tracking the records not requiring assistance to the requestor in making a focused and effective search.

5. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:

a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) 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 (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district 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. (Gov. Code, § 6254.3(a) (Stats. 1992, ch. 463).)

b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b) (Stats. 1992, ch. 463).)

6. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982)).
This activity includes:

a. Drafting and editing a written response that includes a determination that the request is denied.

b. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the denial response and accompanying correspondence.

c. Sending the denial response to the requestor.

This activity does not include, and reimbursement is not required for making the determination, based on case law and statute, that a record is exempt from disclosure. Reimbursement may be claimed only for ~~providing the justification in writing.~~ drafting and editing a written response that includes a determination that the request is denied.

Therefore, the County's revisions to the Commission staff proposed on-going reimbursable activities as described above should be included in the CPRA Ps&Gs.

Time Studies

The County has added a provision to the Commission staff Ps&Gs indicating that time-studies are an acceptable actual-cost claiming methodology. The Commission staff CPRA Ps&Gs do not mention this methodology. This is a serious oversight as this methodology allows claimants to compute reimbursable costs without having to produce CPRA-coded time sheets going back to the beginning of the CPRA reimbursement program --- July 1, 2001. Back then, no one even knew what type of CPRA activity was reimbursable and should be coded.

Further, use of the time-study method for claiming actual costs reduces claimants' costs by not having to file voluminous reimbursement claims. Also, State costs are reduced by not having to review voluminous reimbursement claims.

Therefore the County adds the following time study language to the CPRA Ps&Gs proposed by Commission staff.

> *Claimants may use time studies to support labor [salary, benefit and associated indirect] costs when an activity is task-repetitive. Time*

*study usage is subject to the review and audit conducted by the State Controller's Office. The reimbursable time recorded on each time survey form must be for specific reimbursable activities as detailed herein. An employees reimbursable time is totaled and then multiplied by their productive hourly rate, as that term is defined in the State Controller's Office annual claiming instruction manual, found on www.sco.ca.gov. If a time study sample is used to claim time for 4 through 9 staff, at least 2 staff should be time surveyed. If 10 or more staff are claimed, a 20% sample, rounded to the nearest whole number of cases, should be taken.*

Conclusion

Therefore, for all of the above reasons, the County's revision of "Section IV. REIMBURSABLE ACTIVITIES" of the Commission staff proposed CPRA Ps&Gs is recommended. These revisions follow on pages 14-19.

## IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable to and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

Claimants may use time studies to support labor [salary, benefit and associated indirect] costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office. The reimbursable time recorded on each time survey form must be for specific reimbursable activities as detailed herein. An employee's reimbursable time is totaled and then multiplied by their productive hourly rate, as that term is defined in the State Controller's Office annual claiming instruction manual, found on www.sco.ca.gov. If a time study sample is used to claim time for 4 through 9 staff, at least 2 staff should be time surveyed. If 10 or more staff are claimed, a 20% sample, rounded to the nearest whole number of cases, should be taken.

Scope of Reimbursable Activities

The claimant is only allowed to claim, and be reimbursed for, increased costs for reimbursable activities identified below. Increased cost are limited to the costs of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, labor, contract service, material, supply, equipment and travel costs are reimbursable when incurred in performing the following activities:

A. One Time Activities

One-time development of policies, protocols, manuals, and procedures, to implement only the activities identified in section IV. B of these parameters and guidelines. This activity specifically does not include and reimbursement is not required for, developing policies and procedures to implement all of the California Public Records Act or as to making a determination whether a record is disclosable, or providing copies of disclosable records.

One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section "IV. REIMBURSABLE ACTIVITIES" of these parameters and guidelines. This training activity does not include and reimbursement is not required for implementing all of the California Public Records Act or instruction regarding making a determination whether a record is disclosable.

B. Ongoing Activities

1 Provide a copy of a disclosable electronic record in the electronic 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. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).

This activity includes:

a. Computer programming, extraction, or compiling necessary to produce disclosable records, including the pro rata costs of purchasing and installing software systems permitting key word searches for those requests requiring assistance to the requestor in making a focused and effective search, and

b. Producing a copy of an electronic record that is otherwise produced only at regularly scheduled intervals.

This activity does not include, and reimbursement is not required for the costs of determining whether the record is disclosable; receiving public records act requests not requiring assistance to the requestor in making a focused and effective search; tracking requests not requiring assistance to the requestor in making a focused and effective search; processing requests not requiring assistance to the requestor in making a focused and effective search.

Fee authority discussed in section VII. of these parameters and guidelines is available to be applied to the costs of this activity, and may fully offset the reimbursable costs of this activity. The Controller is authorized to reduce reimbursement for this activity to the extent of fee authority, as described in section VII.

2. Within 10 days from receipt of a request for a copy of records, notify the person making the request of the disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982)).

This activity includes:

a. Drafting, editing, and reviewing a written notice to the person making the request, setting forth the reasons for the determination. If notice is provided verbally in lieu of written notification, the time for staff to contact and communicate this information to the requestor.

b. Preparing and obtaining agency head, or his or her designee, approval and signature of the notification to the requestor.

c. Sending or transmitting the notice to the requestor.

This activity does not include, and reimbursement is not required for the activities of making the determination whether a record is disclosable , receiving the request for records not requiring assistance to the requestor in making a focused and effective search, determining whether the request not requiring assistance to the requestor in making a focused and effective search, falls within the agency's jurisdiction, conducting legal reviews to determine whether records are disclosable, processing the records not requiring assistance to the requestor in making a focused and effective search, obtaining supervisory review in processing records not requiring assistance to the requestor in making a focused and effective search,

or sending and tracking the records not requiring assistance to the requestor in making a focused and effective search;.

3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 school district due to "unusual circumstances" as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982)).

This activity includes:

a. Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched.

b. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the extension notice.

c. Sending or transmitting the notice to the requestor.

4. When a member of the public requests to inspect a public record or obtain a copy of a public record: the local agency or K-14 school district shall (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; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d) (Stats. 2001, ch. 355)).

This activity includes:

a. Conferring with the requestor if clarification is needed to identify records requested.

b. Identifying record(s) and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.

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

Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records not requiring assistance to the requestor in making a focused and effective search, determining whether the request not requiring assistance to the requestor in making a focused and effective search, falls within the agency's jurisdiction, conducting legal reviews to determine whether records are disclosable, processing the records not requiring assistance to the requestor in making a focused and effective search, obtaining supervisory review in processing records not requiring assistance to the requestor in making a focused and effective search, or sending and tracking the records not requiring assistance to the requestor in making a focused and effective search.

5. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:

a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) 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 (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district 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. (Gov. Code, § 6254.3(a) (Stats. 1992, ch. 463).)

b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b) (Stats. 1992, ch. 463).)

6. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982)).

This activity includes:

a. Drafting and editing a written response that includes a determination that the request is denied.

b. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the denial response and accompanying correspondence.

c. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the denial response and accompanying correspondence.

d. Sending the denial response to the requestor.

This activity does not include, and reimbursement is not required for making the determination, based on case law and statute, that a record is exempt from disclosure. Reimbursement may be claimed only for drafting and editing a written response that includes a determination that the request is denied.

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JOHN F. KRATTLI
County Counsel

Los Angeles County's Recommended Changes to:
Commission Staff Proposed Parameters and Guidelines
California Public Records Act Test Claim (02-TC-10, 02-TC-51)

**DECLARATION OF DIANE C. REAGAN**

I, Diane C, Reagan, declare as follows:

1. I am a licensed, practicing attorney in the State of California. I have been a member of the California Bar since 1981; my state bar number is 98709. Immediately before beginning my employment with the Office of the Los Angeles County Counsel in 1994, I was engaged in an estate planning and probate private practice, and prior to that, I was employed by the State of California Department of Corporations, in the Securities Regulation Division, as Senior Corporations Counsel. I am a Principal Deputy County Counsel in the Office of the Los Angeles County Counsel.

2. I have represented many County departments and several commissions and have responded to many requests for public records during my nineteen (19) year tenure with this office. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

3. Among other assignments in the Health Services Division, my primary responsibility is provide advice, transactional and litigation services to the Department of Animal Care and Control ("DACC"). I have represented the Department of Animal Care and Control as its general counsel for over fourteen (14) years. During that time, I have been personally responsible for assisting DACC in responding to requests for public records under the California Public Records Act (CPRA). Between March 2010 and May 2012, I was also the County Counsel attorney designated to respond to Public Record Act requests from a specific requestor, which included working with the Board of Supervisors' staff, and several other County departments, including, but not limited to, the Office of the Chief Executive Officer, the Auditor/Controller, the Health Services

Department, the Department of Public Health, the Department of Public Social Services, and the Sheriff Department.

4. I declare that I have reviewed the Commission on State Mandates (Commission) staff CPRA analysis and proposed parameters and guidelines issued to the County on February 13, 2013.

5. I declare on information and belief that the Commission staff fairly state the activities reasonably necessary in implementing new CPRA services except for the changes I recommend which are found (highlighted) in Attachment A.

6. I declare on information and belief that the changes recommended to Commission staffs' "reimbursable activities," are required because the provision of new CPRA services, including those to assist CPRA requestors in making a focused and effective search, must be tracked, processed and provided to the requestor in a timely and cost-efficient manner.

7. 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.

Executed on March 1, 2013, at Los Angeles, California.

Diane C. Reagan

Schedule A

Los Angeles County's Recommended Changes to:
Commission Staff Proposed Parameters and Guidelines
California Public Records Act Test Claim (02-TC-10, 02-TC-51)[1]

## IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable to and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

*Claimants may use time studies to support labor [salary, benefit and associated indirect] costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office. The reimbursable time recorded on each time survey form must be for specific reimbursable activities as detailed herein. An employee's reimbursable time is totaled and then multiplied by their productive hourly rate, as that term is defined in the State*

[1] The recommended changes to the parameters and guidelines proposed by staff of the Commission on State Mandates are highlighted. These changes do not address provisions pertaining solely to K-14 school districts.

*Controller's Office annual claiming instruction manual, found on www.sco.ca.gov. If a time study sample is used to claim time for 4 through 9 staff, at least 2 staff should be time surveyed. If 10 or more staff are claimed, a 20% sample, rounded to the nearest whole number of cases, should be taken.*

*Scope of Reimbursable Activities*

The claimant is only allowed to claim, and be reimbursed for, increased costs for reimbursable activities identified below. Increased cost are limited to the costs of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant ~~that incurs increased costs, the following activities are reimbursable:,~~ , labor, contract service, material, supply, equipment and travel costs are reimbursable when incurred in performing the following activities:

A.One Time Activit~~ies~~y

One-time development of policies, protocols, manuals, and procedures, to implement only the activities identified in section IV. B of these parameters and guidelines. ~~The activities in section IV.B represent the incremental higher level of service approved by the Commission.~~ This activity specifically does not include and reimbursement is not required for, developing policies and procedures to implement all of the California Public Records Act or making a determination whether a record is disclosable, or providing copies of disclosable records.

~~One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section "IV. REIMBURSABLE ACTIVITIES" of these parameters and guidelines. This training activity does not include and reimbursement is not required for implementing all of the California Public Records Act or instruction regarding making a determination as to whether a record is disclosable. , or providing copies of disclosable records.~~

B. Ongoing Activities

1 Provide a copy of a disclosable electronic record in the electronic 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. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).

This activity includes:

a. Computer programming, extraction, or compiling necessary to produce disclosable records, including the pro rata costs of purchasing and installing software systems permitting key word searches for those requests requiring assistance to the requestor in making a focused and effective search, and

b. Producing a copy of an electronic record that is otherwise produced only at regularly scheduled intervals.

This activity does not include, and reimbursement is not required for the costs of determining whether the record is disclosable; receiving public records act requests not requiring assistance to the requestor in making a focused and effective search; tracking requests not requiring assistance to the requestor in making a focused and effective search; processing requests not requiring assistance to the requestor in making a focused and effective search; ~~determining whether a request describes reasonably identifiable records and identifying access to those records; retrieving records, or sending the records to the requestor.~~

Fee authority discussed in section VII. of these parameters and guidelines is available to be applied to the costs of this activity, and may fully offset the reimbursable costs of this activity. The Controller is authorized to reduce reimbursement for this activity to the extent of fee authority, as described in section VII.

2. Within 10 days from receipt of a request for a copy of records, notify the person making the request of the disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982)).

This activity includes: ~~developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination.~~

a. Drafting, editing, and reviewing a written notice to the person making the request, setting forth the reasons for the determination. If notice is provided verbally in lieu of written notification, the time for staff to contact and communicate this information to the requestor.

b. Preparing and obtaining agency head, or his or her designee, approval and signature of the notification to the requestor.

c. Sending or transmitting the notice to the requestor.

This activity does not include, and reimbursement is not required for the activities of making the determination whether a record is disclosable , receiving the request for records not requiring assistance to the requestor in making a focused and effective search, determining whether the request not requiring assistance to the requestor in making a focused and effective search, falls within the agency's jurisdiction, ~~determining whether the request describes reasonably identifiable records, identifying access to records,~~ conducting legal reviews to determine whether records are disclosable, processing the records not requiring assistance to the requestor in making a focused and effective search, obtaining supervisory review in processing records not requiring assistance to the requestor in making a focused and effective search, or sending and tracking the records not requiring assistance to the requestor in making a focused and effective search;.

3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 school district due to "unusual circumstances" as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982)).

This activity includes:

a. Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched.

b. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the extension notice.

c. Sending or transmitting the notice to the requestor.

4. When a member of the public requests to inspect a public record or obtain a copy of a public record: the local agency or K-14 school district shall (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; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d) (Stats. 2001, ch. 355)).

This activity includes:

a. Conferring with the requestor if clarification is needed to identify records requested.

b. Identifying record(s) and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.

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

Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records not requiring assistance to the requestor in making a focused and effective search, determining whether the request not requiring assistance to the requestor in making a focused and effective search, falls within the agency's jurisdiction, ~~determining whether the request describes reasonably identifiable records, identifying access to records,~~ conducting legal reviews to determine whether records are disclosable, processing the records not requiring assistance to the requestor in making a focused and effective search, obtaining supervisory review in processing records not requiring assistance to the requestor in making a focused and effective search, or sending and tracking the records not requiring assistance to the requestor in making a focused and effective search.

5. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:

a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) 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 (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district 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. (Gov. Code, § 6254.3(a) (Stats. 1992, ch. 463).)

b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b) (Stats. 1992, ch. 463).)

6. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982)).

This activity includes:

a. Drafting and editing a written response that includes a determination that the request is denied.

b. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the denial response and accompanying correspondence.

c. Sending the denial response to the requestor.

d. This activity does not include, and reimbursement is not required for making the determination, based on case law and statute, that a record is exempt from disclosure. Reimbursement may be claimed only for ~~providing the justification in writing.~~ drafting and editing a written response that includes a determination that the request is denied.

*County of Los Angeles*
**Sheriff's Department Headquarters**
*4700 Ramona Boulevard*
*Monterey Park, California 91754-2169*

*Leroy D. Baca, Sheriff*

Los Angeles County's Recommended Changes to:
Commission Staff Proposed Parameters and Guidelines
California Public Records Act Test Claim (02-TC-10, 02-TC-51)

**Declaration of RICK BROUWER**

I, Rick Brouwer, declare as follows:

1. I am a licensed, practicing attorney in the State of California. I have been a member of the California Bar since 1992; my state bar number is 162220. Immediately before beginning my employment with the Office of the County Counsel in 1996, I worked as a labor and employment attorney for Jackson Lewis, the largest labor and employment firm in the country. I am currently a Principal Deputy County Counsel in the Office of the Los Angeles County Counsel.

2. I have represented many County departments and I have responded to many requests for public records during my seventeen (17) year tenure with this office. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

3. Since 1999, my primary responsibility has been to provide legal advice and litigation services to the Los Angeles County Sheriff's Department (LASD), the largest sheriff's department in the country. During that time I have been personally responsible for assisting LASD in responding to requests for public records under the California Public Records Act (CPRA).

4. I declare that I have reviewed the Commission on State Mandates (Commission) staff CPRA analysis and proposed parameters and guidelines issued on February 13, 2013.

5. I declare that it is my information and belief that the Commission staff fairly state the activities reasonably necessary in implementing new CPRA services except for the changes I recommend which are found (highlighted) in Attachment A.

6. I declare that it is my information and belief that the changes recommended to Commission staffs' reimbursable activities are required because the provision of new CPRA services, including those to assist CPRA requestors in making a focused and effective search, must be tracked, processed and provided to the requestor in a timely and cost-efficient manner.

7. 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.

Executed on February 28, 2013, at Los Angeles, California.

Rick Brouwer

Schedule A

Los Angeles County's Recommended Changes to:
Commission Staff Proposed Parameters and Guidelines
California Public Records Act Test Claim (02-TC-10, 02-TC-51)[1]

## IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable to and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

*Claimants may use time studies to support labor [salary, benefit and associated indirect] costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office. The reimbursable time recorded on each time survey form must be for specific reimbursable activities as detailed herein. An employee's reimbursable time is totaled and then multiplied by their productive hourly rate, as that term is defined in the State*

[1] The recommended changes to the parameters and guidelines proposed by staff of the Commission on State Mandates are highlighted. These changes do not address provisions pertaining solely to K-14 school districts.

*Controller's Office annual claiming instruction manual, found on www.sco.ca.gov. If a time study sample is used to claim time for 4 through 9 staff, at least 2 staff should be time surveyed. If 10 or more staff are claimed, a 20% sample, rounded to the nearest whole number of cases, should be taken.*

*Scope of Reimbursable Activities*

The claimant is only allowed to claim, and be reimbursed for, increased costs for reimbursable activities identified below. Increased cost are limited to the costs of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant ~~that incurs increased costs, the following activities are reimbursable:,~~ , labor, contract service, material, supply, equipment and travel costs are reimbursable when incurred in performing the following activities:

A. One Time Activit~~y~~*ies*

One-time development of policies, protocols, manuals, and procedures, to implement only the activities identified in section IV. B of these parameters and guidelines. ~~The activities in section IV.B represent the incremental higher level of service approved by the Commission.~~ This activity specifically does not include and reimbursement is not required for, developing policies and procedures to implement all of the California Public Records Act or making a determination whether a record is disclosable, or providing copies of disclosable records.

One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section "IV. REIMBURSABLE ACTIVITIES" of these parameters and guidelines. This training activity does not include and reimbursement is not required for implementing all of the California Public Records Act or instruction regarding making a determination as to whether a record is disclosable. ~~, or providing copies of disclosable records.~~

B. Ongoing Activities

1 Provide a copy of a disclosable electronic record in the electronic 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. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).

This activity includes:

a. Computer programming, extraction, or compiling necessary to produce disclosable records, including the pro rata costs of purchasing and installing software systems permitting key word searches for those requests requiring assistance to the requestor in making a focused and effective search, and

b. Producing a copy of an electronic record that is otherwise produced only at regularly scheduled intervals.

This activity does not include, and reimbursement is not required for the costs of determining whether the record is disclosable; receiving public records act requests not requiring assistance to the requestor in making a focused and effective search; tracking requests not requiring assistance to the requestor in making a focused and effective search; processing requests not requiring assistance to the requestor in making a focused and effective search; ~~determining whether a request describes reasonably identifiable records and identifying access to those records~~; ~~retrieving records, or sending the records to the requestor.~~

Fee authority discussed in section VII. of these parameters and guidelines is available to be applied to the costs of this activity, and may fully offset the reimbursable costs of this activity. The Controller is authorized to reduce reimbursement for this activity to the extent of fee authority, as described in section VII.

2. Within 10 days from receipt of a request for a copy of records, notify the person making the request of the disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982)).

This activity includes: ~~developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination.~~

a. Drafting, editing, and reviewing a written notice to the person making the request, setting forth the reasons for the determination. If notice is provided verbally in lieu of written notification, the time for staff to contact and communicate this information to the requestor.

b. Preparing and obtaining agency head, or his or her designee, approval and signature of the notification to the requestor.

c. Sending or transmitting the notice to the requestor.

This activity does not include, and reimbursement is not required for the activities of making the determination whether a record is disclosable , receiving the request for records not requiring assistance to the requestor in making a focused and effective search, determining whether the request not requiring assistance to the requestor in making a focused and effective search, falls within the agency's jurisdiction, ~~determining whether the request describes reasonably identifiable records, identifying access to records,~~ conducting legal reviews to determine whether records are disclosable, processing the records not requiring assistance to the requestor in making a focused and effective search, obtaining supervisory review in processing records not requiring assistance to the requestor in making a focused and effective search, or sending and tracking the records not requiring assistance to the requestor in making a focused and effective search;.

3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 school district due to "unusual circumstances" as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982)).

This activity includes:

a. Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched.

b. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the extension notice.

c. Sending or transmitting the notice to the requestor.

4. When a member of the public requests to inspect a public record or obtain a copy of a public record: the local agency or K-14 school district shall (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; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d) (Stats. 2001, ch. 355)).

This activity includes:

a. Conferring with the requestor if clarification is needed to identify records requested.

b. Identifying record(s) and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.

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

Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records not requiring assistance to the requestor in making a focused and effective search, determining whether the request not requiring assistance to the requestor in making a focused and effective search, falls within the agency's jurisdiction, ~~determining whether the request describes reasonably identifiable records, identifying access to records,~~ conducting legal reviews to determine whether records are disclosable, processing the records not requiring assistance to the requestor in making a focused and effective search, obtaining supervisory review in processing records not requiring assistance to the requestor in making a focused and effective search, or sending and tracking the records not requiring assistance to the requestor in making a focused and effective search.

5. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:

a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) 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 (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district 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. (Gov. Code, § 6254.3(a) (Stats. 1992, ch. 463).)

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*County of Los Angeles*
**Sheriff's Department Headquarters**
*4700 Ramona Boulevard*
*Monterey Park, California 91754-2169*

*Leroy D. Baca, Sheriff*

Los Angeles County's Recommended Changes to:
Commission Staff Proposed Parameters and Guidelines
California Public Records Act Test Claim (02-TC-10, 02-TC-51)

## Declaration of Shaun J. Mathers

He makes the following declaration and statement under oath:

I, Shaun J. Mathers, a Captain with the Los Angeles County Sheriff's Department, declare that for the past 10 years I have assisted the Los Angeles County Sheriff's Department in providing California Public Records Act (CPRA) services.

I declare that I have reviewed the Commission on State Mandates Commission staffs' CPRA analysis and proposed parameters and guidelines issued on February 13, 2013.

I declare that it is my information and belief that the Commission staff fairly state the activities reasonably necessary in implementing new CPRA services except for the changes I recommend which are found (highlighted) in Attachment A.

I declare that it is my information and belief that the changes recommended to Commission staffs' reimbursable activities are required because the provision of new CPRA services, including those to assist CPRA requestors in making a focused and effective search, must be tracked, processed and provided to the requestor in a timely and cost-efficient manner.

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.

2/28/13 COMMERCE, CA
Date and Place

Signature

Schedule A

Los Angeles County's Recommended Changes to:
Commission Staff Proposed Parameters and Guidelines
California Public Records Act Test Claim (02-TC-10, 02-TC-51)[1]

## IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable to and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

*Claimants may use time studies to support labor [salary, benefit and associated indirect] costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office. The reimbursable time recorded on each time survey form must be for specific reimbursable activities as detailed herein. An employees reimbursable time is totaled and then multiplied by their productive hourly rate, as that term is defined in the State*

[1] The recommended changes to the parameters and guidelines proposed by staff of the Commission on State Mandates are highlighted. These changes do not address provisions pertaining solely to K-14 school districts.

*Controller's Office annual claiming instruction manual, found on www.sco.ca.gov. If a time study sample is used to claim time for 4 through 9 staff, at least 2 staff should be time surveyed. If 10 or more staff are claimed, a 20% sample, rounded to the nearest whole number of cases, should be taken.*

*Scope of Reimbursable Activities*

The claimant is only allowed to claim, and be reimbursed for, increased costs for reimbursable activities identified below. Increased cost are limited to the costs of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant ~~that incurs increased costs, the following activities are reimbursable:,~~ , labor, contract service, material, supply, equipment and travel costs are reimbursable when incurred in performing the following activities:

A.One Time Activity~~ies~~

One-time development of policies, protocols, manuals, and procedures, to implement only the activities identified in section IV. B of these parameters and guidelines. ~~The activities in section IV.B represent the incremental higher level of service approved by the Commission.~~ This activity specifically does not include and reimbursement is not required for, developing policies and procedures to implement all of the California Public Records Act or making a determination whether a record is disclosable, or providing copies of disclosable records.

One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section "IV. REIMBURSABLE ACTIVITIES" of these parameters and guidelines. This training activity does not include and reimbursement is not required for implementing implement all of the California Public Records Act or instruction regarding making a determination whether a record is disclosable. ~~, or providing copies of disclosable records.~~

B. Ongoing Activities

1 Provide a copy of a disclosable electronic record in the electronic 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. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).

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3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 school district due to "unusual circumstances" as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982)).

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4. When a member of the public requests to inspect a public record or obtain a copy of a public record: the local agency or K-14 school district shall (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; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d) (Stats. 2001, ch. 355)).

This activity includes:

a. Conferring with the requestor if clarification is needed to identify records requested.

b. Identifying record(s) and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.

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

Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records not requiring assistance to the requestor in making a focused and effective search, determining whether the request not requiring assistance to the requestor in making a focused and effective search, falls within the agency's jurisdiction, ~~determining whether the request describes reasonably identifiable records, identifying access to records,~~ conducting legal reviews to determine whether records are disclosable, processing the records not requiring assistance to the requestor in making a focused and effective search, obtaining supervisory review in processing records not requiring assistance to the requestor in making a focused and effective search, or sending and tracking the records not requiring assistance to the requestor in making a focused and effective search.

5. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:

a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) 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 (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district 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. (Gov. Code, § 6254.3(a) (Stats. 1992, ch. 463).)

b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b) (Stats. 1992, ch. 463).)

6. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982)).

This activity includes:

a. Drafting and editing a written response that includes a determination that the request is denied.

b. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the denial response and accompanying correspondence.

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d. This activity does not include, and reimbursement is not required for making the determination, based on case law and statute, that a record is exempt from disclosure. Reimbursement may be claimed only for ~~providing the justification in writing.~~ drafting and editing a written response that includes a determination that the request is denied.

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



# LOS ANGELES COUNTY REVIEW
# COMMISSION STAFF ANALYSIS AND
# PROPOSED PARAMETERS AND GUIDELINES
# CALIFORNIA PUBLIC RECORDS ACT PROGRAM (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 County staff responsible for implementing the California Public Record Act's (CPRA) provisions, which were found to be reimbursable by the Commission on State Mandates (Commission) at their May 26, 2011 hearing, in preparing the attached review.

I declare that the subject review that I have prepared includes sworn declarations of County staff which detail reasonably necessary and reimbursable CPRA activities which are based on statutory provisions found to be reimbursable by the Commission at their May 26, 2011 hearing.

I declare that it is my information and belief that the County's revised CPRA Ps&Gs provide eligible claimants with complete reimbursement for the statutory CPRA provisions found by the Commission to impose "costs mandated by the State", as defined in Government Code section 17514, upon local governmental agencies.

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.

3/5/13; Los Angeles, CA
Date and Place

Signature

**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

**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

Received
March 6, 2013
Commission on
State Mandates

DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

March 6, 2013

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

Dear Ms. Halsey:

The Department of Finance has reviewed the Commission on State Mandates (Commission) draft staff analysis on the parameters and guidelines for the California Public Records Act (Claim Nos. CSM-02-TC-04 and 02-TC-11).

With the exception noted under *Section VII Offsetting Revenues and Reimbursements,* Finance concurs with the Commission's draft staff analysis on the parameters and guidelines.

"**VII. OFFSETTING REVENUES AND REIMBURSEMENTS**

"Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

The test claim statement of decision identified fee authority from Government Code section 6253, and section 6253.9(a)(2) and (b), as added by Statutes 2000, chapter 982, which provides offsetting fee authority for:

1. The direct costs of providing a copy of a disclosable electronic record in the electronic format requested; and

2. ***If the request would require data compilation, extraction, or programming to produce the record, or if the record is one that is otherwise produced only at regularly scheduled intervals, the cost of producing the record including the cost to construct it and the cost of programming and computer services necessary to produce the copy of the electronic record.***

   ~~If the record is of a type that must be compiled or constructed, or is one that is otherwise produced only at regular intervals, the costs of extracting and compiling the data required, or producing the record outside the normal schedule, including computing processes, as necessary.~~

Received
March 6, 2013
Commission on
State Mandates

Revenue from this fee authority must be identified and deducted from the costs claimed for the activity described in Section IV.B.1 of these parameters and guidelines."

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents that are e-filed with the Commission on State Mandates need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions regarding this letter, please contact Randall Ward, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Randall Ward for

TOM DYER
Assistant Program Budget Manager

Enclosure

Received
March 6, 2013
Commission on
State Mandates

JOHN CHIANG
California State Controller
Division of Accounting and Reporting

March 6, 2013

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

Re: Draft Staff Analysis and Proposed Parameters and Guidelines
*California Public Records Act, 02-TC-10 and 02-TC-51*
Government Code Section 6252, et al.
Los Angeles County and Riverside Unified School District, Claimants

Dear Ms. Halsey:

The State Controller's Office reviewed and recommends no changes to the proposed parameters and guidelines for the California Public Records Act.

Should you have any questions regarding the above, please contact Steve Purser at (916) 324-5729 or e-mail spurser@sco.ca.gov.

Sincerely,

JAY LAL, Manager
Local Reimbursement Section

27173.8. Every purchase or contract made in violation of the competitive bidding requirements of this part shall be void.

SEC. 10. Chapter 10.6 (commencing with Section 27195) is added to Part 3 of Division 16 of the Streets and Highways Code, to read:

CHAPTER 10.6. ANNUAL AUDIT OF THE DISTRICT

27195. (a) The district shall contract with a certified public accountant to make an annual audit, the scope and content of which shall be prescribed by such accountant, of the books, accounts, records, papers, money, and securities of the district.

(b) Such report shall include a statement as to whether or not the accountant, through the application of auditing tests, is satisfied that all expenditures which had been made were supported by proper documentation and itemization and that all claims which had been paid were properly itemized.

(c) All costs of the audit shall be borne by the district.

(d) A copy of each year's audit shall be sent to the county auditor of each county within the district for public inspection.

27196. The accountant who is under contract to perform the audit provided for in Section 27195 may at any reasonable time and place examine the books and records of the district.

SEC. 11. Section 27282 is added to the Streets and Highways Code, to read:

27282. The board may fix tolls for travel in one direction only on a facility of travel constructed by the district, with no tolls collected for travel in the other direction.

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## CHAPTER 1473

*An act to amend Sections 3020, 7017, and 19432 of the Business and Professions Code, to amend Sections 15490 and 16480.1 of the Government Code, to amend Section 11770.5 of the Insurance Code, to add Section 10207 to, and Chapter 3.5 (commencing with Section 6250) to Division 7 of Title 1 of the Government Code, and to repeal Sections 1208, and 20473 of the Agricultural Code, Sections 2122, 2713.5, 2852.5, 4013, 4809.1, 5014, 6307.5, 7207.5, 7611, 8010, 8919.2, 9009.5, 9536, 9936, 10060, 18626.7, and 19035 10 of the Business and Professions Code, Article 1 (commencing with Section 1887) of Chapter 3 of Title 2 of Part 1 of, and Sections 1892, 1893, and 1894 of the Code of Civil Procedure, Sections 113, 13867, 23607, 24156, 26008 and 31008 of the Education Code, Sections 105, 732, 1326, and 14107 of the Fish and Game Code, Sections 1227, 8013, 8340.8, 8440.8, 10207, 13913, 15487, 20137, and 65020.10 of the*

*Government Code, Sections 1153.2, 1262, 1356, 1711, and 3805 of the Harbors and Navigation Code, Sections 103.2, 431.4, 1110.2, 13141.2, 17940, and 18917 of the Health and Safety Code, Sections 71.2, 137, 147, and 3092 of the Labor Code, Sections 538, 638, 666, 4567, 9065.2, and 9072 of the Public Resources Code, Section 21209 of the Public Utilities Code, Sections 2605 and 3009 of the Vehicle Code, Sections 13008 and 20034 of the Water Code, and Chapter 842 of the Statutes of 1959, relating to public records.*

[Approved by Governor August 29, 1968 Filed with Secretary of State August 30, 1968 ]

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

SECTION 1. Section 1208 of the Agricultural Code is repealed.

SEC. 3. Section 20473 of the Agricultural Code is repealed.

SEC. 4. Section 2122 of the Business and Professions Code is repealed.

SEC. 5. Section 2713.5 of the Business and Professions Code is repealed.

SEC. 6. Section 2852.5 of the Business and Professions Code is repealed.

SEC. 7. Section 3020 of the Business and Professions Code is amended to read:

3020. The board shall keep an accurate inventory of all property of the board and of the state in the possession of the board and it shall obtain a receipt therefor from its successor.

SEC. 8. Section 4013 of the Business and Professions Code is repealed.

SEC. 9. Section 4809.1 of the Business and Professions Code is repealed.

SEC. 10. Section 5014 of the Business and Professions Code is repealed.

SEC. 11. Section 6307.5 of the Business and Professions Code is repealed.

SEC. 12. Section 7017 of the Business and Professions Code is amended to read:

7017. The board, in addition to the usual periodic reports, shall within 30 days prior to the meeting of the general session of the Legislature submit to the Governor a full and true report of its transactions during the preceding biennium including a complete statement of the receipts and expenditures of the board during the period.

A copy of the report shall be filed with the Secretary of State.

SEC. 13. Section 7207.5 of the Business and Professions Code is repealed.

SEC. 14. Section 7611 of the Business and Professions Code is repealed.

SEC. 15. Section 8010 of the Business and Professions Code is repealed.

SEC. 16. Section 8919.2 of the Business and Professions Code is repealed.

SEC. 17. Section 9009.5 of the Business and Professions Code is repealed.

SEC. 18. Section 9536 of the Business and Professions Code is repealed.

SEC. 19. Section 9936 of the Business and Professions Code is repealed.

SEC. 20. Section 10060 of the Business and Professions Code is repealed.

SEC. 21. Section 18626.7 of the Business and Professions Code is repealed.

SEC. 22. Section 19035.10 of the Business and Professions Code is repealed.

SEC. 23. Section 19432 of the Business and Professions Code is amended to read:

19432. The secretary shall keep a full and true record of all proceedings of the board, preserve at the board's general office all books, documents, and papers of the board, prepare for service such notices and other papers as may be required of him by the board, and perform such other duties as the board may prescribe.

SEC. 24. Article 1 (commencing with Section 1887) of Chapter 3 of Title 2 of Part 4 of the Code of Civil Procedure is repealed.

SEC. 25. Section 1892 of the Code of Civil Procedure is repealed.

SEC. 26. Section 1893 of the Code of Civil Procedure is repealed.

SEC. 27. Section 1894 of the Code of Civil Procedure is repealed.

SEC. 28. Section 113 of the Education Code is repealed.

SEC. 29. Section 13867 of the Education Code is repealed.

SEC. 30. Section 26008 of the Education Code is repealed.

SEC. 31. Section 23607 of the Education Code is repealed.

SEC. 32. Section 24156 of the Education Code is repealed.

SEC. 33. Section 31008 of the Education Code is repealed.

SEC. 34. Section 105 of the Fish and Game Code is repealed.

SEC. 35. Section 732 of the Fish and Game Code is repealed.

SEC. 36. Section 1326 of the Fish and Game Code is repealed.

SEC. 37. Section 14107 of the Fish and Game Code is repealed.

SEC. 38. Section 1227 of the Government Code is repealed.

SEC. 39. Chapter 3.5 (commencing with Section 6250) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 3.5. INSPECTION OF PUBLIC RECORDS

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 citizen of 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 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 all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents 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.

6253. 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.

6254. 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) Trade secrets;

(e) Geological and geophysical data, plant production data and similar information relating to utility systems develop-

ment, 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 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.

Nothing in this section is to be construed as preventing any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

6255. 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.

6256. Any person may receive a copy of any identifiable public record or shall be provided with a copy of all information contained therein. Computer data shall be provided in a form determined by the agency.

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, or the prescribed statutory fee, where applicable.

6258. Any person may institute proceedings in any court of competent jurisdiction to enforce his right to inspect or to receive a copy of any public record 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.

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.

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.

SEC. 40. Section 8013 of the Government Code is repealed.

SEC. 41. Section 8340.8 of the Government Code is repealed.

SEC. 42. Section 8440.8 of the Government Code is repealed.

SEC. 42.3. Section 10207 of the Government Code is repealed.

SEC. 42.5. Section 10207 is added to the Government Code, to read:

10207. The Legislative Counsel shall maintain the attorney-client relationship with each Member of the Legislature with respect to communications between the member and the Legislative Counsel except as otherwise provided by the rules of the Legislature. All materials arising out of this relationship, including but not limited to proposed bills and amendments, analyses, opinions and memoranda prepared by the Legislative Counsel, are not public records, except as otherwise provided

by the rules of the Legislature or when released by the member for whom the material was prepared. When he determines that the public interest so requires, the Legislative Counsel may release any material arising out of the attorney-client relationship with a former Member of the Legislature who is not available to execute a release.

SEC. 43. Section 13913 of the Government Code is repealed.

SEC. 44. Section 15487 of the Government Code is repealed.

SEC. 45. Section 15490 of the Government Code is amended to read:

15490. (a) There is in the state government the State Allocation Board, consisting of the Director of Finance, the Director of General Services, and the Superintendent of Public Instruction. Two Members of the Senate appointed by the Senate Committee on Rules, and two Members of the Assembly appointed by the Speaker, shall meet and, except as otherwise provided by the Constitution, advise with the board to the extent that such advisory participation is not incompatible with their respective positions as Members of the Legislature.

(b) The members of the board and the Members of the Legislature meeting with the board shall receive no compensation for their services but shall be reimbursed for their actual and necessary expenses incurred in connection with the performance of their duties.

(c) The Director of General Services shall provide such assistance to the board as it may require.

SEC. 46. Section 16480.1 of the Government Code is amended to read:

16480.1. There is hereby created a Pooled Money Investment Board, which shall consist of the Controller, Treasurer and Director of Finance. The Pooled Money Investment Board shall meet at least once in every three months and shall designate at least once a month the amount of money available under this article for investment in securities authorized by Article 1 of this chapter, or in bank accounts, or in loans to the General Fund and the type of investment or deposit.

For the purpose of this article, a written determination signed by a majority of the members of the Pooled Money Investment Board shall be deemed to be the determination of the board. Notwithstanding the provisions of Sections 7.5 and 7.6 of this code, the members of the board shall personally make the determinations under this article, and may not authorize a deputy to act for them.

SEC. 47. Section 20137 of the Government Code is repealed.

SEC. 48. Section 65020.10 of the Government Code is repealed.

SEC. 49. Section 1153.2 of the Harbors and Navigation Code is repealed.

SEC. 50. Section 1262 of the Harbors and Navigation Code is repealed.

SEC. 51. Section 1356 of the Harbors and Navigation Code is repealed.

SEC. 52. Section 1711 of the Harbors and Navigation Code is repealed.

SEC. 53. Section 3805 of the Harbors and Navigation Code is repealed.

SEC. 54. Section 103.2 of the Health and Safety Code is repealed.

SEC. 55. Section 431.4 of the Health and Safety Code is repealed.

SEC. 56. Section 1110.2 of the Health and Safety Code is repealed.

SEC. 57. Section 13141.2 of the Health and Safety Code is repealed.

SEC. 58. Section 17940 of the Health and Safety Code is repealed.

SEC. 59. Section 18917 of the Health and Safety Code is repealed.

SEC. 59.5. Section 11770.5 of the Insurance Code is amended to read:

11770.5. The provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 or Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code shall not apply to the Board of Directors of the State Compensation Insurance Fund.

SEC. 60. Section 71.2 of the Labor Code is repealed.

SEC. 61. Section 137 of the Labor Code is repealed.

SEC. 62. Section 147 of the Labor Code is repealed.

SEC. 63. Section 3092 of the Labor Code is repealed.

SEC. 64. Section 538 of the Public Resources Code is repealed.

SEC. 65. Section 638 of the Public Resources Code is repealed.

SEC. 66. Section 666 of the Public Resources Code is repealed.

SEC. 67. Section 4567 of the Public Resources Code is repealed.

SEC. 68. Section 9065.2 of the Public Resources Code is repealed.

SEC. 69. Section 9072 of the Public Resources Code is repealed.

SEC. 70. Section 21209 of the Public Utilities Code is repealed.

SEC. 71. Section 2605 of the Vehicle Code is repealed.

SEC. 72. Section 3009 of the Vehicle Code is repealed.

SEC. 73. Section 13008 of the Water Code is repealed.

SEC. 74. Section 20034 of the Water Code is repealed.

SEC. 75. Chapter 842 of the Statutes of 1959 is repealed.

2000 Cal. Legis. Serv. Ch. 982 (A.B. 2799) (WEST)

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


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.

(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:

<< 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 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 com-

puter 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 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.

CA LEGIS 982 (2000)

CA LEGIS 982 (2000)

END OF DOCUMENT

23 Cal.App.4th 144, 28 Cal.Rptr.2d 359, 89 Ed. Law Rep. 542
**(Cite as: 23 Cal.App.4th 144, 28 Cal.Rptr.2d 359)**

Court of Appeal, Fourth District, Division 1, California.
NORTH COUNTY PARENTS ORGANIZATION FOR CHILDREN WITH SPECIAL NEEDS, Plaintiff and Appellant,
v.
DEPARTMENT OF EDUCATION, Defendant and Respondent.

No. D016698.
March 10, 1994.
Rehearing Denied March 31, 1994.[FN*]

FN* Justices Work and Froehlich concur in the denial. Justice Huffman would grant.

Review Denied May 19, 1994.

Nonprofit organization brought action under Public Records Act against Department of Education seeking to recover costs of copying documents. The Superior Court, San Diego County, No. 628246, J. Richard Haden, J., ruled for Department, and organization appealed. The Court of Appeal, Froehlich, J., held that: (1) Department could recover only direct costs of copying, and (2) Department could waive its copy fee.

Reversed and remanded.

Huffman, J., filed opinion concurring in part and dissenting in part.

West Headnotes

**[1] Records 326 68**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k68 k. Costs and fees. Most Cited Cases

Public Records Act provision allowing agency to charge fee covering "direct costs of duplication" only allows agency to recover costs of copying documents, and "direct cost" does not include ancillary tasks necessarily associated with retrieval, inspection, and handling of file from which copy is extracted. West's Ann.Cal.Gov.Code § 6257.

**[2] Statutes 361 188**

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k188 k. In general. Most Cited Cases

Words of statute are to be interpreted according to usual, ordinary import of language employed in framing them.

**[3] Records 326 68**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k68 k. Costs and fees. Most Cited Cases

Public Records Act provision allowing agency to adopt requirements allowing greater access to records than minimum required standards permits agency to reduce copy fee. West's Ann.Cal.Gov.Code §§ 6253.1, 6257.

**[4] Records 326 68**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k68 k. Costs and fees. Most Cited Cases

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**(Cite as: 23 Cal.App.4th 144, 28 Cal.Rptr.2d 359)**

Trial court's determination that agency was not obligated under Public Records Act to waive copy fee had to be reversed, where agency declined to exercise discretion to reduce copying fee based on erroneous contention that it had no discretion. West's Ann.Cal.Gov.Code §§ 6253.1, 6257.

**[5] Records 326 ⚿68**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k68 k. Costs and fees. Most Cited Cases

Nonprofit organization's action for relief from Department of Education's requirement that it pay costs of copying all appellate hearing decisions resulting from review of local school district action relating to special educational services came within Public Records Act provision allowing suit for injunctive or declarative relief or writ of mandate to enforce right to copies of public records. West's Ann.Cal.Gov.Code §§ 6253.1, 6257, 6258.

**[6] Records 326 ⚿68**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k68 k. Costs and fees. Most Cited Cases

Court of Appeal would not grant specific relief under Public Records Act to nonprofit organization seeking relief from Department of Education's requirement that it pay all costs of copying, other than determining that Department could recover only direct costs of copying and that Department could waive fee; amount to be refunded, costs at trial and appellate level, and attorney fee award would best be determined by trial court. West's Ann.Cal.Gov.Code §§ 6253.1, 6257, 6258.

****360 *145** Charles Wolfinger, San Diego, for plaintiff and appellant.

***146** Joseph R. Symkowick, Roger D. Wolfertz, and Carolyn Pirillo, for defendant and respondent.

FROEHLICH, Associate Justice.

The issue in this case is whether the California Department of Education (Department) is entitled to charge its full cost of providing copies of public documents which are requested in accordance with the California Public Records Act. (Gov.Code, [FN1] § 6250 et seq.)

FN1. All statutory references are to the Government Code unless otherwise specified.

North County Parents Organization for Children With Special Needs (appellant) is a nonprofit tax-exempt corporation which provides advisory services to parents of children with disabilities. Appellant assists such parents in enforcing their rights to special educational services provided by state and federal laws. Parents seeking review of local school district action respecting such services may take advantage of an appellate hearing process. The decisions resulting from this process are public records maintained by the Department.

[1] Appellant requested copies of all decisions rendered in the last two years. Department charged $.25 per page for furnishing the copies, rendering a total bill of $126.50. This charge not only covered the cost of duplication of the documents, but also reimbursed Department for staff time involved in searching the records, reviewing records for information exempt from disclosure under law, and deleting such exempt information. Department refused to reduce this charge, and also refused to waive the charge upon the ground that "there is no legal authority to waive such charges." Appellant paid the charge and then brought this action seeking miscellaneous relief.

The trial court ruled for the Department, finding that section 6257 permits the Department to charge "the full direct costs of duplication," and that the Department's charge of $.25 per copy "was not in contravention of section 6257." The court made a second ruling pertaining to the potential of waiver of fees. It ruled that the Department had discretion to waive fees pursuant to section 6253.1, but that it was

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not required to waive fees and did not err in this case by refusing to consider waiver. Appellant contends both rulings are in error.

[2] We agree with appellant. Section 6257 provides that one who requests copies of public documents must pay the statutory fee for same, if there is one. The parties agree there is none prescribed in this case. Lacking ***147** a statutory fee the cost chargeable is a "fee[ ] covering direct costs of duplication." There seems to be little dispute as to what "duplicate" means. It means just what we thought it did, before looking it up: to make a copy. (See Black's Law Dict. (4th ed. 1968) p. 593 ["to ... reproduce exactly"]; Webster's Third New Internat. Dict. (1981) p. 702 ["to be or make a duplicate, copy or transcript ..."].) Since words of a statute are to be interpreted "according to the usual, ordinary import of the language employed in framing them" (*In re Alpine* (1928) 203 Cal. 731, 737, 265 P. 947), we conclude that the cost chargeable by the Department for furnishing these copies is the cost of copying them.

There is no disagreement with the proposition that the Department was put to a great amount of trouble responding to appellant's request, much of which had nothing to do with copying. Records were searched, documents were read for any material to be excised, such material was removed, files were refiled, etc.

We sometimes presume too much of the Legislature, but this is assuredly not the case when we presume that the statute writers, themselves bureaucrats of a sort, knew the ancillary costs of everything government does. They specified, however, that the sole charge should be that for duplication. In order to clarify this limitation the Legislature added that the fee should be the "direct cost" of duplication. Obviously to be excluded from this definition would be "indirect" costs of duplication, which presumably would ****361** cover the types of costs the Department would like to fold into the charge.

The parties to this appeal argue earnestly about the policy considerations which should go into this momentous decision (whether to charge $.10 or $.25 per copy). We do not reach these arguments. Clearly the Legislature could have provided a different charge for copying. It simply did not, and the reason it did not is of no moment to the Court of Appeal, a body which simply interprets statutes and does not ordinarily seek their rationale.

However, if our quick conclusion needs any bolstering it is easy to find in the statutory history of this fee-setting provision. The original wording, adopted in 1968 (Stats.1968, ch. 1473, § 39, p. 2948), was that "a reasonable fee" could be charged. In 1975 an amendment limited the "reasonable fee" to not more than $.10 per page. (Stats.1975, ch. 1246, § 8, p. 3212.) An amendment in 1976 deleted "reasonable fee" and inserted instead "the actual cost of providing the copy." (Stats.1976, ch. 822, § 1, p. 1890.) Finally, the present version of the statute was adopted in 1981 limiting the fee to the "direct costs of duplication." (§ 6257.) Thus it can be seen that the trend has been to limit, rather ***148** than to broaden, the base upon which the fee may be calculated. A "reasonable fee" or the "actual cost of providing the copy" could be interpreted to include the cost of all the various tasks associated with locating and pulling the file, excising material, etc. When these phrases are replaced by the more restrictive phrase "direct costs of duplication," only one conclusion seems possible. The direct cost of duplication is the cost of running the copy machine, and conceivably also 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.

[3] We apprehend that the court's second ruling was also in error. It may be thought that the error was either inadvertent or insignificant. However, being called upon herein to right wrongs which might seem inconsequential to most, we complete our task by identifying this one. As stipulated by the parties, the Department refused to waive fees because it determined there was no legal authority to do so. The trial court, to the contrary, concluded that the Department *did* have the power to waive fees, citing section 6253.1. This section gives an agency power to "adopt requirements for itself which allow greater access to records than prescribed by the minimum standards set forth in this chapter." The trial court apparently concluded that this provision permits an agency to waive or reduce its fees. We agree. A reduction in copy fee permits "greater access" to records.

[4] The trial court then, however, found no obligation to reduce the fee and hence no actionable wrong by the Department. Our difficulty with this

ruling is that it ignores the fact that the Department declined to exercise discretion, contending it had none. Had the Department been aware that it was vested with discretion to reduce the fee, it might have done so. We believe, therefore, that the case should be returned to the Department with instructions to consider (but not necessarily to grant) the request for fee waiver.

[5][6] Section 6258 provides: "Any person may institute proceedings for injunctive or declarative relief or writ of mandate ... to enforce his or her right to inspect or to receive a copy of any public record...." This lawsuit clearly comes within this provision, and hence appellant's requests for writs, orders and declarations are proper. We decline, however, to grant such specific relief. As indicated by the Attorney General, the Department will surely follow the law once it is advised of it. Appellant is entitled to a declaration of its right to obtain copies at a cost of only the expense of copying, and it is also entitled to our advice that the Department could waive this fee if it chose to do so. By this opinion we have granted these declarations. Appellant is also entitled to a refund of some portion of the fee it has already paid, ***149** and also to costs both at trial and appellate level. The statute (§ 6259, subd. (d)) contains authority for an award of attorney fees to appellant. All these matters are best determined by the trial court assuming (which we would expect is a false assumption)****362** that the parties cannot now resolve their dispute by stipulation.

DISPOSITION

We reverse the judgment of the trial court and remand the case for further proceedings in accord with this opinion.

WORK, Acting P.J., concurs.

HUFFMAN, Associate Justice, concurring in part and dissenting in part:

Although I agree with the majority that Government Code section 6253.1 [FN1] provides a public agency with the discretion to make fee waivers in appropriate cases, I respectfully dissent from the conclusion of the majority regarding the scope of the statutory term "direct costs of duplication." (§ 6257.) Although the monetary amount involved in this appeal is small, the question presented as to allocation of the direct costs of duplication of public records between requestors of such records or the taxpayers is of material importance in this era of straitened public finances. Interpreting section 6257 de novo within the context of the Public Records Act (§ 6250 et seq.) (the Act) and on the record presented, I would conclude that the statutory term "direct costs of duplication" was intended by the Legislature to include not only the actual per page copying cost, but also the costs directly resulting from the acts necessary to prepare the public record material to make it available to the requesting party in an appropriate form. Such preparation may, in my view, include the tasks directly related to duplication, such as searching for appropriate records, "sanitizing" or redacting the material to segregate out statutorily exempt information, and then providing the public records in a prepared form.

FN1. All statutory references are to the Government Code unless otherwise specified.

A few more facts than those set forth by the majority are helpful to an understanding of my position on this issue. Respondent California Department of Education (the Department) is the state agency responsible for ensuring that local school districts provide appropriate special education services. As part of its duties, the Department conducts administrative hearings on appeals by parents contesting local school district decisions about their children's rights to special education services. North County Parents Organization for Children with Special Needs (Appellant), a nonprofit corporation and association of parent volunteers, requested copies of ***150** all decisions issued in such administrative hearings during 1987 and 1988, a two-year period. [FN2]

FN2. Appellant had made a similar request for a one and one-half year period earlier, and had been provided a copy of four decisions (twenty pages in total), for which the Department charged no fee. Appellant then requested copies of all hearing decisions from other nearby school districts for a three-year period, and was told a representative should come to Sacramento to inspect and select the decisions needed, copies of which would then be provided at the rate of ten cents a page. Appellant declined to take this route, based on the cost of travel and because the 10 cent per page charge was excessive in its view.

In response to Appellant's request, the Department assigned a staff analyst to reply to the request by searching individual case files for the hearing decisions, reviewing them for information exempt from disclosure under the Act (names of students and parents), deleting the names and copying decisions, and then refiling the original decisions. The Department then sent Appellant the requested copies of decisions with a bill for $126.50, based on the rate of 25 cents per page for 506 pages. Appellant paid the charge under protest, asking the Department either to reduce the charges to 10 cents per page or to waive them altogether because Appellant is a nonprofit group using the decisions to provide free advice to parents about their rights under applicable special education laws. The Department responded that the charges covered staff costs for locating the records (two hours), reviewing the records for exempt information and then deleting it (one and one-half hours), and then copying the five hundred six pages twice, once from the original and once with the whited-out or "sanitized" copy (three hours). Costs for operating the copy machines and for postage were also incurred.

****363** Section 6257 provides as follows: "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." (Italics added.) [FN3]

FN3. It is agreed that no statutory fee applies to this case.

The trial court gave broad scope to the fees provision of this section by ruling the Department was permitted to charge parties requesting records "the full direct costs of duplication." Review of this determination, according to rules of statutory interpretation, involves the resolution of a question of law de novo on appeal. (*Shippen v. Department of Motor Vehicles* (hereafter DMV) (1984) 161 Cal.App.3d 1119, 1124, 208 Cal.Rptr. 13; *Los Angeles County Safety Police Assn. v. County of Los Angeles* (1987) 192 Cal.App.3d 1378, 1384, 237 Cal.Rptr. 920.) Although construction of statutory language is ***151** unnecessary where the language is clear and unambiguous, rules of statutory interpretation must be applied where there is ambiguity or conflict in the statutory language, or where a literal construction would lead to absurd results. (*DMV, supra*, 161 Cal.App.3d at p. 1124, 208 Cal.Rptr. 13.) The statutory term "direct costs of duplication" is subject to more than one interpretation and must be considered ambiguous.

> "Accordingly, we are compelled to engage in statutory construction, giving words their usual, ordinary, and common sense meaning based on the language the Legislature used and the apparent purpose for which the statute was enacted. [Citation.] We '... ascertain the intent of the Legislature so as to effectuate the purpose of the law.' [Citation.]" (*DMV, supra*, 161 Cal.App.3d at p. 1124, 208 Cal.Rptr. 13.)

Stated differently, statutory language must be construed in context, keeping in mind the statutory purpose, and statutory enactments relating to the same subject must be harmonized to the extent possible. (*Dyna–Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387, 241 Cal.Rptr. 67, 743 P.2d 1323.) "Where uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation. [Citation.] Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent. [Citations.]" (*Ibid.*) Further, " ' "the meaning of a word may be enlarged or restrained by reference to the object of the whole clause in which it is used.' " [Citations.]" (*Id.* at p. 1391, fn. 14, 241 Cal.Rptr. 67, 743 P.2d 1323.)

The majority reads section 6257 according to the "usual, ordinary import" of its language (*In re Alpine* (1928) 203 Cal. 731, 737, 265 P. 947), without benefit of citation of authority or much in the way of explanation. I believe some background of interpretation of the Act is of assistance in this statutory interpretation question. Appellant relies on *American Civil Liberties Union Foundation v. Deukmejian* (hereafter *ACLU* ) (1982) 32 Cal.3d 440, 451–453, 186 Cal.Rptr. 235, 651 P.2d 822, in which the Supreme Court recognized that under section 6255 of the Act, an agency's costs for reviewing and deleting exempt information from records are a burden which may be taken into account in requiring disclosure of records. Section 6255 cre-

ates a balancing test by which an agency can justify nondisclosure of requested records by showing "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."

Although neither party in the case before us has presented the issue as requiring a section 6255 balancing test, the general principles of ***152***ACLU, supra*, 32 Cal.3d 440, 186 Cal.Rptr. 235, 651 P.2d 822 may be applied here; we are required to read related statutory enactments as a whole. (*Dyna–Med, Inc. v. Fair Employment & Housing Com.*, *supra*, 43 Cal.3d at p. 1387, 241 Cal.Rptr. 67, 743 P.2d 1323.) Section 6255 "imposes on ****364** the California courts a duty ... to weigh the benefits and costs of disclosure in each particular case." (*ACLU, supra*, 32 Cal.3d at p. 452, 186 Cal.Rptr. 235, 651 P.2d 822.) A court performing this balancing test is authorized to take into account any expense and inconvenience involved in segregating non exempt from exempt information, because the statutory term "public interest" "encompasses public concern with the cost and efficiency of government." (*Id.* at p. 453, 186 Cal.Rptr. 235, 651 P.2d 822, also see fn. 13, p. 453, 186 Cal.Rptr. 235, 651 P.2d 822.) We may thus take it as established that the Act includes a policy favoring the efficiency of government and limitation of its costs.

Moreover, although the evident purpose of the Act is to increase freedom of information by giving the public maximum access to information in the possession of public agencies (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651–652, 230 Cal.Rptr. 362, 725 P.2d 470), such access to information is not unlimited under the Act. For example, section 6254 et seq. defines a number of categories of information that are exempt from disclosure; requests for records are subject to those constraints. The Act thus places both substantive and some financial constraints upon disclosure of public records. (See *ACLU, supra*, 32 Cal.3d at p. 451, 186 Cal.Rptr. 235, 651 P.2d 822; *State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1191, 13 Cal.Rptr.2d 342.)

I would read the language of section 6257 referring to the "direct costs of duplication" with this background in mind. To effectuate the purpose of the statute, according to the intent of the Legislature, a court is required to look first "to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided." (*Dyna–Med, Inc. v. Fair Employment & Housing Com.*, *supra*, 43 Cal.3d at pp. 1386–1387, 241 Cal.Rptr. 67, 743 P.2d 1323.) The fee provisions of section 6257 are activated by "any request for a copy of records, which reasonably describes an identifiable record, or information produced therefrom, ..." (§ 6257.) Upon such a request, the agency must make the records promptly available to any person, with the proviso that "[a]ny 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." Thus, there are two clauses in this statute suggesting that public records must in some cases be edited or otherwise prepared before being made available to the requestor: (1) The records may consist of information produced from an identifiable record, and (2) nonexempt information may be provided in the form of any reasonably segregable portion of ***153** the records. The Legislature thus showed it was aware that there might be a need for preparation of records (search, review, and deletion) before they could be made appropriately available to the requestor, and that accompanying costs would be incurred. Such costs might be considerable, for example, if the requested material contained privileged personnel matters or litigation-related documents. (See § 6254, subds. (b), (c), (k).) I see no reason to assume that the Legislature intended that in all nonwaiver (§ 6253.1) cases, taxpayers, rather than requesting parties, should bear the full direct costs of duplicating copies of public records under the Act.

Where statutory language is uncertain or ambiguous, "consideration should be given to the consequences that will flow from a particular interpretation. [Citation.]" (*Dyna–Med, Inc. v. Fair Employment & Housing Com.*, *supra*, 43 Cal.3d at p. 1387, 241 Cal.Rptr. 67, 743 P.2d 1323.) The financial consequences of Appellant's position are potentially considerable in this era of public agency budget deficits. I believe that the Legislature's references to the "information produced" from a record and the "reasonably segregable portion" of records which may be produced show that in this context, the Legislature intended that the meaning of the word "duplication" should be enlarged by reference to the object of the whole clause in which it is used. (*Id.* at p. 1391, fn. 14,

241 Cal.Rptr. 67, 743 P.2d 1323.) It thus should include the tasks directly related to duplicating the material as prepared for release, in ****365** accordance with the limitations imposed by the Act.

Dicta in a recent opinion by the Second District, Division Three, in *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588, 600–601, 22 Cal.Rptr.2d 409, suggests that in section 6257, the Legislature "has provided only for recovery of *duplication costs* by the ... agency involved. This is a restriction which is both reasonable and appropriate where the mandatory disclosure is limited to current records of contemporaneous activity, but totally unreasonable and inappropriate where both generation and compilation of information from historical archives is required." (*Id.* at p. 601, 22 Cal.Rptr.2d 409.) I find support for my position on section 6257 in this quoted language, since selecting and preparing the records requested by Appellant for disclosure required someone to compile those records and then edit them for disclosure. Such preparation was directly related to duplicating and making the copies available and was not free of agency expense.

Moreover, for purposes of interpreting the fee provision in section 6257, it is not proper to place too much weight upon the identity of the requestor of the documents. The Act does not differentiate among those who seek access to public information (e.g., a requestor who is a commercial entity, intending to use the material obtained for commercial purposes, and a private party ***154** who seeks public information). (*State Bd. of Equalization v. Superior Court, supra*, 10 Cal.App.4th at p. 1190, 13 Cal.Rptr.2d 342.) In *State Bd. of Equalization*, the court refuted any interpretation of the Act which would give less deference to commercial users, as opposed to private parties, and adhered to its previous statement in *Shippen v. DMV, supra*, 161 Cal.App.3d at pages 1126–1127, 208 Cal.Rptr. 13 that access to bulk records by commercial users may be circumscribed by reasonable conditions regarding format and price. (*State Bd. of Equalization, supra*, 10 Cal.App.4th at p. 1191, 13 Cal.Rptr.2d 342.) I believe that an interpretation of "direct costs of duplication" as including directly related search, compilation, review, and deletion expenses is consistent with the principles of *State Bd. of Equalization*, as allowing access to public records to be circumscribed in appropriate instances by reasonable conditions regarding format and price. I therefore dissent from the majority opinion on this point.

Cal.App. 4 Dist.,1994.
North County Parents Organization v. Department of Education
23 Cal.App.4th 144, 28 Cal.Rptr.2d 359, 89 Ed. Law Rep. 542

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**(Cite as: 170 Cal.App.4th 1301, 89 Cal.Rptr.3d 374)**

Court of Appeal, Sixth District, California.
COUNTY OF SANTA CLARA et al., Petitioners,
v.
The SUPERIOR COURT of Santa Clara County, Respondent;
California First Amendment Coalition, Real Party in Interest.

No. H031658.
Feb. 5, 2009.
As Modified Feb. 27, 2009.

**Background:** Requester filed petition for writ of mandate challenging county's denial of its California Public Records Act (CPRA) request for geographic information system (GIS) basemap. The Superior Court, Santa Clara County, No. CV072630,James P. Kleinberg, J., ordered county to provide data to requester. County petitioned for writ review.

**Holdings:** The Court of Appeal, McAdams, J., held that:
(1) on issue of first impression, Critical Infrastructure Information (CII) Act prohibition against disclosure applies only to recipients of protected critical infrastructure information (PCII);
(2) CII Act did not apply to county's disclosure of its own basemap;
(3) disclosure of basemap would contribute significantly to public understanding of government activities;
(4) alleged availability of alternative means of obtaining information in basemap did not render public interest in disclosure "minimal";
(5) county's financial interests did not compel nondisclosure;
(6) security concerns did not compel nondisclosure;
(7) on issue of first impression, CPRA provides no statutory authority for an agency to assert copyright interest in public records;
(8) on issue of first impression in California, county could not require requester to sign end user agreement limiting use of disclosed records; and
(9) trial court's failure to rule on ancillary costs associated with production of electronic records required remand.

Writ issued.

West Headnotes

**[1] Records 326 63**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k63 k. Judicial enforcement in general. Most Cited Cases

In expedited appellate review by extraordinary writ of an order to disclose public records under the California Public Records Act (CPRA), the scope of review is the same as for direct appeals. West's Ann.Cal.Gov.Code § 6259(c).

**[2] States 360 18.3**

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.3 k. Preemption in general. Most Cited Cases

As a general principle, federal law preempts state law (1) where Congress has said so explicitly, (2) where Congress has said so implicitly, as when federal regulation occupies the field exclusively, and (3) where federal and state law conflict.

**[3] States 360 18.13**

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.13 k. State police power. Most Cited Cases

Unless Congress has demonstrated a clear and manifest purpose to the contrary, the presumption is

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that federal law does not preempt the states' historic police powers.

**[4] States 360 18.9**

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.9 k. Federal administrative regulations. Most Cited Cases

A federal agency literally has no power to act, let alone preempt the validly enacted legislation of a sovereign State, unless and until Congress confers power upon it.

**[5] Records 326 55**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k55 k. Exemptions or prohibitions under other laws. Most Cited Cases

Critical Infrastructure Information (CII) Act prohibition against disclosure under state law of protected critical infrastructure information (PCII) provided to a state or local government applies only to information in the hands of the governmental recipient; it does not apply to information in the hands of the submitter. 6 U.S.C. § 133(a)(1); 6 C.F.R. §§ 29.1(a, b), 29.8(b), (d)(1), (g).

**[6] Records 326 55**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k55 k. Exemptions or prohibitions under other laws. Most Cited Cases

County was not barred by the Critical Infrastructure Information (CII) Act from disclosing geographic information system (GIS) basemap data pursuant to a California Public Records Act (CPRA) request, even though county had submitted the basemap to the federal government as CII, since the data had been submitted by the county rather than to the county. 6 U.S.C. § 133(a)(1); 6 C.F.R. §§ 29.1(a, b), 29.8(b), (d)(1), (g); West's Ann.Cal.Gov.Code § 6250 et seq.
*See Cal. Jur. 3d, Records and Recording Laws, § 19; 2 Witkin, Cal. Evidence (4th ed. 2000) Witnesses, § 288.*

**[7] Records 326 50**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k50 k. In general; freedom of information laws in general. Most Cited Cases

The California Public Records Act (CPRA) was enacted for the purpose of increasing freedom of information by giving members of the public access to information in the possession of public agencies. West's Ann.Cal.Gov.Code § 6250 et seq.

**[8] Records 326 54**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In general. Most Cited Cases

All public records are subject to disclosure unless the California Public Records Act (CPRA) expressly provides otherwise. West's Ann.Cal. Const. Art. 1, § 3; West's Ann.Cal.Gov.Code § 6250 et seq.

**[9] Records 326 55**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k55 k. Exemptions or prohibitions under other laws. Most Cited Cases

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**(Cite as: 170 Cal.App.4th 1301, 89 Cal.Rptr.3d 374)**

The exemption from disclosure under California Public Records Act (CPRA) for materials whose disclosure "is exempted or prohibited pursuant to federal or state law" is not an independent exemption; it merely incorporates other prohibitions established by law. West's Ann.Cal.Gov.Code § 6254(k).

**[10] Records 326 54**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In general. Most Cited Cases

The catchall exemption from disclosure under the California Public Records Act (CPRA) allows a government agency to withhold records if it can demonstrate that, on the facts of a particular case, the public interest served by withholding the records clearly outweighs the public interest served by disclosure. West's Ann.Cal.Gov.Code § 6255.

**[11] Records 326 54**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In general. Most Cited Cases

Since disclosure of public records is favored, all exemptions from disclosure under the California Public Records Act (CPRA) are narrowly construed. West's Ann.Cal. Const. Art. 1, § 3(b)(2); West's Ann.Cal.Gov.Code §§ 6254, 6255.

**[12] Records 326 65**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k65 k. Evidence and burden of proof. Most Cited Cases

An agency opposing disclosure under the California Public Records Act (CPRA) bears the burden of proving that an exemption applies. West's Ann.Cal. Const. Art. 1, § 3(b)(2); West's Ann.Cal.Gov.Code §§ 6254, 6255.

**[13] Records 326 54**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In general. Most Cited Cases

Under the California Public Records Act (CPRA), the fact that a public record may contain some confidential information does not justify withholding the entire document. West's Ann.Cal.Gov.Code § 6253(a).

**[14] Records 326 54**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In general. Most Cited Cases

The burden of segregating exempt from nonexempt materials is one of the considerations which the court can take into account in determining whether the public interest favors disclosure, in considering whether a record falls within the catchall exemption from disclosure under the California Public Records Act (CPRA). West's Ann.Cal.Gov.Code § 6255.

**[15] Records 326 54**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In general. Most Cited Cases

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Exemptions from disclosure under the California Public Records Act (CPRA) can be waived. West's Ann.Cal.Gov.Code § 6254.5.

**[16] Records 326 54**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In general. Most Cited Cases

Disclosure to one member of the public of material subject to an exemption under the California Public Records Act (CPRA) would constitute a waiver of the exemption, requiring disclosure to any other person who requests a copy. West's Ann.Cal.Gov.Code § 6254.5.

**[17] Records 326 63**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k63 k. Judicial enforcement in general. Most Cited Cases

The Court of Appeal would not consider the argument, urged only by county's amici on writ review of order for county to disclose geographic information system (GIS) data pursuant to a request under the California Public Records Act (CPRA), that the GIS data was computer software and thus not treated as a public record; the county had raised the argument unsuccessfully in the trial court. West's Ann.Cal.Gov.Code § 6254.9 (a, b).

**[18] Records 326 54**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In general. Most Cited Cases

**Records 326 64**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k64 k. Discretion and equitable considerations; balancing interests. Most Cited Cases

When the catchall exemption from disclosure under the California Public Records Act (CPRA) is invoked, the court undertakes a balancing process, assessing whether on the facts of the particular case, the public interest served by withholding the records clearly outweighs the public interest served by disclosure. West's Ann.Cal.Gov.Code § 6255.

**[19] Records 326 63**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k63 k. Judicial enforcement in general. Most Cited Cases

In analyzing the availability of the catchall exemption from disclosure under the California Public Records Act (CPRA), a reviewing court accepts the trial court's express and implied factual determinations if supported by the record, but undertakes the weighing process anew. West's Ann.Cal.Gov.Code §§ 6255, 6257.5.

**[20] Records 326 52**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k52 k. Persons entitled to disclosure; interest or purpose. Most Cited Cases

In determining the public interest in disclosure of a public record, in considering whether the record falls within the catchall exemption from disclosure under

the California Public Records Act (CPRA), the motive of the particular requester is irrelevant. West's Ann.Cal.Gov.Code § 6255.

**[21] Records 326 52**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k52 k. Persons entitled to disclosure; interest or purpose. Most Cited Cases

The California Public Records Act (CPRA) does not differentiate among those who seek access to public information. West's Ann.Cal.Gov.Code § 6257.5.

**[22] Records 326 54**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In general. Most Cited Cases

If public records sought pertain to the conduct of the people's business, there is a public interest in disclosure, for purposes of determining the availability of the catchall exemption from disclosure under the California Public Records Act (CPRA). West's Ann.Cal. Const. Art. 1, § 3(b)(2); West's Ann.Cal.Gov.Code § 6255.

**[23] Records 326 54**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In general. Most Cited Cases

For purposes of determining the availability of the catchall exemption from disclosure under the California Public Records Act (CPRA), the weight of the public interest in disclosure of a public record pertaining to the conduct of the people's business is proportionate to the gravity of governmental tasks sought to be illuminated, and the directness with which the disclosure will serve to illuminate. West's Ann.Cal.Gov.Code § 6255.

**[24] Records 326 54**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In general. Most Cited Cases

The disclosure of county's geographic information system (GIS) basemap data under the California Public Records Act (CPRA) would contribute significantly to public understanding of government activities, thus supporting the conclusion that the catchall exemption from CPRA disclosure did not apply, since access to the basemap would contribute to comparisons of property tax assessments, issuance of permits, treatment of tax delinquent properties, equitable deployment of public services, and issuance of zoning variances; the public interest in disclosure was not merely hypothetical. West's Ann.Cal.Gov.Code § 6255.

**[25] Records 326 54**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In general. Most Cited Cases

The alleged availability of alternative means of obtaining the information in county's geographic information system (GIS) basemap did not render the public interest in the basemap's disclosure under the California Public Records Act (CPRA) "minimal," and thus did not support application of the catchall exemption from disclosure under the CPRA, since the disclosure of the basemap would not implicate privacy concerns. West's Ann.Cal.Gov.Code § 6255.

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**[26] Records 326 54**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In general. Most Cited Cases

While the availability of less intrusive means to obtain the information may be a factor in determining the availability of the catchall exemption from disclosure under the California Public Records Act (CPRA), particularly in privacy cases, the existence of alternatives does not wholly undermine the public interest in disclosure. West's Ann.Cal.Gov.Code § 6255.

**[27] Records 326 54**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In general. Most Cited Cases

Even where a requester has an alternative means to access the information in a public record, it should not prohibit it from obtaining the documents under the California Public Records Act (CPRA). West's Ann.Cal.Gov.Code § 6250 et seq.

**[28] Records 326 63**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k63 k. Judicial enforcement in general. Most Cited Cases

Trial court's finding that counties disclosing their geographic information system (GIS) basemap programs had suffered few ill fiscal effects, in finding that a county's financial interests did not compel nondisclosure of its basemap under the catchall exemption from the California Public Records Act (CPRA), was supported by substantial evidence, including a declaration that two counties' basemap programs remained "alive" and "robust" after the counties began to provide their basemaps at little cost, that fourteen California counties provided their GIS basemap data to the public free of charge, and that another twenty-three California counties provided their GIS basemap data for the cost of reproduction. West's Ann.Cal.Gov.Code § 6250 et seq.

**[29] Records 326 63**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k63 k. Judicial enforcement in general. Most Cited Cases

Trial court's finding that disclosure of county's geographic information system (GIS) basemap would not have major security implications, in concluding that security concerns did not compel nondisclosure under the catchall exemption from the California Public Records Act (CPRA), was supported by substantial evidence, including expert testimony that the availability of information on the locations of water pipe easements would not uniquely aid terrorists, and evidence that the county had sold the basemap to 18 purchasers including three private entities. West's Ann.Cal.Gov.Code § 6255.

**[30] Records 326 54**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In general. Most Cited Cases

Security may be a valid factor supporting nondisclosure under the catchall exemption from the California Public Records Act (CPRA). West's Ann.Cal.Gov.Code § 6255.

**[31] Records 326 54**

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326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In general. Most Cited Cases

The mere assertion of possible endangerment from the disclosure of public records does not "clearly outweigh" the public interest in access to these public records, as required to compel nondisclosure under the catchall exemption from the California Public Records Act (CPRA). West's Ann.Cal.Gov.Code § 6255.

**[32] Records 326 67**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k67 k. Findings and order; injunctive relief. Most Cited Cases

Trial court did not fail to address county's claim that it could condition its disclosure of its geographic information system (GIS) basemap on requester's execution of an agreement not to violate county's copyright interest in the basemap, where trial court stated in a footnote to its order to disclose the basemap that copyright protection was not appropriate, reading the provision stating that the California Public Records Act (CPRA) did not limit copyright protection in conjunction with the provision stating that records stored on computers were not exempt from disclosure; trial court was not required to also discuss creativity and compilation issues which were not briefed by county. 17 U.S.C.A. § 101 et seq.; West's Ann.Cal.Gov.Code § 6254.9(d, e).

**[33] Records 326 63**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k63 k. Judicial enforcement in general. Most Cited Cases

County preserved its claim that it could condition its California Public Records Act (CPRA) disclosure of its geographic information system (GIS) basemap on requester's execution of an agreement not to violate county's copyright interest in the basemap as a "unique arrangement," by arguing to the trial court that it could require execution of such an end user agreement, arguing that it owned a copyright interest in the basemap, and citing to the federal copyright statute. 17 U.S.C.A. § 101 et seq.; West's Ann.Cal.Gov.Code § 6250 et seq.

**[34] Copyrights and Intellectual Property 99 10.4**

99 Copyrights and Intellectual Property
99I Copyrights
99I(A) Nature and Subject Matter
99k3 Subjects of Copyright
99k10.4 k. Other works. Most Cited Cases

State law determines whether a public official may claim a copyright in his office's creations.

**[35] Copyrights and Intellectual Property 99 10.4**

99 Copyrights and Intellectual Property
99I Copyrights
99I(A) Nature and Subject Matter
99k3 Subjects of Copyright
99k10.4 k. Other works. Most Cited Cases

Each state may determine whether the works of its government entities may be copyrighted.

**[36] Copyrights and Intellectual Property 99 10.4**

99 Copyrights and Intellectual Property
99I Copyrights
99I(A) Nature and Subject Matter
99k3 Subjects of Copyright
99k10.4 k. Other works. Most Cited Cases

170 Cal.App.4th 1301, 89 Cal.Rptr.3d 374, 37 Media L. Rep. 1331, 09 Cal. Daily Op. Serv. 1526, 2009 Daily Journal D.A.R. 1802
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California Public Records Act (CPRA) provision recognizing the availability of copyright protection for software developed by a state or local agency in a proper case provides no statutory authority for an agency to assert any other copyright interest. West's Ann.Cal.Gov.Code § 6254.9.

**[37] Records 326 62**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k62 k. In general; request and compliance. Most Cited Cases

In disclosing geographic information system (GIS) basemap as a public record under California Public Records Act (CPRA), county could not require requester to sign end user agreement limiting the use of the basemap; CPRA required disclosure of records for the cost of reproduction, and that policy would be undercut by permitting county to place extra-statutory restrictions on records. West's Ann.Cal.Gov.Code § 6253(b).

**[38] Appeal and Error 30 63**

30 Appeal and Error
30III Decisions Reviewable
30III(C) Amount or Value in Controversy
30k63 k. Reduction by payment or other satisfaction. Most Cited Cases

Trial court's failure to make an explicit ruling on the issue of whether county was entitled to ancillary costs associated with production of electronic records, in ordering county to disclose its geographic information system (GIS) basemap under California Public Records Act (CPRA), required remand for the trial court to consider the issue, even though the trial court's order specified that the county was to recover only its direct cost; there was a factual disagreement between the requester and the county about whether the disclosure would require additional programming on the county's part. West's Ann.Cal.Gov.Code § 6253.9(b).

****379** Office of the County Counsel, Ann Miller Ravel, County Counsel, Robert A. Nakamae, Dep. County Counsel, for Petitioners.

California State Association of Counties, Jennifer B. Henning, for Amicus Curiae on Behalf of Petitioners.

Holme, Roberts & Owen, Roger Myers, Rachel Matteo–Boehm, Kyle Schriner, San Francisco, for Real Party in Interest.

California Newpaper Publishers Assoc., Los Angeles Times Communication LLP, Freedom Communications, Inc., Copley Press, Inc., The Bakersfield Californian, The Press–Enterprise, Medianews Group, Inc., Reporters Committee for Freedom of the Press, and The National Freedom of Information Coalition, Mary Duffy Carolan, Jeff Glasser, Davis Wright Tremaine, Los Angeles, for Amicus Curiae on behalf of Real Party in Interest.

The National Security Archive, The Center for Democracy and Technology, Jenner & Block LLP, Paul M. Smith, Iris E. Bennett, Daniel I. Weiner, Peter H. Hanna, The Electronic Frontier Foundation, Marcia Hoffman, American Business Media, Choicepoint Asset Company LLC, First American Core Logic, Inc., National Association of Professional Background Screeners, Real Estate Information Professionals Association, Reed Elsevier Inc., The Software and Information Industry Association, Meyer Klipper & Mohr PLLC, Michael R. Klipper, Christopher A. Mohr; Coblentz Patch Duffy & Bass LLP, Jeffrey G. Knowles, San Francisco, Seventy SevenGIS Professionals, Great Oaks Water Co., Timothy S. Guster, General Counsel, for Amicus Curiae on behalf of Real Party in Interest.

McADAMS, J.

***1308** This writ proceeding raises weighty questions of first impression, which illuminate tensions between federal homeland security provisions and our state's open public record laws. This proceeding also requires us to consider a state law exemption allowing nondisclosure in the ***1309** public interest; the impact of copyright claims on disclosure; and the extent to which charges for electronic public records may exceed reproduction costs. After analyzing these important and novel issues, we conclude that the law calls for unrestricted disclosure of the information sought here, subject to the payment of costs to be determined by the trial court.

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## INTRODUCTION

The writ proceeding before us was instituted by the County of Santa Clara and its executive, Peter Kutras, Jr. (collectively, the County). The County seeks extraordinary relief from a superior court order filed in May 2007, requiring it to disclose its geographic information system "basemap" to the real party in interest, California First Amendment Coalition (CFAC). Having stayed the 2007 order, we issued an order to show cause in March 2008, to which CFAC and the County responded.

The County's petition in this court rests on three main legal arguments, which are asserted in the alternative: (1) paramount federal law promulgated under the Homeland Security Act protects the information from disclosure; (2) the requested information is exempt from disclosure under the California Public Records Act; (3) even if disclosure is required, the County can place restrictions on disclosure under state law provisions recognizing its copyright interests, and it can demand fees in excess of reproduction costs.

After considering the extensive record, the arguments raised by the parties, and the submissions by numerous *amici curiae,* we conclude that the County is not ****380** entitled to the relief sought. We therefore deny the County's writ petition on the merits. However, we will remand the matter to the superior court for a determination of whether and to what extent the County may demand fees in excess of the direct costs of reproducing the electronic record requested by CFAC.

## FACTUAL AND PROCEDURAL BACKGROUND

On June 12, 2006, CFAC submitted a request for a copy of the County's geographic information system (GIS) basemap.[FN1] The request was made under the California Public Records Act (CPRA), ***1310**Government Code sections 6250 et seq. Two weeks later, the County denied the request, citing statutory exemptions and copyright protection.

> FN1. As described in the County's 2002 GIS strategic plan: "Geographic information systems (GIS) are a class of information technology that has been widely adopted throughout government and business sectors to improve the management of location-based information." As further explained in that document: "GIS is an information management technology that combines computer mapping and database technologies to improve the management and analysis of location based information." Among the essential geographic elements of the GIS basemap are "parcels, streets, assessor parcel information, jurisdictional boundaries, orthophotos [aerial photographs], and buildings."
>
> According to a declaration submitted by the County in the proceedings below: "The GIS Basemap starts with the Assessor's map data, and builds layers of information onto it. The 'GIS Basemap' is a computer mapping system that (1) tells the hardware where to gather information from a variety of separate databases and (2) tells the hardware how to intelligently render the various bits of data into a structured output format."

On August 16, 2006, CFAC renewed its request for the GIS basemap, with some modifications. Later that month, the County denied the renewed request.

### *Proceedings in the Superior Court*

On October 11, 2006, CFAC filed a petition for writ of mandate, seeking to compel the County to produce the GIS basemap. Among the exhibits attached to the petition was the County's GIS Basemap Data request form, which details the procedure and the required fees for obtaining that data. Based in part on the fee schedule contained in that form, CFAC asserted that the cost of obtaining county-wide parcel information alone "would be approximately $250,000." As legal support for its petition, CFAC relied on the CPRA, and on the California Constitution, article 1, section 3. The County answered, then CFAC filed its replication to the answer.

In January 2007, CFAC moved for judgment on its petition. The County opposed the motion, and CFAC replied. At a hearing held in February 2007, the court authorized the County to file a supplemental response, which it did the following month. CFAC successfully sought an opportunity to reply.

The trial court thereafter conducted two further

hearings in April 2007. A substantial volume of evidence and argument was presented to the trial court.

On May 18, 2007, the trial court filed a 27–page written order.

In its factual findings, the court described GIS and the GIS basemap. The court determined that the County "sells the GIS basemap to members of the public for a significant fee and requires all recipients to enter into a mutual non-disclosure agreement." Later in its order, the court observed that the County had "actually entered into agreements with 18 different entities, 15 of those being government entities."

****381** Addressing the legal issues, the court noted both parties' agreement that "the resolution of this dispute turns on whether the public record is exempt." ***1311** The court then discussed various proffered CPRA exemptions, ultimately rejecting them all for different reasons.

Having found that no exemption was available under the CPRA, the court ordered the County to provide CFAC with the GIS basemap, at the County's direct cost. The court stayed the order until June 25, 2007, to permit the parties to pursue appellate review.

***Proceedings in This Court***

[1] On June 12, 2007, the County initiated this writ proceeding.[FN2] It filed a petition accompanied by a memorandum of points and authorities. At the County's request, we issued a temporary stay. CFAC filed preliminary opposition, to which the County replied.

FN2. The CPRA contains a provision for expedited appellate review by extraordinary writ only. (Gov.Code, § 6259, subd. (c); *Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 426–427, 121 Cal.Rptr.2d 844, 49 P.3d 194.) The scope of review is the same as for direct appeals. (*State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1185, 13 Cal.Rptr.2d 342.)

*Order to Show Cause; Responses*

In March 2008, we issued an order to show cause to the respondent superior court, inviting opposition by CFAC as the real party in interest.

CFAC filed a return in April 2008, to which the County replied the following month.

Numerous *amici curiae* applied for leave to file five separate briefs in this court. We granted all five applications.[FN3]

FN3. One brief was filed in support of the County by two *amici*, the California State Association of Counties and the League of California Cities. The other four *amicus* briefs were offered in support of CFAC, by (1) the California Newspaper Publishers' Association, and various news and other organizations; (2) the National Security Archive, the Center for Democracy and Technology, and the Electronic Frontier Foundation; (3) American Business Media, et al., commercial and nonprofit entities that compile public records for various uses; and (4) 77 GIS Professionals.

*The Record*

In connection with its June 2007 petition in this court, the County filed an eight-volume petitioner's appendix consisting of nearly 2,000 pages. The following month, we granted the County's request to augment the record with transcripts of the two hearings conducted by the superior court in April 2007.

***1312** In 2008, we received and granted three requests for judicial notice. [FN4] Despite****382** having taken judicial notice of these documents, we need not rely on them in resolving this proceeding. (*Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184, fn. 1, 151 Cal.Rptr. 837, 588 P.2d 1261; see also, *Windham at Carmel Mountain Ranch Assn. v. Superior Court* (2003) 109 Cal.App.4th 1162, 1173, fn. 11, 135 Cal.Rptr.2d 834; *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 30, 34 Cal.Rptr.3d 520.)

FN4. The first request for judicial notice was submitted by the County's *amici*, the California State Association of Counties and the League of California Cities. The subject of this request for judicial notice is the legislative history of Assembly Bill No. 3265 (Chapter 447, Statutes of 1988), which enacted Government Code section 6254.9, part

of the California Public Records Act. We received and granted this request for judicial notice in June 2008. Shortly thereafter, CFAC opposed the request and moved for reconsideration. In doing so, CFAC expressed no objection "to the Court's taking judicial notice of legislative history materials that may be pertinent to showing the intent of the Legislative as a whole when enacting the bill." But it argued that a large number of documents included in the request for judicial notice fail to satisfy that standard. In opposing the motion for reconsideration, petitioner's *amici* urged the propriety of noticing one particular document targeted by CFAC, a 1988 memorandum from the City of San Jose, which sponsored the bill. In reply, CFAC disagreed with *amici's* assessment of the 1988 memorandum.

The second request for judicial notice was made by CFAC's *amici*, the California Newspaper Publishers' Association, et al.; it was received and granted in June 2008. Attached to that request are 10 newspaper articles, offered "to establish the widespread use of GIS basemap data in reporting, which is relevant to this Court's Government Code § 6255 inquiry into the public interest served by releasing GIS basemap data."

The third request for judicial notice was filed by the County in July 2008. It asks this court to judicially notice documents from the United States Copyright Office demonstrating that two California cities have registered copyrights.

## CONTENTIONS

As indicated above, the County offers three grounds to support its petition, which asserts trial court error in mandating disclosure of its GIS basemap.

The County's first argument relies on federal law, including the Critical Infrastructure Information Act of 2002. According to the County, that statute and its accompanying regulations preempt state law. And under those superseding federal provisions, disclosure of the GIS basemap is prohibited, because it has been validated by the United States Department of Homeland Security as protected critical infrastructure information.

The County's second argument is based on state law, the CPRA. According to the County, even if the CPRA is not preempted by federal law, its "catchall" exemption shields the GIS basemap from public disclosure.

As the third ground for its petition, the County posits that even if neither preemption nor exemption supports nondisclosure, it should be allowed (a) to ***1313** demand end user agreements, because the GIS basemap is copyrightable, and (b) to recover more than its direct cost of providing the record, based on a provision of the CPRA.

## DISCUSSION

Addressing each of the County's three contentions in turn, we first provide an overview of the relevant general principles of law. We then set forth the parties' arguments in greater detail, followed by our analysis.

### I. Federal Homeland Security Law

#### *A. Overview*

*1. The Statute*

The federal statute at issue here is the Critical Infrastructure Information Act of 2002 (CII Act). (6 U.S.C. §§ 131–134.) The CII Act is part of the Homeland Security Act of 2002, which established the Department of Homeland Security (DHS). (See *id.*, §§ 101, 111(a).) Within the DHS, Congress established an Office of Intelligence and Analysis and an Office of Infrastructure Protection. (6 U.S.C. § 121(a).) The statutory responsibilities associated with those offices include carrying out "comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States," and developing "a comprehensive national plan for securing the key resources and critical infrastructure of the United States, including power production, generation, and distribution systems, information technology and telecommunications systems (including satellites), electronic financial and property****383** record storage and transmission systems, emergency preparedness communications systems, and the physical and tech-

170 Cal.App.4th 1301, 89 Cal.Rptr.3d 374, 37 Media L. Rep. 1331, 09 Cal. Daily Op. Serv. 1526, 2009 Daily Journal D.A.R. 1802
**(Cite as: 170 Cal.App.4th 1301, 89 Cal.Rptr.3d 374)**

nological assets that support such systems." (*Id.*, (d)(2), (5).)

At the heart of the CII Act is the protection of critical infrastructure information (CII), statutorily defined as "information not customarily in the public domain and related to the security of critical infrastructure or protected systems...." (6 U.S.C. § 131(3).) "The CII Act authorized DHS to accept information relating to critical infrastructure from the public, owners and operators of critical infrastructure, and State, local, and tribal governmental entities, while limiting public disclosure of that sensitive information under the Freedom of Information Act ... and other laws, rules, and processes." (71 Fed. Reg. 52262 (September 1, 2006).)

The CII Act contains a section aimed at protecting voluntarily shared critical infrastructure information. (6 U.S.C. § 133.) Concerning the disclosure of such information, it provides ***1314** in pertinent part: "Notwithstanding any other provision of law, critical infrastructure information (including the identity of the submitting person or entity) that is voluntarily submitted to [the DHS] for use by that agency regarding the security of critical infrastructure and protected systems ... [¶] (A) shall be exempt from disclosure under ... the Freedom of Information Act[ ]" and "(E) shall not, if provided to a State or local government or government agency ... [¶] ... be made available pursuant to any State or local law requiring disclosure of information or records[.]" (*Id.*, (a)(1)(A), (E)(i); see O'Reilly, 1 Federal Information Disclosure 3d (2000 & Westlaw Dec. 2008 update) § 13:14 [describing this provision as a "much-tinkered clause" that was "hotly contested as the bills were debated"].)

The CII Act directs the Department of Homeland Security to "establish uniform procedures for the receipt, care, and storage by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government." (6 U.S.C. § 133(e)(1).) It further provides that those procedures "shall include mechanisms" for "the protection and maintenance of the confidentiality of such information so as to permit the sharing of such information within the Federal Government and with State and local governments, and the issuance of notices and warnings related to the protection of critical infrastructure and protected systems, in such manner as to protect from public disclosure the identity of the submitting person or entity, or information that is proprietary, business sensitive, relates specifically to the submitting person or entity, and is otherwise not appropriately in the public domain." (*Id.*, (e)(2)(D).)

*2. Regulations*

The federal regulations implementing the CII Act are found in the Code of Federal Regulations, volume 6, part 29. Those regulations are intended to implement the federal statute "through the establishment of uniform procedures for the receipt, care, and storage of Critical Infrastructure Information (CII) voluntarily submitted to the Department of Homeland Security (DHS)." (6 C.F.R. § 29.1(a) (2007).)

As stated in the regulations: "Consistent with the statutory mission of DHS to prevent terrorist attacks within the United States and reduce the vulnerability of the United States to terrorism, DHS will encourage the voluntary submission of CII by safeguarding and protecting that information from unauthorized disclosure and by ensuring that such information is, as necessary, securely shared with State and ****384** local government pursuant to ... the CII Act. As required by the CII Act, these rules establish procedures regarding: ... [¶] The receipt, validation, handling, storage, proper marking and use of information as PCII[.]" (6 C.F.R. § 29.1(a) (2007).)

***1315** Protcted CII (PCII) is CII that has been validated by DHS. (6 C.F.R. § 29.2(g) (2007).)

Among the regulations is one relied on by the County, which states that PCII "shall be treated as exempt from disclosure under the Freedom of Information Act and any State or local law requiring disclosure of records or information." (6 C.F.R. § 29.8(g) (2007).)

*3. Preemption*

The County's reliance on federal law rests on its contention that the CII Act and accompanying regulations preempt the CPRA.

[2][3][4] As a general principle, federal law preempts state law (1) where Congress has said so explicitly, (2) where Congress has said so implicitly, as when federal regulation occupies the field exclusively, and (3) where federal and state law conflict. (*Lorillard Tobacco Co. v. Reilly* (2001) 533 U.S. 525, 541, 121 S.Ct. 2404, 150 L.Ed.2d 532.) Unless Con-

gress has demonstrated a clear and manifest purpose to the contrary, the presumption is that federal law does not preempt the states' historic police powers. (*Id.* at pp. 541–542, 121 S.Ct. 2404; *Jevne v. Superior Court* (2005) 35 Cal.4th 935, 949–950, 28 Cal.Rptr.3d 685, 111 P.3d 954.) Moreover, a federal "agency literally has no power to act, let alone pre-empt the validly enacted legislation of a sovereign State, unless and until Congress confers power upon it." (*Lousiana Public Serv. Comm. v. FCC* (1986) 476 U.S. 355, 374, 106 S.Ct. 1890, 90 L.Ed.2d 369.)

***B. The Parties' Contentions***

*1. Preemption*

The County claims express federal preemption under 6 Code of Federal Regulation, part 29.8(g), which exempts PCII from the operation of federal, state, and local laws requiring the disclosure of public records. As the County points out, the preamble to the final rule promulgated by Department of Homeland Security notes "the preeminence of PCII status under the CII Act and these regulations in relation to any State, territorial, or tribal public disclosure laws or policies." (71 Fed.Reg., *supra,* at p. 52268.) That same document also states: "This rulemaking, as required by the underlying statute, preempts State, local and tribal laws that might otherwise require disclosure of PCII...." (*Id.* at p. 52271; see also, O'Reilly, 2 Federal Information Disclosure 3d, *supra,* § 27.22.)

The County also asserts that Congress has implicitly preempted state law, arguing that "the Federal Regulations set forth a scheme for PCII validation ***1316** that is so pervasive, it is unreasonable to infer that Congress intended the states to occupy the field." (See *Jevne v. Superior Court, supra,* 35 Cal.4th at p. 958, 28 Cal.Rptr.3d 685, 111 P.3d 954.)

CFAC disputes the County's preemption claim. In its view, "the CII Act does not preempt" the CPRA, but "merely creates a rule of nondisclosure" that has no application to this case.

*2. Statutory Arguments*

According to CFAC, the County's position rests on a misreading of the federal act as it relates to CII that has been voluntarily submitted to the federal government, such as the GIS basemap at issue here. (See 6 U.S.C. § 133(a).) In CFAC's view, the provisions in the federal statute ****385** limiting disclosure apply only to those entities *receiving* PCII from DHS, not to those *submitting* it. Furthermore, CFAC argues, the federal protection for CII has been incorporated into state law as an exemption in the CPRA, but that exemption was waived by the County's sale of the GIS basemap to non-governmental entities. (See Gov.Code, §§ 6254, subds. (k) [provision incorporating federal law exemptions], (ab) [provision exempting CII], 6254.5 [waiver provision].)

The County disputes this view of the CII Act, arguing that it imposes "an artificial distinction" between submitting and receiving entities. The County also dismisses CFAC's waiver argument, calling it "irrelevant" given federal preemption of the CPRA.

***C. Analysis***

We agree with CFAC that the pertinent question here is not whether federal homeland security law trumps state disclosure law. Instead, the analysis in this case turns on whether the federal act and accompanying regulations apply at all. As we now explain, we conclude that the CII Act does not apply here because the County is a *submitter* of CII, not a *recipient* of PCII. Given that conclusion, we need not consider whether the CII Act preempts the CPRA.

*1. Federal law distinguishes between submitters and recipients of PCII.*

In undertaking our statutory analysis, we begin by examining the language of the relevant provisions. (*Smith v. Superior Court* (2006) 39 Cal.4th 77, 83, 45 Cal.Rptr.3d 394, 137 P.3d 218.) Statutory interpretation presents a legal ***1317** question, which we decide de novo. (*Ibid.*; *Los Angeles Unified School Dist. v. Superior Court* (2007) 151 Cal.App.4th 759, 767, 60 Cal.Rptr.3d 445.)

The CII Act provides that critical infrastructure information that has been voluntarily submitted "shall be exempt from disclosure" under the federal Freedom of Information Act. (6 U.S.C. § 133(a)(1)(A).) As more particularly relevant here, it also prohibits disclosure of PCII "pursuant to any State or local law requiring disclosure of information or records"—but only "if provided *to* a State or local government...." (*Id.*, (a)(1)(E)(i), italics added.)

We are not aware of any case law interpreting this provision. But the regulations promulgated under the

170 Cal.App.4th 1301, 89 Cal.Rptr.3d 374, 37 Media L. Rep. 1331, 09 Cal. Daily Op. Serv. 1526, 2009 Daily Journal D.A.R. 1802
**(Cite as: 170 Cal.App.4th 1301, 89 Cal.Rptr.3d 374)**

CII Act bear out the statute's apparent distinction between the submission of CII and the receipt of PCII, as we now explain.

We begin with the specific regulation cited by the County, 6 Code of Federal Regulations, part 29.8. Subdivision (g) of that regulation provides in part that PCII "shall be treated as exempt from disclosure under the Freedom of Information Act and any State or local law requiring disclosure of records or information." (6 C.F.R. § 29.8(g) (2007).) We acknowledge that subdivision (g) does not distinguish between CII submitters and PCII recipients. But another subdivision of this regulation does reflect that distinction.

Subdivision (b) of 6 Code of Federal Regulations, part 29.8 thus states in pertinent part: "PCII may be provided *to* a state or local government entity for the purpose of protecting critical infrastructure or protected systems...." (6 C.F.R. § 29.8(b) (2007), italics added.) "The *provision* of PCII to a State or local government entity will normally be made only pursuant to an arrangement with the PCII Program Manager providing for compliance ... and acknowledging the understanding and responsibilities of the *recipient.* State and local governments *receiving* such information will acknowledge ****386** in such arrangements the primacy of PCII protections under the CII Act" and "agree to assert all available legal defenses to disclosure of PCII under State, or local public disclosure laws, statutes or ordinances...." (*Ibid.*, italics added.)

This emphasis on recipients of PCII also appears at subdivision (d) of the next regulation, which provides: "State and local governments *receiving* information marked 'Protected Critical Infrastructure Information' shall not share that information" except as allowed by the regulations. (6 C.F.R. § 29.8(d)(1) (2007), italics added.) On the subject of enforcement, subdivision (d) continues: "if the PCII Program Manager determines that an entity or person who has *received* PCII has violated the provisions of ***1318** this Part or used PCII for an inappropriate purpose, the PCII Program Manager may disqualify that entity or person from future receipt of any PCII or future receipt of any sensitive homeland security information...." (*Id.*, § 29.9(d)(2), italics added.)

Other regulations reflect the same dichotomy between the submission of CII and the receipt of PCII, as the following excerpts demonstrate. "The regulations in this Part apply to all persons and entities that are authorized to handle, use, or store PCII or that otherwise *accept receipt* of PCII." (6 C.F.R. § 29.1(b) (2007), italics added.) The regulations help ensure that CII is "securely *shared with* State and local government pursuant to ... the CII Act." (*Id.*, § 29.1(a), italics added.) "A Federal, State or local agency that *receives* PCII may utilize the PCII only for purposes appropriate under the CII Act, including securing critical infrastructure or protected systems." (*Id.*, § 29.3(b), italics added.) "All Federal, State and local government entities shall protect and maintain information as required by these rules or by the provisions of the CII Act when that information *is provided to the entity* by the PCII Program Manager...." (*Id.*, § 29.5(c), italics added.)

The preamble to the final regulations likewise confirms the submitter/recipient distinction. For example, it clarifies that "State, local and tribal contractors" are not "precluded from *receiving* PCII" and it notes a change in the final regulations "to permit employees of Federal, State, local, and tribal contractors who are engaged in the performance of services in support of the purposes of the CII Act, to communicate with a *submitting* person ... when authorized by the PCII Program Manager or ... designee." (71 Fed.Reg., *supra,* at p. 52269, italics added.)

[5] Taken as a whole, this consistent and pervasive regulatory language supports our construction of the relevant provision of the CII Act, 6 United States Code section 133(a)(1)(E)(i). As we interpret that provision, it draws a distinction between the submission of CII and the receipt of PCII. In the hands of the submitter, the nature of the information remains unchanged; in the hands of the governmental recipient, it is protected from disclosure. [FN5]

> FN5. As one commentator observed in the context of voluntary submissions of CII by private industry, "firms cannot use DHS as a 'black hole' in which to hide information that would otherwise have come to light [.]" (Bagley, Benchmarking, Critical Infrastructure Security, and the Regulatory War on Terror (2006) 43 Harv. J. on Legis. 47, 57, fn. omitted.)

This interpretation is also consonant with other

aspects of the statute and regulations, particularly those that limit the uses of PCII in the hands of governmental recipients. As provided in the statute, PCII provided to a state or local government or agency shall not "be used other than for the purpose of protecting critical ****387** infrastructure or protected systems, or in furtherance of ***1319** an investigation or the prosecution of a criminal act [.]" (6 U.S.C. § 133(a)(1)(E)(iii).) The regulations are to the same effect: "A Federal, State or local agency that receives PCII may utilize the PCII only for purposes appropriate under the CII Act, including securing critical infrastructure or protected systems." (6 C.F.R. § 29.3(b) (2007).) If the GIS basemap constitutes PCII in the County's hands, as it maintains, then federal law strictly restricts use of that data to the narrow purposes enumerated in the CII Act.

In sum, we conclude that the CII Act distinguishes between submitters of CII and recipients of PCII, with the result that the federal statute's prohibition on disclosure of protected confidential infrastructure information applies only when it has been "*provided to* a State or local government or government agency...." (6 U.S.C. § 133(a)(1)(E)(i), italics added.)

*2. Because the County did not receive PCII, the federal provisions do not apply.*

[6] In this case, the information at issue was submitted *by* the County, not *to* it. Because the County is a submitter of CII, not a recipient of PCII, neither the CII Act nor the accompanying regulations apply here.

Having concluded that federal homeland security law does not apply in this case, we turn to the County's contention that the CPRA exempts the GIS basemap from disclosure.

**II. State Law Disclosure Exemption**

As before, we summarize the governing law, then we describe and analyze the parties' contentions.

***A. Overview***

"In 1968, the Legislature clarified the scope of the public's right to inspect records by enacting the CPRA." (*County of Los Angeles v. Superior Court* (2000) 82 Cal.App.4th 819, 825, 98 Cal.Rptr.2d 564.) "The CPRA 'replaced a hodgepodge of statutes and court decisions relating to disclosure of public records.' " (*Los Angeles Unified School Dist. v. Superior Court*, *supra*, 151 Cal.App.4th at p. 765, 60 Cal.Rptr.3d 445.) The CPRA is codified in the Government Code, starting at section 6250.[FN6]

FN6. Further unspecified statutory citations are to the Government Code.

*1. Policy Favoring Disclosure*

[7][8] The CPRA "was enacted for the purpose of increasing freedom of information by giving members of the public access to information in the ***1320** possession of public agencies." (*Filarsky v. Superior Court*, *supra*, 28 Cal.4th at pp. 425–426, 121 Cal.Rptr.2d 844, 49 P.3d 194.) Legislative policy favors disclosure. (*San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356, 1408, 44 Cal.Rptr.3d 128 (*San Lorenzo.*)) "All public records are subject to disclosure unless the Public Records Act expressly provides otherwise." (*BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 751, 49 Cal.Rptr.3d 519.)

California voters endorsed that policy in 2004 by approving Proposition 59, which amended the state constitution to explicitly recognize the "right of access to information concerning the conduct of the people's business" and to provide that "the writings of public officials and agencies shall be open to public scrutiny." (Cal. Const., art. 1, § 3, subd. (b)(1); see ****388***BRV, Inc. v. Superior Court*, *supra*, 143 Cal.App.4th at p. 750, 49 Cal.Rptr.3d 519; *Los Angeles Unified School Dist. v. Superior Court*, *supra*, 151 Cal.App.4th at p. 765, 60 Cal.Rptr.3d 445.)

*2. Exemptions*

"The right of access to public records under the CPRA is not absolute." (*Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1283, 48 Cal.Rptr.3d 183, 141 P.3d 288.) The CPRA "states a number of exemptions that permit government agencies to refuse to disclose certain public records." (*Ibid.*) To a large extent, these exemptions reflect legislative concern for privacy interests. (*Ibid.*; *Commission on Peace Officer Standards and Training v. Superior Court* (2007) 42 Cal.4th 278, 289, 64 Cal.Rptr.3d 661, 165 P.3d 462.) The CPRA features two categories of exemptions: "(1) materials expressly exempt from disclosure pursuant to section 6254; and (2) the 'catchall exception' of section 6255...." (*City of San Jose v. Superior Court*

(1999) 74 Cal.App.4th 1008, 1019, 88 Cal.Rptr.2d 552, fn. omitted; *San Lorenzo, supra*, 139 Cal.App.4th at p. 1408, 44 Cal.Rptr.3d 128.)

*a. Enumerated Exemptions*

[9] "The Legislature has assembled a diverse collection of exemptions from disclosure in section 6254." (*Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1068, 112 Cal.Rptr.2d 80, 31 P.3d 760; see also, §§ 6254.1–6254.29.) For example, public records need not be disclosed if their disclosure "is exempted or prohibited pursuant to federal or state law ...." (§ 6254, subd. (k); cf. *Rim of the World Unified School Dist. v. Superior Court* (2002) 104 Cal.App.4th 1393, 1397, 129 Cal.Rptr.2d 11.) But "this exemption 'is not an independent exemption. It merely incorporates other prohibitions established by law.' " (*Copley Press, Inc. v. Superior Court, supra*, 39 Cal.4th at p. 1283, 48 Cal.Rptr.3d 183, 141 P.3d 288.) Also listed among the express exemptions is: "Critical infrastructure information, as defined in ***1321**Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the California Office of Homeland Security for use by that office ...." (§ 6254, subd. (ab).)

*b. Catchall Provision*

[10] Section 6255 "allows a government agency to withhold records if it can demonstrate that, on the facts of a particular case, the public interest served by withholding the records clearly outweighs the public interest served by disclosure." (*San Lorenzo, supra*, 139 Cal.App.4th at p. 1408, 44 Cal.Rptr.3d 128.) This catchall exemption "contemplates a case-by-case balancing process, with the burden of proof on the proponent of nondisclosure to demonstrate a clear overbalance on the side of confidentiality." (*Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, 1071, 44 Cal.Rptr.3d 663, 136 P.3d 194.) "Where the public interest in disclosure of the records is not outweighed by the public interest in nondisclosure, courts will direct the government to disclose the requested information." (*City of San Jose v. Superior Court, supra*, 74 Cal.App.4th at p. 1018, 88 Cal.Rptr.2d 552.)

*c. Operation*

[11][12] Since disclosure is favored, all exemptions are narrowly construed. (Cal. Const., art. I, § 3, subd. (b)(2); *Board of Trustees of California State University v. Superior Court* (2005) 132 Cal.App.4th 889, 896, 34 Cal.Rptr.3d 82.) The agency opposing disclosure bears the burden of proving that an exemption applies. ****389**(*Board of Trustees of California State University v. Superior Court*, at p. 896, 34 Cal.Rptr.3d 82.)

[13][14] Moreover, if only part of a record is exempt, the agency is required to produce the remainder, if segregable. (§ 6253, subd. (a).) In other words, "the fact that a public record may contain some confidential information does not justify withholding the entire document." (*State Bd. of Equalization v. Superior Court, supra*, 10 Cal.App.4th at p. 1187, 13 Cal.Rptr.2d 342; see *Connell v. Superior Court* (1997) 56 Cal.App.4th 601, 614, 65 Cal.Rptr.2d 738 [the superior court's "limited disclosure order eliminated the Controller's legitimate security concern"].) "The burden of segregating exempt from nonexempt materials, however, remains one of the considerations which the court can take into account in determining whether the public interest favors disclosure under section 6255." (*American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 453, fn. 13, 186 Cal.Rptr. 235, 651 P.2d 822.)

[15][16] Exemptions can be waived. (§ 6254.5; *County of Los Angeles v. Superior Court* (2005) 130 Cal.App.4th 1099, 1107, 30 Cal.Rptr.3d 708.) "Disclosure to one member of the public would constitute a waiver of the exemption ***1322** [citation], requiring disclosure to any other person who requests a copy." (86 Ops.Cal.Atty.Gen. 132, 137 (2003), citing § 6254.5; *City of San Jose v. Superior Court, supra*, 74 Cal.App.4th at p. 1018, 88 Cal.Rptr.2d 552.)

***B. The Parties' Contentions***

At issue here is whether the GIS basemap is exempt from disclosure under the CPRA. As stated in the trial court's decision: "Given County's admission that the GIS basemap and data elements are a public record, both parties agree that the resolution of this dispute turns on whether the public record is exempt."

[17][18] In this court, the County proffers only one exemption, the catchall provision of section 6255.[FN7] That provision reads in pertinent part: "The agency shall justify withholding any record by demonstrating that the record in question is exempt ****390** 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." (§ 6255, subd. (a).) When this exemption is invoked, the court undertakes a balancing process. (*Michaelis, Montanari & Johnson v. Superior Court, supra*, 38 Cal.4th at p. 1071, 44 Cal.Rptr.3d 663, 136 P.3d 194.) The court assesses whether "on the facts of [the] particular case, the public interest served by withholding the records clearly outweighs the public interest served by disclosure." (*San Lorenzo, supra*, 139 Cal.App.4th at p. 1408, 44 Cal.Rptr.3d 128.)

FN7. In the trial court, the County urged other exemptions, including section 6254, subdivision (ab), which exempts "Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the California Emergency Management Agency for use by that office, including the identity of the person who or entity that voluntarily submitted the information." As stated in papers that the County filed in January 2007, it was then "in the process of submitting the GIS Basemap as 'Critical Infrastructure Information' to the California Office of Homeland Security" pursuant to section 6254, subdivision (ab). In a similar vein, the County also relied below on section 6254, subdivision (k), which incorporates other exemptions "pursuant to federal or state law," together with the federal regulations governing CII. The County proffered several other statutory exemptions as well. The trial court rejected all of the County's statutory exemption arguments. With the exception of the catchall exemption of section 6255, the County does not renew any of those arguments here.

In this court, by contrast, the County's *amici* urge an additional exemption, based on section 6254.9, which the County argued unsuccessfully below. Under that section, computer software—defined to include computer mapping systems—is not treated as a public record. (§ 6254.9, subds.(a), (b).)

Since the point is raised only by *amici*, we need not and do not consider it. "Amici curiae must take the case as they find it. Interjecting new issues at this point is inappropriate." ( *California Assn. for Safety Education v. Brown* (1994) 30 Cal.App.4th 1264, 1275, 36 Cal.Rptr.2d 404; see also, e.g., *Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1047, fn. 12, 56 Cal.Rptr.3d 814, 155 P.3d 226.) We therefore decline to address the exemption issue raised solely by the County's *amici* here.

***1323** Addressing the disclosure prong of the balancing test, the County asserts that the public interest in obtaining the GIS basemap is both minimal and hypothetical. Concerning the nondisclosure prong, the County asserts two reasons for withholding the record: one related to straitened public finances and the other arising from security concerns. Weighing the two prongs, the County says, "the balance clearly favors the County's position of nondisclosure because concerns over security and the risk of undermining the County's ability to continue providing valuable services to County residents clearly outweighed CFAC's hypothetical interest."

CFAC disagrees, with particular emphasis on countering the County's security argument.

***C. Analysis***

[19] In analyzing the availability of this exemption, we accept the trial court's express and implied factual determinations if supported by the record, but we undertake the weighing process anew. (*Connell v. Superior Court, supra*, 56 Cal.App.4th at p. 612, 65 Cal.Rptr.2d 738.) As our high court has explained, "although a reviewing court should weigh the competing public interest factors de novo, it should accept as true the trial court's findings of the 'facts of the particular case' [citation], assuming those findings are supported by substantial evidence." (*Michaelis, Montanari & Johnson v. Superior Court, supra*, 38 Cal.4th at p. 1072, 44 Cal.Rptr.3d 663, 136 P.3d 194.)

In this case, the trial court considered the evidence, made factual findings, and engaged in the weighing process before concluding that the balance of interests favored disclosure. Though it described both parties' "competing interests" as "somewhat hypothetical," the court nevertheless concluded that the County had "not shown a 'clear overbalance' in favor of non-disclosure."

170 Cal.App.4th 1301, 89 Cal.Rptr.3d 374, 37 Media L. Rep. 1331, 09 Cal. Daily Op. Serv. 1526, 2009 Daily Journal D.A.R. 1802
**(Cite as: 170 Cal.App.4th 1301, 89 Cal.Rptr.3d 374)**

On independent review of the competing interests, we agree with the trial court's conclusion. In our view, the County has both understated the public interest in disclosure and overstated the public interest in nondisclosure.

*1. Public Interest in Permitting Disclosure*

According to the County, "CFAC's interest in disclosure of the GIS Basemap is hypothetical," and it is also "minimal" since acquiring the information "can be accomplished by lesser means." We disagree.

*a. The public interest in disclosure is not hypothetical.*

In pressing its characterization of CFAC's interest as hypothetical, the County cites the trial court's concerns about CFAC's standing, since it ***1324** "represents no citizen." The County paraphrases the trial court's observation: "Other than a generalized proclamation of the 'public's ****391** right to know,' CFAC[ ] has *no* interest in the GIS Basemap."

[20][21] In making that argument, the County misapprehends the focus of the inquiry. As CFAC points out, the motive of the particular requester is irrelevant; the question instead is whether disclosure serves the *public* interest. "The Public Records Act does not differentiate among those who seek access to public information." (*State Bd. of Equalization v. Superior Court, supra*, 10 Cal.App.4th at p. 1190, 13 Cal.Rptr.2d 342; see also, e.g., *American Civil Liberties Union Foundation v. Deukmejian, supra*, 32 Cal.3d at p. 451, 186 Cal.Rptr. 235, 651 P.2d 822; *Connell v. Superior Court, supra*, 56 Cal.App.4th at pp. 611–612, 65 Cal.Rptr.2d 738; § 6257.5.)

[22][23] " 'If the records sought pertain to the conduct of the people's business there *is* a public interest in disclosure. The *weight* of that interest is proportionate to the gravity of governmental tasks sought to be illuminated and the directness with which the disclosure will serve to illuminate.' " (*Connell v. Superior Court, supra*, 56 Cal.App.4th at p. 616, 65 Cal.Rptr.2d 738.) "The existence and weight of this public interest are conclusions derived from the nature of the information." (*Ibid.*) As this court put it, the issue is "whether disclosure would contribute significantly to public understanding of government activities." (*City of San Jose v. Superior Court, supra*, 74 Cal.App.4th at p. 1018, 88 Cal.Rptr.2d 552.)

[24] Here, the trial court summarized some of CFAC's proffered "examples as to how access to the GIS basemap will contribute to its understanding of government activities" including "comparison of property tax assessments, issuance of permits, treatment of tax delinquent properties, equitable deployment of public services, issuance of zoning variances." As these examples show, the public's interest in disclosure is very real, given " 'the gravity of governmental tasks sought to be illuminated and the directness with which the disclosure will serve to illuminate.' " (*Connell v. Superior Court, supra*, 56 Cal.App.4th at p. 616, 65 Cal.Rptr.2d 738.)

*b. The public interest in disclosure is not minimal.*

[25] In support of its second point, the County cites a decision of this court for the principle that "public interest in disclosure is minimal ... where the requester has alternative, less intrusive means of obtaining the information sought." (*City of San Jose v. Superior Court, supra*, 74 Cal.App.4th at p. 1020, 88 Cal.Rptr.2d 552.) The trial court explicitly recognized that principle, saying "the availability of alternate sources of obtaining the information is relevant in weighing the public interest in disclosure." The court also stated that "CFAC ***1325** could obtain the same information found in the GIS basemap by performing a (more laborious) search of other publicly available records." [FN8]

> FN8. CFAC contends that the trial court was mistaken factually as to this point.

The County misplaces its reliance on our decision in *City of San Jose v. Superior Court, supra*, 74 Cal.App.4th 1008, 88 Cal.Rptr.2d 552. That case is factually distinguishable, since it involved privacy concerns that are not in play here. In *City of San Jose*, we determined that "airport noise complainants have a significant privacy interest in their names, addresses, and telephone numbers as well as in the fact that they have made a complaint to their government, and that disclosure of this information would have a chilling effect on future complaints." ****392**(*Id.* at pp. 1023–1024, 88 Cal.Rptr.2d 552.) Concerning the CPRA catchall exemption, we explained: "In determining whether the public interest in nondisclosure of individuals' names and addresses outweighs the public interest in disclosure of that information," courts evaluate whether disclosure serves "the legislative purpose" of illuminating the performance of public

duties. (*Id.* at p. 1019, 88 Cal.Rptr.2d 552.) "Where disclosure of names and addresses would not serve this purpose, denial of the request for disclosure has been upheld." (*Ibid.*) "Courts have also recognized that the public interest in disclosure is minimal, even when the requester asserts that personal contact is necessary to confirm government compliance with mandatory duties, where the requester has alternative, less intrusive means of obtaining the information sought." (*Id.* at p. 1020, 88 Cal.Rptr.2d 552.) Conversely, "where the disclosure of names and addresses is necessary to allow the public to determine whether public officials have properly exercised their duties by refraining from the arbitrary exercise of official power, disclosure has been upheld." (*Ibid.*)

[26][27] While the availability of less intrusive means to obtain the information may be a factor in the analysis, particularly in privacy cases, the existence of alternatives does not wholly undermine the public interest in disclosure. (Cf. *City of San Jose v. Superior Court, supra*, 74 Cal.App.4th at p. 1025, 88 Cal.Rptr.2d 552.) Even where a requester "has an alternative means to access the information, it should not prohibit it from obtaining the documents under the CPRA." (*Los Angeles Unified School Dist. v. Superior Court, supra*, 151 Cal.App.4th at p. 772, fn. 6, 60 Cal.Rptr.3d 445.) The records at issue here " 'pertain to the conduct of the people's business' " so " 'there *is* a public interest in disclosure.' " (*Connell v. Superior Court, supra*, 56 Cal.App.4th at p. 616, 65 Cal.Rptr.2d 738.) For the reasons proffered by CFAC and summarized by the trial court, it also appears that "disclosure would contribute significantly to public understanding of government activities." (*City of San Jose v. Superior Court*, at p. 1018, 88 Cal.Rptr.2d 552.)

In sum, we conclude, the public interest in disclosure of the GIS basemap is neither hypothetical nor minimal. That brings us to the second prong of the balancing test, assessing the public interest in nondisclosure.

***1326** *2. Public Interest in Preventing Disclosure*

The County proffers two interests to support nondisclosure. First, the County cites financial issues, positing its "continuing effort to provide the public with a high level of service during challenging economic times" and emphasizing the threatened impact on first responders. Second, the County raises public safety concerns, stressing the need "to protect sensitive infrastructure information not customarily in the public domain." We consider and reject each in turn.

*a. The County's financial interests do not compel nondisclosure.*

According to the County, it developed the GIS basemap "at a significant cost in terms of time, effort and resources." If "forced to provide the GIS Basemap to all requesters at the direct cost of production," the County contends, it will lose its ability to sell the technology, with the result that "the County alone will have to shoulder the obligation of maintaining the GIS Basemap—a difficult task during times of ever increasing budget deficits. The end result will be a reduction in service levels to the public." The County also asserts that losing "control over its intellectual****393** property (copyright interests in the GIS Basemap) with the dissemination of electronic copies ... will negatively impact the tools used by first responders" in the county. It argues: "This is no hypothetical scenario, but is based upon actual experiences of other counties."

In support of this claim in the trial court, the County submitted a declaration stating that San Diego and Ventura counties "saw their programs wither away once outside funding disappeared (due to providing the GIS maps at little or no cost to the public)."

[28] CFAC countered below with a declaration that "San Diego County's GIS basemap program ... is alive and thriving" and "Ventura County's GIS operation is robust and growing." That declaration also averred that "fourteen counties in California ... provide their GIS basemap data in electronic format to the public free of charge" while another "twenty-three counties in California ... provide their GIS basemap data in electronic format to the public for the cost of reproduction."

Addressing the financial issues, the trial court expressed concern "that County will have difficulty recouping the expense incurred in creating the GIS basemap," but it noted the "dearth of evidence that this was County's initial plan." Additionally, as just noted, CFAC offered evidence that other counties disclosing their GIS basemap programs had suffered few ill fiscal effects. The trial court apparently credited this evidence. Applying the ***1327** deferential substantial

evidence review standard, we do so as well. *(Connell v. Superior Court, supra*, 56 Cal.App.4th at p. 613, 65 Cal.Rptr.2d 738.)

Beyond the state of the evidence in this particular record, there are other reasons to accord little weight to the financial concerns. As has been said: "There is nothing in the Public Records Act to suggest that a records request must impose *no* burden on the government agency." (*State Bd. of Equalization v. Superior Court, supra*, 10 Cal.App.4th at p. 1190, fn. 14, 13 Cal.Rptr.2d 342; see also *Connell v. Superior Court, supra*, 56 Cal.App.4th at p. 614, 65 Cal.Rptr.2d 738.) Thus, for example, the $43,000 cost of compiling an accurate list of names was not "a valid reason to proscribe disclosure of the identity of such individuals." (*CBS Broadcasting Inc. v. Superior Court* (2001) 91 Cal.App.4th 892, 909, 110 Cal.Rptr.2d 889; cf. *American Civil Liberties Union Foundation v. Deukmejian, supra*, 32 Cal.3d at pp. 452–453, 186 Cal.Rptr. 235, 651 P.2d 822 [courts should not "ignore any expense and inconvenience involved in segregating nonexempt from exempt information"].)

*b. The proffered security concerns do not compel nondisclosure.*

The County also asserts a public safety interest in guarding against terrorist threats, based on its contention that the GIS basemap contains sensitive information that is not publicly available, such as the exact location of Hetch Hetchy reservoir components. The County cites the precision of its "georeferenced parcel map" (described as accurate "within +/1 foot in the developed areas and +/5 feet in the hilly areas") in arguing that disclosure of the basemap would "allow anyone to locate the parcels overlaying the Hetch Hetchy water lines. Matching the GIS Basemap with orthophotographs, which are in the public domain, would allow anyone to pinpoint weak spots in the system and quickly and effectively plan a terrorist attack." By contrast, the County maintains, other publicly available maps "are not georeferenced, do not contain GPS coordinates, do not include orthophotographs, and are not a continuous representation of the Hetch Hetchy water supply system—key elements****394** to disclosing precise locations of the critical infrastructure."

To prove this claim in the trial court, the County submitted the declaration of Robert Colley, Acting GIS Manager for its Information Services Department, which includes these statements: "Requiring the County to provide the GIS Basemap in electronic format to the public will jeopardize public safety because it will provide the public with access to sensitive information that is not otherwise publicly available." "For public safety reasons, it is critical that geospatial information such as the GIS Basemap stay out of the public domain." "The actual location of the Hetch Hetchy water lines are generally known, but not provided in any detail for obvious reasons—to minimize the threat of terrorist attack on the water system." "The ***1328** exact location of Hetch Hetchy water lines is an integral part of the GIS Basemap and not easily segregable."

To refute that claim, CFAC offered the declaration of Bruce Joffe, a member of the Geospatial Working Group, which "is organized by the U.S. Department of Homeland Security" and "is comprised of GIS professionals from various federal agencies ... and the private sector" who "discuss issues of GIS technology and national security." Joffe declared: "Based on my knowledge, skill, experience, training and education in the areas of GIS, the lines identified by the County in each of the documents as Hetch Hetchy 'water pipelines' are actually not the pipelines themselves, but the land easement areas or rights-of-way. The easements cover an area greater than the pipelines themselves, and do not indicate the specific location of pipes, which are buried underground." "The location of the Hetch Hetchy easements can be obtained from other sources...." Joffe opined "that the location of the Hetch Hetchy easement [s] is not the kind of information that would uniquely aid terrorists.... Restricting public access to the County's GIS basemap data is unlikely to be a major impediment for terrorists in identifying and locating their desired targets." Joffe also addressed segregability, declaring: "The County could easily disclose the data elements and descriptive attribute data requested by CFAC in its June 12, 2006 Public Record Act request without also disclosing the location of the Hetch Hetchy easements, if it chose to do so." He then described how that could be done.

[29] Addressing these issues, the trial court explained that not everything in the GIS basemap has security implications. As the County conceded and the trial court found, "some of the information in the GIS basemap" is a matter of public record that has "nothing to do with critical infrastructure." By way of ex-

ample, the court cited "the assessed value of a single family home in San Jose" and questioned why it should be "cloaked with the protection of CII/PCII simply by submission to OHS" (the California Office of Homeland Security). The court continued: "It appears County has belatedly focused on to the information pertaining to 'water lines' and used that as its primary, if not sole, basis for obtaining the CII/PCII designation without any concession that the GIS basemap consists of any other publicly available information." The court concluded: "County has not made the initial effort to establish that all information contained in the GIS basemap is CII. Having failed to meet its initial burden, County's assertion of this particular exemption fails." The record supports these findings. (Cf., e.g., *Williams v. Superior Court* (1993) 5 Cal.4th 337, 355, 19 Cal.Rptr.2d 882, 852 P.2d 377 [a public agency may not "shield a record from public disclosure, regardless of its nature, simply****395** by placing it in a file label[ ]ed 'investigatory' "].)

Furthermore, the trial court observed, "it does not appear this has been an overriding concern to County, as shown by the dissemination of the GIS ***1329** basemap to others, albeit relying on a form of non-disclosure agreement." As noted above, the County sold the GIS basemap to 18 purchasers, including three private entities. In the trial court's view: "If the security issue were of greater importance, one would think there would be no dissemination of the GIS basemap whatever." We see no reasoned basis for overturning that inference. (Cf. § 6254.5, subd. (e) [no waiver of exemption where disclosure is made to *government* agency that "agrees to treat the disclosed material as confidential"]; *County of Los Angeles v. Superior Court, supra*, 130 Cal.App.4th 1099, 1107, 30 Cal.Rptr.3d 708 [this section "provides a means for governmental agencies to share privileged materials without waiving the privilege"].)

[30][31] Security may be a valid factor supporting nondisclosure. (See, e.g., *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1346, 283 Cal.Rptr. 893, 813 P.2d 240 [governor's private appointment schedule]; *Procunier v. Superior Court* (1973) 35 Cal.App.3d 211, 212, 110 Cal.Rptr. 531 [diagrams depicting correctional facility], disapproved on other grounds in *Shepherd v. Superior Court* (1976) 17 Cal.3d 107, 124, 130 Cal.Rptr. 257, 550 P.2d 161; 73 Ops.Cal.Atty.Gen. 236, 237–239 (1990) [same].) But the "mere assertion of possible endangerment does not 'clearly outweigh' the public interest in access to these public records." (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 652, 230 Cal.Rptr. 362, 725 P.2d 470; accord, *Commission on Peace Officer Standards and Training v. Superior Court, supra*, 42 Cal.4th at p. 302, 64 Cal.Rptr.3d 661, 165 P.3d 462.) While we are sensitive to the County's security concerns, we agree with the trial court that the County failed to support nondisclosure on this ground.

*3. Weighing the Competing Interests*

The balancing test is applied on a case-by-case basis. (*Michaelis, Montanari & Johnson v. Superior Court, supra*, 38 Cal.4th at p. 1071, 44 Cal.Rptr.3d 663, 136 P.3d 194; *CBS Broadcasting Inc. v. Superior Court, supra*, 91 Cal.App.4th at p. 908, 110 Cal.Rptr.2d 889.) As the party seeking to withhold the record, the County bears the burden of justifying nondisclosure. (*Board of Trustees of California State University v. Superior Court, supra*, 132 Cal.App.4th at p. 896, 34 Cal.Rptr.3d 82; *Los Angeles Unified School Dist. v. Superior Court, supra*, 151 Cal.App.4th at p. 767, 60 Cal.Rptr.3d 445.)

Independently weighing the competing interests in light of the trial court's factual findings, we conclude that the public interest in disclosure outweighs the public interest in nondisclosure. We thus agree with the trial court that the County failed to "demonstrate a clear overbalance on the side of confidentiality." (*Michaelis, Montanari & Johnson v. Superior Court, supra*, 38 Cal.4th at p. 1071, 44 Cal.Rptr.3d 663, 136 P.3d 194.)

***1330 III. Limitations on Disclosure**

Having concluded that neither federal nor state law provides a basis for withholding the GIS basemap, we turn to the County's arguments for limitations on disclosure. As previously noted, the County argues for the right (A) to demand end user agreements, because the GIS basemap is copyrightable, and (B) to recover more than its direct costs of production, based on section 6253.9, subdivision (b), of the CPRA.

****396 *A. Copyright Protection***

*1. Background*

In arguments below, the County raised similar copyright arguments, relying on section 6254.9. Section 6254.9 permits the nondisclosure of computer

software, defined to include computer mapping systems. (§ 6254.9, subds. (a), (b).) This statutory exemption is based on a legislative determination that software is not a public record. (*Id.*, subd. (a).) Nevertheless, as subdivision (d) explains: "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." (*Id.*, subd. (d).) Subdivision (e) addresses copyright as follows: "Nothing in this section is intended to limit any copyright protections." (*Id.*, subd. (e).) Relying on that last subdivision, the County argued that it could "require end users to execute an agreement not to violate [its] copyright interest in the GIS Basemap."

CFAC disagreed. It asserted: "No reported California decision has ever concluded that a public agency may refuse to release copies of public records to protect its own purported copyright."

The trial court agreed with CFAC. The court briefly explained its reasoning in footnote 19 ***1331** of the court's May 2007 order. The court first quoted section 6254.9, subdivision (e), then stated: "CFAC is correct in its interpretation that, when read in conjunction with subdivision (d), copyright protection is not appropriate here."

*2. The Parties' Contentions*

In this court, the County raises both procedural and substantive arguments concerning copyright.

Procedurally, the County complains that the trial court did not reach its copyright claim. The County acknowledges the court's holding in footnote 19. But it maintains that the court made its ruling in the context of deciding that the GIS basemap is not "computer software" and thus does not qualify for exemption under section 6254.9, subdivision (a). In the County's view, "the trial court should not have summarily dismissed the County's request for an end user agreement, without first examining the creativity and compilation issues." (See 17 U.S.C. § 101 [defining compilation]; *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.* (1991) 499 U.S. 340, 345, 111 S.Ct. 1282, 113 L.Ed.2d 358 [recognizing a low threshold of creativity for copyright protection].)

In its substantive arguments, the County maintains that copyright law protects its compilation of data as a "unique arrangement." The County seeks the right to demand an end user agreement upon disclosure of the GIS basemap, to protect its rights as the "rightful owner" of copyrightable intellectual property in the map.

CFAC disputes both the procedural and substantive arguments interposed by the County. Countering the County's procedural claim, CFAC points to footnote 19 of the trial court's order, characterizing it as an explicit rejection of the County's copyright arguments. Substantively, CFAC argues, the CPRA does not recognize copyright interests in public records such as these, and it thus precludes the imposition of an end user agreement upon their release.

*3. Analysis*

[32][33] At the outset, we reject the County's procedural claim that the trial court should have examined "the creativity and compilation issues" involved in its copyright claim. For one thing, the County did not brief those specific issues in its papers below. It simply made the bald ****397** assertion that it owns a "copyright interest in the GIS Basemap" followed by a citation to the federal copyright statute. (17 U.S.C. § 101 et seq.) And that assertion was addressed and rejected by the trial court, as shown by its citation to authority. In any event, the County preserved its substantive copyright claim, which we now review.

*a. State Law Question*

[34][35] State law "determines whether [a public official] may claim a copyright in his office's creations." (*Microdecisions, Inc. v. Skinner* (2004) 889 So.2d 871, 875; see *County of Suffolk, New York v. First American Real Estate Solutions* (2001) 261 F.3d 179, 188; *Building Officials & Code Adm'rs, Inc. v. Code Tech., Inc.* (1980) 628 F.2d 730, 735–736.) "Each state may determine whether the works of its government entities may be copyrighted." (*Microdecisions, Inc. v. Skinner*, at p. 876.)

***1332** In some states, statutes explicitly recognize the authority of public officials or agencies to copyright specific public records that they have created. (See *Microdecisions, Inc. v. Skinner*, *supra*, 889 So.2d at pp. 874, 875 [Florida state law authorized "certain agencies to obtain copyrights" and "permitted certain categories of public records to be copyrighted," but it gave county property appraisers "no authority to assert copyright protection in the GIS maps,

which are public records"]; cf. *County of Suffolk, New York v. First American Real Estate Solutions, supra*, 261 F.3d at p. 189 [New York's public record law "did not specifically address the impact on a state agency's copyright"].)

At issue here is how California's public records law treats the County's copyright claim. That is a question of first impression in this state. Because it requires statutory interpretation of the CPRA, it is also a question of law, which we review de novo. (*Los Angeles Unified School Dist. v. Superior Court, supra*, 151 Cal.App.4th at p. 767, 60 Cal.Rptr.3d 445.) We begin our analysis with the specific provision cited by the County in support of its copyright interest.

*b. Section 6254.9*

The CPRA references copyright protection in a single provision, section 6254.9, subdivision (e). As previously noted, that provision states: "Nothing in this section is intended to limit any copyright protections." (§ 6254.9, subd. (e).)

As the County reads that statutory language, it "expressly provides for copyright protection despite production of public records." Furthermore, the County says, copyright protection "is not limited to computer software," which has its own discrete exemption in section 6254.9, subdivision (a).[FN9]

> FN9. Section 6254.9, subdivision (a) provides: "Computer software developed by a state or local agency is not itself a public record under this chapter." The County conceded below that the GIS basemap is a public record. The contrary arguments of its *amici* notwithstanding, that concession appears well-founded. (Cf. 88 Ops.Cal.Atty.Gen. 153, 157 (2005) ["parcel boundary map data maintained by a county assessor in an electronic format is subject to public inspection and copying" under CPRA].) Since the GIS basemap is a public record, the County cannot claim the computer software exemption of section 6254.9, subdivision (a). Nor does it attempt to do so here. (See fn. 7, *ante*.)

We reject the County's interpretation. At the outset, we reiterate the principle that restrictions on disclosure are narrowly construed. (Cal. Const., art. 1, § 3, subd. (b)(1)(2); *Board of Trustees of California State University v. Superior Court, supra*, 132 Cal.App.4th at p. 896, 34 Cal.Rptr.3d 82.) With that principle in mind, ****398** we consider the County's contentions, applying settled rules of statutory construction. As the California Supreme Court recently reaffirmed, "our fundamental task is to ascertain the Legislature's intent so as to effectuate the purpose of the statute." (*Smith v. Superior Court, supra*, 39 Cal.4th at p. 83, 45 Cal.Rptr.3d 394, 137 P.3d 218.)

***1333** *(i) Statutory Language*

In undertaking our analysis, we start with the language of the provision. (*Smith v. Superior Court, supra*, 39 Cal.4th at p. 83, 45 Cal.Rptr.3d 394, 137 P.3d 218; *Los Angeles Unified School Dist. v. Superior Court, supra*, 151 Cal.App.4th at p. 767, 60 Cal.Rptr.3d 445.) We again quote that language, emphasizing two words that guide our construction: "Nothing in this *section* is intended to *limit* any copyright protections." (§ 6254.9, subd. (e), italics added.)

First, the provision uses the word "section." (§ 6254.9, subd. (e).) It does not employ the broader term "chapter," which would encompass the entire CPRA. That word choice directs our focus to the subject of section 6254.9, which is computer software. Given this context, use of the word "section" strongly suggests that the referenced copyright protection is limited to computer software.

[36] Second, the provision states that it does not "limit" copyright protection. (§ 6254.9, subd. (e).) In our view, that phrasing operates only as a legislative *recognition* that copyright protection for software is available in a proper case; it cannot be read as an affirmative *grant of authority* to obtain and hold copyrights. The Legislature knows how to explicitly authorize public bodies to secure copyrights when it means to do so. For example, the Education Code includes a number of provisions authorizing copyrights, including this one: "Any county board of education may secure copyrights, in the name of the board, to all copyrightable works developed by the board, and royalties or revenue from such copyrights are to be for the benefit of the board securing such copyrights." (Ed.Code, § 1044; see also, e.g., *id.*, §§ 32360, 35170, 72207, 81459.) The Health and Safety Code contains this provision, which references the statute at issue here: "Copyright protection and all other rights and privileges provided pursuant to Title

17 of the United States Code are available to the [Department of Toxic Substances Control] to the fullest extent authorized by law, and the department may sell, lease, or license for commercial or non-commercial use any work, including, but not limited to, videotapes, audiotapes, books, pamphlets, and computer software as that term is defined in Section 6254.9 of the Government Code, that the department produces whether the department is entitled to that copyright protection or not." (Health & Saf.Code, § 25201.11, subd. (a); see also, e.g., *id.*, § 13159.8, subd. (c).) Here, by contrast, section 6254.9 contains no such express authorization to secure copyrights.

*(ii) Legislative History*

"If the statutory terms are ambiguous, we may examine extrinsic sources, including ... the legislative history." ***1334**(*Smith v. Superior Court, supra*, 39 Cal.4th at p. 83, 45 Cal.Rptr.3d 394, 137 P.3d 218; accord, *Los Angeles Unified School Dist. v. Superior Court, supra*, 151 Cal.App.4th at pp. 767–768, 60 Cal.Rptr.3d 445.)

On the other hand, where "legislative intent is expressed in unambiguous terms, we must treat the statutory language as conclusive; 'no resort to extrinsic aids is necessary or proper.' " ****399**(*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 61, 124 Cal.Rptr.2d 507, 52 P.3d 685; see also, e.g., *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc., supra*, 133 Cal.App.4th at pp. 29–30, 34 Cal.Rptr.3d 520.) That is the situation here. By the express terms of section 6254.9, the Legislature has demonstrated its intent to acknowledge copyright protection for software only.

In sum, while section 6254.9 recognizes the availability of copyright protection for software in a proper case, it provides no statutory authority for asserting any other copyright interest.

*c. End User Restrictions*

Having found no specific statutory copyright authorization, we now consider whether the County may demand licensing agreements or otherwise impose restrictions on end users.

While no California court has addressed this question, courts in two other jurisdictions have, reaching opposite conclusions. Applying New York law, the court in *County of Suffolk* found end user agreements permissible. (*County of Suffolk, New York v. First American Real Estate Solutions, supra*, 261 F.3d at pp. 191–192.) There, the court construed the "plain language" of New York's public records law "to permit [the] County to maintain its copyright protections while complying with its obligations" under the statute. (*Id.* at p. 191.) Three years later, applying Florida law, the court in *Microdecisions* rendered a contrary decision. ***1335**(*Microdecisions*, http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=735&FindType=Y&ReferencePositionType=S&SerialNum=2005630739&ReferencePosition=872*Inc. v. Skinner, supra*, 889 So.2d at p. 872.) There, the court decided that a county property appraiser could not "require prospective commercial users of the records created in his office to first enter into a licensing agreement." (*Ibid.*)

[37] As a matter of first impression in California, we conclude that end user restrictions are incompatible with the purposes and operation of the CPRA. In arriving at that conclusion, we find ourselves in agreement with the Florida decision in *Microdecisions, Inc. v. Skinner, supra*, 889 So.2d 871. That case addressed similar statutory provisions, and its reasoning is persuasive. (*Id.* at pp. 875–876.) By contrast, we find the *County of Suffolk* case less consistent with our state's law. (See *County of Suffolk, New York v. First American Real Estate Solutions, supra*, 261 F.3d at pp. 191–192.)

As the discussion in *Microdecisions* reflects, Florida's public records law is similar to California's in at least two important respects. (*Microdecisions, Inc. v. Skinner, supra*, 889 So.2d at p. 875.) For one thing, under Florida law: "A requester's motive for seeking a copy of documents is irrelevant." (*Ibid.*) The same is true in California. By express legislative mandate, the CPRA "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." (§ 6257.5; see *City of San Jose v. Superior Court, supra*, 74 Cal.App.4th at p. 1018, 88 Cal.Rptr.2d 552.) In addition, California shares a second key similarity with Florida law: both states limit the fees that may be charged for producing a public record. In Florida, "the fee prescribed by law" is "generally the cost of reproduction." (*Microdecisions, Inc. v. Skinner*, at p. 875.) California law incorporates the same general limitation. (§ 6253, subd. (b).)

Beyond these factual similarities, we find the Florida court's reasoning persuasive. The *Microdecisions* court discussed "the interplay between the federal copyright act and Florida's public records law." (*Microdecisions, Inc. v. Skinner, supra,* 889 So.2d at p. 876.) It explained: "The copyright act gives the holder the exclusive rights to reproduce and distribute a ****400** work and to authorize others to do so." (*Ibid.,* citing 17 U.S.C. § 106(1), (3).) "As such, a copyright owner may refuse to provide copies of the work or may charge whatever fee he wants for copies of the work or a license to use the work." (*Ibid.*) "The Florida public records law, on the other hand, requires State and local agencies to make their records available to the public for the cost of reproduction." (*Ibid.*, citing § 119.07(1)(a), Florida Statutes (2002).) "This mandate overrides a government agency's ability to claim a copyright in its work unless the legislature has expressly authorized a public records exemption." (*Microdecisions, Inc. v. Skinner*, at p. 876.)

The same persuasive reasoning applies to the interplay between copyright law and California's public records law, with the result that unrestricted disclosure is required. Doing so serves effectuates the purpose of the statute, which is "increasing freedom of information by giving members of the public access to information in the possession of public agencies." (*Filarsky v. Superior Court, supra,* 28 Cal.4th at pp. 425–426, 121 Cal.Rptr.2d 844, 49 P.3d 194.) This same "policy is enshrined in the Constitution." (*Los Angeles Unified School Dist. v. Superior Court, supra,* 151 Cal.App.4th at p. 776, 60 Cal.Rptr.3d 445, citing Cal. Const., art. I, § 3, subd. (b).) That policy would be undercut by permitting the County to place extra-statutory restrictions on the records that it must produce, through the use of end user agreements.

*d. Conclusion*

The CPRA contains no provisions either for copyrighting the GIS basemap or for conditioning its release on an end user or licensing agreement by the ***1336** requester. The record thus must be disclosed as provided in the CPRA, without any such conditions or limitations.

***B. Recovery of Additional Costs***

In its final argument in this court, the County seeks the right to charge additional amounts for producing the GIS basemap, beyond its direct cost, pursuant to section 6253.9, subdivision (b).

*1. Overview*

Generally speaking, an agency may recover only the direct cost of duplicating a record. (§ 6253, subd. (b).) The agency "shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable." (*Ibid.*) For paper records, direct cost has been interpreted to cover the "cost of running the copy machine, and conceivably also the expense of the person operating it" while excluding any charge for "the ancillary tasks necessarily associated with the retrieval, inspection and handling of the file from which the copy is extracted." (*North County Parents Organization v. Department of Education* (1994) 23 Cal.App.4th 144, 148, 28 Cal.Rptr.2d 359; compare *id.* at p. 149, 28 Cal.Rptr.2d 359 (dis. opn. of Huffman, J.); see also *Los Angeles Unified School Dist. v. Superior Court, supra,* 151 Cal.App.4th at p. 770, 60 Cal.Rptr.3d 445; 88 Ops.Cal.Atty.Gen., *supra*, at p. 164.)

For electronic records, however, the statute allows an agency to recover specified ancillary costs in either of two cases: (1) when it must "produce a copy of an electronic record" between "regularly scheduled intervals" of production, or (2) when compliance with the request for an electronic record "would require data compilation, extraction, or programming to produce the record." (§ 6253.9, subd. (b)(1), (2); see 88 Ops.Cal.Atty.Gen., *supra*, at p. 164.) Under those circumstances,****401** the agency may charge "the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record ...." (§ 6253.9, subd. (b).)

*2. The Parties' Contentions*

Here, the County asserts entitlement to greater costs on both statutory bases. (§ 6253.9, subd. (b)(1), (2).) The County maintains: "It is undisputed that in order to comply with CFAC's request, the County would be required to produce a copy of the electronic GIS Basemap at an unscheduled interval. It is also undisputed that compliance requires data compilation, extraction, or programming to produce the GIS Basemap." According to the County, it raised this issue below, but the trial court failed to address it.

***1337** CFAC acknowledges that the County raised the issue below. But in its view, the County

170 Cal.App.4th 1301, 89 Cal.Rptr.3d 374, 37 Media L. Rep. 1331, 09 Cal. Daily Op. Serv. 1526, 2009 Daily Journal D.A.R. 1802
**(Cite as: 170 Cal.App.4th 1301, 89 Cal.Rptr.3d 374)**

failed to advise the trial court of the amount claimed "nor did it indicate how it proposes to calculate that cost, an omission that no doubt led to the respondent court's order to produce the basemap for the direct cost of duplication."

CFAC also questions whether the statute applies, saying "since the County sends copies of the basemap to its paid subscribers on a regular basis, it does not appear that any additional programming would be necessary to fulfill CFAC's request for the data under the PRA." (See § 6253.9, subd. (b)(1).)

The County disputes this last point in its reply.

*3. Analysis*

[38] Given the parties' opposing factual contentions, coupled with the absence of an explicit ruling by the trial court on this point, remand is warranted on the question of costs.

**SUMMARY OF CONCLUSIONS**

I. Federal homeland security provisions do not apply here.

As recognized in both the Critical Infrastructure Information Act and the accompanying regulations promulgated by Department of Homeland Security, there is a distinction between submitters of critical infrastructure information (CII) and recipients of protected critical infrastructure information (PCII). The federal prohibition on disclosure of protected confidential infrastructure information applies only to recipients of PCII. Because the County did not receive PCII, the federal provisions do not apply.

II. The proffered California Public Records Act exemption does not apply.

After independently weighing the competing interests in light of the trial court's factual findings, we conclude that the public interest in disclosure outweighs the public interest in nondisclosure.

III. A. There is no statutory basis either for copyrighting the GIS basemap or for conditioning its release on a licensing agreement. B. The matter will be remanded to the trial court to allow it to determine allowable costs that the County may charge for producing the GIS basemap.

***1338 DISPOSITION**

Let a peremptory writ of mandate issue commanding respondent court to set aside that portion of its order of May 18, 2007, that directs the County to "[c]harge CFAC the direct cost for the copy provided." In all other respects, the County's request for an extraordinary writ is denied. Respondent is directed to conduct a new hearing to determine allowable costs that the County may charge for producing the requested public record. The stay issued on ****402** June 14, 2007, by this court shall remain in effect until this opinion is final. Costs in this original proceeding are awarded to real party in interest, CFAC.

WE CONCUR: ELIA, Acting P.J., and MIHARA, J.

Cal.App. 6 Dist.,2009.
County of Santa Clara v. Superior Court
170 Cal.App.4th 1301, 89 Cal.Rptr.3d 374, 37 Media L. Rep. 1331, 09 Cal. Daily Op. Serv. 1526, 2009 Daily Journal D.A.R. 1802

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85 Ops. Cal. Atty. Gen. 225, 2002 WL 31492634 (Cal.A.G.)

Office of the Attorney General
State of California

Opinion No. 01-605

November 1, 2002

THE HONORABLE BYRON SHER
MEMBER OF THE STATE SENATE

THE HONORABLE BYRON SHER, MEMBER OF THE STATE SENATE, has requested an opinion on the following question

Does a county board of supervisors have statutory authority to charge a fee for a copy of a public record that exceeds the fee amount authorized by the California Public Records Act?

CONCLUSION

A county board of supervisors has statutory authority to charge a fee for a copy of a public record that exceeds the fee amount authorized by the California Public Records Act provided that the fee set by the county does not exceed the amount reasonably necessary to recover the cost to the county of providing the copy. In granting such statutory authority, the Legislature has specified exceptions for fees charged in furnishing copies of certain public records.

ANALYSIS

The question presented for resolution concerns the relationship between two different statutes contained in the Government Code. [FN1] Section 6253 is part of the California Public Records Act (§§ 6250-6276.48; "Act") and authorizes state and local public agencies to charge a fee when furnishing a copy of a public record. Subdivision (b) of section 6253 states

> "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."

Accordingly, under the terms of section 6253, a public agency may charge a fee for a copy of a public record in an amount that is either (1) based upon and limited to the "direct costs of duplication" or (2) authorized and determined under some other statute. (North County Parents Organization v. Department of Education (1994) 23 Cal.App.4th 144, 147-148.) [FN2]

The second statute in question is section 54985. It is part of a statutory scheme (§§ 54985-54988) that authorizes counties to increase certain fees under specified conditions. Section 54985 provides:

> "(a) Notwithstanding any other provision of law that prescribes an amount or otherwise limits the amount of a fee or charge that may be levied by a county, a county service area, or a county waterworks district governed by a

county board of supervisors, a county board of supervisors shall have the authority to increase or decrease the fee or charge, that is otherwise authorized to be levied by another provision of law, in the amount reasonably necessary to recover the cost of providing any product or service or the cost of enforcing any regulation for which the fee or charge is levied. The fee or charge may reflect the average cost of providing any product or service or enforcing any regulation. Indirect costs that may be reflected in the cost of providing any product or service or the cost of enforcing any regulation shall be limited to those items that are included in the federal Office of Management and Budget Circular A-87 on January 1, 1984.

***2** "(b) If any person disputes whether a fee or charge levied pursuant to subdivision (a) is reasonable, the board of supervisors may request the county auditor to conduct a study and to determine whether the fee or charge is reasonable.

".....

"(c) This chapter shall not apply to any of the following

"(1) Any fee charged or collected by a court clerk pursuant to Section 26820.4, 26823, 26824, 26826, 26827, 26827.4, 26830, 72054, 72055, 72056, 72059, 72060, or 72061 of the Government Code or Section 103470 of the Health and Safety Code, and any other fee or charge that may be assessed, charged, collected, or levied, pursuant to law for filing judicial documents or for other judicial functions.

"(2) Any fees charged or collected pursuant to [Sections 6100-6110].

"(3) Any standby or availability assessment or charge.

"(4) Any fee charged or collected by a county agricultural commissioner.

"(5) Any fee charged or collected pursuant to [Sections 12240-12246] of the Business and Professions Code.

"(6) Any fee charged or collected by a county recorder or local registrar for filing, recording, or indexing any document, performing any service, issuing any certificate, or providing a copy of any document pursuant to Section 2103 of the Code of Civil Procedure, Section 27361, 27361.1, 27361.2, 27361.3, 27361.4, 27361.8, 27364, 27365, or 27366 of the Government Code, Section 103625 of the Health and Safety Code, or Section 9525 of the Uniform Commercial Code.

"(7) Any fee charged or collected pursuant to [Sections 26720-26751] of the Government Code."

The issue to be addressed is whether under the terms of section 54985, a county board of supervisors may charge a fee for a copy of a public record that exceeds the fee amount authorized in section 6253. We conclude that the authorization of section 54985 is applicable to most fees for copies of public records.

First, we note that section 6253 applies not only to counties but also to state agencies, cities, school districts and other public entities. (§ 6253, subd. (b).) It does not appear, however, that subdivision (a) of section 54985 requires the "other provision of law," such as section 6253, to apply only to counties. As long as the other law "prescribes an amount or otherwise limits the amount of a fee or charge that may be levied by a county," the terms of section 54985 would be applicable regardless of whether some other public agency may also be limited in charging the fee in question. [FN3]

Next, we consider whether section 6253 authorizes a "fee or charge" for purposes of section 54985. Section 6253 does not specify a particular amount to be paid for a copy of a public record. Moreover, its reference to "a statutory fee" suggests that some other provision of law may be followed without the need for reliance upon the terms of section 6253.

Nonetheless, section 6253 clearly prescribes the collecting of a fee for furnishing a copy of a public record. Even without considering the "statutory fee" alternative, section 6253 allows charging a fee based upon the "direct costs of duplication." While the amount of the fee is thus limited in this alternative and must be administratively determined, the fee for the copy "is otherwise authorized to be levied by another provision of law" for purposes of section 54985, subdivision (a). (See Shippen v. Department of Motor Vehicles, supra, 161 Cal.App.3d at pp. 1124-1127;76 Ops.Cal.Atty.Gen., supra, at pp. 250-251.) [FN4]

***3** Next, we address whether the language of section 54985 may be applied to a copy of a public record. Is a copy a "product or service" as that phrase is used in subdivision (a) of section 54985? Under section 6253, a person re-

questing a copy of a public record would expect to receive a tangible object that is a "product" which is produced by the performance of a "service." (See North County Parents Organization v. Department of Education, supra, 23 Cal.App.4th at p. 147;61 Ops.Cal.Atty.Gen. 458, 461-464 (1978); 28 Ops.Cal.Atty.Gen. 70, 71 (1956).) Such a product or service comes within the language of section 54985 since the statute itself exempts fees charged for copies of certain public records.

For example, the fee for a copy of a public record cannot be increased by a county board of supervisors under subdivision (a) of section 54985 if the copy is of a "writ, process, paper, order, or notice actually made by" the sheriff (§ 26727), "a birth, death, or marriage certificate, when the copy is made by the recorder" (§ 27365), or "of any other record or paper on file in the office of the recorder, when the copy is made by the recorder" (§ 27366) or "any notice of federal lien, or notice or certificate affecting a federal lien" (Code Civ. Proc., § 2103, subd. (d)). (See § 54985, subd. (c)(6), (c)(7); see also County of Santa Barbara v. Connell (1999) 72 Cal.App.4th 175, 180-182;76 Ops.Cal.Atty.Gen., supra, at p. 252.) There would be no need to exclude fees charged for copies of these public records if fees for copies of public records were not subject to being increased under the general provisions of subdivision (a) of the statute. As stated by the Supreme Court in Curle v. Superior Court (2001) 24 Cal.4th 1057, 1063"[W]e consider portions of a statute in the context of the entire statute and the statutory scheme of which it is a part, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose. [Citation.]"

Subdivision (a) of section 54985 limits a county's fee for a copy of a public record to "the amount reasonably necessary to recover the costs of providing" the copy. [FN5] In charging a fee to cover its costs, a county board of supervisors could conceivably benefit those being charged since "[a]n inability to charge fees in a sufficient amount to cover costs would likely produce inadequate staffing...."(76 Ops.Cal.Atty.Gen., supra, at p. 253, fn. 5.) In any event, a "reasonably necessary" fee for a copy of a public record would have no effect upon the public's right of access to and inspection of public records free of charge. [FN6]

Finally, as between the provisions of section 6253 and section 54985, those of the latter control those of the former. Subdivision (a) of 54985 begins "Notwithstanding any other provision of law...."Section 6253 is such a "provision of law" that limits the amount a county may charge for a copy of a public record. The "notwithstanding" phrase contained in section 54985 constitutes a "term of art [that] has been read as an express legislative intent to have the specific statute control despite the existence of other law which might otherwise govern. [Citations.]" (People v. DeLaCruz (1993) 20 Cal.App.4th 955, 963.)

***4** We conclude that a county board of supervisors has statutory authority to charge a fee for a copy of a public record that exceeds the fee amount authorized by the Act provided that the fee set by the county does not exceed the amount reasonably necessary to recover the cost to the county of providing the copy. In granting such statutory authority, the Legislature has specified exceptions for fees charged in furnishing copies of certain public records.

Bill Lockyer
Attorney General

Marjorie E. Cox
Deputy Attorney General

[FN1]. All further statutory references are to the Government Code unless otherwise indicated.

[FN2]. The "statutory fee" provision need not specify an exact amount of the fee but may simply authorize the charging of a fee in an amount to be determined by the public agency. Such a statute might specify the factors to be considered in the public agency's calculation of the fee. (*Shippen v. Department of Motor Vehicles* (1984) 161 Cal.App.3d 1119, 1124-1127;76 Ops.Cal.Atty.Gen. 249, 250-251 (1993).)

[FN3]. The exemptions listed in subdivision (c) of section 54985 also indicate that the statute's terms would be applicable where the other provision of law limits the amount of a fee that would be charged by some other public agency.

[FN4]. Section 54985 does not grant independent authority to charge a fee in the first instance but only authorizes a county board of supervisors to increase (or decrease) a fee that is statutorily authorized elsewhere. (§ 54987.) Here, section 6253 provides the independent authorization for the county to levy the fee in question.

[FN5]. Subdivision (b) of section 54985 allows "the county auditor to conduct a study and to determine whether the fee or charge is reasonable" if the reasonableness of a fee increased by the county board of supervisors is disputed. (See 76 Ops.Cal.Atty.Gen, *supra*, at p. 252, fn. 4.)

[FN6]. The courts have noted that requests for copies of public records are often not "for the purpose of staying informed about the conduct of the people's business, as the Act states (§ 6250)," but rather the copies are obtained for commercial purposes in selling information to others. (See *Shippen v. Department of Motor Vehicles*, *supra*, 161 Cal.App.3d at p. 1126.)

85 Ops. Cal. Atty. Gen. 225, 2002 WL 31492634 (Cal.A.G.)

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88 Ops. Cal. Atty. Gen. 153, 05 Cal. Daily Op. Serv. 8771, 2005 Daily Journal D.A.R. 11943, 2005 WL 2464165 (Cal.A.G.)

Office of the Attorney General
State of California

Opinion No. 04-1105

October 3, 2005

THE HONORABLE JOE NATION
MEMBER OF THE STATE ASSEMBLY

THE HONORABLE JOE NATION, MEMBER OF THE STATE ASSEMBLY, has requested an opinion on the following questions:

1. Is parcel boundary map data maintained in an electronic format by a county assessor subject to public inspection and copying under provisions of the California Public Records Act?

2. If so, in what period of time must a county furnish a copy of the data upon request of a member of the public?

3. What fee may be charged by a county for furnishing a copy of the data to a member of the public?

CONCLUSIONS

1. Parcel boundary map data maintained by a county assessor in an electronic format is subject to public inspection and copying under provisions of the California Public Records Act.

2. A copy of parcel boundary map data maintained in an electronic format by a county assessor must be furnished "promptly" upon request of a member of the public.

3. The fee that may be charged by a county for furnishing a copy of parcel boundary map data maintained in an electronic format by a county assessor is generally limited to the amount that covers the direct cost of producing the copy but may include certain other costs depending upon the particular circumstances as specified in the California Public Records Act.

ANALYSIS

The questions presented for resolution concern detailed geographic information that is regularly prepared, maintained, and updated for use by California's county assessors to describe and define the precise geographic boundaries of "assessor's parcels" - units of real property for which property taxes are assessed throughout the state. Most counties have converted much of this information, including parcel maps, into an electronic format. Once converted, the information may be combined with other kinds of information for use in "geographic information systems," which

provide the ability to conduct complex comparisons and analyses useful to county assessors, other public agencies, and private entities. (See Fish & G. Code, § 2855; Gov. Code, §§ 51010.5, 51017, 65891.5; Health & Saf. Code, §§ 25284.1, 25292.4, 25299.97; Pen. Code, § 3003; Pub. Res. Code, §§ 4750.7, 30335.5; Wat. Code, §§ 13193, 79080; see also *County of Suffolk, N.Y. v. First Am. Real Estate Solutions* (2d Cir. 2001) 261 F.3d 179, 186, fn. 4.)[FN1]

We are asked whether copies of this parcel boundary map data in an electronic format must be made available by counties to members of the public upon request under provisions of the California Public Records Act (§§ 6250-6276.48; "Act"). If disclosure is required, when must a copy be furnished, and what amount may be charged for the copy? We conclude that disclosure is required and that the Act specifies "prompt" disclosure upon payment of a fee that is limited in most cases to the cost of producing the copy.

1. Right to Inspect and Copy

***2** Most records of state and local public agencies are subject to disclosure to members of the public upon request. Section 6253 provides:

> "(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.
>
> ***3** "(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." [FN2]

This statutory disclosure requirement promotes the people's right to monitor their government's activities, in recognition of the principle that "access to information concerning the conduct of the public's business is a fundamental and necessary right of every person in this state."(§ 6250; see Cal. Const., art. I, § 3, subd. (b); *Times Mirror Co. v. Su-*

*perior Court* (1991) 53 Cal.3d 1325, 1338-1339;*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651-655;*Marylander v. Superior Court* (2000) 81 Cal.App.4th 1119, 1125;73 Ops.Cal.Atty.Gen. 236, 237 (1990).) [FN3]

In 2000, the Legislature enacted section 6253.9 to address the increasingly widespread use of government documents that are produced in an electronic format. (Stats. 2000, ch. 982, § 2.) Section 6253.9 provides:

"(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.

***4** "(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."

Consistent with the terms of section 6253.9 is the broad language of section 6252, subdivision (g), which defines a "writing" as follows:

" '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, and any record thereby created, regardless of the manner in which the record has been stored." (Italics added.)

It is apparent from the provisions of sections 6252 and 6253.9 that parcel boundary map data maintained by a county assessor in an electronic format is subject to inspection and copying by members of the public unless some exemption applies allowing nondisclosure. The Act contains numerous exemptions under which specified records may be kept confidential. (See, e.g., §§ 6254.1, 6254.3, 6254.4, 6254.20, 6254.22, 6254.25.) Such statutory exceptions, however, are to be narrowly construed. (See Cal. Const., art. I, § 3, subd. (b)(2); *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1425;*Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 476;79 Ops.Cal.Atty.Gen. 269, 271 (1996).) [FN4]

Here, we find that two of the Act's exemptions merit our analysis. First, section 6254.9 provides a specific exemption for "computer software," including "computer mapping systems":

"(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."

Does parcel boundary map data maintained in an electronic format by a county assessor constitute a "computer mapping system" for purposes of section 6254.9?

***5** To understand the language of section 6254.9, we apply well recognized rules of statutory interpretation. " 'In construing a statute, " 'we strive to ascertain and effectuate the Legislature's intent.' [Citations.]" ' " (*In re Dannenberg* (2005) 34 Cal.4th 1061, 1081.)"The words of the statute are the starting point." (*Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 977.)"Words used in a statute… should be given the meaning they bear in ordinary use. [Citations.]" (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735; accord, *Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1063.)As so construed, they provide the best indication of the Legislature's intent. (*People v. Smith* (2004) 32 Cal.4th 792, 777-798;*People v. Castenada* (2000) 23 Cal.4th 743, 746-747.)And, as indicated above, since section 6254.9 is an exemption statute, it is to be strictly construed in favor of disclosure. (*City of Hemet v. Superior Court, supra*, 37 Cal.App.4th at p. 1425.)

Following these governing principles of statutory construction, we find that the term "computer mapping systems" in section 6254.9 does not refer to or include basic maps and boundary information per se (i.e., the basic *data* compiled, updated, and maintained by county assessors), but rather denotes unique computer *programs* to process such data using mapping functions - original programs that have been designed and produced by a public agency. (See, e.g., §§ 6254.9, subd. (d), 6253.9, subd. (f) [distinguishing "record" from "software in which [record] is maintained"], 51010.5, subd. (i) [defining "GIS mapping system" as *system*"that will collect, store, retrieve, analyze, and display environmental geographic *data*…" (italics added)]; see also *Cadence Design Systems, Inc. v. Avant! Corporation* (2002) 29 Cal.4th 215 [action between two "software developers" who design "place and route software"]; *Edelstein v. City and County of San Francisco* (2002) 29 Cal.4th 164, 171 [delay in implementation of elections system because necessary "software" not yet "developed" and tested]; Computer Dict. (3d ed. 1997) p. 441 [defining "software" as "[c]omputer programs; instructions that make hardware work"]; Freedman, The Computer Glossary: The Complete Illustrated Dict. (8th ed. 1998) p. 388 ["A common misconception is that software is also data. It is not. Software tells the hardware how to process the data. Software is 'run.' Data is 'processed' "].) Accordingly, parcel map data maintained in an electronic format by a county assessor does not qualify as a "computer mapping system" under the exemption provisions of section 6254.9.

The other exemption we must consider is subdivision (k) of section 6254, which provides:
"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:
"....."
"(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." [FN5]

***6** As we observed in 76 Ops.Cal.Atty.Gen. 219, 221 (1993), subdivision (k) "does not constitute an independent exemption; rather, it merely incorporates other prohibitions established by law."(See also *CBS, Inc. v. Block, supra*, 42 Cal.3d at p. 656;*San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 775.)Subdivision (k)'s incorporation includes any specific procedures, standards, or burdens governing disclosure in the "other statute," no matter how arduous those requirements may be. (*City of Hemet v. Superior Court, supra*, 37 Cal.App.4th at pp. 1422-1431.)

Here, we find that subdivision (k) of section 6254 incorporates the special restrictive definitions of "public documents" set forth in the Revenue and Taxation Code with respect to information and records prepared and maintained by county assessors. Revenue and Taxation Code sections 408, subdivision (a), provides:

> "Except as otherwise provided in subdivision (b), (c), (d), and (e), any information and records in the assessor's office that are not required by law to be kept or prepared by the assessor, and homeowners' exemption claims, are not public documents and shall not be open to public inspection…." [FN6]

Revenue and Taxation Code section 408.3 states:

> "(a) Except as otherwise provided in Sections 451 and 481 and in Section 6254 of the Government Code, property characteristics information maintained by the assessor is a public record and shall be open to public inspection.
>
> "(b) For purposes of this section, 'property characteristics,' includes, but is not limited to, the year of construction of improvements to the property, their square footage, the number of bedrooms and bathrooms of all dwellings, the property's acreage, and other attributes of or amenities to the property, such as swimming pools, views, zoning classifications or restrictions, use code designations, and the number of dwelling units of multiple family properties.
>
> "(c) Notwithstanding Section 6257 of the Government Code or any other provision of law, if the assessor provides property characteristics information at the request of any party, the assessor may require that a fee reasonably related to the actual cost of developing and providing the information be paid by the party receiving the information.
>
> "The actual cost of providing the information is not limited to duplication or production costs, but may include recovery of developmental and indirect costs, as overhead, personnel, supply, material, office, storage, and computer costs. All revenue collected by the assessor for providing information under this section shall be used solely to support, maintain, improve, and provide for the creation, retention, automation, and retrieval of assessor information.
>
> "(d) The Legislature finds and declares that information concerning property characteristics is maintained solely for assessment purposes and is not continuously updated by the assessor. Therefore, neither the county nor the assessor shall incur any liability for errors, omissions, or approximations with respect to property characteristics information provided by the assessor to any party pursuant to this section. Further, this subdivision shall not be construed to imply liability on the part of the county or the assessor for errors, omissions, or other defects in any other information or records provided by the assessor pursuant to the provisions of this part." [FN7]

***7** Revenue and Taxation Code section 409, subdivision (a), additionally provides:

> "Notwithstanding Section 6257 of the Government Code or any other statutory provision, if the assessor, pursuant to the request of any party, provides information or records that the assessor is not required by law to prepare or keep, the county may require that a fee reasonably related to the actual cost of developing and providing that information be paid by the party receiving the information. The actual cost of providing the information is not limited to duplication or reproduction costs, but may include recovery of developmental and indirect costs, such as overhead, personnel, supply, material, office, storage, and computer costs. It is the intent of this section that the county may impose this fee for information and records maintained for county use, as well as for information and records not maintained for county use. Nothing herein shall be construed to require an assessor to provide information to any party beyond that which he or she is otherwise statutorily required to provide."

To the extent that these Revenue and Taxation Code provisions exempt or otherwise prohibit disclosure of certain county assessor records, they are incorporated into the Act pursuant to section 6254, subdivision (k). However, such incorporation does not shield from disclosure parcel boundary map data maintained in an electronic format by a county assessor because county assessors are "required by law" within the meaning of Revenue and Taxation Code section 408, subdivision (a), to prepare and maintain parcel boundary maps showing assessor's parcels, and must make such maps and data available for public inspection. Revenue and Taxation Code section 327 provides in part:

> "Where any county or county officer possesses a complete, accurate map of any land in the county, or whenever such a complete, accurate map has been made in compliance with Sections 27556 to 27560, inclusive, of the Government Code, the assessor may number or letter the parcels in a manner approved by the board of supervi-

> sors. The assessor may renumber or reletter the parcels or prepare new map pages for any portion of such map to show combinations or divisions of parcels in a manner approved by the board of supervisors, so long as an inspection of such map will readily disclose precisely what land is covered by any particular parcel number or letter in the current or any prior fiscal year. This map or copy shall at all times be publicly displayed in the office of the assessor." [FN8]

A county assessor must provide an assessment roll of "all property within the county which it is the assessor's duty to assess" (Rev. & Tax. Code, § 601), showing a "legal description" of the land (Rev. & Tax. Code, §§ 602, subd. (b), 1255).

Because county assessors are required by law to prepare and keep parcel maps and corresponding boundary information, indexed to parcel identification numbers, such records do not come within the exemption language of Revenue and Taxation Code section 408, subdivision (a).

***8** To be sure, no provision of law dictates that a county assessor must keep this required parcel boundary map data *in an electronic format*; rather, the choice to do so lies within the discretion of each assessor. But once such a format has been selected, the material must be made available for public inspection, and copies of the data, in the electronic format in which it is held, must be provided upon request. Section 6253.9 asks only whether a public agency *has* information constituting a public record "in an electronic format" -- not whether a statute dictates the use of such a format.

Finally, we assume that release of the parcel boundary map data maintained in an electronic format will not "jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained" (§ 6253.9, subd. (f)), and that the public interest served by disclosure would not be "clearly outweighed" by any public interest in nondisclosure (§ 6255). Application of either of these two statutes would depend upon the particular and unique circumstances involved. No other statutory exemptions appear relevant to our inquiry. [FN9]

We conclude in answer to the first question that parcel boundary map data maintained by a county assessor in an electronic format is subject to public inspection and copying under provisions of the Act.

2. Time for Responding to Disclosure Request

With respect to the date by which a county must respond to a request for parcel boundary map data maintained in an electronic format, the provisions of section 6253 govern, as quoted above. Since the data is not exempt from disclosure, a county is required to "make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable."(§ 6253, subd. (b).)

We conclude that parcel boundary map data maintained in an electronic format by a county assessor must be furnished "promptly" upon request of a member of the public.

3. Fees That May Be Charged

The amount of the fees that may be charged by a county for furnishing parcel boundary map data maintained in an electronic format depends upon the particular circumstances specified in section 6253.9. First, the county must "make the information available in any electronic format in which it holds the information."(§ 6253.9 subd. (a)(1).) If a county no longer has the information in an electronic format, it need not attempt to reconstruct the data. (§ 6253.9, subd. (c).)

If the request is for a copy in an electronic format that the county has used to create copies for its own use or for providing copies to other public agencies, the fee that may be charged is "limited to the direct cost of producing a copy of [the] record in [the] electronic format."(§ 6253.8, subd. (a)(2); see *North County Parents Organization v. De-*

*partment of Education* (1994) 23 Cal.App.4th 144, 148 [" '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"]; 85 Ops.Cal.Atty.Gen. 225, 227-229 (2002).)

***9** If the request is made at a time other than when the data is periodically produced, the fee may additionally include "the cost to construct [the] record, and the cost of programming and computer services necessary to produce a copy of the record."(§ 6253.9, subd. (b)(1).) The fee may similarly cover such additional costs when "[t]he request would require data compilation extraction, or programming to produce the record."(§ 6253.9, subd. (b)(2).) In either event, however, the fee may not include expenses associated with the county's initial gathering of the information, or with initial conversion of the information into an electronic format, or with maintaining the information.

We conclude that the fee that may be charged by a county for furnishing a copy of parcel boundary map data maintained in an electronic format by a county assessor is generally limited to the amount that covers the direct cost of producing the copy but may include certain other costs depending upon the particular circumstances as specified in the Act.

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[FN1]. All references hereafter to the Government Code are by section number only.

[FN2]. Section 6255 states:

> "(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."

[FN3]. Our focus here is the scope of *the public's* right to inspect and copy records maintained by a county assessor. We do not address the separate question concerning the circumstances under which such information must be made available to other government entities. (See, e.g., Rev. & Tax. Code, § 408, subd. (b); *State Bd. of Equalization v. Watson* (1968) 68 Cal.2d 307, 312 [State Board of Equalization]; 68 Ops.Cal.Atty.Gen. 209, 219-223 (1985) [Internal Revenue Service]; *cf.* 52 Ops.Cal.Atty.Gen. 194, 195-196 (1969) [state inheritance tax appraisers]; see also § 6254.5, subd. (e) [confidential disclosure of exempt material to governmental agency in performance of official duties does not constitute waiver of exemption].)

[FN4]. In addition to its specific exemptions, the Act permits a public agency to withhold a requested public record when "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."(§ 6255, subd. (a); see, e.g., 84 Ops.Cal.Atty.Gen. 55, 56-60 (2001); 81 Ops.Cal.Atty.Gen. 383, 386-388 (1998).)

[FN5]. Section 6254.7 provides that certain records relating to public health are public records. Section 6254.13 refers to test questions and other materials used by the Department of Education. We note that subdivision (k) of section 6254 is consistent with subdivision (g) of section 6253.9, quoted above, which exempts electronic records "to which access is otherwise restricted by statute."

[FN6]. Subdivision (b) of the statute authorizes an assessor to provide appraisal data to any other county assessor, and

requires disclosure to specified public officials and agencies. Subdivision (c) concerns the disclosure of information to the county tax collector, and subdivisions (d) and (e) involve disclosure to a property owner whose property is being assessed.

[FN7]. Revenue and Taxation Code section 451 concerns the contents of property statements required to be filed by specified persons. Revenue and Taxation Code section 481 involves information furnished with respect to a change in property ownership. As noted above, section 6254 provides exemptions from public disclosure. Section 6257 was repealed in 1998 and replaced by section 6253, quoted above. (Stats. 1998, ch. 620, §§ 5, 10.)

[FN8]. Sections 27556-27560 refer to maps filed for record in the office of the county recorder, the duties of the county surveyor, and the preparation of an assessor's maps.

[FN9]. We note that the Act "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."(§ 6257.5; see *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414, 1417-1418;*Wilder v. Superior Court* (1998) 66 Cal.App.4th 77, 70.)Also, the fact that a record is costly to produce in the first instance or that a copy thereof may be costly to reproduce for a member of the public does not cause a public record to become exempt from disclosure.

88 Ops. Cal. Atty. Gen. 153, 05 Cal. Daily Op. Serv. 8771, 2005 Daily Journal D.A.R. 11943, 2005 WL 2464165 (Cal.A.G.)

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