

OPEN GOVERNMENT GUIDE

Access to Public Records
and Meetings in

CALIFORNIA

**REPORTERS
COMMITTEE**
FOR FREEDOM OF THE PRESS

Sixth Edition
2011

OPEN GOVERNMENT GUIDE

OPEN RECORDS AND MEETINGS LAWS IN

CALIFORNIA

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Previously Titled
Tapping Officials' Secrets

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Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

Following the outline. Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, www.rcfp.org/ogg. The Internet version of the outlines allows you to search the database and compare the law in different states.

Updates: The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at www.rcfp.org/ogg. This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.

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FOREWORD

California's Constitutional Sunshine Amendment: On November 2, 2004, California voters overwhelmingly approved Proposition 59, an amendment to California's Constitution that elevated the public's right of access to public records and public meetings to constitutional stature. This amendment, set forth in Article I, Section 3(b) of the California Constitution, and commonly called the Sunshine Amendment, declares: "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." Cal. Const. Art. I, § 3(b); see appendix for full text of the Sunshine Amendment.

The Sunshine Amendment accomplishes many things. First, it firmly establishes a fundamental constitutional right for people to scrutinize what their government is doing by mandating access to government records and meetings of government bodies. By elevating the right of access to constitutional stature, all newly enacted state laws and administrative regulations must conform to the Sunshine Amendment's provisions. Practically speaking, it brings more weight to the public's right of access because it leaves no doubt as to the importance of access to the people of California and consequently renders ineffective the assertion that access in a particular case serves no public purpose — a claim often asserted by government agencies to defeat access. Similarly, it strengthens the case for access in particular cases where under existing statutory exemptions records can be withheld when the public's interest in non-disclosure clearly outweighs the public's interest in disclosure. See Cal. Gov't Code § 6255. This is so because most interests in non-disclosure are not constitutionally based and thus will be of significantly less importance when weighed against a now-constitutional right of access.

Second, unlike statutory rights of access under California's Public Records Act and The Ralph M. Brown Act, the Sunshine Amendment applies not just to the executive branch of government but to the judicial and legislative branches as well. While the Amendment expressly reserves existing protections for proceedings and records of the Legislature and rules adopted in furtherance of those protections, and maintains all other preexisting constitutional and statutory exemptions to the right of access to public records and meetings, these branches of government are now within the mantle of the public's constitutional right of access. In practice, what new rights of access this may bring remains to be determined, but arguably the right would include access to records and meetings of both the Legislature and the Judiciary not currently exempt from disclosure under existing authority.

Third, the Sunshine Amendment requires that statutes, court rules or other authority be construed broadly when they further the public's right of access and be construed narrowly when they limit the right of access — rules of construction from which many courts have strayed in recent years to the detriment of open government. Cal. Const. Art. I, § 3(b)(2).

Fourth, in adopting new laws, court rules or other authority that limit the right of access, public bodies must now make express findings demonstrating the interest purportedly protected and the need for protecting that interest. *Id.* Thus, the adoption of agency rules and regulations, for example, intended to impede public access will no longer be allowed on the whim of the agency's governing body but will require actual on-the-record findings demonstrating the need for secrecy and demonstrating how the exemption will achieve that need

— findings similar to that required by a court before sealing a court record or closing a court proceeding.

Lastly, the Sunshine Amendment leaves intact the right of privacy guaranteed by the constitution by clarifying that it does not supersede or modify the existing constitutional right of privacy. And, disconcerting for proponents of access, the Amendment expressly does not affect existing statutory protections afforded peace officers over information concerning their official performance or professional qualifications. *Id.*, § 3(b)(3).

Practically speaking, politicians have taken notice of the overwhelming voter support for the Amendment. Former California Governor Arnold Schwarzenegger, for example, reversed a long-standing trend of withholding the governor's daily calendars under a claim of deliberative process, by complying with a post-Amendment request for his daily calendars. See: www.cfac.org/Attachments/governor_calendars.htm

Nevertheless, the practical effect of the Sunshine Amendment to those seeking access to public records and public meetings likely will be resolved by the courts on a case-by-case basis. Throughout this chapter of the Open Government Guide, we attempt to note where the Amendment may change or enhance existing law.

California Public Records Act: California Government Code Sections 6250 through 6276.48 comprise the California Public Records Act ("CPRA"). In enacting the CPRA the Legislature expressly declared that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." Cal. Gov't Code § 6250. Indeed, in California "access to government records has been deemed a fundamental interest of citizenship." *International Federation of Professional and Technical Eng. v. Superior Court*, 42 Cal. 4th 319, 328, 64 Cal. Rptr. 3d 693, 165 P.3d 488 (2007) ("*Int'l Federation*") (quoting *CBS Inc. v. Block*, 42 Cal. 3d 646, 652 n.5, 230 Cal. Rptr. 362, 725 P. 2d 470 (1986)). By promoting prompt public access to government records, the CPRA is "intended to safeguard the accountability of government to the public." *Register Div. of Freedom Newspapers Inc. v. County of Orange*, 158 Cal. App. 3d 893, 901, 205 Cal. Rptr. 92 (1984). As the California Supreme Court recognized in *Int'l Federation*:

Implicit in a democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process.

Id. at 328-29 (quoting *Block*, 42 Cal. 3d at 651). The Court has emphasized that "maximum disclosure of the conduct of governmental operations [is] to be promoted by the act." *Block*, 42 Cal. 3d at 651-52 (emphasis added).

In accordance with this policy, public records are broadly defined to include "any writing containing information relating to the conduct of a public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristic[.]" Cal. Gov't Code § 6252(e). Citing with approval an even broader definition of public records adopted by the California Attorney General, another court has stated:

This definition 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. Only purely personal information unrelated to 'the conduct of the public's business' could be considered exempt from this definition, i.e., the shopping list phoned from home, the letter to a public officer from a friend which is totally void of reference to governmental activities.

San Gabriel Tribune v. Superior Court, 143 Cal. App. 3d 762, 774, 192 Cal. Rptr. 415 (1983) (internal citations omitted); see also *Versaci v. Superior Court*, 127 Cal. App. 4th 805, 813, 26 Cal. Rptr. 3d 92 (2005)

(quoting *Coronado Police Officers Ass'n v. Carroll*, 106 Cal. App. 4th 1001, 1006, 131 Cal. Rptr. 2d 553 (2003)(citing with approval same definition)).

Moreover, unless the public records of a local agency are exempt from the provisions of the CPRA, they must be made available for public inspection. *Int'l Federation*, 42 Cal. 4th at 329; *Commission on Peace Officer Standards and Training*, 42 Cal. 4th 278, 288, 64 Cal. Rptr. 3d 661, 165 P.3d 462 (2007); *Williams v. Superior Court*, 5 Cal. 4th 337, 346, 19 Cal. Rptr. 2d 882, 852 P.2d 377 (1993). Exemptions must be narrowly construed and the public agency bears the burden of proving that an exemption applies. *BRV, Inc. v. Superior Court*, 143 Cal. App. 4th 742, 755, 49 Cal. Rptr. 3d 519 (2006); *Bakersfield City School Dist. v. Superior Court*, 118 Cal. App. 4th 1041, 1045, 13 Cal. Rptr. 3d 517 (2004); *Cal. State Univ. v. Superior Court*, 90 Cal.App.4th 810, 831, 108 Cal. Rptr. 2d 870 (2001); see also *Lorig v. Medical Bd.*, 78 Cal. App. 4th 462, 467, 92 Cal. Rptr. 2d 862 (2000); *County of Los Angeles v. Superior Court*, 82 Cal. App. 4th 819, 825, 98 Cal. Rptr. 2d 564 (2000).

Because the CPRA was modeled after the federal Freedom of Information Act (“FOIA”), 5 U.S.C. Section 552 *et seq.*, courts may look to case law under FOIA in construing the CPRA. See *Times Mirror Co. v. Superior Court*, 53 Cal. 3d 1325, 1338, 283 Cal. Rptr. 893, 813 P.2d 240 (1991); *American Civil Liberties Union Foundation v. Deukmejian*, 32 Cal. 3d 440, 447, 186 Cal. Rptr. 235, 651 P.2d 822 (1982); but see *Williams*, 5 Cal. 4th at 348-54 (holding that CPRA’s exemption for law enforcement investigatory records did not incorporate FOIA criteria and thus courts cannot look to FOIA cases to interpret Section 6254(f) of the CPRA, but must look to the statutory language of the CPRA provision to construe the statute).

Most of the exemptions under the CPRA are set forth under Section 6254 and are specific to certain records or types of records, but under Section 6255 a general exemption exists where, 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.” Cal. Gov’t Code § 6255 (commonly called the “catch all” exemption). In reviewing the propriety of an agency decision to withhold records, a court is charged with ascertaining whether non-disclosure was justified under either of these statutes. Cal. Gov’t Code § 6259(b).

To facilitate prompt public access to public records, court orders either directing disclosure of public records or supporting an agency’s decision of nondisclosure are immediately reviewable by an appellate court by way of an emergency petition seeking issuance of an extraordinary writ. Cal. Gov’t Code § 6259(c). In 1991, the California Supreme Court made clear that under this writ procedure, trial court orders are reviewable on their merits. *Times Mirror Co.*, 53 Cal. 3d at 1336; see also *State Bd. of Equalization v. Superior Court*, 10 Cal. App. 4th 1177, 1185, 13 Cal. Rptr. 2d 342 (1992)(echoing the decision in *Times Mirror* and stating that the scope of review by a writ of review is equivalent with the scope of review on appeal). Thus, when a trial court order under the CPRA is reviewed by an appellate court, the independent review standard is employed for legal issues and factual findings made by the trial court will be upheld if they are based on substantial evidence. *Times Mirror Co.*, 53 Cal. 3d at 1336 (citing *Block*, 42 Cal. 3d at 650-51).

Court Administrative Records: Effective January 1, 2010, the Judicial Council of California approved new Rules of Court (10.500 *et seq.*) that set forth a comprehensive scheme much like that of the CPRA for access to non-adjudicative administrative records of the state trial and appellate courts, the Judicial Council, and the Administrative Office of the Courts. “Judicial administrative record” means any writing containing information relating to the conduct of the people’s business that is prepared, owned, used, or retained by a judicial branch entity regardless of the writing’s physical form or characteristics, except an adjudicative record. The term ‘judicial administrative record’ does not include records of a personal nature that are not used in or do not relate to the people’s business, such as personal notes, memoranda,

electronic mail, calendar entries, and records of Internet use.” Cal. R. Ct. 10.500 (c)(2). Like the CPRA, judicial administrative records, such as budget and management information relating to the administration of the courts, are open to the public unless specifically exempt. Cal. R. Ct. 10.500 (e)(1)(A). The Rules contain similar exemptions as under the CPRA, such as those for personnel, medical and similar records, and adopts other exemptions unique to the specific functions of the judicial branch. The Rules require a determination as to whether the records will be made available within 10 calendar days of the request and, if disclosable, that they thereafter be made available promptly. Cal. R. Ct. 10.500 (e)(6) & (7). Generally, the Rules allow for the recovery of the direct cost of duplication, but if records are intended for commercial purposes, the Rules allow for recovery of search and review costs as well. Cal. R. Ct. 10.500 (e)(4). Similar to the fee recovery provisions pertaining to electronic records under the CPRA, the Rules allow for recovery of the direct cost of producing an electronic record, including computer programming, when the record is not one produced by the judicial branch at regularly scheduled intervals or its production requires data compilation or extraction, or related programming, not otherwise required under the Rules. Cal. R. Ct. 10.500 (i)(2). The Rules are enforceable under the writ procedures available for enforcing access to records under the CPRA. Cal. R. Ct. 10.500 (j)(2). Alternatively, they are enforceable under the writ procedures of Rule 10.803, which allow for expedited review of the petition by a hearing judge selected from a panel of appellate court justice. The justice selected to hear the matter in the superior court must be from a judicial district other than one in which the dispute arises. Cal. R. Ct. 10.803. As under the CPRA, reasonable attorneys’ fees and costs are recoverable to a prevailing plaintiff. Cal. R. Ct. 10.500 (j)(6).

Open Meetings: The law in California pertaining to open meetings is set forth in three Acts, namely, the Ralph M. Brown Act (“Brown Act”), found at Sections 54950 through 54963 of the California Government Code, the Bagley-Keene Open Meeting Act (“Bagley-Keene Act”), found at Sections 11120 through 11132 of the California Government Code, and the open meeting provisions governing the State’s legislative branch, found at Sections 9027 through 9031 of the California Government Code.

The Brown Act was enacted into law in 1953 to require open meetings of local agencies and “to curb misuse of the democratic process by secret legislation of public bodies.” *Epstein v. Hollywood Entertainment Dist. II Business Improvement Dist.*, 87 Cal. App. 4th 862, 867, 104 Cal. Rptr. 2d 857 (2001). The Act declares, in part:

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

Cal. Gov’t Code § 54950. As stated by one court, “[i]t is clearly the public policy of this State that the proceedings of public agencies, and the conduct of the public’s business, shall take place at open meetings, and that the deliberative process by which decisions related to the public’s business shall be conducted in full view of the public.” *Epstein*, 87 Cal. App. 4th at 867; see also *Coban v. City of Thousand Oaks*, 30 Cal. App. 4th 547, 555, 35 Cal. Rptr. 2d 782 (1994). The Act applies to “local agencies,” defined in Section 54951 as “a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.” Cal. Gov’t Code § 54950.

Under the Act, “[a]ll meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.” Cal. Gov’t Code § 54953(a). A “meeting” includes “any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss or

deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.” Cal. Gov’t Code § 54952.2(a). The Act extends to a legislative body’s “informal sessions or conferences,” even if no vote is taken. *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors*, 263 Cal. App. 2d 41, 47, 69 Cal Rptr. 480 (1968). As explained, the Act includes “deliberation as well as action” because “deliberation and action [are] dual components of the collective decision-making process . . .” *Id.* at 51.

The Act contains specific exemptions from the open meetings requirements, but these exemptions must be narrowly construed and if a specific statutory exemption does not exist, the matter must be conducted in public regardless of its sensitivity. Cal. Gov’t Code § 54962. These specific provisions primarily concern real property acquisitions, pending litigation, personnel matters and labor negotiations. Cal. Gov’t Code §§ 54956.8, 54956.9, 54957, 54957.6. Importantly, the Act sets forth the minimum access that is required by law. Local agencies are free to “allow greater access to their meetings than prescribed by the minimal standards set forth in [the Act].” Cal. Gov’t Code § 54953.7.

In keeping with the Act’s open meetings provisions, the Act contains, among other things, provisions governing when meetings must be noticed and when agendas must be prepared. Cal. Gov’t Code §§ 54954, 54954.2. Additionally, before or during consideration of each agenda item, the public must be given an opportunity to comment on the item. Cal. Gov’t Code § 54954.3(a). The Act prohibits agencies from requiring members of the public, as a condition to attendance, to register his or her name, provide other information, or “otherwise to fulfill any condition precedent to his or her attendance.” Cal. Gov’t Code § 54953.3. And, members of the public attending public meetings have the right to record the proceedings with audio or video tape recorders or still or motion picture cameras unless the agency finds that such recordings amount to a “persistent disruption of the proceedings.” Cal. Gov’t Code § 54953.5(a).

The Act contains provisions for civil remedies and criminal misdemeanor penalties for certain violations. Cal. Gov’t Code §§ 54960, 54960, 54960.1. The nature of civil proceedings are two-fold: (1) actions to stop or prevent violations or threatened violations of the Act; and, (2) actions to void action taken by a legislative body in violation of certain provisions of the Act. Cal. Gov’t Code §§ 54960 and 54960.1, respectively. Actions to void actions taken in violation of specified provisions of the Act require that the interested party first make a written

demand to the local agency to cure or correct the action alleged to have been taken in violation the Act. Cal. Gov’t Code § 54960.1(b). In civil actions, the Act allows for the recovery of costs and reasonable attorneys’ fees. Cal. Gov’t Code § 54960.5.

The Bagley-Keene Act was enacted in 1967 to extend the basic concept of the Brown Act to “state bodies.” This Act contains many parallel provisions as are in the Brown Act. Except as otherwise exempted, state bodies means “every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.” Cal. Gov’t Code § 11121(a). Specific bodies are excluded from this definition at Section 11121.1. With respect to the public higher education systems in California, the Bagley-Keene Act applies to meetings of the governing boards of community colleges, state universities and the Regents of the University of California, and meetings of these bodies must be open to the public. Meetings are defined as they are in the Brown Act, with varying notice provisions. Cal. Gov’t Code § 11122.5(a). Closed sessions are authorized on, among other topics, specified personnel matters, real property negotiations with negotiator, labor negotiations and pending litigation. Cal. Gov’t Code § 11126. The Bagley-Keene Act contains similar enforcement provisions as in the Brown Act except that under the Bagley-Keene Act actions may be brought to declare purely past actions in violation of the Act, not just actions to prevent ongoing or threatened violations of the Act. Cal. Gov’t Code § 11130(a); *compare* Cal. Gov’t Code § 54960. And, under the Bagley-Keene Act, there is no need to serve a demand to cure before seeking to nullify action taken by state bodies. Cal. Gov’t Code § 11130.3(a); *compare* Cal. Gov’t Code § 54960.1(b).

In 1973, the California Legislature enacted the Grunsky-Burton Open Meeting Act, Sections 9027 of the Government Code, which provides that all meetings of the Senate and Assembly and the committees, subcommittees and conference committees were to be “conducted openly” so that the public may remain informed. That section was repealed in 1984 and replaced with Section 9926 of the Legislative Reform Act of 1983. In 1989, those provisions were repealed and replaced with similar provisions which can be found again at Sections 9027 through 9031, inclusive, of the Government Code. Because of their relatively simple language, scope and application, those provisions will be given limited attention in this outline.

This forward was written by Duffy Carolan.

Open Records

I. STATUTE — BASIC APPLICATION

A. Who can request records?

1. Status of requestor.

“[A]ccess to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” Cal. Gov’t Code § 6250. “Every person” can inspect public records. Cal. Gov’t Code § 6253(a). “Person” includes any natural person, corporation, partnership, limited liability company, firm or association. Cal. Gov’t Code § 6252(c). The CPRA does not differentiate among those who seek access to public information. If a record is public, as defined by or construed under the CPRA, all persons have the same right of access. *County of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1324, 89 Cal. Rptr. 3d 374 (2009); *State Bd. of Equalization v. Superior Court*, 10 Cal. App. 4th 1177, 1190, 13 Cal. Rptr. 2d 342 (1992).

For example, citizens of other states, and foreign as well as domestic corporations are included in the CPRA’s definition of “person.” *Connell v. Superior Court*, 56 Cal. App. 4th 601, 611-12, 65 Cal. Rptr. 2d 738 (1997). A municipal corporation, as well as its elected city attorney, is also a “person” entitled to request documents from another governmental agency. *Los Angeles Unified Sch. Dist. v. Superior Court*, 151 Cal. App. 4th 759, 771, 60 Cal. Rptr. 3d 445 (2007). Section 6252.5 of the Government Code expressly allows an elected member or official of any state or local agency to access public records of that agency — or any other — on the same basis as any other person. Cal. Gov’t Code § 6252.5. Likewise, a plaintiff who files suit against a public agency may utilize the CPRA to obtain documents for use in litigation to the same extent as any other person. *County of Los Angeles v. Superior Court*, 82 Cal. App. 4th 819, 826, 98 Cal. Rptr. 2d 564 (2000). Members of the media, while “persons” under the CPRA, have no greater right of access than the general public. *Dixon v. Superior Court*, 170 Cal. App. 4th 1271, 1279, 88 Cal. Rptr. 3d 847 (2009); *City of San Jose v. Superior Court*, 74 Cal. App. 4th 1008, 1018, 88 Cal. Rptr. 2d 552 (1999); *City of Hemet v. Superior Court*, 37 Cal. App. 4th 1411, 1417 n.7, 44 Cal. Rptr. 2d 532 (1995). Conversely, a person personally affected by the public record has no greater right of access than other persons under the CPRA. *Los Angeles Police Dept. v. Superior Court*, 65 Cal. App. 3d 661, 668, 135 Cal. Rptr. 575 (1977).

2. Purpose of request.

There are no limitations on access to public records based on the purpose for which the record is being requested, if the record is otherwise subject to disclosure. Cal. Gov’t Code § 6257.5. A member of the public need not state the purpose for requesting records. *See, e.g., CBS Broad. Inc. v. Superior Court*, 91 Cal. App. 4th 892, 909, 110 Cal. Rptr. 2d 889 (2001); *City of San Jose v. Superior Court*, 74 Cal. App. 4th 1008, 1018, 88 Cal. Rptr. 2d 552 (1999); *State Bd. of Equalization v. Superior Court*, 10 Cal. App. 4th 1177, 1191, 13 Cal. Rptr. 2d 342 (1992). This is so because “[t]he motive of the particular requester is irrelevant; the question instead is whether disclosure serves the public interest.” *County of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1324, 89 Cal. Rptr. 3d 374 (2009) (rejecting county’s standing argument that open government group had no particularized interest in GIS basemap data other than “generalized proclamation of the ‘public’s right to know’...”). Stated another way, what is material is the public interest in disclosure, not the private interest of a requesting party. *State Bd. of Equalization*, 10 Cal. App. 4th at 1191.

3. Use of records.

There are no restrictions or limitations on the subsequent use of records obtained under the CPRA. In *County of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1333, 89 Cal. Rptr. 3d 374 (2009), the

court, as a matter of first impression, rejected as inconsistent with the CPRA the county’s claim that it could require requesters of its GIS basemap data to enter into licensing agreements restricting use and dissemination of the data. The court held that copyright protections under the CPRA extend “in a proper case” only to computer software. *Id.* at 1331-36 (“The CPRA contains no provision either for copyrighting the GIS basemap or for conditioning its release on an end user or licensing agreement by the requester.”).

With one exception, a requester is not required to state the use or purpose for which the records are being requested. Cal. Gov’t Code § 6257.5. Under the investigatory records exemption of Section 6254(f) (3), an individual requesting the address of any individual arrested or the current address of the victim of a crime, must declare under penalty of perjury that the request is made for a journalistic, scholarly, political or governmental purpose, or is sought for investigatory purposes by a licensed private investigator. Additionally, the requester must declare that the information obtained pursuant to this subsection will not be used directly or indirectly to sell a product or service. Cal. Gov’t Code § 6254(f)(3); *see Los Angeles Police Dept. v. United Reporting Pub. Corp.*, 528 U.S. 32, 120 S.Ct. 483, 488, 145 L.Ed. 2d 451 (1999) (upholding facial constitutional challenge to this provision but noting that the constitutionality of the provision as applied to respondent, a publishing company that provides the names and addresses of arrested individuals to its customers, remained open to challenge); *see also United Reporting Pub. Corp. v. Cal. Hwy. Patrol*, 231 F.3d 483 (9th Cir. 2000) (where Ninth Circuit Court of Appeal remanded action for further district court proceedings addressing the “as applied” constitutionality of this provision).

B. Whose records are and are not subject to the act?

1. Executive branch.

The CPRA applies to every state office, officer, department, division, bureau, board and commission or other state body or agency, except the Legislature and the courts. Cal. Gov’t Code § 6252(f). The CPRA also applies to local agencies, including counties, cities, schools districts, municipal corporations, districts, political subdivisions, or any board, commission or agency thereof; other local public agencies; or non-profit entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952 of the Government Code. Cal. Gov’t Code § 6252(a). For example, a county’s claim settlement committee constituted a “local agency” under the CPRA. *Register Div. of Freedom Newspapers, Inc. v. Orange County*, 158 Cal. App. 3d 893, 898, 205 Cal. Rptr. 92 (1984). But a nonprofit auxiliary corporation affiliated with a state university, and which operated multi-purpose arena being built on university campus was not a “state agency” under the CPRA. *California State Univ. (Fresno) v. Superior Court*, 90 Cal. App. 4th 810, 898, 108 Cal. Rptr. 2d 870 (2001).

a. Records of the executives themselves.

All executives’ records, as defined under Section 6252(e), are subject to the CPRA. Under the Constitutional Sunshine Amendment, “the writings of public officials and agencies” are open to public scrutiny. Cal. Const. Art. 1, § 3(b)(1).

b. Records of certain but not all functions.

The CPRA broadly defines public records to include, “any writing containing information relating to the conduct of the public’s business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.” Gov’t Code § 6252(e). “The mere custody of a writing by a public agency does not make it a public record, but if a record is kept by an officer because it is necessary or convenient to the discharge of his official duty, it is a public record.” *Braun v. City of Taft*, 154 Cal. App. 3d 332, 340, 201 Cal. Rptr. 654 (1984); *see also Cal. State Univ. v. Superior Court*, 90 Cal. App. 4th 810, 824, 108 Cal. Rptr. 2d 870 (2001). Citing with approval an even broader definition of public records adopted by the Attorney General, another court has stated:

‘This definition 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. Only purely personal information unrelated to ‘the conduct of the public’s business’ could be considered exempt from this definition, i.e., the shopping list phoned from home, the letter to a public officer from a friend which is totally void of reference to governmental activities.’

San Gabriel Tribune v. Superior Court, 143 Cal. App. 3d 762, 774; 192 Cal. Rptr. 415, 422 (1983)(internal citations omitted); *see also Versaci v. Superior Court*, 127 Cal. App. 4th 805, 813, 26 Cal. Rptr. 3d 92 (2005) (quoting *Coronado Police Officers Ass’n v. Carroll*, 106 Cal. App. 4th 1001, 1006, 131 Cal. Rptr. 2d 553 (2003)(citing with approval same definition)).

This definition of public records has been held not to include a database compiled and maintained by a county public defender’s office which primarily consisted of information from client files, as well as public records, because the core function of the records was to aid the public defender’s office in representing indigent clients, which was a private function, not public. *Coronado Police Officers Ass’n v. Carroll*, 106 Cal. App. 4th 1001, 1008, 131 Cal. Rptr. 2d 553 (2003). Moreover, records maintained by a county auditor-controller for the court pursuant to contract whereby the county manages the court’s budgetary and financial matters and where the contract provided that all documents shall remain the property of the court were held to fall outside the provisions of the CPRA as the courts are not subject to the CPRA. *Orange County Employees Ass’n v. Superior Court*, 120 Cal. App. 4th 287, 209, 15 Cal. Rptr. 3d 201 (2004); *but see Crews v. Superior Court*, 31 Med. L. Rptr. 1890 (Cal. App. Ct. 2003, unpublished)(holding that records used and retained by county in managing the court’s finances pursuant to contract fell within the definition of public records and were required to be disclosed under CPRA).

2. Legislative bodies.

The CPRA does not apply to the State Legislature or its committees. Cal. Gov’t Code § 6252(a). Records of the Legislature are subject to the Legislative Open Records Act. Cal. Gov’t Code § 9070, et. seq. The Constitutional Sunshine Amendment does apply to the Legislature because it applies generally to “public bodies” and to the “writings of public officials,” without excluding the Legislature. Cal. Const. Art. I, § 3(b)(1). The Amendment, however, specifically maintains exemptions and protections for confidentiality of records of the Legislature as provided for by “Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions . . .” Cal. Const., Art. I, § 3(b)(1). Moreover, in *Sutter’s Place v. Superior Court*, 161 Cal. App. 4th 1370, 1382, 75 Cal. Rptr. 3d 9 (2008), the court rejected the argument that the Sunshine Amendment eliminated the mental process principle asserted to protect the motives and thought processes of local legislators (not state legislators), and characterized the principle as rooted in state and federal constitution law, as well as statutory law under the CPRA’s Section 6254(k) (incorporating other prohibitions established by law), both of which the court said were expressly prereserved under the Sunshine Amendment. Nevertheless, a constitutional right of access arguably would extend to records of the Legislature not exempt or otherwise protected under existing law.

3. Courts.

The CPRA does not apply to the judicial branch of government, which like the legislative branch is specifically excluded from the definition of “state agency” under the CPRA. Cal. Gov’t Code § 6252(a). The Constitutional Sunshine Amendment, however, does apply to the judicial branch of government, which includes the courts, the Administrative Office of the Courts and the Judicial Council, because the Amendment applies to the “meetings of public bodies” and the “writings of public officials and agencies . . .” without excluding the Judiciary. Cal. Const. Art. I, § 3(b)(1). The Amendment, however, specifically maintains “constitutional or statutory exceptions to the

right of access to public records” in effect on the effective date of the Amendment. *Id.* § 3(b)(5). No published case has addressed what additional access to the records of the Judiciary, if any, is afforded under the Sunshine Amendment. However, a constitutional right of access arguably would extend to records not exempt or otherwise protected under “constitutional or statutory exception” in effect on November 3, 2004, when the Amendment became effective. Other language in the Amendment also implies that pre-existing Rules of Court are not superseded by the Amendment. *Id.* § 3(b)(2).

In addition to the Sunshine Amendment, Rules of Court, effective Jan. 2010, set forth comprehensive public access provisions applicable to judicial administrative records maintained by state trial and appellate courts, the Judicial Council, and the Administrative Office of the Courts. Cal. Rules of Court 10.500 et. seq. These rules were modeled after the CPRA.

Moreover, both the federal and state constitutions provide broad access rights to judicial proceedings and records. *See, e.g., NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178, 86 Cal. Rptr.2d 778, 980 P.2d 337, (1999) (where California Supreme Court reviewed at length constitutional right of access in both criminal and civil proceedings and held right applied to trial proceedings in civil action); *see also Copley Press v. Superior Court*, 63 Cal. App. 4th 367, 373, 74 Cal. Rptr. 2d 69, (1998) (recognizing constitutional right of access to school district’s settlement with minor when court approval required and holding no compelling reason justified sealing settlement records); *Copley Press Inc. v. Superior Court*, 6 Cal. App. 4th 106, 115, 7 Cal. Rptr. 2d 841 (1992) (recognizing broad First Amendment right of access to judicial records in both civil and criminal proceedings and holding right attached to rough minute books of trial court). Earlier courts had also recognized at least a common law right of access to judicial records. *See, e.g., Estate of Hearst*, 67 Cal. App. 3d 777, 782, 136 Cal. Rptr. 821 (1977) (probate files of probate court open).

4. Nongovernmental bodies.

a. Bodies receiving public funds or benefits.

The fact that an entity receives public funds does not itself subject it to the provisions of the CPRA. Rather, the CPRA applies to the local and state agencies listed in Sections 6252(a) and (f) of the Government Code and to private corporations and entities and lessees of any hospital pursuant to subdivisions (c) and (d), respectively, of Section 54952 of the Government Code (known as the Ralph M. Brown Act). Cal. Gov’t Code § 6252(a). Specifically, private corporations or entities are subject to the CPRA if they are either created by an elected legislative body to exercise authority that may lawfully be delegated by the elected governing body or receive funds from a local agency and have as a board member at least one member of the legislative body of the local agency appointed to the governing body of the private entity, by the legislative body of the local agency, as a full voting member. Cal. Gov’t Code § 54952(c)(1). *See Cal. State Univ. v. Superior Court*, 90 Cal. App. 4th 810, 826-30, 108 Cal. Rptr. 2d 870 (2001) (nonprofit auxiliary corporation affiliated with state university, and which operated multi-purpose arena being built on university campus, was not a state agency under CPRA); 85 Ops. Cal. Att’y. Gen. 55 (2002) (private, nonprofit corporation that received funds from school district and had on its corporate board one of district’s trustees with full voting rights, and was created by the City, which lawfully delegated authority to it to operate an educational access channel, was subject to CPRA and opening meetings laws); *see also Epstein v. Hollywood Entertainment Dist. II Bus. Improvement Dist.*, 87 Cal. App. 4th 862, 869-73, 104 Cal. Rptr. 2d 857 (2001).

b. Bodies whose members include governmental officials.

The fact that a group’s membership includes governmental officials does not itself subject the group to the provisions of the CPRA. Rather the CPRA applies to the local and state agencies listed in Sections 6252(a) and (f) of the Government Code and to private corporations

or entities and licensees of any hospital pursuant to subdivisions (c) and (d) of Section 54952 of the Government Code (the Ralph M. Brown Act). Cal. Gov't Code § 6252(a). Specifically, private corporations or entities are subject to the CPRA if they are either created by an elected legislative body to exercise authority that may lawfully be delegated by the elected governing body or receive funds from a local agency and have as a board member at least one member of the legislative body of the local agency appointed to the governing body of the private entity, by the legislative body of the local agency, as a full voting member. Cal. Gov't Code § 54952(c)(1). See *Cal. State Univ. v. Superior Court*, 90 Cal. App. 4th 810, 826-30, 108 Cal. Rptr. 2d 870 (2001) (nonprofit auxiliary corporation affiliated with state university, and which operated multi-purpose arena being built on university campus, was not a state agency under CPRA); 85 Ops. Cal. Att'y. Gen. 55 (2002) (private, nonprofit corporation that received funds from school district and had on its corporate board one of district's trustees with full voting rights, and was created by the City, which lawfully delegated authority to it to operate an educational access channel, was subject to CPRA and opening meetings laws); see also *Epstein v. Hollywood Entertainment Dist. II Bus. Improvement Dist.*, 87 Cal. App. 4th 862, 869-73, 104 Cal. Rptr. 2d 857 (2001).

5. Multi-state or regional bodies.

Multistate or regional bodies, such as planning authorities, are not specifically mentioned in CPRA, nor have they been the subject of any known court decisions. Arguably the CPRA would apply to multi-state bodies as "other state body or agency" under Section 6252(f) of the CPRA. Regional bodies might arguably fall within the CPRA's definition of "state agency" as a "division, bureau, board or commission or other state body or agency..." Cal. Gov't Code § 6252(f).

6. Advisory boards and commissions, quasi-governmental entities.

Section 6252(a) of the Government Code provides that any boards, commissions or agencies that are a part of a political entity listed therein, e.g., city, county, school district, municipal corporation, political subdivision, etc., are subject to the CPRA. Cal. Gov't Code § 6252(a). But see *Cal. State Univ. (Fresno) v. Superior Court*, 90 Cal. App. 4th 810, 828, 108 Cal. Rptr. 2d 870 (2001) (nonprofit auxiliary corporation affiliated with a state university and which operated multi-purpose arena being built on university campus was not a "state agency" under the CPRA).

7. Others.

Grand Juries: The CPRA does not apply to grand juries because it specifically excludes judicial agencies established by Article VI of the California Constitution. Although grand juries are not specifically mentioned in Article VI, the nature of the grand jury as a judicial entity and the important public interest requiring that its proceedings be conducted in secrecy are persuasive indications that the Legislature intended the grand jury to be excluded, as are the courts, from the CPRA's provisions. *McClatchy Newspapers v. Superior Court*, 44 Cal. 3d 1162, 245 Cal. Rptr. 774, 751 P.2d 1329 (1988).

The Constitutional Sunshine Amendment arguably does apply to grand juries because it applies generally to the meetings of public bodies and the writings of public officials and agencies. Cal. Const. Art. I, § 3(b)(1). However, because the Constitutional Sunshine Amendment expressly maintains pre-existing constitutional and statutory exemptions to the right of access to public records (see Cal. Const. Art. I, § 3(b)(5)) and because the Legislature has enumerated several Penal Code provisions governing the secrecy of grand jury proceedings (see, e.g., Cal. Penal Code §§ 915, 924.1, 924.2, 939), it is doubtful that the Amendment provides any new access rights to records of the grand jury.

In cases where an indictment has been returned, existing statutory law provides that the public is entitled to transcripts of grand jury proceedings 10 days after delivery of the transcript to the defendant or his

or her counsel unless, upon motion, it is determined that a reasonable likelihood exists that public disclosure may prejudice defendant's fair trial rights. Cal. Penal Code § 938.1(b).

Jury Commissioner: The CPRA also does not apply to the jury commissioner since the commissioner is an executive officer appointed by the superior court and therefore part of the judicial system. *Pantos v. City and County of San Francisco*, 151 Cal. App. 3d 258, 262, 198 Cal. Rptr. 489 (1984). The Constitutional Sunshine Amendment arguably does apply to the jury commissioner because it applies generally to the meetings of public bodies and the writings of public officials and agencies without exception for the judicial branch of government. Cal. Const. Art. I, § 3(b)(1). However, the Constitutional Sunshine Amendment expressly maintains pre-existing constitutional and statutory exemptions to the right of access to public records. *Id.* § 3(b)(5). Whether statutory law that provides for sealing of trial juror identifying information upon recording of a jury's verdict is such a statutory exemption is unclear given the provision for access upon a showing of good cause. See Cal. Civ. Proc. Code § 237(a)(2). No case has addressed what additional access to the records of the jury commissioner, if any, is afforded under the Sunshine Amendment. Arguably, access to juror questionnaires completed to determine juror qualification, pursuant to California Civil Procedure Code Section 205, for inclusion on the master list of qualified jurors may be accessible under the Amendment. No statute exists prohibiting their public disclosure (though one limits their use, see Cal. Civ. Proc. Code § 205(b)) and previous case law holding that disclosure violated reasonable expectations of privacy did so on the particular facts of the case and in light of assurances of confidentiality provided by the court. *Pantos*, 151 Cal. App. 3d at 264.

Other documents held by the jury commissioner such as the master list of qualified jurors (identifying prospective jurors by name and address) and the jury summons list, which is a list of prospective or qualified jurors who are summoned to appear or to be available for jury service, are accessible court records under existing constitutional, statutory and common law *Id.* at 262-63 (citing constitutional and statutory authority for access to court records and holding master list and summons list are public documents subject to public inspection).

Homeowners' Associations: These are not governmental agencies and they are neither a state or local agency or a subdivision thereof. Thus, they are not subject to the CPRA.

C. What records are and are not subject to the act?

All records of included agencies are subject to the CPRA unless the Legislature has expressly provided to the contrary. *International Federation of Professional and Technical Eng. v. Superior Court*, 42 Cal. 4th 319, 329, 64 Cal. Rptr. 3d 693, 165 P.3d 488 (2007); *Williams v. Superior Court*, 5 Cal. 4th 337, 346, 852 P.2d 377, 19 Cal. Rptr. 2d 882 (1993); *County of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1320, 89 Cal. Rptr. 3d 374 (2009) (quoting *BRV, Inc. v. Superior Court*, 143 Cal. App. 4th 742, 751, 49 Cal. Rptr. 3d 519 (2006)). "Public records" are broadly defined under the CPRA to include "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Cal. Gov't Code § 6252 (e). As explained by one court, "[t]he mere custody of a writing by a public agency does not make it a public record, but if a record is kept by an officer because it is necessary or convenient to the discharge of his official duty, it is a public record." *Braun v. City of Taft*, 154 Cal. App. 3d 332, 340, 201 Cal. Rptr. 654 (1984); see also *Cal. State Univ. v. Superior Court*, 90 Cal. App. 4th 810, 824, 108 Cal. Rptr. 2d 870 (2001). Citing with approval an even broader definition of public records adopted by the Attorney General, another court has stated:

"This definition 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. Only purely personal information unrelated to 'the conduct of

the public's business' could be considered exempt from this definition, i.e., the shopping list phoned from home, the letter to a public officer from a friend which is totally void of reference to governmental activities.'

San Gabriel Tribune v. Superior Court, 143 Cal. App. 3d 762, 774, 192 Cal. Rptr. 415, 422 (1983) (internal citations omitted); see also *Versaci v. Superior Court*, 127 Cal. App. 4th 805, 813, 26 Cal. Rptr. 3d 92 (2005) (quoting *Coronado Police Officers Ass'n v. Carroll*, 106 Cal. App. 4th 1001, 1006, 131 Cal. Rptr. 2d 553 (2003) (citing with approval same definition)).

Nor do the records necessarily have to be in the agency's custody to be a public records as the CPRA applies to records prepared, owned or used by the agency. Cal. Gov't Code § 6252(e).

The definition of public records has been held not to include a database compiled and maintained by county public defender's office which primarily consisted of information from client files, as well as public records, because the core function of the records was to aid the public defender's office in representing indigent clients, which was a private function, not public. *Coronado Police Officers Ass'n v. Carroll*, 106 Cal. App. 4th 1001, 1008, 131 Cal. Rptr. 2d 553 (2003). Moreover, records maintained by a county auditor-controller for the court pursuant to contract whereby the county manages the court's budgetary and financial matters and where the contract provided that all documents shall remain the property of the court were held to fall outside the provisions of the CPRA as the courts are not subject to the CPRA. *Orange County Employees Ass'n v. Superior Court*, 120 Cal. App. 4th 287, 209, 15 Cal. Rptr. 3d 201 (2004); but see *Crews v. Superior Court*, 31 Med. L. Rptr. 1890 (Cal. App. Ct. 2003, unpublished) (holding that records used and retained by county in managing the court's finances pursuant to contract fell within the definition of public records and were required to be disclosed under CPRA).

"Public records' in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975." Cal. Gov't Code § 6252(e).

1. What kind of records are covered?

The CPRA defines "writing" as "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 combination thereof, and any record thereby created, regardless of the manner in which the record has been stored." Cal. Gov't Code § 6252(g). For example, in *Commission on Peace Officer Standards and Training*, 42 Cal. 4th 278, 288 n.3, 64 Cal. Rptr. 3d 661 (2007), the court stated that information stored in a computer database containing peace officer names, employing agency and employment dates qualified as a "writing" because "that term is defined broadly to include every 'means of recording upon any tangible thing any form of communication or representation ... and any record thereby created, regardless of the manner in which the record has been stored.'" (quoting Gov. Code § 6252(g)).

The CPRA applies to records an agency is legally required to maintain and also to those maintained at the agencies' own discretion and convenience unless a statute specifically provides otherwise. See, e.g., *Statewide Homeowners Inc. v. Williams*, 30 Cal. App. 3d 567, 570-71, 106 Cal. Rptr. 479 (1973) (by statute county assessor only required to make accessible those records legally required to be maintained). It also applies to records relating to the public's business prepared, owned or used by an agency even if the agency does not maintain the records. Cal. Gov't Code § 6252(e). The record, however, must be "identifiable" before an agency is required to make it available for inspection or copying. Cal. Gov't Code § 6253(b). The test for whether a record is "identifiable" is not the volume of records requested but whether they can be located with reasonable effort. *State Bd. of Equalization v. Superior Court*, 10 Cal. App. 4th 1177, 1186, 13 Cal. Rptr. 2d

342 (1992) (where court explained that CPRA's identification requirement may not be used by agency to withhold records).

Computer software developed by a state or local agency is not a public record. Cal. Gov't Code § 6254.9(a).

2. What physical form of records are covered?

The fact that public records may be stored in a computer does not affect their status as public records. Cal. Gov't Code § 6254.9(d). Section 6253.9 of the CPRA requires public agencies that have information which 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. Cal. Gov't Code § 6253.9. See, e.g., *County of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 89 Cal. Rptr. 3d 374 (2009) (upholding order requiring disclosure of county GIS basemap data over claims that disclosure would violate Federal Homeland Security Act and that data was exempt under the CPRA's "catchall" provision of Gov't Code Section 6255). This statute, effective January 1, 2001, supersedes portions of an earlier statute (Section 6253(b)) that allowed public agencies to determine the form in which computer data would be made available. See Cal. Att'y. Gen. Ops. No. 04-1105 (2005) (parcel boundary map data maintained by county assessor in an electronic format is disclosable in that format under CPRA).

Section 6253.9 further requires agencies to make the information available in any electronic format in which it holds the information, but does not require release of records in electronic format where "release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained." Cal. Gov't Code § 6253.9(f).

3. Are certain records available for inspection but not copying?

The right of access to public records means both the right to inspect records (Cal. Gov't Code § 6253(a)) and the right to obtain exact copies of them unless making exact copies is impracticable (Cal. Gov't Code § 6253(b)). At least one court has denied a requester's right to copy documents where they were available for inspection at the agency's office and the documents were voluminous (80,000) and costly to print and ship. *Rosenthal v. Hansen*, 34 Cal. App. 3d 754, 757, 761, 110 Cal. Rptr. 257 (1973); but see *CBS Broad. Inc. v. Superior Court*, 91 Cal. App. 4th 892, 909, 110 Cal. Rptr. 2d 889 (2001) (even if it would cost the Department of Social Services approximately \$43,000 to compile accurate list of every individual granted criminal conviction exemption to work in licensed day care facility and identity of each facility employing such individuals, cost was not valid reason to deny CPRA request); *Cal. First Amendment Coalition v. Superior Court*, 67 Cal. App. 4th 159, 166, 78 Cal. Rptr. 847 (1998) ("A clearly framed request which requires an agency to search an enormous volume of data for a 'needle in the haystack' or, conversely, a request which compels the production of a huge volume of material may be objectionable as unduly burdensome. [citations omitted] Records requests, however, inevitably impose some burden on government agencies. An Agency is obligated to comply so long as the record can be located with reasonable effort.").

D. Fee provisions or practices.

1. Levels or limitations on fees.

Section 6253(b) of the CPRA provides that "each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable." Cal. Gov't Code § 6253(b).

With respect to documents, "direct costs" means photocopying costs only. *North County Parents Org. v. Dept. of Ed.*, 23 Cal. App. 4th 144, 148, 28 Cal. Rptr. 2d 359 (1994). (The statutory history of the CPRA indicates that "'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.”) A statute which establishes a fee or provides authority to an agency to determine the charges for its records prevails over the CPRA. For example, the Department of Motor Vehicles has statutory authority, pursuant to Vehicle Code Section 1811, to charge flat fees for its records. *Shipper v. Dept. of Motor Vehicles*, 161 Cal. App. 3d 1119, 1127, 208 Cal. Rptr. 13 (1984); *see also* 85 Ops. Cal. Att’y. Gen. 225 (2002) (a county board of supervisors has statutory authority to charge a fee for a copy of a public record that exceeds the direct cost of duplication provided amount does not exceed that reasonably necessary to recover cost of providing the copy).

With respect to computer data, “direct costs” means the cost of “producing a copy of a record in an electronic format.” Cal. Gov’t Code § 6253.9(a)(2). Direct costs here presumably mean the cost of the disk. However, under the CPRA a requester may be required to bear the additional cost of “constructing 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.” Cal. Gov’t Code § 6253.9(b). *See* Ops. Cal. Att’y. Gen. 04-1105 (2005) (charge by county for furnishing a copy of parcel boundary map data maintained in electronic format by county assessor is generally limited to direct cost of producing the copy but if request is made at time other than when data periodically produced the charge may include cost to construct the record, cost of programming and computer services necessary to produce a copy, but the fee may not include expenses associated with initial gathering of information or with initial conversion or maintenance of information in electronic format).

2. Particular fee specifications or provisions.

a. Search.

Unlike the fee provision for copying public records, the CPRA contains no fee provision for inspecting records pursuant to Section 6253(a). Cal. Gov’t Code § 6253(a).

b. Duplication.

Section 6253(b) of the CPRA provides that absent a statute authorizing a different fee, an agency may charge an amount that covers only the direct costs of duplication. Cal. Gov’t Code § 6253(b); *see also North County Parents Org. v. Dept. of Ed.*, 23 Cal. App. 4th 144, 148, 28 Cal. Rptr. 2d 359 (1994) (where court disapproved of a 25 cent per-page fee that included not only copying costs but staff time involved in searching for the records, reviewing records for exempt information and deleting exempt portions).

c. Other.

Electronically Stored Public Records: See Section I. D. 1. above.

E-Mail Transmission Fees. Agencies transmitting public records via electronic transmission (e-mail) may require the requester to pay the direct costs associated with that transmission. Cal. Gov’t Code § 11104.5(b). No case has interpreted this provision, and generally agencies do not charge for e-mailing responsive documents.

3. Provisions for fee waivers.

The CPRA contains no provision for fee waivers; however, agencies may reduce or waive fees under the discretionary authority granted agencies under the CPRA to adopt requirements that provide greater access than the minimum standards set forth in the CPRA. Cal. Gov’t Code § 6253(e); *see also North County Parents Org. v. Dept. of Ed.*, 23 Cal. App. 4th 144, 148, 28 Cal. Rptr. 2d 359 (1994) (where court held agency had discretionary authority under the act to reduce or waive fee for duplicating public records).

4. Requirements or prohibitions regarding advance payment.

Section 6253(b) of the CPRA provides that unless otherwise statutorily exempt, an agency shall make public records promptly available to any person “upon payment of fees” covering the direct costs of duplication. Thus, once an agency determines how many pages are requested to be copied, it calculates the total amount due and payment is to be made prior to actual receipt of the copies. Cal. Gov’t Code § 6253(b).

5. Have agencies imposed prohibitive fees to discourage requesters?

Yes. Although the CPRA prohibits fees in excess of the “direct costs of duplication,” many agencies, especially at the local level, routinely overcharge. More problematic are the charges being sought in connection with electronic records. While costs for compiling or extracting and related programming necessary to produce electronic records not otherwise routinely generated by the agency are allowable under Section 6253.9 of the CPRA, such costs have often placed access beyond the reach of most requesters, with agencies often demanding many thousands of dollars for anticipated programming costs. It also has become a new way for agencies bent on nondisclosure to discourage requesters from pursuing their access rights.

E. Who enforces the act?

Under Section 6258 of the CPRA, “[a]ny person may institute proceedings for injunctive or declaratory relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter.” Cal. Gov’t Code § 6258. The plain meaning of this provision “contemplates a declaratory relief proceeding commenced only by an individual or entity seeking disclosure of public records, and not by the public agency from which disclosure is sought.” *Filarsky v. Superior Court*, 28 Cal. 4th 419, 426, 121 Cal. Rptr. 2d 844, 49 P.3d 194 (2002) (city may not initiate ordinary declaratory relief action to determine its obligation to disclose records to a member of the public as CPRA provides exclusive means for litigating question of whether records must be disclosed).

1. Attorney General’s role.

The CPRA does not appear to permit the Attorney General to initiate enforcement proceedings against a public agency to disclose public records unless the Attorney General has been denied access to public records.

2. Availability of an ombudsman.

Local ordinances governing access to public meetings and public records (commonly referred to as sunshine ordinances) often designate a particular information officer or other employee to field complaints regarding CPRA and Brown Act violations. Aggrieved individuals should ascertain whether their municipality has a sunshine ordinance and, if so, whether the ordinance designates such an individual.

3. Commission or agency enforcement.

Local ordinances governing access to public meetings and public records (commonly referred to as sunshine ordinances) often provide for administrative review of agency decisions, though determinations are generally recommendatory and unenforceable. Aggrieved individuals should ascertain whether their municipality has a sunshine ordinance and, if so, what procedures are provided for review of agency denials. Some state agencies may also have similar procedures for review of agency denials.

F. Are there sanctions for noncompliance?

The CPRA does not provide for sanctions for an agency’s noncompliance with its disclosure obligations. Reasonable attorneys’ fees and costs are mandatory to the prevailing plaintiff under Section 6259(d),

however. If an agency fails to obey a court order requiring disclosure of public records, contempt sanctions may be imposed, following a hearing on an order to show cause. Cal. Gov't Code § 6258.

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open records statute.

1. Character of exemptions.

While the number of exemptions under the CPRA have made it a far less powerful vehicle for public enlightenment than originally intended, it is important to remember that the CPRA sets merely the “minimum standard” public agencies must meet for disclosing public records. Unless a statute expressly prohibits disclosure, public agencies are free to allow greater access than allowed under the CPRA. Cal. Gov't Code § 6253(e) (“[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.”). Moreover, unless an express statutory provision makes the record exempt, it must be disclosed. *International Federation of Professional and Technical Eng. v. Superior Court*, 42 Cal. 4th 319, 329, 64 Cal. Rptr. 3d 693, 165 P.3d 488 (2007); *Commission on Peace Officer Standing and Training v. Superior Court*, 42 Cal. 4th 278, 288, 64 Cal. Rptr. 3d 661, 165 P.3d 462 (2007); *County of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1320, 89 Cal. Rptr. 3d 374 (2009); *BRI, Inc. v. Superior Court*, 143 Cal. App. 4th 742, 751, 49 Cal. Rptr. 3d 519 (2006); see also *Bakersfield City School Dist. v. Superior Court*, 118 Cal. App. 4th 1041, 1045, 13 Cal. Rptr. 3d 517 (2004) (“The CPRA embodies a strong policy in favor of disclosure of public records. Any refusal to disclose public information must be based on a specific narrowly construed exception to that policy.”); *Cal. State Univ. v. Superior Court*, 90 Cal.App.4th 810, 831, 108 Cal. Rptr. 2d 870 (2001) (same).

Moreover, exemptions are to be narrowly construed and public agencies bear the burden of proving that an exemption applies. *Int'l Federation*, 42 Cal. 4th at 329; *County of Santa Clara*, 170 Cal. App. 4th at 1321; *BRI, Inc. v. Superior Court*, 143 Cal. App. 4th 742, 756, 49 Cal. Rptr. 3d 519 (2006); *Bakersfield City School Dist.*, 118 Cal. App. 4th at 1045, *Cal. State Univ.*, 90 Cal. App. 4th at 831; see also *Lorig v. Medical Bd.*, 78 Cal. App. 4th 462, 467, 92 Cal. Rptr. 2d 862 (2000); *County of Los Angeles v. Superior Court*, 82 Cal. App. 4th 819, 825, 98 Cal. Rptr. 2d 564 (2000). Importantly, the Constitutional Sunshine Amendment mandates that “[a] statute, court rule or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access.” Cal. Const. Art. I, § 3(b)(2). Moreover, any new exemption adopted after the effective date of the Sunshine Amendment must be adopted “with findings demonstrating the interest protected by the limitation and the need for protecting that interest.” *Id.*

Additionally, public agencies cannot deny access merely because portions of a public record contain exempt information. Rather, Section 6253(a) requires that “[a]ny 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.” Cal. Gov't Code § 6253(a). *Commission on Peace Officer Standing and Training*, 42 Cal. 4th at 301-02; *American Civil Liberties Union Foundation v. Deukmejian*, 32 Cal. 3d 440, 453 n.13, 186 Cal. Rptr. 235, 651 P.2d 822 (1982); *Northern Cal. Police Practices Project v. Craig*, 90 Cal. App. 3d 116, 124, 153 Cal. Rptr. 173 (1979).

Public agencies may also waive exemptions by voluntarily or inadvertently disclosing a record otherwise exempt from disclosure by statute. Specifically, Section 6254.5 provides, in pertinent part, “whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law.” Cal. Gov't Code § 6254.5; *County of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1321-

22, 89 Cal. Rptr. 3d 374 (2009) (“Disclosure to one member of the public would constitute a waiver of the exemption [citation], requiring disclosure to any other person who requests a copy.” (citations omitted)); *City of San Jose v. Superior Court*, 74 Cal. App. 4th 1008, 1018, 88 Cal. Rptr. 2d 552 (1999); *Vallejos v. Cal. Hwy. Patrol*, 89 Cal. App. 3d 781, 152 Cal. Rptr. 846 (1979). There are, however, several statutory exceptions to waiver. See Cal. Gov't Code § 6254.5 (a)-(i); *Rackauckas v. Superior Court*, 104 Cal. App. 4th 169, 240, 128 Cal. Rptr. 2d 234 (2002) (no waiver for interagency disclosures made in confidence); *Michael P. v. Superior Court*, 92 Cal. App. 4th 1036, 1048, 113 Cal. Rptr. 2d 11 (2001) (same).

a. General or specific?

The CPRA has two types of exemptions: specific and general. Most exemptions are specific. However, there is a general type of exemption for records that may be withheld when, 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 “catchall” exemption is found in Government Code Section 6255. See, e.g., *International Federation of Professional and Technical Eng. v. Superior Court*, 42 Cal. 4th 319, 329, 64 Cal. Rptr. 3d 693, 165 P.3d 488 (2007) (describing nature of exemptions under CPRA).

b. Mandatory or discretionary?

The CPRA does not require an agency to withhold records merely because an exemption may be available pursuant to its provisions; the agency has discretionary authority to override statutory exemptions unless the contrary is clearly expressed. Cal. Gov't Code § 6253(e). Section 6253(e) provides that “[e]xcept 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.” See also *North County Parents Org. v. Dept. of Ed.*, 23 Cal. App. 4th 144, 148, 28 Cal. Rptr. 2d 359 (1994).

c. Patterned after federal Freedom of Information Act?

The CPRA is modeled after the federal Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, et seq. *Times Mirror Co. v. Superior Court*, 53 Cal. 3d 1325, 1338, 283 Cal. Rptr. 893, 813 P.2d 240 (1991); *Versaci v. Superior Court*, 127 Cal. App. 4th 805, 818, 26 Cal. Rptr. 3d 92 (2005); *Cal. State Univ. v. Superior Court*, 90 Cal. App. 4th 810, 823-24, 108 Cal. Rptr. 2d 870 (2001); *County of Los Angeles v. Superior Court*, 82 Cal. App. 4th 819, 825, 98 Cal. Rptr. 2d 564 (2000). The two Acts have similar policy objectives and should receive a parallel construction. *Cal. State Univ.*, 90 Cal. App. 4th at 823-24; *County of Los Angeles*, 82 Cal. App. 4th at 825; see also *City of Hemet v. Superior Court*, 37 Cal. App. 4th 1411, 1417 n.6, 44 Cal. Rptr. 2d 532 (1995). The application of this general rule, however, may turn on the language of the specific exemption at issue. For example, the California Supreme Court departed from the general rule in *Williams v. Superior Court*, 5 Cal. 4th 337, 19 Cal. Rptr. 2d 882, 852 P.2d 377 (1993), where it rejected the application of FOIA standards and held that the Legislature had made it clear in the language of the CPRA that the investigatory records exemption of Section 6254(f)(1) and (f)(2) should be construed literally and the cases interpreting FOIA were not to be followed in interpreting these provisions of the CPRA.

2. Discussion of each exemption.

Specific Exemptions Under 6254.

Section 6254 lists specific exemptions from disclosure that a public agency may rely upon to withhold particular records. These exemptions are listed in Section 6254 as subsection (a) through subsection (ac). They are permissive, not mandatory. The following provides the text of each exemption under Section 6254 and commentary thereon. Note, other statutory exemptions exist and are set forth in subsequent sections of the CPRA. Some of these are discussed separately below.

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

Comment: “The purpose of the exemption is to provide a measure of agency privacy for written discourse concerning matters pending administrative action.” *Citizens for a Better Environment v. Dept. of Food & Agric.*, 171 Cal. App. 3d 704, 711-12, 217 Cal. Rptr. 504 (1985). There are three statutory conditions for exemption under this subdivision: (1) The record sought must be a preliminary draft, note or memorandum; (2) of a type not retained by the public agency in the ordinary course of business; and (3) the public interest in withholding it must clearly outweigh the public interest in disclosure. *Id.* at 711-12. While the exemption serves to exempt from disclosure “pre-decisional writings containing advisory opinions, recommendations and policy deliberations,” the exemption does not apply to severable factual material contained in deliberative memoranda. *Id.* at 713.

In *Citizens For A Better Environment*, the plaintiff, a national environmental organization, sought disclosure of inspection and monitoring reports on county enforcement of pesticide-use laws. Since the documents were made in the course of a determinative process of evaluating the county’s compliance with the state’s criteria regarding pesticide law enforcement, the documents met the first criteria as “pre-decisional communications.” *Id.* at 510. While evidence regarding some of the documents sought supported a finding that they were discarded in the ordinary course of business and thus met the second criteria, an EPA memoranda retained in each county file did not. *Id.* In addressing the third criteria, the court said the phrase “public interest in withholding records” could not be construed to encompass any policy argument as with the catchall exemption under Section 6255, but only those objectives that advance the specific policy domain of subdivision (a) — fostering robust agency debate. *Id.* at 715-16.

In distinguishing factual as opposed to recommendatory content, the court said, “That a judgment (an opinion) is embedded in a statement that something is the case (the hallmark of a factual claim) obviously does not deprive it of its factual quality. It is only an opinion which is “recommendatory” that may be withheld.” *Id.* at 717; cf. *Times Mirror Co. v. Superior Court*, 53 Cal. 3d 1325, 1342, 813 P.2d 240, 283 Cal. Rptr. 893 (1991) (where under Section 6255’s catchall exemption the Court explained that even if the content of a document is purely factual, it would be nonetheless exempt from public scrutiny if it is actually related to the process by which policies are formulated or inextricably intertwined with the policy-making process.)

While this exemption was intended to protect the pre-decisional, deliberative processes in an agency’s drafts, notes or memoranda, a broader “deliberative process” exemption has now emerged under Section 6255’s catchall exemption, which arguably makes the exemption under subsection (a) of Section 6254 obsolete. See Section II. B. below for more on the deliberative process exemption.

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

Comment: The purpose of this exemption is to prevent a litigant from obtaining a greater advantage against a government entity than otherwise allowed under the rules of discovery. *Roberts v. City of Palm-dale*, 5 Cal. 4th 363, 373, 853 P.2d. 496, 20 Cal. Rptr. 2d 330 (1993). It applies only if the record was specifically prepared for use in litigation — mere relevancy to the litigation is not enough. *Bd. of Trustees of the Cal. State Univ. v. Superior Court*, 132 Cal. App. 4th 889, 897, 34 Cal. Rptr. 3d 82 (2005) (quoting *County of Los Angeles v. Superior Court*, 82 Cal. App. 4th 819, 830, 98 Cal. Rptr. 2d 564, 572 (2000) (where court remanded action for *in camera* determination of whether sheriff’s department’s over-detention reports, logs tracking erroneous releases and over-detentions, and Inmate Reception Center Task Force Report

were prepared by county for use in litigation); see also *City of Hemet v. Superior Court*, 37 Cal. App. 4th 1411, 1418-19, 44 Cal. Rptr. 2d 532 (1995) (where court concluded that internal investigation report of officer misconduct could not be withheld under pending litigation exemption because report was not prepared specifically for litigation; rejecting argument that documents relevant to later-instituted litigation should be exempt under pending litigation exemption); *Fairley v. Superior Court*, 66 Cal. App. 4th 1414, 1422, 78 Cal. Rptr. 2d 648 (1998) (where court remanded action for *in camera* determination of whether pre-litigation arrest records of plaintiff were prepared in anticipation of litigation).

This exemption protects not only attorney work product or documents protected by the attorney-client privilege, but also the work product of public agencies generated in anticipation of litigation. *Bd. of Trustees of the Cal. State Univ.*, 132 Cal. App. 4th at 898 (citing *Fairley*, 66 Cal. App. 4th at 1422 n.5); see also *Roberts*, 5 Cal. 4th at 373. While, generally, the exemption protects only documents prepared by or on behalf of the agency (see *Farley*, 66 Cal. App. 4th at 1504), it also protects correspondence between opposing counsel and parties when sought by nonparties to the action and when the parties do not intend the correspondence to be revealed outside of the litigation. *Id.* at 894.

Once the litigation is over, records not otherwise independently protected from disclosure (i.e., attorney-client documents) must be disclosed. See, e.g., *City of Los Angeles v. Superior Court*, 41 Cal. App. 4th 1083, 49 Cal. Rptr. 2d 35 (1996) (depositions in concluded action against city not exempt from disclosure); *Register Division of Freedom Newspapers v. County of Orange*, 158 Cal. App. 3d 893, 909, 205 Cal. Rptr. 92 (1984) (documents pertaining to settlement of personal injury claim against public entity, including but not limited to settlement agreement itself, were subject to disclosure).

Deposition transcripts are not exempt from disclosure under this subdivision because they are available under another statutory provision absent a protective order. *Bd. of Trustees of the Cal. State Univ.*, 132 Cal. App. 4th at 901 (citing Cal. Civ. Proc. Code § 2025.570). Claims filed against a public agency under California’s Tort Claims Act are not exempt from disclosure under this subdivision. *Poway Unified Sch. Dist. v. Superior Court*, 62 Cal. App. 4th 1496, 1505, 73 Cal. Rptr. 2d. 777 (1998); see also 71 Ops. Cal. Att’y. Gen. 235, 238 (1988).

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

Comment: In enacting the CPRA the Legislature was mindful of the right of individuals to privacy. See Cal. Gov’t Code § 6250 (“In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.”). Likewise, the Constitutional Sunshine Amendment provides, “Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule or other authority to the extent that it protects that right to privacy” Cal. Const. Art. I, § 3(b) (3). Thus, disclosure of public records requires the balancing of two fundamental yet competing public interests: “the public’s interest in disclosure and the individual’s interest in personal privacy.” *International Federation of Professional and Technical Engineers v. Superior Court*, 42 Cal.4th 319, 329-30, 64 Cal.Rptr.3d 693, 165 P.3d 488 (2007); *Commission on Peace Officer Standards and Training v. Superior Court*, 42 Cal.4th 278, 299, 64 Cal. Rptr. 3d 661, 165 P.3d 462 (2007); see also *Versaci v. Superior Court*, 127 Cal. App. 4th 805, 813, 26 Cal. Rptr. 3d 92 (2005) (quoting *Gilbert v. City of San Jose*, 114 Cal. App. 4th 606, 613, 7 Cal. Rptr. 3d 692 (2003)).

Generally, the purpose of the exemption for private records embodied in subdivision (c) is to “protect information of a highly personal nature which is on file with a public agency” The exemption “typically appl[ies] to employee’s personnel folders or sensitive personal information which individuals *must* submit to government.” *San*

Gabriel Tribune v. Superior Court, 143 Cal. App. 3d 762, 777, 192 Cal. Rptr. 415 (1983). As courts have stated, “one does not lose his [or her] right to privacy upon accepting public employment . . .” *Versaci*, 127 Cal. App. 4th at 818 (quoting *New York Times Co. v. Superior Court*, 52 Cal. App. 4th 97, 100, 60 Cal. Rptr. 2d 410 (1997)). For example, in *Versaci*, the court held that the personal performance goals of a former superintendent of a community college district established each year between the superintendent and the board and maintained as confidential as part of her personnel file were exempt from disclosure under this subdivision. *Id.* at 818-22.

In determining whether the exemption applies, courts may look to the factors necessary to establish an invasion of a constitutional right of privacy. *Int'l Federation*, 42 Cal.4th at 330 n.3 (while recognizing that review of the factors might be helpful in a particular case, Court explained that intrusion upon a privacy interest need not rise to the level of an invasion of a constitutional right of privacy to be recognized under 6254(c)). That test requires a showing of: (1) a legally protected privacy interest; (2) a reasonable expectation of privacy; and, (3) a serious invasion of privacy. *Hill v. National Collegiate Athletic Ass'n*, 7 Cal.4th 1, 39-40, 26 Cal. Rptr. 2d 834, 865 P.2d 633 (1994) (applying test in invasion of privacy case); *Int'l Federation*, 42 Cal.4th at 330-31 (recognizing privacy interest in personal financial information but holding that expectation of privacy over salary earned in public employment was not reasonable); *Braun v. City of Taft*, 154 Cal. App. 3d 332, 347, 201 Cal. Rptr. 654 (1984) (applying *Hill* test in determining whether disclosure required under CPRA); *cf. Versaci*, 127 Cal. App. 4th at 818 (applying three-part determination that: (1) the document sought constitutes a personnel file, medical file or other similar file; (2) disclosure would compromise substantial privacy interests; and, (3) the potential harm to the privacy interests outweighs the public interest in disclosure).

Personnel Files: Personnel files are not *per se* exempt from disclosure. However, portions may be exempt if disclosure constitutes an “unwarranted invasion of privacy.” See *Braun*, 154 Cal. App. 3d at 347. The *Braun* court recognized that the “personnel” exemption was developed to “protect intimate details of personal and family life, not business judgments and relationships.” *Braun*, 154 Cal. App. 3d at 343-44; see also *Bakersfield City School Dist. v. Superior Court*, 118 Cal. App. 4th 1041, 1045, 13 Cal. Rptr. 3d 517 (2004) (same). In *Braun*, the court found that disclosure of two letters from a public employee’s personnel file, one appointing him to a position and another rescinding the appointment, did not constitute such an invasion because the letters contained no private information. *Id.* at 344. The court explained that although the reclassification may be embarrassing to an individual, the letters manifested his employment contract, and in California public employment contracts are public records that may not be considered exempt. *Id.* Nor was disclosure of the employee’s address, birth date and Social Security number prohibited by the right of privacy under Article I, Section 1 of the California Constitution. *Id.* at 347.

In *CBS Broad. Inc. v. Superior Court*, 91 Cal. App. 4th 892, 907, 110 Cal. Rptr. 2d 889 (2001), the court held that the privacy exemption did not exempt from public disclosure the identity of individuals granted criminal conviction exemption to work in a licensed child day care facility and the identity of each facility employing such individuals because this information was a matter of public record. In *Cal. State Univ. v. Superior Court*, 90 Cal. App. 4th 810, 834, 108 Cal. Rptr. 2d 870 (2001), the court held that individuals who purchased luxury suites in an arena being built on university campus entered into “public sphere” and by doing so “voluntarily diminished their own privacy interest” such that their names and license agreements were not exempt from disclosure under the CPRA. In *Lorig v Medical Bd.*, 78 Cal. App. 4th 462, 468, 92 Cal. Rptr. 2d 862 (2000), the court held that it was not an unwarranted invasion of privacy to disclose the home addresses of state-employed physicians who voluntarily used their home address as their “address of record.” See also *ANG Newspapers v. Union City*, 33 Med. L. Rptr. 2069 (Cal. Sup. Ct. 2005) (granting access to morale and job satisfaction report by outside consultant of city fire depart-

ment); *Merced Sun-Star v. County of Merced*, 32 Med. L. Rptr. 1703 (Cal. Sup. Ct. 2004) (granting access to redacted report held by county since report not personnel record and disclosure would not constitute unwarranted invasion of personnel privacy).

Employee Wrongdoing: While documents relating to employee wrongdoing may be contained in personnel files, they must be disclosed if they “reveal allegations of a substantial nature, as distinct from baseless or trivial, and there is reasonable cause to believe the complaint is well-founded . . .” *Bakersfield City School Dist. v. Superior Court*, 118 Cal. App. 4th 1041, 1046, 13 Cal. Rptr. 3d 517 (2004) (citing *American Federation of State, County and Municipal Employees v. Regents of Univ. of Cal.*, 80 Cal. App. 3d 913, 146 Cal. Rptr. 42 (1978)). Under such circumstances, the public employee privacy must give way to the public interest in disclosure of public employee wrongdoing. *Id.* In determining whether the complaint is well founded, the trial court does not determine the veracity of the underlying complaint but reviews the documents to determine whether “they reveal sufficient indicia of reliability to support a reasonable conclusion that the complaint was well-founded.” *Id.* at 1047. See also *Sacramento Area Fire Fighters Local 522 v. City of Sacramento*, 33 Med. L. Rptr. 1147 (Cal. Sup. Ct. 2004); *Cal. Ass’n of Prof’l Scientists v. Dept. of Health Services*, 31 Med. L. Rptr. 1986 (Cal. Sup. Ct. 2003).

Where the allegations of wrongdoing are against a public figure, public official, such as a school district superintendent, as opposed to a nonpublic figure, public official, a lesser standard of reliability is applied in reviewing the records. *BRV, Inc. v. Superior Court*, 143 Cal.App.4th 742, 759, 49 Cal.Rptr.3d 519 (2006). This is so because public officials have significantly reduced expectations of privacy in their public employment. *Id.* at 758 (“The potential injury here is to his reputation, but as a public official, he knew his performance could be the subject of public, ‘vehement, caustic, and sometimes unpleasantly sharp attacks....’”) (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964)). Thus, the court in *BRV* reviewed a report against a school superintendent accused of verbally abusing students and sexually harassing female students and said “it could not conclude the allegations were so unreliable the accusations could not be anything but false.” *Id.* at 758-59.

Salary Information: The public has a right of access to public employee exact salary information under the CPRA. See *Int'l Federation*, 42 Cal.4th at 329. Without deciding whether a public entity’s payroll expenditure information constitutes “personnel . . . or similar files” under Section 6254(c), the Court in *Int'l Federation* held that disclosure of exact salary information was nonetheless compelled because disclosure would not constitute an “unwarranted invasion of personal privacy.” *Id.* at 329 (quoting Cal. Gov’t § 6254(c)). In so holding, the Court explained that while disclosure may cause “discomfort or embarrassment . . . an individual’s expectation of privacy in a salary earned in public employment is significantly less than the privacy expectation regarding income earned in the private sector.” *Id.* at 331. The Court also noted that “[c]ounterbalancing any cognizable interest that public employees may have in avoiding disclosure of their salaries is the strong public interest in knowing how the government spends its money.” *Id.* at 333. Access to public records, the Court said, “makes it possible for members of the public ‘to expose corruption, incompetence, inefficiency, prejudice, and favoritism.’” *Id.* at 333 (quoting *NBC Subsidiary, Inc. v. Superior Court*, 20 Cal.4th 1178, 1211 n.28, 86 Cal.Rptr.2d 778, 980 P.2d 337 (1999)).

The Court also discounted an earlier case decided at the preliminary injunction stage that had supported the notion that public employees may have, under certain circumstances, a reasonable expectation of privacy in their exact salaries. *Id.* at 335 (concluding that *Priceless*, 112 Cal. App. 4th 1500, was of slight precedential value because of the limited trial court record and posture of the case). It also expressly disagreed with *Priceless* to the extent its holding can be read to stand for the proposition that the practice of a particular governmental agency in refusing to disclose salary information can create a privacy interest in those records. *Id.* at 336.

Cases decided before *Int'l Federation* also supported the notion that exact salary information of public employees is not exempt under the CPRA. See *Braun*, 154 Cal. App. 3d at 338-40 (holding that trial court was within its discretion to find that disclosure of salary card of transit administrator was not an unwarranted invasion of personal privacy); *Bakersfield California v. Kern*, 31 Med. L. Rptr. 1728 (Cal. Sup. Ct. 2002) (ruling that 6254(c) does not exempt from disclosure names of and compensation paid to firefighters, sheriff's deputies and police officers since information does not constitute "personnel" information with meaning of exemption and since compelling reasons support disclosure); 60 Ops. Cal. Att'y. Gen. 110 (1977); 68 Ops. Cal. Att'y. Gen. 73 (1985); see also Cal. Gov't Code § 54957 (prohibiting local public agencies from conducting closed session meetings to discuss or act on proposed compensation "except for a reduction of compensation that results from the imposition of discipline."); *San Diego Union v. City Council*, 146 Cal. App. 3d 947, 955, 196 Cal. Rptr. 45 (1983) (upholding trial court order enjoining city council from holding closed sessions on salaries of nonelected city employees).

Under Section 6254.8 of the CPRA, every public employment contract between a state or a local agency and any public official or public employee is a public record. Cal. Gov't Code § 6254.8; see *Priceless*, 112 Cal. App. 4th at 1517-18 (holding this provision did not apply to compel individualized salary information of most classified civil service employees because their employment is pursuant to statute not contract).

Police Records: Disclosure of police officer personnel records are regulated by both California's Evidence Code and Penal Code. See Cal. Penal Code §§ 832.5, 832.7, 832.8 and Cal. Evid. Code §§ 1043-1046; see, e.g., *Copley Press, Inc. v. Superior Court*, 39 Cal.4th 1272, 1284, 48 Cal. Rptr.3d 183, 141 P.3d 288 (2006) (records of a county civil service commission relating to a peace officer's administrative appeal of a disciplinary matter were exempt under Penal Code Section 832.7, protecting peace officer personnel records); *San Diego Police Officers Ass'n v. City of San Diego Civil Service Commission*, 104 Cal. App. 4th 275, 128 Cal. Rptr. 2d 248 (2002) (provisions governing peace officer personnel records precluded disclosure of peace officer personnel records at public administrative appeal of disciplinary decision if disclosure objected to by officer); *City of Hemet v. Superior Court*, 37 Cal. App. 4th 1411, 1431, 44 Cal. Rptr. 2d 532 (1995) (records relating to allegations of police misconduct fell within protections of peace officer personnel records); *Fagan v. Superior Court*, 111 Cal. App. 4th 607, 618-19, 4 Cal. Rptr. 3d 239 (2003) (officers' urinalysis test results taken in connection with an administrative investigation of officer's off-duty conduct fell within protections of peace officer personnel records).

The Constitutional Sunshine Amendment expressly maintains these privacy protections for peace officers. Cal. Const. Art. I, § 3(b) (3). However, not all police officer information is subject to these provisions or the protections of this subdivision. Indeed, in *Commission on Peace Officer Standards and Training v. Superior Court*, 42 Cal.4th 278, 64 Cal. Rptr.3d 661, 165 P.3d 462 (2007), the Court made clear that these statutes cannot be interpreted as reaching beyond their clear language and purpose, and cannot be used as a justification for withholding basic information about the state's law enforcement officers:

The public's legitimate interest in the identity and activities of peace officers is even greater than its interest in those of the average public servant. 'Law enforcement officers carry upon their shoulders the cloak of authority to enforce the laws of the state. In order to maintain trust in its police department, the public must be kept fully informed of the activities of its peace officers.'

42 Cal. 4th at 297 (emphasis added) (quoting *New York Times v. Superior Court*, 52 Cal. App. 4th 97, 104-105, 60 Cal. Rptr. 2d 410 (1997)). Thus, the Court held that police officer names, employing agency, and employment dates in a database maintained by the commission was not confidential under Sections 832.7 or 832.8, and disclosure would not constitute an unwarranted invasion of personal

privacy under Section 6254(c). *Id.* at 294, 299-303. And in *Int'l Federation*, 42 Cal.4th at 343-46, the Court rejected the argument that individual salary information of police officers was confidential as part of their "personnel records" under Section 832.7.

Names of police officers who fired their weapons at civilians while engaged in the performance of their duties also have been held not to be private information under these Penal Code provisions. *New York Times Co. v. Superior Court*, 52 Cal. App. 4th 97, 104, 60 Cal. Rptr. 2d 410 (1997) ("Fear of possible opprobrium or embarrassment is insufficient to prevent disclosure."); but see *Copley Press*, 39 Cal.4th at 1298 (disapproving *New York Times* to extent inconsistent with its holding, and criticizing the court's "unsupported assertion" that police officer names are not confidential as part of their personnel file, "at least insofar as it applies to disciplinary matters like the one at issue here."). Following the decision in *Commission on Peace Officers Standard and Training*, and taking into account the decision in *Copley Press*, the California Attorney General concluded in 2008 that these provisions do not shield the names of peace officers involved in critical incidents, and that the information must be disclosed in response to a CPRA request unless the proponents of secrecy show that the harm of disclosure clearly outweighs the benefits of public access in a specific case – generally, in those situations where peace officers are currently working undercover. 91 Ops. Cal. Atty. Gen.11 (May 19, 2008).

Disclosure of information in violation of the statutory procedures governing disclosure of peace officer personnel records has been determined not to give rise to a private right of action. *Rosales v. City of Los Angeles*, 82 Cal. App. 4th 419, 428, 98 Cal. Rptr. 2d 144 (2000).

Job Applications: With respect to job applications and resumes of public employees, the court in *Eskaton Monterey Hospital v. Myers*, 134 Cal. App. 3d 788, 794, 184 Cal. Rptr. 840 (1982), said that "information as to the education, training, experience, awards, previous positions and publications of the (employee) . . . is routinely presented in both professional and social settings, is relatively innocuous and implicates no applicable privacy or public policy exemption." Additionally, job applications and resumes of those actually chosen for the job, are not exempt from disclosure. But applications and resumes pertaining to others in the pool of applicants may be exempt from disclosure under the deliberative process privilege, discussed below at II.B.

Medical Records: Generally, medical records are the type of records that are exempt from disclosure under 6254(c). However, medical records of a tort claimant against a county are not exempt from disclosure since by making the claim, the claimant places his or her alleged physical injuries, and medical records substantiating them, in issue and tacitly waives any expectation of privacy with respect to them. *Register Div. of Freedom Newspapers Inc. v. County of Orange*, 158 Cal. App. 3d 893, 902, 205 Cal. Rptr. 92 (1984). Because the county used the records in arriving at its decision to settle the claim, the court in *Register Div. Of Freedom Newspapers, Inc.* said the county could not hide behind the claimant's privacy to justify its concealment of the records from public scrutiny. *Id.*

"No provider of health care, health care service plan or contractor" may disclose medical information without patient or guardian authorization. Cal. Civ. Code § 56.10; see also The Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. § 1320d (governing use and disclosure by a covered entity of personally identifiable health care information relating to an individual).

Financial Data: Financial data submitted by a waste disposal firm to a city, which the city relied on in granting a rate increase pursuant to an exclusive contract between the city and the company, was not exempt from disclosure under Section 6254(c) where the city publicly based its decision to permit the company to increase rates based upon the financial data it submitted. The data thereby lost its exempt status. *San Gabriel Tribune*, 143 Cal. App. 3d at 775; see also *Cal. State Univ.*, 90 Cal. App. 4th at 834 (rejecting argument that disclosure of names of those who purchased luxury suites at arena being built on university property would violate individuals' right to privacy in their financial

dealings).

(d) Contained or related to:

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

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

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

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

Comment: There are no California reported court decisions interpreting Section 6254(d). Cases decided under the companion section of the federal Freedom of Information Act, 5 U.S.C. § 552(b)(8), generally apply this exemption liberally in favor of nondisclosure. One federal appeal court has even held that financial reports concerning a closed bank require the same protection from disclosure as those of an operating bank. *Gregory v. Federal Deposit Insurance Corp.*, 631 F.2d 896, 203 U.S. App. D.C. 314 (D.C. Cir. 1980).

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

Comment: There are no California reported court decisions interpreting Section 6254(e).

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. However, state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951 [crime involving injury or death to victim compensated under crime victim's bill of rights law], unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files which reflect the analysis or conclusions of the investigating officer.

Customer list provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision.

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

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and

date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of the Penal Code [various sex crimes] may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined in any of the sections of the Penal Code set forth in this subdivision may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(3) Subject to the restrictions imposed by Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with § 7512) of Division 3 of the Business and Professions Code. However, the address of the victim of any crime defined by Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statute of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph may not be used directly or indirectly, or furnished to another, to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury. Nothing in this paragraph shall be construed to prohibit or limit a scholarly, journalistic, political or government use of address information obtained pursuant to this paragraph.

Comment: The cumbersome "investigatory records" exemption is one of the most litigated exemptions of the CPRA, and it is with investigatory records of law enforcement agencies that the public's right to access is the most limited. Unlike other exemptions under the CPRA, which simply set forth discretionary exemptions, the investigatory records exemption contains three categories of information: that which an agency may withhold, that which must be disclosed and that which is expressly exempt from the mandatory disclosure provisions. See *Williams v. Superior Court*, 5 Cal. 4th 337, 349, 852 P.2d 377, 19 Cal. Rptr. 2d 882 (1993). Under this exemption, unless the requester has a specific interest in the investigatory report (such as being the victim), an agency may, in the exercise of its discretion, withhold the actual records pertaining to its investigatory functions, but it must extract specific information from those records and make that information

available to the public.

In 1993, the California Supreme Court decided what was the first in a series of cases that have limited the public's right of access to investigatory records and files. In *Williams*, a newspaper waited until after the completion of a criminal prosecution before requesting copies of criminal investigation records. Although there was no pending criminal investigation, the California Supreme Court held that unlike the Federal Freedom of Information Act ("FOIA") investigatory records exemption, which does not exempt records of closed investigations, the CPRA exemption "does not terminate with the conclusion of the investigation." *Id.* at 361-62. Moreover, the Court explained that "[o]nce an investigation . . . has come into being because there is a concrete and definite prospect of enforcement proceedings at that time, material that relate to the investigation and, thus, properly belong in the file, remain exempt subject to the terms of the statute." *Id.* In rejecting FOIA standards for interpreting Section 6254(f), the *Williams* Court limited access to investigatory records by holding that the public has a statutory right of access only to that information which is set forth with particularity in Sections 6254(f)(1) and 6254(f)(2), as long as the disclosure of that information would not endanger the safety of an individual involved in the investigation or would not jeopardize the successful completion of the investigation or a related investigation. *Id.* at 354; see also *Rivero v. Superior Court*, 54 Cal. App. 4th 1048, 63 Cal. Rptr. 2d 213 (1997) (where court held district attorney's investigatory file in concluded investigation was not subject to disclosure under the CPRA, and city's sunshine laws, which allowed for disclosure of closed investigation files, had to yield to state statute prohibiting interference with district attorney's investigatory and prosecutorial functions).

While the prospect of law enforcement must be "concrete and definite" before investigatory files may be withheld under the exemption, this standard was held inapplicable to investigatory records, which have an independent claim to exempt status under the statute. In holding as exempt from disclosure citizen reports and police radio calls following a routine police stop that resulted in no arrest, the California Supreme Court in *Haynie v. Superior Court*, 26 Cal. 4th 1061, 1070, 112 Cal. Rptr. 2d 80, 31 P.3d 760 (2001), reasoned that limiting the exemption "only to records of investigations where the likelihood of enforcement has ripened into something concrete and definite would expose to the public the very sensitive investigative stages of *determining* whether a crime has been committed or who has committed it."

Further defining the exemption broadly, the court in *Dixon v. Superior Court*, 170 Cal. App. 4th 1271, 1276, 88 Cal. Rptr.3d 847 (2009), held that an autopsy report produced by a coroner's inquiries into a suspected homicide where there exists the definite prospect of law enforcement is an investigatory file compiled for law enforcement purposes within the meaning of Section 6254(f). In so holding, the court recognized that a coroner's office that compiles investigatory files for law enforcement purposes is entitled to assert the exemption even if it is not itself the police or law enforcement agency since it is an "other . . . local agency" that compiled the files for "law enforcement . . . purposes." *Id.*

Similarly defining the exemption broadly, the court in *State Office of the Inspector General v. Superior Court*, 189 Cal. App. 4th 695, 709, 117 Cal. Rptr. 3d 388 (2010), held, in what could be characterized as dicta, that investigatory materials underlying a public report of the Office of Inspector General into the parole supervision by the Department of Corrections and Rehabilitation of a defendant charged with kidnapping, raping and holding hostage for 18 years a female minor, were exempt as "investigatory files compiled by a state agency for correctional purposes." Because the underlying investigation of the parole supervision carried with it the possibility of criminal prosecution, the court said the prospect of "enforcement proceedings was concrete and definite when the investigation was launched." *Id.* at 709-10.

Also in *Rackauckas v. Superior Court*, 104 Cal. App. 4th 169, 179, 128 Cal. Rptr. 2d 234 (2002), the court held that a letter prepared by the district attorney after the conclusion of its investigation of alleged po-

lice misconduct and which contained the DA's conclusions fell within the investigatory records exemption because the statute contains no exception for post-investigation records and because the letter related exclusively to the investigation.

The courts have narrowly defined that which must be disclosed under Section 6254(f)(1) and (f)(2). For example, in *County of Los Angeles v. Los Angeles Superior Court (Kusar)*, 18 Cal. App. 4th 588, 599, 22 Cal. Rptr. 2d 409 (1993), the court held that disclosure of arrest information was limited to *current* information and records of matters described in the statute, such as information contained in incident logs and booking sheets recording the daily investigatory and arrest activity of local police departments, pertaining to *contemporaneous* police activity and did not apply to a request for arrest information of two police officers going back ten years.

Nevertheless, to be exempt, the investigatory, security, intelligence or complaint records must be compiled by the agency for correctional, law enforcement or licensing purposes. See, e.g., *Uribe v. Howie*, 19 Cal. App. 3d 194, 112-13, 96 Cal. Rptr. 493 (1971) (where court held that county agricultural commissioner could not withhold mandatory reports filed by farmers who had sprayed pesticides in the area by labeling the files investigatory for licensing purposes when licensing was not the primary purpose for which the files were compiled and when the files were not being used for investigation purposes at the time of trial).

The United States Supreme Court has upheld the facial constitutionality of subsection (f)(3), which allows for the disclosure of the addresses of arrestees and victims of crimes, other than those specified, for scholarly, journalistic, political, governmental or investigative purposes by a licensed private investigator, but precludes disclosure of such information for commercial purposes. See *Los Angeles Police Dept. v. United Reporting Pub. Corp.*, 528 U.S. 32, 120 S.Ct. 483, 488, 145 L.Ed. 2d 451 (1999). The United States Supreme Court, however, noted that the constitutionality of the provision as applied to respondent, a publishing company that provides the names and addresses of arrested individuals to its customers, remained open on remand. See *United Reporting Pub. Corp. v. Cal. Hwy. Patrol*, 231 F.3d 483 (9th Cir. 2000).

It is important to note that each piece of information requested that is enumerated in Section 6254(f) must be considered and analyzed separately by the agency. A law enforcement agency, like any other agency subject to the provisions of the CPRA, bears the burden of justifying its refusal to disclose otherwise public records with regard to each separate piece of information requested (i.e., name, the factual circumstances surrounding the arrest, the charges, etc.).

(g) *Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of Division 14 of Title 3 of the Education Code.*

Comment: The Education Code sections referred to in this subsection address standardized tests for admission to post-secondary institutions, such as the Scholastic Aptitude Test (SAT) and similar examinations. Copies of tests, answers, scores and related documents and information that are required to be filed with the California Post-Secondary Education Commission are exempt from disclosure under this subsection.

(b) *The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.*

Comment: There are no reported cases discussing this exemption.

(i) *Information required from any taxpayer in connection with the col-*

lection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

Comment: There are no reported cases discussing this exemption.

(j) *Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and the library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.*

Comment: There are no reported cases discussing this exemption.

(k) *Records the disclosure of which is exempted or prohibited pursuant to the provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.*

Comment: This subdivision is not an independent exemption but merely incorporates other prohibitions established by law. *Copley Press, Inc. v. Superior Court*, 39 Cal.4th 1272, 1283, 48 Cal. Rptr. 3d 183, 141 P.3d 288 (2006); *CBS Broad. Inc. v. Superior Court*, 91 Cal. App. 4th 892, 906, 110 Cal. Rptr. 2d 889 (2001) (quoting *CBS Inc. v. Block*, 42 Cal.3d 646, 656, 230 Cal. Rptr. 362, 725 P.2d 470 (1986)). Statutes regulating various agencies, commissions and public offices often designate specific records as confidential. Additionally, Sections 930 through 1061 of the Evidence Code set forth the various privileges from compelled disclosure available to litigants in civil and criminal trials. These statutes and privileges may be asserted, where applicable, by a public agency under Section 6254(k).

For example, pursuant to Evidence Code Sections 950 through 962, a public agency has an attorney-client privilege in confidential communications between itself and its attorneys. The California Supreme Court held that this exemption covers communications that are made between a public agency and its attorneys during pending litigation as well as those made at other times. *Roberts v. City of Palmdale*, 5 Cal. 4th 363, 371, 20 Cal. Rptr. 2d 330, 853 P.2d 496 (1993). One court also has held that the privilege is not waived by disclosure to successful bidder of a privileged memorandum and transmittal letter prepared by county counsel where disclosure was reasonably necessary to further interests of both parties in finalizing negotiations. *STI Outdoor v. Superior Court*, 91 Cal. App. 4th 334, 341, 109 Cal. Rptr. 2d 865 (2001).

The qualified trade secret, official information and attorney work-product privilege, which covers the research, impressions, notes and conclusions of an attorney, may be asserted through Section 6254(k).

In an effort to identify the numerous statutes that are incorporated in this subdivision, the Legislature enacted Section 6275, which provides that after January 1, 1999, each addition or amendment to a statute that exempts any information contained in a public record from disclosure pursuant to subdivision (k) of Section 6254 shall be listed and described in Article 2, Section 6276.02-6276.48. Cal. Gov't Code § 6275.

(l) *Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's Legal Affairs Secretary. However, public records shall not be transferred to the custody of the Governor's Legal Affairs Secretary to evade the disclosure provision of this chapter.*

Comment: This exemption is designed to protect from disclosure communications to the Governor and members of the Governor's staff from correspondents outside of government. *Cal. First Amendment Coalition v. Superior Court*, 67 Cal. App. 4th 159, 168, 78 Cal. Rptr. 2d 847 (1998). In *Times Mirror Co. v. Superior Court*, 53 Cal. 3d 1325, 1337, 813 P.2d 240, 283 Cal. Rptr. 893 (1991), the California Supreme Court held that the Governor's daily, weekly and monthly calendars and schedules were not exempt under this subsection, which the Court said was confined to "communications by letter." However, the Court in *Times Mirror* found such documents to be exempt under the "deliberative process" exemption under Government Code Sec-

tion 6254(a). *Id.* at 1344.

Expanding the exemption beyond strictly "communications by letters," the appellate court in *Cal. First Amendment Coalition*, 67 Cal. App. 4th at 169, held that application forms as well as letters received by the Governor's office from applicants for appointment to a vacant supervisor position fell within the correspondence exemption.

(m) *In the custody of or maintained by the Legislative Counsel, except those records in the public database maintained by the Legislative Counsel that are described in [Government Code] Section 10248.*

Comment: There are no reported cases discussing this exemption.

(n) *Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license certificate, or permit applied for.*

Comment: There are no reported cases discussing this exemption.

(o) *Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application which are subject to disclosure under this chapter.*

Comment: If a private party seeks financial assistance from the California Pollution Control Financing Authority in order to implement a pollution control project, the financial information concerning the private party would presumably be exempt from disclosure, while other information would not.

(p) *Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories or strategy, or that provide instruction, advice or training to employees who do not have full collective bargaining and representation rights under these chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.*

Comment: The referenced statutes are provisions of the Government Code relating to state employer-employee relations. The representatives of a state agency need not disclose to the public records concerning their tactics, analysis or strategy in employee relations.

(q) *Records of state agencies related to the activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories or strategy, or that provide instruction, advice or training to employees.*

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. If a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient services, those contracts shall be open to inspection one year after they are fully

executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provisions of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee and the Legislative Analyst's Office. The committee and that office shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.

Comment: The statutes cited in Section 6254(q) refer to special negotiators who represent the State in the Medi-Cal program.

(r) Records of Native American graves, cemeteries and sacred places and records of Native American places, features, and objects described in Section 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency.

Comment: There are no reported cases discussing this exemption.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Care Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

Comment: A health care facility must transmit a copy of the Joint Commission's report on an inspection of its facility to the state if the commission is simultaneously conducting a quality of care inspection of the facility.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Part 2 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

Comment: There are no reported cases discussing this exemption.

(u)(1) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(2) The home address and telephone number of peace officers, judges, court commissioners and magistrates that are set forth in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(3) The home address and telephone number of peace officers, judges, court commissioners and magistrates that are set forth in licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff or a county or the chief or other head of a municipal police department.

Comment: This Section requires the licensing agency to segregate exempt from non-exempt material. See Cal. Gov't Code § 6257. Except for the information specifically exempted, the remainder of the application should be made available. *CBS Inc. v. Block*, 42 Cal. 3d 646, 652-53, 725 P.2d 470, 230 Cal. Rptr. 362 (1986). However, even under *CBS Inc.*, information contained in an application that would reveal intimate details of a person's medical or family circumstances may also be deleted prior to release of the record.

(v)(1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695),

and Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), and Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code, and that reveal any of the following:

(A) The deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board, entities with which the board is considering a contract, or entities with which the board is considering or enters into any other arrangement under which the board provides, receives, or arranges services or reimbursement.

(B) The impressions, recommendations, meeting minutes, research, work product, theories or strategy of the board or its staff, or records that provide instruction, advice or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.3 (commencing with Section 12695), Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after their effective dates.

(B) If a contract that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion of the contract containing the rates of payment, shall be open to inspection one year after the effective date of the amendment.

(3) Three years after a contract or amendment is open for inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

Comment: There are no reported cases discussing this exemption.

(w)(1) Records of the Managed Risk Medical Insurance Board related to activities governed by Chapter 8 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories or strategy of the board or its staff, or records that provide instructions, advice or training of employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 8 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

Comment: There are no reported cases discussing this exemption.

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or, financial data regarding the funded accounts held in escrow for service

contracts held in force in this state by a service contractor.

Comment: There are no reported cases discussing this exemption.

(y)(1) *Records of the Managed Risk Medical Insurance Board related to activities governed by Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, and that reveal any of the following:*

(A) *The deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board, entities with which the board is considering a contract, or entities with which the board is considering or enters into any other arrangement under which the board provides, receives, or arranges services or reimbursement.*

(B) *The impressions, opinions, recommendations, meeting minutes, research, work product, theories or strategy of the board or its staff, or records that provide instructions, advice or training to employees.*

(2) (A) *Except for the portion of a contract that contains the rates of payment, contracts, entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, on or after January 1, 1998, shall be open to inspection one year after their effective date.*

(B) *If a contract entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the effective date of the amendment.*

(3) *Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.*

(4) *Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).*

(5) *The exemption from disclosure provided pursuant to this subdivision for the contracts, deliberative processes, discussions, communications, negotiations, impressions, opinions, recommendations, meeting minutes, research, work product, theories or strategy of the board or its staff shall also apply to the contracts, deliberative processes, discussions, communications, negotiations, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of applicants pursuant to Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code.*

Comment: There are no reported cases discussing this exemption.

(z) *Records obtained pursuant to paragraph (2) of subdivision (c) of Section 2891.1 of the Public Utilities Code.*

Comment: There are no reported cases discussing this exemption.

(aa) *A document prepared by or for a state or local agency that assesses its vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency's operations and that is for distribution or consideration in a closed session.*

Comment: This exemption was adopted in response to concerns after the terrorist attacks on Sept. 11, 2001. There are no reported cases discussing this exemption.

(ab) *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 used in this subdivision, "voluntarily submitted" means submitted in the absence of the office exercising any legal authority to compel access to or submission of critical infrastructure information. This subdivision shall not affect the status of information in the possession of any other state or local governmental agency.

Comment: This exemption has generated no reported decisions. *But see County of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 89 Cal. Rptr. 3d 374 (2009) (holding that federal Critical Infrastructure Information Act did not prohibit county from disclosing GIS basemap data under the CPRA where data had been submitted by the county to federal government, not to the county).

(ac) *All information provided to the Secretary of State by a person for the purpose of registration in the Advance Health Care Directive Registry, except that those records shall be released at the request of a health care provider, a public guardian, or the registrant's legal representative.*

Comment: There are no reported cases discussing this exemption.

(ad) *The following records of the State Compensation Insurance Fund:*

(1) *Records related to claims pursuant to Chapter 1 (commencing with Section 3200) of Division 4 of the Labor Code, to the extent that confidential medical information or other individually identifiable information would be disclosed.*

(2) *Records related to the discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the fund, and any related deliberations.*

(3) *Records related to the impressions, opinions, recommendations, meeting minutes of meetings or sessions that are lawfully closed to the public, research, work product, theories, or strategies of the fund or its staff, on the development of rates, contracting strategy, underwriting, or competitive strategy pursuant to the powers granted to the fund in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code.*

(4) *Records obtained to provide worker's compensation insurance under Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, including, but not limited to, any medical claims information, policyholder information provided that nothing in this paragraph shall be interpreted to prevent an insurance agent or broker from obtaining proprietary information or other information authorized by law to be obtained by the agent or broker, and information on rates, pricing, and claims handling received from brokers.*

(5) (A) *Records that are trade secrets pursuant to Section 6276.44, or Article 11 (commencing with Section 1060) of Chapter 4 of Division 8 of the Evidence Code, including without limitation, instructions, advice, or training provided by the State Compensation Insurance Fund to its board members, officers, and employees regarding the fund's special investigation unit, internal audit unit, and informational security, marketing, rating, pricing, underwriting, claims handling, audits, and collections.*

(B) *Notwithstanding subparagraph (A), the portions of records containing trade secrets shall be available for review by the Joint Legislative Audit Committee, the Bureau of State Audits, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.*

(6) (A) *Internal audits containing proprietary information and the following records that are related to an internal audit:*

(i) *Personal papers and correspondence of any person providing assistance to the fund when that person has requested in writing that his or her papers and correspondence be kept private and confidential. Those papers and correspondence shall become public records if the written request is withdrawn, or upon order of the fund.*

(ii) Papers, correspondence, memoranda, or any substantive information pertaining to any audit not completed or an internal audit that contains proprietary information.

(B) Notwithstanding subparagraph (A), the portions of records containing proprietary information, or any information specified in subparagraph (A) shall be available for review by the Joint Legislative Audit Committee, the Bureau of State Audits, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.

(7) (A) Except as provided in subparagraph (C), contracts entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code shall be open to inspection one year after the contract has been fully executed.

(B) If a contract entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(C) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(D) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to this paragraph.

(E) Nothing in this paragraph is intended to apply to documents related to contracts with public entities that are not otherwise expressly confidential as to that public entity.

(F) For purposes of this paragraph, "fully executed" means the point in time when all of the necessary parties to the contract have signed the contract.

Comment: There are no reported cases discussing this exemption.

Concluding paragraphs of Section 6254:

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act (29 U.S.C. SEC. 158).

B. Other statutory exclusions.

Catchall/Public Interest Exemption: Under Section 6255 an agency may withhold public records if "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." Cal. Gov't Code § 6255; *County of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1321, 89 Cal. Rptr. 3d 374 (2009) (applying balancing and holding that public interest in disclosure of county's GIS basemap data outweighed the public interest in nondisclosure); *CBS Inc. v. Block*, 42 Cal.3d 646, 652, 230 Cal Rptr. 362, 725 P.2d 470 (1986); *CBS Broad. Inc. v. Superior Court*, 91 Cal. App. 4th 892, 908, 110 Rptr. 2d 889 (2001) ("The burden of proof is on the proponent of nondisclosure, who must demonstrate a 'clear overbalance' on the side of confidentiality.") (quoting *City of San Jose v. Superior Court*, 74 Cal. App. 4th 1008, 1018, 88 Cal. Rptr. 2d 552 (1999)).

While this section does not specifically identify the public interests to be served in non-disclosure, the nature of those interests may be inferred from the specific exemptions contained in Section 6254. *Times Mirror Co. v. Superior Court*, 53 Cal. 3d 1325, 1338, 813 P.2d 240, 283 Cal. Rptr. 893 (1991). This exemption should not be used

where records are covered by specific exemptions under Section 6254, thus indicating that the Legislature did not intend to have the records governed by the vague catchall provision. See *City of Hemet v. Superior Court*, 37 Cal. App. 4th 1411, 1421, 44 Cal. Rptr. 2d 532 (1995) (where court held catchall exemption could not apply to justify non-disclosure of internal personnel investigation of police officer since there were at least two other specific exemptions that covered related documents).

Importantly, while the Constitutional Sunshine Amendment expressly maintains preexisting statutory exemptions such as this, the elevation of the public's right of access to constitutional stature under the Amendment must now be considered when balancing the respective interests. Cal. Const. Art. I, § 3(b)(1). Moreover, "[t]here must be a clear overbalance on the side of confidentiality before the catchall applies." *City of Hemet*, 37 Cal. App. 4th at 1421 (citations omitted); see also *Block*, 42 Cal.3d at 652; *CBS Broad. Inc.*, 91 Cal. App. 4th at 908 (quoting *Block*, quoting statute).

This public interest exemption, or "catchall" exemption, has been used to withhold public records not otherwise exempt under the CPRA or as an additional grounds for nondisclosure. See, e.g., *Times Mirror Co.*, 53 Cal. 3d at 1340-47 (where Court recognized that potential threat to Governor's security that would be caused by disclosure of Governor's daily and weekly schedules bolstered Court's determination that the need for confidentiality outweighed the need for disclosure); see also *City of San Jose v. Superior Court*, 74 Cal. App. 4th 1008, 1023, 88 Cal. Rptr. 2d 552 (1999) (where court held public interest in withholding names, addresses and telephone numbers of persons who complained to city about municipal airport noise outweighed public interest served by disclosure).

Where, however, the government agency is unable to meet its burden under this exemption, it cannot justify withholding public records under it. See, e.g., *County of Santa Clara*, 170 Cal. App. 4th at 1329 (holding that county failed to demonstrate a clear overbalance on the side of confidentiality in withholding GIS basemap data from the public); *CBS Broad. Inc.*, 91 Cal. App. 4th at 908 (holding agency failed to meet burden of proof to withhold names of every individual granted a criminal conviction exemption to work in a licensed child day care facility and the identity of each facility employing such individuals); *Cal. State Univ. v. Superior Court*, 90 Cal. App. 4th 810, 835, 108 Cal. Rptr. 2d 870 (2001) (holding university failed to carry its burden of proof to justify withholding identity of every individual who obtained luxury suite licenses in arena being built on university property); *Po-way Unif. Sch. Dist. v. Superior Court*, 62 Cal. App. 4th 1496, 1506, 73 Cal. Rptr.2d 777 (1998) (where court held privacy of minors submitting claim forms to public schools, which the court said were relevant to public interest in ending school hazing practices, did not justify withholding records of claims under this exemption); *New York Times Co. v. Superior Court*, 52 Cal. App. 4th 97, 104, 60 Cal. Rptr.2d 410 (1997) (where court held that the perceived harm to deputies from disclosure of their names as officers who fired weapons in the line of duty, which resulted in the death of a civilian, did not outweigh the public interest served by disclosure of their names); *Connell v. Superior Court*, 56 Cal. App. 4th 601, 612, 65 Cal. Rptr. 2d 738 (1997) (where court held pure speculative security interests or burden and expense of providing requested information did not justify withholding unpaid warrants to state vendors, which pertained to the government's conduct in managing public revenues); *City of Los Angeles v. Superior Court*, 41 Cal. App. 4th 1083, 1091, 49 Cal. Rptr. 2d 35 (1996) (where court held public interest in disclosure of deposition transcripts in closed action against the city, which related to claims of excessive force in the use of police dogs, outweighed the privacy interest of the litigants and could not be overcome by purported chilling effect disclosure would have on way city prepares its cases); *New York Times Co. v. Superior Court*, 218 Cal. App. 3d 1579, 268 Cal. Rptr. 21 (1990) (public disclosure of names of excessive users of water outweighed reputational/privacy interests of those issued citations); *Register Div. of Freedom Newspapers Inc. v. County of Orange*, 158 Cal. App. 3d 893, 902, 205 Cal. Rptr. 92 (1984) (where public interest in disclosure of medical records used by

county in settling claim outweighed any purported privacy right in nondisclosure).

Deliberative Process Privilege Under Catchall Exemption: Disconcerting for proponents of open government, the catchall exemption has been used to engraft an expansive “deliberative process privilege” into the CPRA that would not otherwise be available under Section 6254(a)’s deliberative process exemption for preliminary drafts, notes or inter-agency or intra-agency memoranda, or any other specific exemption. See, e.g., *Times Mirror Co. v. Superior Court*, 53 Cal. 3d 1325, 283 Cal. Rptr. 893, 813 P.2d 240 (1991). Whether this privilege survives the passage of the Constitutional Sunshine Amendment remains to be determined. Because this privilege has been engrafted into Section 6255 through common law and the Amendment only maintains pre-existing “constitutional and statutory exemption[s],” not those created through case law, an argument can be made that this privilege does not survive passage of the Amendment. Cal. Const. Art. I, § 3(b)(5); but see *Sutter’s Place v. Superior Court*, 161 Cal. App. 4th 1370, 75 Cal. Rptr. 3d 9 (2008) (in dicta, court rejected argument that the Sunshine Amendment eliminated the separate mental process privilege as applied to protect the motives and thought processes of local legislators and characterizing that privilege as rooted in constitutional, as well as statutory law) Indeed, without conceding the point, former California Governor Arnold Schwarzenegger has complied with requests for his daily calendars after passage of the Amendment. See www.cfac.org/Attachments/governor_calendars.htm.

The deliberative process privilege is designed to protect essentially three policy objectives: “First, it protects creative debate and candid consideration of alternatives within an agency, and, thereby, improves the quality of agency policy decisions. Second, it protects the public from the confusion that would result from premature exposure to discussions occurring before the policies affecting it had actually been settled upon. And third, it protects the integrity of the decision-making process itself by confirming that ‘officials should be judged by what they decided, not for matters they considered before making up their minds.’” *Times Mirror Co.*, 53 Cal. 3d at 1352 (Kennard, J., dissenting) (citing *Jordan v. United States Dept. of Justice*, 591 F.2d 753, 772-73 (D.C. Cir. 1978)); see also *California First Amendment Coalition v. Superior Court*, 67 Cal. App. 4th 159, 170, 78 Cal. Rptr. 2d 847 (1998).

The key question in every case is “whether the disclosure of materials would expose an agency’s decision making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency’s ability to perform its functions.” *Id.* at 1342. To qualify for the privilege the document sought must be both predecisional and deliberative. *Id.* at 1352 (Kennard, J., dissenting) (citing *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 151-52, 95 S. Ct. 1504, 44 L.Ed.2d 29 (1975)). “To establish that a document is predecisional, an agency must identify an agency decision of policy to which the document contributed [citations omitted], or at least must show ‘that the document is in fact part of some deliberative process’ [citations omitted].” *Id.* (Kennard, J., dissenting). To show that a document is deliberative, a document generally must consist of opinions or recommendations. *Id.* As the majority in *Times Mirror* states, however, “[e]ven if the content of a document is purely factual, it is nonetheless exempt from public scrutiny if it is ‘actually . . . related to the process by which policies are formulated.’ (citations omitted) or ‘inextricably intertwined’ with ‘policy-making processes’ (citations omitted).” *Id.* at 1342.

In *Times Mirror*, the California Supreme Court traced the origins of the deliberative process privilege to “the traditional common law privilege that attached to confidential intra-agency advisory opinions, a privilege which was later codified in exemption 5 of the [federal Freedom of Information Act.]” *Id.* at 1339-40 n.10. Thus, in *Times Mirror*, the Court construed a deliberative process privilege from federal decisions applying exemption 5 and from the broad language of Section 6255, which permits nondisclosure where the public interest in confidentiality clearly outweighs the interest in disclosure. Applying the

privilege, the Court held that the Governor’s appointment schedules, calendars and notes revealing the daily activities of the Governor over a five-year period while not exempt as correspondence to and from the Governor under Section 6254(l) were nevertheless exempt under Section 6255’s catchall provision. The Court concluded that because “disclosing the identity of persons with whom the Governor has met and consulted is the functional equivalent of revealing the substance or direction of the Governor’s judgment and mental processes” and disclosure “would indicate which interests or individuals he deemed to be of significance with respect to critical issues of the moment” the intrusion into the deliberative process was “patent.” *Id.* at 1343. In holding that the public interest in disclosure of such information was clearly outweighed by the public interest in confidentiality, the Court noted that, “[t]o disclose every private meeting or association of the Governor and expect the decision making process to function effectively, is to deny human nature and contrary to common sense and experience.” *Id.*

The Court further noted, however, that its holding did not mean the Governor’s calendars, schedules or other records were beyond the reach of the public. *Id.* at 1345. The Court recognized that given a more focused and limited request a court might properly conclude that the public interest in confidentiality does not clearly outweigh the public interest in disclosure. *Id.* Nevertheless, the Court’s holding in *Times Mirror Co.*, paved the way for a deliberative process privilege under the CPRA that reaches well beyond the one applicable to preliminary drafts, notes, and interagency and intra-agency memoranda under Section 6254(a).

Subsequent cases have expanded this deliberative process privilege. For example, it has been used to deny access to documents pertaining to applicants to local and county boards of supervisors. See, e.g., *Wilson v. Superior Court*, 51 Cal. App. 4th 1136, 1143, 59 Cal. Rptr. 2d 537 (1996) (where applications for position on county board of supervisors were considered “predecisional documents whose sole purpose is to aid the Governor in selecting gubernatorial appointees. . . .”); see also *Cal. First Amendment Coalition*, 67 Cal. App. 4th 159. In *Cal. First Amendment Coalition*, petitioner sought access from the Governor’s office of any documents containing the names of those who had applied for a county supervisor’s position. Construing the request as seeking all documents containing information regarding applicants for appointment to the position, the appellate court held that the information sought was exempt from disclosure under the Governor’s correspondence exemption of Section 6254(l) and under the catchall exemption of Section 6255. Under the later exemption, the court noted and petitioner conceded that written materials discussing the applicants’ suitability for appointment were exempt as “communications to the decision maker” disclosure of which would reveal deliberative processes. *Id.* at 169. With respect to applications, the petitioner argued that since there was no assurance that the Governor even reviews them and they reveal nothing of the Governor’s thought process, disclosure would not impair the Governor’s decision-making process. *Id.* at 171. Rejecting this argument, the court reasoned that disclosure of the applications would likely reduce the applicant pool and discourage candor in those applying for the job, which would ultimately hinder the decision-making process. *Id.* at 172. The court went on to conclude that the proffered need for disclosure was outweighed by the need for confidentiality. *Id.* at 172-74.

In a non-CPRA case, the deliberative process privilege has been held to apply to local legislative bodies, such as a county local agency formation commission. *San Joaquin Local Agency Formation Com’n v. Superior Court*, 162 Cal. App. 4th 159, 76 Cal. Rptr. 3d 93 (2008). In probably its broadest application to date, the deliberative process privilege has been used to deny access to phone billing records of city council members to show calls placed as part of official business. *Rogers v. Superior Court*, 19 Cal. App. 4th 469, 23 Cal. Rptr. 2d 412 (1993).

Just how far the deliberative process privilege will go in justifying nondisclosure of public records is a question proponents of open government hope will not be answered by the current trend indicated by

the above cases but by the overwhelming intent of the public in passing the Constitutional Sunshine Amendment.

Government Code Sections 6276.02-6276.48: In an attempt to assist members of the public and state and local agencies in identifying exemptions to the CPRA, the Legislature has compiled known exemptions from public disclosure in Article 2, Sections 6276.02 through 6276.45. Cal. Gov't Code § 6275. These sections list records or information that by statute agencies *may* not be required to disclose and thus *may* fall within Section 6254(k)'s exemption from disclosure. The records and information listed in Article 2 are not inclusive and the listing of a statute in the Article does not itself create an exemption. Cal. Gov't Code § 6275. Currently there are more than 600 categories of documents under Article 2 ranging from "Acquired Immune Deficiency Syndrome" (Section 6276.02) to "Youth Authority" (Section 6276.48). After January 1, 1999 each addition or amendment to a statute that exempts any information contained in a public record from disclosure pursuant to subdivision (k) of Section 6254 must be listed and described in Article 2. *Id.*

Some noteworthy exemptions contained in Article 2 include records pertaining to: (1) bids received by government agencies for public works under Section 10304 of the Public Contract Code; (2) driver's arrest for traffic violations under Section 40313 of the Vehicle Code; (3) employee personnel files under Section 1198.5 of the Labor Code; (4) firearm sales or transfers under Section 12082 of the Penal Code; (5) grand jury information or indictments under Sections 924 and 938.1 of the Penal Code; (6) hazardous waste control, notice of unlawful hazardous waste disposal under Section 25180.5 of the Health and Safety Code; (7) Insurance Commissioner information from examination or investigation under Sections 1215.7, 1433 and 1759.3 of the Insurance Code (and other provisions regarding the Insurance Commissioner and insurance); (8) Department of Motor Vehicle records under Section 1808 to 1808.7 of the Vehicle Code; (9) rap sheet information under Penal Code Sections 11075, 11105 and 13330.

C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

See Section II. B. above, discussing deliberative process exemption. In the case of *Rosenthal v. Hansen*, 34 Cal. App. 3d 754, 757, 761, 110 Cal. Rptr. 257 (1973), the court imposed a judicially created "reasonableness" standard to restrict access to public records where the request for a seven-volume, loose-leaf workbook was found to be voluminous. In a similar vein, the Court in *American Civil Liberties Union Foundation v. Deukmejian*, 32 Cal. 3d 440, 452-53, 186 Cal. Rptr. 235, 651 P.2d 822 (1982), held that where a public agency can substantiate that a voluminous request, involving extensive segregation of exempt from non-exempt materials, would impose an unwarranted burden on the agency's resources, the public interest in nondisclosure outweighs the public interest in disclosure. See also *Cal. First Amendment Coalition v. Superior Court*, 67 Cal. App. 4th 159, 166, 78 Cal. Rptr. 2d 847 (1998) ("A clearly framed request which requires an agency to search an enormous volume of data for a 'needle in the haystack' or, conversely, a request which compels the production of a huge volume of material may be objectionable as unduly burdensome.[citations omitted] Records requests, however, inevitably impose some burden on government agencies. An agency is obligated to comply so long as the record can be located with reasonable effort."); cf. *CBS Broad. Inc. v. Superior Court*, 91 Cal. App. 4th 892, 909, 110 Cal. Rptr. 2d 889 (2001) (rejecting as untenable position that costs in amount of \$43,000 to compile accurate list of individuals granted criminal conviction exemption to work in licensed child day care facilities was valid reason for nondisclosure).

D. Are segregable portions of records containing exempt material available?

Yes. Government Code Section 6253 (a) provides in part as follows: "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." Cal. Gov't Code § 6253(a); *Com-*

mission on Peace Officer Standards and Training v. Superior Court, 42 Cal.4th 278, 301, 64 Cal. Rptr. 3d 661, 165 P.3d 462 (2007); see also *Northern Cal. Police Practices Project v. Craig*, 90 Cal. App. 3d 116, 124, 153 Cal. Rptr. 173 (1979). This means that a person requesting a public record should always ask that the agency furnish the non-exempt portions of a record should it also contain exempt, segregable material. The public agency has the duty to segregate unless it is "too onerous" to do so. The agency bears the burden of demonstrating that it is "too onerous" to segregate the exempt material from the non-exempt material. Simply responding that the records requested contain exempt material is not sufficient to relieve the agency of its duty to produce the non-exempt records requested. *State Bd. of Equalization v. Superior Court*, 10 Cal. App. 4th 1177, 1186, 13 Cal. Rptr. 2d 342 (1992).

E. Homeland Security Measures.

Under Section 6254(aa), an agency may withhold "[a] document prepared by or for a state or local agency that assesses its vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency's operations and that is for distribution or consideration in a closed session. Cal. Gov't Code § 6254(aa). Under Section 6254(ab), critical infrastructure information that is voluntarily submitted to the California Emergency Management Agency or used by that office is exempt. No reported cases have discussed these exemptions. *But see County of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1316, 89 Cal. Rptr. 3d 374 (2009) (rejecting county's argument that GIS basemap data was exempt under federal Critical Infrastructure Information Act, since information was provided by County not to it, as required under Act).

III. STATE LAW ON ELECTRONIC RECORDS

The fact that public records may be stored in a computer does not affect their status as public records. Cal. Gov't Code § 6254.9(d). Section 6253.9 of the CPRA requires public agencies that have information which 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. Cal. Gov't Code § 6253.9. This statute, effective January 1, 2001, supersedes portions of an earlier statute (Section 6253(b)) that allowed public agencies to determine the form in which computer data would be made available. See, e.g., *Commission on Peace Officers Standards and Training v. Superior Court*, 42 Cal.4th 278, 288 n.3, 64 Cal. Rptr. 3d 661, 165 P.3d 462 (2007) (noting that information stored in commission's computer database qualified as "writing" within meaning of CPRA); *County of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 89 Cal. Rptr. 3d 374 (2009) (allowing for disclosure of county's GIS basemap data); Cal. Ops. Att'y. Gen. 04-1105 (2005) (parcel boundary map data maintained by county assessor in an electronic format is disclosable in that format under CPRA). Section 6253.9 further requires agencies to make the information available in any electronic format in which it holds the information, but does not require release of records in electronic format where "release would jeopardize or compromise the security or integrity of the original record or any proprietary software in which it is maintained." Cal. Gov't Code § 6253.9(f).

A. Can the requester choose a format for receiving records?

Yes, if the information requested is in an electronic format the agency shall make that information available in any electronic format in which it holds the information or, if requested, in a format used by the agency to create copies for its own use or for provision to other agencies. Cal. Gov't Code § 6253.9(a). If the request is for non-electronic records and the agency also has the information available in electronic format, the agency may inform the requester that the information is also available in electronic format. Cal. Gov't Code § 6253.9(d). If the information is available in non-electronic format, an agency cannot make the information available only in electronic format. Cal. Gov't Code § 6253.9(e). Section 6253.9 does not require release of records in electronic format where "release would jeopardize or compromise

the security or integrity of the original record or any proprietary software in which it is maintained.” Cal. Gov’t Code § 6253.9(f).

B. Can the requester obtain a customized search of computer databases to fit particular needs?

Yes, but the agency may require the requester to bear the cost of producing the record if it is one produced only at otherwise regularly scheduled intervals or would require data compilation, extraction or programming to produce. Cal. Gov’t Code § 6253.9(a). An agency, however, is not required to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format. Cal. Gov’t Code § 6253.9(c). Nor is it required to disclose electronic records where “release would jeopardize or compromise the security or integrity of the original record or any proprietary software in which it is maintained.” Cal. Gov’t Code § 6253.9(f).

C. Does the existence of information in electronic format affect its openness?

No. Government Code § 6254.9(d) states: “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 [the CPRA].” See, e.g., *Commission on Peace Officers Standards and Training v. Superior Court*, 42 Cal.4th 278, 288, n.3, 64 Cal. Rptr. 3d 661, 165 P.3d 462 (2007) (noting that information stored in commission’s computer database qualified as “writing” within meaning of CPRA); Cal. Ops. Att’y. Gen. 04-1105 (2005) (parcel boundary map data maintained by county assessor in an electronic format is disclosable in that format under CPRA).

D. How is e-mail treated?

The CPRA’s definition of “writing” includes e-mail: “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 combination thereof, and any record thereby created, regardless of the manner in which the record has been stored.” Cal. Gov’t Code § 6252(f) (emphasis added). See also *San Diego Reader v. Superior Court*, 31 Med. L. Rptr. 1890 (Cal. Sup. Ct. 2002) (ruling that e-mail to and from mayor’s former press secretary are not exempt from disclosure since e-mail is a government record, since those corresponding with government have diminished expectation of privacy as to e-mail content and address and since public interest in nondisclosure did not clearly outweigh interest in disclosure).

1. Does e-mail constitute a record?

Yes. See Cal. Gov’t Code 6252(f) (expressly including in the definition of writing under the CPRA “transmitting by electronic mail or facsimile...”).

2. Public matter on government e-mail or government hardware

Public. “Public records” includes “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” Cal. Gov’t Code § 6254(e)

3. Private matter on government e-mail or government hardware

Depends. While the definition of public records is broad, “[t]he mere custody of a writing by a public agency does not make it a public record, but if a record is kept by an officer because it is necessary or convenient to the discharge of his official duty, it is a public record.” *Braun v. City of Taft*, 154 Cal. App. 3d 332, 340, 201 Cal. Rptr. 654 (1984). As another court explained, “[o]nly purely personal information unrelated to ‘the conduct of the public’s business’ could be considered exempt from this definition, i.e., the shopping list phoned from home, the letter to a public officer from a friend which is totally

void of reference to governmental activities.” *San Gabriel Tribune v. Superior Court*, 143 Cal. App. 3d 762, 774, 192 Cal. Rptr. 415, 422 (1983) (internal citations omitted). Arguably, if the private emails reveal public employee wrongdoing or waste of taxpayer dollars, for example, they would not be “unrelated” to the conduct of the public’s business, and thus would be disclosable public records. *Id.*; see, e.g., *San Diego Reader*, 31 Med. L. Rptr. 1890.

4. Public matter on private e-mail

There are no reported cases under the CPRA addressing this issue. See *Tracy Press, Inc. v. Superior Court*, 164 Cal. App. 4th 1290, 80 Cal. Rptr. 3d 464 (2008) (while case involved access to email communications sent to and from city council member’s private email account and pertaining to public business, court dismissed action on basis that council member was indispensable party to writ of mandamus in appellate court where council member was named as a party in underlying petition). Arguably, emails prepared or used by a public official or public employee to assist that person in carrying out his or her duties, or pertaining to the public’s business are public records under the CPRA.

5. Private matter on private e-mail

There are no reported cases under the CPRA addressing this issue. Conceivably, private emails retained on a private email account pertaining to the public’s business or retained to assist a public employee in the discharge of his or her official duties would be a public record. Conversely, purely private matters that do not relate to the public’s business retained on a private email account would not fall within the definition of public records.

E. How are text messages and instant messages treated?

1. Do text messages and/or instant messages constitute a record?

Yes. “Public records” includes “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” Cal. Gov’t Code § 6254(e).

2. Public matter message on government hardware.

Public, as such writings fall within the definition of “public records” under the CPRA. Cal. Gov’t Code § 6254(e). There are no reported cases under the CPRA addressing this issue, however.

3. Private matter message on government hardware.

There are no reported cases under the CPRA addressing this issue. See *City of Ontario v. Quan*, 130 S.Ct. 2619, 177 L.Ed.2d 216 (2010) (unanimously holding that police chief’s search of text messages sent to and received by a SWAT team officer did not violate his constitutional rights against unreasonable searches); see also D3, above.

4. Public matter message on private hardware.

There are no reported cases under the CPRA addressing this issue but, arguably, if it pertains to the public’s business and it was prepared or used by a public employee to assist in carrying out his or her public duties, it is a public record. See D4, above.

5. Private matter message on private hardware.

There are no reported cases under the CPRA addressing this issue. See D5, above.

F. How are social media postings and messages treated?

There are no reported cases under the CPRA addressing this issue. While the message itself might be public through other means, the data residing on an agency’s computers pertaining to the time spent engaging in social media and the sites visited on the public’s time, arguably, pertains to the public’s business and is thus a public record.

G. How are online discussion board posts treated?

There are no reported cases under the CPRA addressing this issue. While the post itself might be public through other means, the data residing on an agency's computers pertaining to the time spent on such discussion boards or the particular sites visited while on the public's time, arguably, pertains to the public's business and is thus a public record.

H. Computer software

1. Is software public?

No. "Computer software developed by a state or local agency is not itself a public record under this chapter." Cal. Gov't Code § 6254.9 (a). "Computer software" includes computer mapping systems, computer programs, and computer graphics systems." Cal. Gov't Code § 6254.9(b).

2. Is software and/or file metadata public?

While computer software developed by a state or local agency is not a public record under the CPRA, metadata is not expressly exempt under the CPRA and thus presumptively is a public record. No reported case under the CPRA has addressed this issue.

I. How are fees for electronic records assessed?

If produced in an electronic format in which the agency holds the information or in a format used by the agency to create copies for its own use or for provision to other agencies, the cost of the record is limited to the direct cost of duplication. Cal. Gov't Code § 6253.9(a) (1)&(2). If required to produce an electronic record that is produced only at otherwise regularly scheduled intervals or would require data compilation, extraction, or programming to produce, the agency can require the requester to bear the cost of producing the record, including the cost to construct it, and the cost of programming and computer services necessary to produce it. Cal. Gov't Code § 6253.9(b); *see also County of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1336, 89 Cal. Rptr. 3d 374 (2009) (discussing allowable charges for production of electronic records).

J. Money-making schemes.

1. Revenues.

Provisions limiting the cost of public records to the direct cost of duplication, unless another cost is statutorily permitted, or to the costs of producing a record in an electronic format when the request is for a record in a format not produced at otherwise regularly scheduled intervals or would require computer programming to produce, sharply curtail an agency's ability to make the provision of public records an income generating scheme. *See* Cal. Gov't Code §§ 6253(b), 6253.9; *see also County of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1336, 89 Cal. Rptr. 3d 374 (2009) (discussing allowable charges for hardcopy and electronic records). Nevertheless, overcharging for public records does occur.

2. Geographic Information Systems.

Under the CPRA "computer software" developed by a state or local agency is not itself a public record and that term is defined to include "computer mapping systems, computer programs, and computer graphic systems." Cal. Gov't Code § 6254.9 (b). Neither the statute or case law, however, define "computer mapping systems." While agencies had routinely charged excessive fees for accessing and downloading GIS data on the presumption that such data was copyrightable, and thus a licensing fee could be imposed, the court in *County of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1330-36, 89 Cal. Rptr. 3d 374 (2009), rejected both the notion that public records can be protected by copyright and that end-user restrictions can be imposed on their use. In so doing, the court held that copyright protection over public records under the CPRA is limited to computer software and that the county had waived any claim that the GIS base-

map data was software by failing to raise it on appeal. *Id.* at 1334 & 1322 n.7. Whether GIS-formatted mapping data is protected software under Section 6254.9 of the Government Code or electronic data required to be disclosed under Section 6253.9 is, as of April of 2011, on appeal in *Sierra Club v. Superior Court*, Court of Appeal of the State of California, Fourth Appellate District (Case No. G044138).

K. On-line dissemination.

There are no provisions under the CPRA for agencies to charge members of the public for accessing public records on-line through an agency's website. Presumptively, this manner of accessing public records is free.

IV. RECORD CATEGORIES — OPEN OR CLOSED

A. Autopsy reports.

Public, unless compiled by for law enforcement purposes and the prospect of law enforcement is concrete and definite, then, according to one appellate court case, the report may be withheld under the investigatory records exemption of the CPRA. Cal. Gov't Code § 6254(f); *Dixon v. Superior Court*, 170 Cal. App. 4th 1271, 1276, 88 Cal. Rptr.3d 847 (2009)(holding that an autopsy report produced by a coroner's inquiries into a suspected homicide where there exists the definite prospect of law enforcement is an investigatory file compiled for law enforcement purposes within the meaning of Section 6254(f)). *Dixon*, however, arguably is wrongly decided. The court's decision turned on its determination that a coroner performing duties pursuant to an inquest into a criminally-related death is a law enforcement agency within the meaning of the investigatory records exemption of Section 6254(f). *Id.* at 1277. In so concluding, however, the court failed to cite or recognize the express provision directly governing a coroner's inquest, including those involving investigations into the cause of death in criminally-related cases, that requires a coroner's inquest be open to the public. Cal. Gov't Code § 27491.6. Moreover, the court arguably applied an over broad interpretation of the investigatory records exemption by holding that the duties of a coroner pursuant to an inquest under Government Code Section 27491 are performed "as a law enforcement agency" within the meaning of the investigatory records exemption of Section 6254(f) without any determination of whether the coroner is charged with the enforcement of criminal laws, as opposed to the enforcement of other laws, such as the issuance of subpoenas on witnesses or a summons of jury called to inquire as to the cause of death. *See, e.g.,* Cal. Gov't Code §§ 27492, 27499.

Moreover, earlier courts, before the adoption of the CPRA, had held that autopsy reports are public records. *See People v. Williams*, 174 Cal. App. 2d 364, 390, 345 P.2d 47 (1959)("An autopsy report is a record that the coroner is required to keep (Gov. Code § 27491) and is therefore, a public record (citations omitted.);" *Walker v. Superior Court*, 155 Cal. App. 2d 134, 138-39, 317 P.2d 130 (1957); *see generally* Cal. Gov't Code § 27491 (setting forth duties of coroners); § 27491.6 (requiring inquests performed by coroner be open to the public). The Legislature was no doubt aware of these decisions when it enacted the CPRA, and could have expressly exempted coroners' reports from public disclosure, but did not do so. *See also San Francisco Examiner v. Plummer*, 19 Med. L. Rptr. 1319 (1991) (in a decision not certified for publication, a superior court judge held that a county sheriff's department was required to release autopsy records of victims of the Nimitz Freeway collapse during the 1989 San Francisco earthquake).

B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)

1. Rules for active investigations.

Both Section 6254(a), governing preliminary drafts and interagency or intra-agency memoranda, and Section 6255's public interest bal-

ancing test encompassing through case law a deliberative process exemption are potential impediments to access to administrative enforcement records reflecting pre-decisional thought processes of the agency. Cal. Gov't Code §§ 6254(a), 6255; *see generally Citizens for a Better Environment v. Dept. of Food & Agric.*, 171 Cal. App. 3d 704, 217 Cal. Rptr. 504 (1985)(agency did not meet its burden under Section 6254(a) to show how the public's interest in nondisclosure clearly outweighed the public's interest in disclosure of reports on county's enforcement of pesticide-use laws).

2. Rules for closed investigations.

While Sections 6254(a) and 6255 may still be invoked over pre-decisional, deliberative documents, records reflecting final agency action, records considered in reaching a final determination, or records reflecting public employee wrongdoing arguably are public.

C. Bank records.

Generally exempt from disclosure. See Gov't Code § 6254(d).

D. Budgets.

Public, unless preliminary and thus arguably exempt under Sections 6254(a) or 6255. Cal. Gov't Code §§ 6254(a), 6255. If an agency subject to the Ralph M. Brown Act considered the budget in connection with any open meeting, the agency is precluded from relying on Section 6255 as a basis for its withholding. Cal. Gov't Code § 54957.5 (a).

E. Business records, financial data, trade secrets.

Business and financial records are open to public access when used as the basis for a public agency's decision-making. *San Gabriel Valley Tribune v. Superior Court*, 143 Cal. App. 3d 762, 192 Cal. Rptr. 415 (1983). However, information that constitutes a trade secret is generally exempt from disclosure. Gov't Code §§ 6254.(k)(engrafting into CPRA exemptions under federal and state law, including provisions of California Evidence Code relating to privileges). Trade secret protection, however, is not absolute. *See, e.g., Coalition of Univ. Employees v. Regents of Univ. of Cal.*, 32 Med. L. Rptr. 1212 (Cal. Sup. Ct. 2003) (even assuming internal rates of return of private equity investments made by university were trade secrets, disclosure turns on balancing of interests and public interest in disclosure outweighed interest in nondisclosure).

Several provisions govern disclosure of various financial records. For example, statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with such licensing agency to establish personal qualification for the license, certificate or permit applied for, are exempt from disclosure. Cal. Gov't Code § 6254(n). Financial data contained in applications for financing from the California Pollution Control Financing Authority is not subject to disclosure where an authorized officer of the Authority determines that disclosure of such financial data would be competitively injurious to the applicant and such data is required in order to obtain guarantees from the U.S. Small Business Administration. Cal. Gov't Code § 6254(o). Corporate financial data and corporate proprietary information furnished to a government agency by a private company for the purpose of permitting the agency to work with the company in retaining, locating or expanding a facility in California are exempt from disclosure. Cal. Gov't Code § 6254.15.

F. Contracts, proposals and bids.

Contracts are public. Competitive proposals, while decided on a case-by-case basis, are arguably exempt under Section 6255's public interest balancing test during the negotiation process but must be made public prior to final acceptance by the public agency to afford public input in the selection process. *Michaelis, Montanari & Johnson v. Superior Court*, 38 Cal.4th 1065, 1073, 44 Cal. Rptr. 3d 663, 136 P.3d 194 (2006).

Financial records submitted to an agency and used as a basis for its determination to increase rates on an exclusive public contract are public. *See, e.g., San Gabriel Valley Tribune v. Superior Court*, 143 Cal. App. 3d 762, 192 Cal. Rptr. 415 (1983)(rejecting trade secret exemption over financial data submitted to city and considered in open meeting regarding rate increase for waste disposal services); *but see STI Outdoor v. Superior Court*, 91 Cal. App. 4th 334, 341, 109 Cal. Rptr. 2d 865 (2001)(holding that disclosure to successful bidder of legal memorandum and transmittal letter where disclosure was reasonably necessary to further interests of both parties in finalizing negotiations did not waive attorney-client privilege).

G. Collective bargaining records.

Tactics and strategy records are exempt. Other records are public. Cal. Gov't Code § 6254(p).

H. Coroners reports.

Public, unless compiled by for law enforcement purposes and the prospect of law enforcement is concrete and definite, then, according to one appellate court case, the report may be withheld under the investigatory records exemption of the CPRA. Cal. Gov't Code § 6254(f); *Dixon v. Superior Court*, 170 Cal. App. 4th 1271, 1276, 88 Cal. Rptr.3d 847 (2009)(holding that an autopsy report produced by a coroner's inquiries into a suspected homicide where there exists the definite prospect of law enforcement is an investigatory file compiled for law enforcement purposes within the meaning of Section 6254(f)). *Dixon*, however, is arguably wrongly decided. The court's decision turned on its determination that a coroner performing duties pursuant to an inquest into a criminally-related death is a law enforcement agency within the meaning of the investigatory records exemption of Section 6254(f). *Id.* at 1277. In so concluding, however, the court failed to cite or recognize the express provision directly governing a coroner's inquest, including those involving investigations into the cause of death in criminally-related cases, that requires a coroner's inquest be open to the public. Cal. Gov't Code § 27491.6. Moreover, the court arguably applied an over broad interpretation of the investigatory records exemption by holding that the duties of a coroner pursuant to an inquest under Government Code Section 27491 are performed "as a law enforcement agency" within the meaning of the investigatory records exemption of Section 6254(f) without any determination of whether the coroner is charged with the enforcement of criminal laws, as opposed to the enforcement of other laws, such as the issuance of subpoenas on witnesses or a summons of jury called to inquire as to the cause of death. *See, e.g., Cal. Gov't Code §§ 27492, 27499.*

Moreover, earlier courts, before the adoption of the CPRA, had held that autopsy reports are public records. *See People v. Williams*, 174 Cal. App. 2d 364, 390, 345 P.2d 47 (1959) ("An autopsy report is a record that the coroner is required to keep (Gov. Code § 27491) and is therefore, a public record (citations omitted)."); *Walker v. Superior Court*, 155 Cal. App. 2d 134, 138-39, 317 P.2d 130 (1957); *see generally Cal. Gov't Code § 27491* (setting forth duties of coroners); § 27491.6 (requiring inquests performed by coroner be open to the public). The Legislature was no doubt aware of these decisions when it enacted the CPRA, and could have expressly exempted coroners' reports from public disclosure, but did not do so. *See also San Francisco Examiner v. Plummer*, 19 Med. L. Rptr. 1319 (1991) (in a decision not certified for publication, a superior court judge held that a county sheriff's department was required to release autopsy records of victims of the Nimitz Freeway collapse during the 1989 San Francisco earthquake).

I. Economic development records.

Presumptively public, unless the public's interest in nondisclosure clearly outweighs the public's interest in disclosure under Section 6255 of the Government Code or if some other express statute applies to the specific type of records under consideration. *See, e.g., Cal. Gov't*

Code § 6254(h)(real estate appraisals pertaining to the acquisition of property or prospective supply and construction contracts).

J. Election records.

1. Voter registration records.

Limited disclosure for election, scholarly, journalistic, political or governmental purposes. Cal. Gov't Code § 6254.4. The California driver's license number, the California identification card number, the Social Security number, any other unique identifier used for purposes of voter identification shown on a voter registration card, as well as the signature of the voter, are confidential. Cal. Elec. Code § 2194(b) & (d). However, other personal information regarding a voter, including home address, telephone number, e-mail address, occupation, precinct number and prior registration information shown on the voter registration card for all registered voters may be disclosed "to any person for election, scholarly, journalistic or political purposes, or for governmental purposes, as determined by the Secretary of State." Cal. Elec. Code § 2194; Cal. Gov't Code § 6254.4.

2. Voting results.

Election results are public and generally available on-line through the Secretary of State's official website. See http://www.sos.ca.gov/elections/elections_elections.htm.

Referendum, initiative and recall petitions are exempt from disclosure except as to specified individuals, including the proponents of a petition if found to be insufficient. Gov't Code §§ 6253.5 and 6253.6.

K. Gun permits.

Licenses and applications to carry firearms are public. *CBS Inc. v. Block*, 42 Cal. 3d 646, 652-53, 725 P.2d 470, 230 Cal. Rptr. 362 (1986). However, certain information contained in the application is expressly exempt. Cal. Gov't Code § 6254(u)(information indicating when and where applicant is vulnerable to attack, information concerning applicant's mental health, home address and telephone number of judicial officer or peace officer set forth in the application and license is exempt). Section 6254(u) requires the licensing agency to segregate exempt from non-exempt material. See Cal. Gov't Code § 6257.

L. Hospital reports.

Generally exempt. No provider of health care shall disclose medical information regarding a patient without first obtaining authorization as required by statute. Cal. Civ. Code § 56.10; see also The Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. § 1320d (governing use and disclosure by a covered entity of personally identifiable health care information relating to an individual). However, medical records of a tort claimant against a public agency are not exempt from disclosure because claimant by filing claim places alleged physical injuries and medical records substantiating them at issue. See *Register Div. of Freedom Newspapers Inc. v. County of Orange*, 158 Cal. App. 3d 893, 902, 205 Cal. Rptr. 92 (1984).

M. Personnel records.

See Section II. A. 2. (c), above, for detailed discussion of personnel exemption under Section 6254(c) of CPRA.

1. Salary.

Public. See *International Federation of Professional and Technical Engineers v. Superior Court*, 42 Cal.4th 319, 64 Cal. Rptr. 3d 693, 165 P.3d 488 (2007); see also Cal. Gov't Code § 6254.8 (public employment contracts between a state or a local agency and any public official or public employee is a public record). See Section II. A. 2. (c), above, for more detailed discussion of this issue.

2. Disciplinary records.

For non-public figure, public employees' documents relating to employee wrongdoing must be disclosed if they "reveal allegations of a substantial nature, as distinct from baseless or trivial, and there is rea-

sonable cause to believe the complaint is well-founded . . ." *Bakersfield City School Dist. v. Superior Court*, 118 Cal. App. 4th 1041, 1046, 13 Cal. Rptr. 3d 517 (2004)(citing *American Federation of State, County and Municipal Employees v. Regents of Univ. of Cal.*, 80 Cal. App. 3d 913, 146 Cal. Rptr. 42 (1978)); see also *Sacramento Area Fire Fighters Local 522 v. City of Sacramento*, 33 Med. L. Rptr 1147 (Cal. Sup. Ct. 2004); *Cal. Ass'n of Prof'l Scientists v. Dept. of Health Services*, 31 Med. L. Rptr. 1986 (Cal. Sup. Ct. 2003).

For public figure, public officials, who have a diminished expectation of privacy, a lesser standard of reliability is applied in reviewing the records. *BRV, Inc. v. Superior Court*, 143 Cal.App.4th 742, 759, 49 Cal.Rptr.3d 519 (2006). In conducting an in camera review, courts look to determine whether the allegations are "so unreliable that [they] could not be anything but false." *Id.* at 758-59. See Section II. A. 2. (c), above, for more detailed discussion of this issue.

3. Applications.

There is no express exemption from disclosure for job applications. Disclosure of information as to education, training, experience, awards, previous positions and publications by the employee has been held to implicate no privacy or public policy exemption. *Esaton Monterey Hospital v. Myers*, 134 Cal. App. 3d 788, 794, 184 Cal. Rptr. 840 (1982). Nevertheless, applications for public office have been denied under the exemption for correspondence to and from the Governor (Cal. Gov't Code § 6254(l); *California First Amendment Coalition v. Superior Court*, 67 Cal. App. 4th 159, 78 Cal. Rptr. 2d 847 (1998)) and under the deliberative process exemption/catchall exemption (*Wilson v. Superior Court*, 51 Cal. App. 4th 1136, 59 Cal. Rptr. 2d 537 (1996)). Job applications and resumes of those actually chosen for the job, however, are not exempt from disclosure.

4. Personally identifying information.

There are no express exemptions from disclosure under the CPRA of personal identifying information generally. However, personal identifying information contained in certain records is exempt. See, e.g., Cal. Gov't Code § 6254(j)(library circulation records identifying borrows of items available in the library); § 6254(u)(exempting from disclosure home address, telephone number of judicial or peace officers on applications and licenses to carry firearms). Moreover, the non-disclosure requirements of the Information Practices Act, which does protect personal identifying information contained in agency records, expressly does not apply to disclosures pursuant to the CPRA. See Cal. Civ. Code § 1798.25(g). With several exemptions, that Act protects "personal information" that is maintained by an agency that identifies or describes an individual, "including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual." Cal. Gov't Code § 1798.3 (a). Section 6254(c) of the Government Code, the personnel records exemption, "typically appl[ies] to employee's personnel folders or sensitive personal information which individuals must submit to the government." *San Gabriel Tribune v. Superior Court*, 143 Cal. App. 3d 762, 777, 192 Cal. Rptr. 415 (1983). It was developed "to protect intimate details of personal and family life, not business judgments and relationships." *Braun v. City of Taft*, 154 Cal. App. 3d 332, 343-34, 201 Cal. Rptr. 654 (1984). However, "one does not lose his [or her] right to privacy upon accepting public employment..." *Versaci v. Superior Court*, 127 Cal. App. 4th 805, 818, 26 Cal. Rptr. 3d 92 (2005)(quoting *New York Times Co. v. Superior Court*, 52 Cal. App. 4th 97, 100, 60 Cal. Rptr. 2d 410 (1997)(holding that personal performance goals of former superintendent of community college district maintained in confidence as part of personnel file were exempt from disclosure under Section 6254(c)). Names, addresses and telephone numbers of citizens have also been withheld under the catchall/public interest balancing test of Section 6255. *City of San Jose v. Superior Court*, 74 Cal. App. 4th 1008, 1023, 88 Cal. Rptr. 2d 552 (1999)(holding public interest in withholding names, addresses and telephone numbers of persons who

complained to city about municipal airport noise outweighed public interest served by disclosure especially in light of agency's disclosure of other information going to complaints).

Several other express provisions exempt from disclosure certain personal data required to be submitted to the government. For example, statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with such licensing agency to establish personal qualification for the license, certificate or permit applied for, are exempt from disclosure. Cal. Gov't Code § 6254(n). Financial data contained in applications for financing from the California Pollution Control Financing Authority is not subject to disclosure where an authorized officer of the Authority determines that disclosure of such financial data would be competitively injurious to the applicant and such data is required in order to obtain guarantees from the U.S. Small Business Administration. Cal. Gov't Code § 6254(o).

5. Expense reports.

Public. With no express exemption applicable to public employee expense reports, they are presumptively public and routinely disclosed.

6. Other.

Pensions: In a recent decision, an appellate court held that exact pension amounts of retired pensioners, like salaries of public employees, are public. *Sacramento County Employees Retirement System v. Superior Court* ("SCERS"), — Cal. App. 4th —; — Cal. Rptr. —, 2011 WL 1797199 (Cal. App. 3d Dist. May 11, 2011). As of May 16, 2011, two other cases before separate divisions of the California Court of Appeal are pending on the issue of whether public employee names and corresponding pension amounts are public or exempt from disclosure under Government Code Sections 6254(c)(personnel files), 6255 (public interest balancing test) or 31532 (governing county board of retirement and providing "[s]worn statements and individual records of members shall be confidential and shall not be disclosed to anyone except insofar as may be necessary for the administration of this chapter or upon order of a court of competent jurisdiction, or upon written authorization by the member."). *Sonoma County Employee's Retirement Association v. Superior Court*, Court of Appeal for the State of California, First Appellate District, Case No. A1330659; *San Diego County Employee Retirement Association v. Superior Court*, Court of Appeal of the State of California, Fourth Appellate District, Case No. D058963.

In *SCERS*, the court held that consistent with the constitutional mandate that exemptions from the mandatory disclosure provisions of the CPRA be construed narrowly, "individual records" under Section 31532 had to be construed as meaning those records submitted by individuals, or on an individual's behalf, to the retirement board, not all records pertaining to an individual, as advocated by the retirement board. See *SCERS*, 2011 WL 1797199 * 15.

Prior decisions of the California Attorney General discussing Section 31532, or similar provisions, and the recent California Supreme Court case compelling disclosure of public employee salaries strongly support disclosure of public employee pensions. 25 Ops. Cal. Atty. Gen. 90 (1955); 60 Ops. Cal. Atty. Gen. 110 (1977); *International Federation of Professional and Technical Engineers v. Superior Court*, 42 Cal.4th 319, 64 Cal. Rptr. 3d 693, 165 P.3d 488 (2007).

Police Personnel Related Records: Disclosure of police officer personnel records are regulated by both California's Evidence Code and Penal Code. See Cal. Penal Code §§ 832.5, 832.7, 832.8 and Cal. Evid. Code §§ 1043-1046; see, e.g., *Copley Press, Inc. v. Superior Court*, 39 Cal.4th 1272, 1284, Cal.Rptr.3d 183, 141 P.3d 288 (2006)(records of a county civil service commission relating to a peace officer's administrative appeal of a disciplinary matter were exempt under Penal Code Section 832.7, protecting peace officer personnel records); *San Diego Police Officers Ass'n v. City of San Diego Civil Service Commission*, 104 Cal. App. 4th 275, 128 Cal. Rptr. 2d 248 (2002)(provisions governing peace officer personnel records precluded disclosure of peace officer personnel records at public administrative appeal of disciplinary decision if dis-

closure objected to by officer); *City of Hemet v. Superior Court*, 37 Cal. App. 4th 1411, 1431, 44 Cal. Rptr. 2d 532 (1995)(records relating to allegations of police misconduct fell within protections of peace officer personnel records); *Fagan v. Superior Court*, 111 Cal. App. 4th 607, 618-19, 4 Cal. Rptr. 3d 139 (2003)(officers' urinalysis test results taken in connection with an administrative investigation of officer's off-duty conduct fell within protections of peace officer personnel records).

The Constitutional Sunshine Amendment expressly maintains these privacy protections for peace officers. Cal. Const. Art. I, § 3(b) (3). However, not all police officer information is subject to these provisions. Indeed, in *Commission on Peace Officer Standards and Training v. Superior Court*, 42 Cal.4th 278, 64 Cal.Rptr.3d 661, 165 P.3d 462 (2007), the Court made clear that these statutes cannot be interpreted as reaching beyond their clear language and purpose, and cannot be used as a justification for withholding basic information about the state's law enforcement officers:

The public's legitimate interest in the identity and activities of peace officers is even greater than its interest in those of the average public servant. 'Law enforcement officers carry upon their shoulders the cloak of authority to enforce the laws of the state. In order to maintain trust in its police department, the public must be kept fully informed of the activities of its peace officers.'

42 Cal. 4th at 297 (emphasis added) (quoting *New York Times v. Superior Court*, 52 Cal. App. 4th 97, 104-105, 60 Cal. Rptr. 2d 410 (1997)). Thus, the Court held that police officer names, employing agency, and employment dates in a database maintained by the commission was not confidential under Penal Code Sections 832.7 or 832.8, and disclosure would not constitute an unwarranted invasion of personal privacy under Government Code Section 6254(c). *Id.* at 294, 299-303. And in *Int'l Federation*, 42 Cal.4th at 343-46, the Court rejected the argument that individual salary information of police officers was confidential as part of their "personnel records" under Section 832.7.

Names of police officers who fired their weapons at civilians while engaged in the performance of their duties have been held not to be private information under these Penal Code provisions. *New York Times Co. v. Superior Court*, 52 Cal. App. 4th 97, 104 (1997)("Fear of possible opprobrium or embarrassment is insufficient to prevent disclosure."); but see *Copley Press*, 39 Cal.4th at 1298 (disapproving *New York Times* to extent inconsistent with its holding, and criticizing the court's "unsupported assertion" that police officer names are not confidential as part of their personnel file, "at least insofar as it applies to disciplinary matters like the one at issue here."). Following the decision in *Commission on Peace Officers Standard and Training*, and taking into account the decision in *Copley Press*, the California Attorney General concluded in 2008 that these provisions do not shield the names of peace officers involved in critical incidents, and that the information must be disclosed in response to a CPRA request unless the proponents of secrecy show that the harm of disclosure clearly outweighs the benefits of public access in a specific case – generally, in those situations where peace officers are currently working undercover. 91 Ops. Cal. Atty. Gen.11 (May 19, 2008).

N. Police records.

1. Accident reports.

Accident reports are exempt. Cal. Veh. Code § 20012. Abstracts of accident reports required to be sent to the Department of Motor Vehicles in Sacramento, except abstracts of accidents which in the opinion of the reporting officer were the fault of another individual, are open to the public for inspection at the DMV during office hours. Cal. Veh. Code § 1808.

2. Police blotter.

Public as to information that is expressly stated to be subject to disclosure in the statute. Cal. Gov't Code § 6254(f)(1), (2) and (3).

3. 911 tapes.

911 tapes are not expressly exempt under the CPRA. Arguably, when calls for assistance involve an allegation of criminal wrongdoing, they may fall under the investigatory records exemption of Section 6254(f). Under such circumstances, the detailed information culled from the tape and required to be disclosed under the statute would have to be disclosed, but not the tape itself. Cal. Gov't Code § 6254(f) (1), (2) and (3). However, not all calls to a 911 call center or local police department are or should be protected from disclosure under this provision. Section 6254(f) exempts only “[r]ecords of complaints to, or investigations conducted by, or records of intelligence information or security procedures of” various law enforcement agencies, as well as certain “investigatory . . . files” maintained by those agencies. Cal. Gov't Code § 6254(f). In *Haynie v. Superior Court*, 26 Cal. 4th 1061, 1071, 112 Cal. Rptr. 2d 80, 31 P.3d 760 (2001), the California Supreme Court made clear that this exemption must not be interpreted to “shield everything law enforcement officers do from disclosure.” The Court emphasized that “officers make inquiries of citizens for purposes . . . that are unrelated to either civil or criminal investigations.” *Id.* “The records of investigation exempted under section 6254(f) encompass *only those investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred.*” *Id.* (emphasis added). When a 911 call is made for medical assistance, for example, Section 6254(f) arguably is not implicated.

4. Investigatory records.

See generally Section II. A. 2. (f), above.

a. Rules for active investigations.

Specified facts from investigatory or security records, without disclosure of the records themselves, must be disclosed unless disclosure would endanger the successful completion of an investigation, or related investigation, or endanger a person involved in the investigation. Cal. Gov't Code §§ 6254(f)(1), (f)(2) and (f)(3).

For arrests, the agency must disclose such facts as the name, occupation, and detailed physical description of every individual arrested by the agency, as well as the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds must be disclosed. Cal. Gov't Code § 6254(f)(1).

For complaints or requests for assistance, the agency must disclose such facts as the time and nature of the response, the time, date and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. Notwithstanding these mandatory disclosure requirements, an agency, at the victim's request, may withhold the name of a victim of certain specified sexual crimes as set forth in the statute. Cal. Gov't Code § 6254(f)(2). Additionally, to obtain address information for individuals arrested by an agency or victims of crimes other than those expressly set forth in the statute, the requester must state under penalty of perjury that the information is sought for one of five specified purposes: scholarly, journalistic, political, governmental, or investigation purposes by a licensed private investigator. Cal. Gov't Code § 6254(f)(3). Moreover, the requester must declare under penalty of perjury that the information obtained shall not be used, directly or indirectly, to sell a product or service. *Id.*

The mandatory disclosure provisions of Section 6254(f)(1) and (f) (2) have been held to apply only to those records pertaining to contemporaneous police activity and not to requests for arrest information about closed investigations. *County of Los Angeles v. Superior Court (Kusar)*, 18 Cal. App. 4th 588, 598-99, 22 Cal. Rptr. 2d 409 (1993). This holding arose from an unusual factual setting in which a litigant made a Public Records Act request going back ten years to circumvent

a prior discovery order and to obtain confidential police officer personnel information. *Id.*

The broad exemptions of 6254(f) are discretionary, however, and nothing precludes an agency from disclosing more than it is required to under the law. Cal. Gov't Code § 6253(e).

b. Rules for closed investigations.

Exempt. The CPRA's exemption for investigatory files does not terminate when the investigation terminates. *Williams v. Superior Court*, 5 Cal. 4th 337, 362, 852 P.2d 377, 19 Cal. Rptr.2d 882 (1993). In *Williams*, the California Supreme Court held that the language and history of Section 6254(f) did not support an interpretation that would place a time limit on the duration of the exemption to disclosure regarding investigatory files. Additionally, the exemption has been held to apply to letters prepared after the conclusion of an investigation but that were related exclusively to the investigation. *Rackauckas v. Superior Court*, 104 Cal. App. 4th 169, 179, 128 Cal. Rptr. 2d 234 (2002).

The mandatory disclosure requirements of information from investigatory record, set forth above, have been held to apply only to those records pertaining to contemporaneous police activity, not to closed investigations. *County of Los Angeles v. Superior Court (Kusar)*, 18 Cal. App. 4th 588, 598-99, 22 Cal. Rptr. 2d 409 (1993).

5. Arrest records.

Except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation, state and local law enforcement agencies shall make public the following information pertaining to arrests currently being processed in the criminal justice system: “[t]he full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and place of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.” Cal. Gov't Code § 6254(f)(1); see also *County of Los Angeles v. Superior Court (Kusar)*, 18 Cal. App. 4th 588, 22 Cal. Rptr. 2d 409 (1993), discussed above.

6. Compilations of criminal histories.

Exempt. Local summary criminal history information (“rap sheet”) is exempt from disclosure. Cal. Penal Code § 13300. Also, records pertaining to closed investigations unrelated to any contemporaneous law enforcement activities are not required to be disclosed under Government Code Section 6254(f). See *County of Los Angeles v. Superior Court (Kusar)*, 18 Cal. App. 4th 588, 598-99, 22 Cal. Rptr. 2d 409 (1993), discussed above.

7. Victims.

The name and age of the victim shall be made public, unless the disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation. However, the name of any victim of certain crimes defined by various provisions of the Penal Code relating to sex offenses may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. Cal. Gov't Code § 6254(f)(2). Furthermore, pursuant to Penal Code 293, a law enforcement agency is required to advise victims of their right to request that their names not be released.

Address information of victims must also be disclosed where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a duly licensed in-

investigator, except that the address of a victim of any crime defined by certain enumerated provisions of the Penal Code shall remain confidential. The requester must also declare under penalty of perjury that the address information obtained shall not be used to sell a product or service to any individual or group of individuals. Cal. Gov't Code § 6254(f)(3).

8. Confessions.

May be withheld at agency's discretion under Section 6254(f) if compiled for correctional or law enforcement purposes. However, once introduced in evidence in a criminal proceeding, public access to the information is presumed absent a constitutional showing justifying its sealing.

9. Confidential informants.

Exempt. The identity of confidential informants and any statements made by them are expressly exempt from disclosure under Section 6254(f). California Evidence Code Section 1041 also protects the identity of confidential informants upon a proper showing.

10. Police techniques.

Exempt. Police techniques or "security procedures" are expressly exempt from disclosure under Section 6254(f).

11. Mug shots.

Access appears discretionary. See Cal. Ops. Att'y Gen. 03-205 (2003)(sheriff has discretion to furnish copies of mug shots to public or media but once released a copy must be made available to all who make request). In California, law enforcement agencies routinely make mug shots available to the press. Indeed, in *People v. McCloud*, 146 Cal. App. 3d 180, 182, 194 Cal. Rptr. 75 (1983), the only published California case regarding mug shots, the court recognized that mug shots are routinely made available to the press and public and that this practice provides a variety of benefits to the public and the law enforcement system, as evident from the arrests at issue which "were brought about through the publication in a daily newspaper, of their mug shots taken after some earlier arrest." The *McCloud* case does not discuss access to mug shots pursuant to the CPRA. It holds instead that mug shots are *not* part of the criminal summary history ("rap sheet"), which is a confidential record under Penal Code Section 13300.

12. Sex offender records.

Local summary criminal history information ("rap sheet") is exempt from disclosure. Cal. Penal Code § 13300. Also, records pertaining to closed investigations unrelated to any contemporaneous law enforcement activities are not required to be disclosed under Government Code Section 6254(f); see also *County of Los Angeles v. Superior Court (Kusar)*, 18 Cal. App. 4th 588, 589-99, 22 Cal. Rptr. 2d 409 (1993). Despite these laws and pursuant to the Sex Offender Registration Act of Section 290 of the Penal Code, certain sex offenders are required to register with local law enforcement agencies when coming into the state or moving residences within the state. Cal. Penal Code § 290. Notwithstanding any other law, law enforcement agencies may provide information to the public about a person required to register as a sex offender pursuant to Section 290, by whatever means the entity deems appropriate, "when necessary to ensure the public safety based upon information available to the entity concerning that specific person." Cal. Penal Code § Section 290.45. Additionally, under Megan's Law, the Department of Justice is required to make information about registered sex offenders publicly available via the Internet. Cal. Penal Code § 290.46. There are four categories of sex offenders for purposes of the disclosure requirements. The name of the registrant, address, a photograph, the year of most recent conviction, year of release and subsequent felony convictions is among the information available on the DOJ's website for some categories of registrants.

O. Prison, parole and probation reports.

Prison records are generally exempt. Cal. Gov't Code § 6254(f). However, transcripts of parole hearings and any statements, recom-

mendations, or other materials considered and incorporated therein, unless the material is confidential in order to preserve institutional security and the security of others, shall be made available to the public no later than 30 days from the date of the hearing. Cal. Penal Code § 3042. Probation reports filed with the court are open for public inspection from the date judgment is pronounced or probation granted (or in the case of a report arising out of a previous arrest from the date the subsequent accusatory pleading is filed) to and including 60 days from the date judgment is pronounced or probation granted, whichever is earlier. Cal. Penal Code § 1203.05. Thereafter, access to probation reports requires either a court order upon the filing of a petition by the individual seeking access, or a court order upon the court's own motion. *Id.*

P. Public utility records.

The name, credit history, utility usage date, home address, or telephone number of utility customers of local agencies are not required to be disclosed under the CPRA except under certain specified circumstances set out in the statute, such as an authorized request for release by an agent or family member of the person to whom the information pertains, or upon a determination that the public interest in disclosure clearly outweighs the public interest in nondisclosure. Cal. Gov't Code § 6254.16. Also, geological and geophysical data, plant production data, and similar information relating to utility systems development are not required to be disclosed under the CPRA. Cal. Gov't Code § 6254(e).

Q. Real estate appraisals, negotiations.

1. Appraisals.

Appraisals for acquisition of property are exempt "until all the property has been acquired or all the contract agreement obtained." Cal. Gov't Code § 6254(h).

2. Negotiations.

While a local agency may hold a closed session for the purpose of meeting with its real estate negotiator to discuss price and terms of the purchase, sale, exchange or lease of real property, there is no corollary provision under the CPRA to withhold records, though assertion of the public interest balancing test of Section 6255 to thwart access during the negotiation process is conceivable. There are no known reported cases discussing this issue. See Cal. Gov't Code § 54956.8 (while negotiation session is closed, statute requires agency to identify real property which is subject of negotiation, the person or persons with whom negotiations may occur, and the name of the negotiator for the agency).

3. Transactions.

Public.

4. Deeds, liens, foreclosures, title history.

Public.

5. Zoning records.

Public.

R. School and university records.

1. Athletic records.

There is no specific statutory exemption from disclosure but see R. 3, below, for exemptions for student records generally.

2. Trustee records.

There is no specific statutory exemption from disclosure.

3. Student records.

Elementary school pupil records are generally exempt. Cal. Ed. Code § 49073-76. Community college student records (Cal. Ed. Code § 67243) and university student records (Cal. Ed. Code § 76143) are

also generally exempt. *See Porten v. University of San Francisco*, 64 Cal. App. 3d 825, 134 Cal. Rptr. 839 (1976)(recognizing state constitutional right of privacy in student records); *see also Rim of the World Unif. Sch. Dist. v. Superior Court*, 104 Cal. App. 4th 1393, 129 Cal. Rptr. 2d 11 (2003)(holding federal Family Educational Rights and Privacy Act preempted state statute requiring disclosure of student expulsion records).

4. Other.

Campus crime reports: The governing boards of community college districts, state universities, the University of California, Hastings College of Law, and any post-secondary institution receiving public funds for student financial assistance must release campus crime records upon request by students, employees, applicants for admission, and the media, unless the information is the type exempt from disclosure under Government Code Section 6254(f). Cal. Ed. Code § 67380(a)(3). While there are no reported cases discussing the scope of the disclosure requirements of the Education Code, its language and legislative history suggest that the actual records of crime, including police reports, may be within the scope of disclosure. Also, it is unclear whether the discretionary exemptions for closed investigations judicially created under Government Code Section 6254(f) in *County of Los Angeles v. Superior Court (Kusar)*, 18 Cal. App. 4th 588, 598-99, 22 Cal. Rptr. 409 (1993), apply under the Education Code. The statute does not apply unless the campus has a full-time equivalent enrollment of more than 1,000 students. Cal. Ed. Code § 67380(e). Nor does it apply as to the California Community Colleges unless and until the Legislature makes funds available to them to fulfill the statute's mandate. Additionally, the provisions of Section 67380 are made applicable to the University of California only through appropriate resolution of the Regents of the University of California. Cal. Ed. Code § 67400.

S. Vital statistics.

1. Birth certificates.

Public, except for those parts which contain medical and family information. Cal. Health & Safety Code § 102430.

2. Marriage & divorce.

Certificates of marriage are public. However, *confidential marriage certificates* are not open to public inspection except upon order of the court issued upon a showing of good cause. Cal. Family Code § 511. Health and Safety Code §10361, which provided that State Registrar and county clerk records regarding dissolution of marriage, judgment of nullity or legal separation were closed to public inspection, was repealed in 1995. These records are now public.

3. Death certificates.

Public.

4. Infectious disease and health epidemics.

Information about an ongoing outbreak of an infectious disease at a public facility is not expressly exempt and strong public policies support disclosure of such information to inform the public, dissuade undue panic and allow the public to judge the agency's response. It can be anticipated that some concerns about whether disclosure will violate the Health Insurance Portability and Accountability Act ("HIPPA") will be expressed, if not directly asserted to thwart disclosure. HIPPA would only apply, however, if the facility fell within the definition of a "health care provider" and the disclosure was of "individually identifiable health information," as those terms are defined under 42 USCA Section 1320(d); 45 CFR 160.103. Even so, HIPPA expressly authorizes disclosure pursuant to other legal mandates, such as a state's public records act. CFR § 164.512(a).

V. PROCEDURE FOR OBTAINING RECORDS

The CPRA requires prompt agency response to records requests and allows immediate relief via the courts.

A. How to start.

1. Who receives a request?

The request should be directed to the public official or employee who has custody of the records. The request need not be to the head of an agency or to a supervisor.

2. Does the law cover oral requests?

a. Arrangements to inspect & copy.

A request must "reasonably describe an identifiable record" to be produced. Cal. Gov't Code § 6253(b). Such a request may be made orally. *Los Angeles Times v. Alameda Corridor Transp. Authority*, 88 Cal. App. 4th 1381, 107 Cal. Rptr. 2d 29 (2001)(CPRA does not require that requests for public records be in writing). However, if the request is in writing, then a written response is required. Cal. Gov't Code § 6255(b). Therefore, if a denial is anticipated or it is anticipated that the agency may drag its heels, the better practice is to make the request in writing, signed and dated by the person requesting the record, and to retain a copy. Otherwise, routine requests can be and should be made orally.

b. If an oral request is denied:

If an oral request is denied, then a letter should be sent or faxed immediately memorializing the request (describing the records requested) and the denial. Also, request that the agency, pursuant to Section 6255(a), justify its denial by providing the express provision(s) of the CPRA upon which the agency is relying and by providing the names and titles of each person responsible for the denial.

(1). How does the requester memorialize the refusal?

If the agency orally denies the request, the better practice is to memorialize the denial in a letter, keeping in mind that any letter may be an exhibit in support of any later initiated court proceedings under the CPRA.

(2). Do subsequent steps need to be in writing?

No, but the better practice is to memorialize in a letter addressed to the agency the prior request and denial and any subsequent actions taken by the agency, keeping in mind that any letter may be an exhibit in support of any later initiated court proceedings under the CPRA.

3. Contents of a written request.

a. Description of the records.

A simple request describing the records with specificity and asking that they be made available immediately is sufficient. An agency is required to comply with the request so long as the record can be located with reasonable effort. *State Bd. of Equalization v. Superior Court*, 10 Cal. App. 4th 1177, 1186, 13 Cal Rptr. 2d 342 (1992).

If the requester is uncertain of how to describe the documents sought because he or she does not know what documents the agency maintains, for example, the requester can seek the assistance of the agency, which is required to, among other things, "[a]ssist 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." Cal. Gov't Code § 6253.1.

Extraneous matter, such as the reason for the request, is unnecessary unless the information is covered by Section 6254(f)(3) of the Government Code. Under Section 6257.5, an agency may not deny access based on the purpose for which the record is being requested. Cal. Gov't Code § 6257.5. However, disclosure of the purpose of the request may assist the agency in locating responsive documents. *See Cal. Gov't Code § 6253.1.*

It is good practice to include a statement that if the agency contends

that some portion of the record is exempt from disclosure, the exempt material should be deleted and the remainder of the record be disclosed. Cal. Gov't Code § 6253(a).

b. Need to address fee issues.

The agency may charge a fee for the direct costs of copying the records or a “statutory fee,” if applicable. Cal. Gov't Code § 6253(b); *see also* Section I. D. Thus, it is good practice to either tender the fee, if known, with the request or to state in the request that payment will be made at the time copies are provided.

One may request a waiver of the fee; however, since the CPRA authorizes a fee for the direct cost of duplication, or other statutory fee, the agency has complete discretion to grant the waiver or demand payment of the fee before providing copies.

c. Plea for quick response.

If disclosure is time sensitive, it is a good idea to remind the agency that the CPRA states that the agency is to make the records “promptly” available and, absent unusual circumstances, it must make a determination of whether the records are disclosable public records no later than 10 days from receipt of the request. Cal. Gov't Code § 6253(b) and (c).

d. Can the request be for future records?

The request must be for existing records, not future records. *See* definition of “public records” and “writings” in the CPRA, Cal. Gov't Code § 6252(e) and (g).

B. How long to wait.

1. Statutory, regulatory or court-set time limits for agency response.

Copies of non-exempt public records must be made “promptly” available to the requester. However, the CPRA expressly allows 10 days from receipt of the request for the agency to make a determination as to whether a specific record is a disclosable public record in the possession of the agency. Cal. Gov't Code § 6253(c). This does not mean that the agency may take 10 days on all requests for public records. It simply means that where a question exists about whether the record is exempt from disclosure or whether the record is in the agency's possession, the agency may take up to 10 days to make its determination. *See* Cal. Gov't Code § 6253(d) (“Nothing in this chapter shall be construed to permit an agency to obstruct the inspection or copying of public records.”)

An agency also must allow for the inspection of public records at all times during the office hours of the agency. Cal. Gov't Code § 6253(a). Presumably, the agency would be allowed the same time period as with a request for copies of records to make its determination following a request for inspection if the public status of the record is unclear.

Extension of time for unusual circumstances. If the agency contends that the request is unusual and requires a search of separate locations, an examination of a voluminous amount of separate and distinct records, consultation with another agency with an interest in the records requested, or the compilation of data, writing of programming language or constructing a computer report to extract data, the time limit for the agency to make its determination regarding disclosure may be extended by an additional 14 days. In such “unusual circumstances,” the head of the agency, or his or her designee, must provide written notice 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,” which shall not be later than 14 days beyond the original 10 day period. When the determination is dispatched and if the agency determines that the records are disclosable, it must notify the requester of when the records will be made available. Cal. Gov't Code § 6253(c).

The CPRA requires prompt notification of agency determination. As soon as a determination is made whether to comply with the request, the

agency must immediately notify the requester of the decision *and* of the reasons for any denial. Cal. Gov't Code § 6255(a). The agency is required to demonstrate that the record in question is exempt by citing the specific provision(s) of the CPRA or other law it is relying upon for its denial to disclose. Cal. Gov't Code § 6255(a).

2. Informal telephone inquiry as to status.

It is always a good idea to follow up a written or oral request with a telephone call to ask about the status of the agency's response to the request. This can be an opportunity to provide, on an informal basis, statutory or case law support for your request, if necessary.

3. Is delay recognized as a denial for appeal purposes?

A delay beyond the 10- to 24-day period allowed under Section 6254(c) is arguably a violation of the CPRA giving a requester standing to sue the agency. A lawsuit is a costly method to obtain a response, however. Practically speaking, filing a writ petition or an action for declaratory or injunctive relief may be premature if the agency has not definitively denied the request. On the other hand, if the delay is unreasonable and it becomes clear that the agency is refusing to respond or has gone substantially beyond the 10- or 24-day period, then it might be worthwhile to file a lawsuit, even if it is only to get a response from the agency. In this circumstance, writing the agency and informing it that suit will be filed absent a written response or production of records by a stated date, would assist in establishing that the inaction is a violation of the CPRA and an intended denial by the agency.

4. Any other recourse to encourage a response.

Another recourse to encourage a response is to send a second letter, following up on the original request, setting forth statutory and case law support for disclosure and advising the agency that its delay is in violation of Section 6253(d) of the CPRA. Bringing public attention to the matter, through local media or public officials overseeing the agency may also prompt action.

C. Administrative appeal.

The CPRA does not mention administrative appeals, but provides for immediate access to any court of competent jurisdiction, without the need to exhaust administrative remedies. Cal. Gov't Code § 6258. Designated state agencies, however, may have adopted regulations for administrative appeals. Cal. Gov't Code § 6253.4. Additionally, many municipalities have adopted sunshine ordinances which may allow for internal review of the municipality's denial.

The Attorney General is not empowered to enforce the provision of the CPRA unless the AG has itself been denied access to public records under the Act.

1. Time limit.

Not applicable.

2. To whom is an appeal directed?

Not applicable.

a. Individual agencies.

Not applicable.

b. A state commission or ombudsman.

Not applicable.

c. State attorney general.

While the Attorney General's Office does not handle administrative appeals from a CPRA denial, it does issue opinions in various matters that have persuasive effect. When the law is unsettled or unclear, seeking an opinion from the Attorney General on the matter may be an avenue to persuade an agency to comply with the request.

3. Fee issues.

Not applicable.

4. Contents of appeal letter.

Not applicable.

5. Waiting for a response.

Not applicable.

6. Subsequent remedies.

Not applicable.

D. Court action.

Section 6258 sets forth the methods available for instituting actions against an agency for violation of the CPRA. Cal. Gov't Code § 6258.

1. Who may sue?

“Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter.” Cal. Gov't Code § 6258. The California Supreme Court has held that the plain meaning of this provision “contemplates a declaratory relief proceeding commenced only by an individual or entity seeking disclosure of public records, and not by the public agency from which disclosure is sought.” *Filarsky v. Superior Court*, 28 Cal. 4th 419, 426, 121 Cal. Rptr. 2d 844, 49 P.3d 194 (2002)(city may not initiate ordinary declaratory relief action to determine its obligation to disclose records to a member of the public as CPRA provides exclusive means for litigating question of whether records must be disclosed).

2. Priority.

Section 6258 provides, in pertinent part, that the hearing in these proceedings “shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.” Cal. Gov't Code § 6258.

3. Pro se.

It is not advisable to proceed in *pro se*. If a court action must be brought, complex procedural requirements virtually necessitate the hiring of an attorney.

4. Issues the court will address:

a. Denial.

The court will determine whether the agency has met its burden of justifying its withholding of the requested records by determining whether a specific exemption from disclosure applies under the CPRA, or other law, or whether under the facts of a particular case the public interest served by not making the records public clearly outweighs the public interest served by disclosure of the records. Cal. Gov't Code § 6255; Cal. Gov't Code § 6259(b). “The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow.” Cal. Gov't Code § 6259(a).

b. Fees for records.

It is a violation of the CPRA for an agency to charge more than “the direct cost of duplication,” unless a statutory fee provision allows for additional charges. Cal. Gov't Code § 6253(b). With respect to documents, “direct costs” means photocopying costs only. *North County Parents Org. v. Cal. Dept. of Ed.*, 23 Cal. App. 4th 144, 148, 28 Cal. Rptr. 2d 359 (1994). With respect to computer data, “direct costs” means the cost of “producing a copy of a record in an electronic format.” Cal. Gov't Code § 6253.9(a)(2). However, under the CPRA a requester may be required to bear the additional costs of “constructing

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.” Cal. Gov't Code § 6253.9(b).

c. Delays.

While delay beyond that which is proscribed under Section 6253(c) of the CPRA may allow a requester to bring suit, the California Supreme Court has held that “requiring disclosure of otherwise exempt records as a penalty for delay in complying with the Act’s timing requirements is unduly harsh.” *Michaelis, Montanari & Johnson v. Superior Court*, 38 Cal. 4th 1065, 44 Cal. Rptr. 3d 663, 136 P.3d 194 (2006). But failing to assert a specific exemption while relying on others may waive the right to raise exemption for first time in subsequent litigation. *See, e.g., ANG Newspapers v. Union City*, 33 Med. L. Rptr. 2069 (Cal. Sup. Ct. 2005)(ruling that City’s failure to assert exemption waived right to raise exemption for first time in response to order to show cause).

d. Patterns for future access (declaratory judgment).

Upon the filing of a complaint for declaratory relief, the court may enter a prospective order governing future rights of access to the records or a class of records; otherwise the court shall not issue any order applying to future denials of disclosure of records by the agency.

5. Pleading format.

The CPRA provides that one may seek injunctive or declaratory relief or a writ of mandate to enforce his or her right to inspect or to receive a copy of any public record. Cal. Gov't Code § 6258. In California, the pleading format for injunctive and declaratory relief is a complaint. The proper pleading form for a writ of mandate is a verified petition. Because one section of the CPRA refers to the procedure as a “verified petition,” the initial pleadings, whether a complaint or petition, should be verified. *See* Cal. Gov't Code § 6259.

The choice of procedures to use may depend upon local court rules and practices in the county where the action is filed. The declaratory relief procedure enables the court to enter a prospective order governing future rights of access to the records. The petition procedure offers the advantage that the hearing procedure can frequently be expedited.

Where the petition procedure is used, a party will typically seek an alternative writ directing disclosure of the public records or requiring the agency to appear at a hearing to show cause why a peremptory writ directing disclosure should not issue. The court, in its discretion, will issue the alternative writ and order to show cause to the public agency, which may be made returnable within a few days, but usually not longer than the general notice period for law and motion matters. The CPRA provides that the court set the time for responsive pleadings and hearings “with the object of securing a decision as to such matters at the earliest possible time.” Cal. Gov't Code § 6258.

6. Time limit for filing suit.

The CPRA does not set forth a statute of limitations for filing a lawsuit against a public agency. The limitations periods for causes of action for liabilities created by statute is three years. Cal. Civ. Proc. Code § 338. Because the relief sought under the CPRA is equitable in nature, the best course of action is to file suit without undue delay that a court could consider if the delay prejudices the agencies’ case.

7. What court.

The lawsuit must be filed in the superior court of the county where the records or some part thereof are maintained. Cal. Gov't Code §

6259(a).

8. Judicial remedies available.

The only judicial remedy available under the CPRA is immediate disclosure of the public records, a declaratory judgment governing the alleged practice or future disclosure of the same type of documents in question, if applicable, and the recovery of costs and reasonable attorneys' fees. If an agency fails to obey a court order, contempt sanctions may be imposed by the court, after hearing on an order to show cause. Cal. Gov't Code § 6259(c).

9. Litigation expenses.

a. Attorney fees.

Section 6259(d) provides that the court "shall award costs and reasonable attorney fees" to the plaintiff should the plaintiff prevail in proceedings to compel disclosure of public records pursuant to CPRA. Cal. Gov't Code § 6259(d). The award of costs and fees is mandatory. *Bernardi v. County of Monterey*, 167 Cal. App. 4th 1379, 1393, 84 Cal. Rptr. 3d 754 (2008). "The costs and fees shall be paid by the public agency of which the public official is a member employee and shall not become a personal liability of the public official." *Id.*

A plaintiff prevails if the litigation motivated the defendant to re-lease requested records. *Galbisio v. Orosi Public Utility Dist.*, 167 Cal. App. 4th 1063, 1085, 84 Cal. Rptr. 3d 788 (2008); *Los Angeles Times v. Alameda Corridor Transp. Authority*, 88 Cal. App. 4th 1381, 1391, 107 Cal. Rptr. 2d 29 (2001)(partially prevailing plaintiff entitled to attorneys' fees under statute); *Beth v. Garamendi*, 232 Cal. App. 3d 896, 901-02, 283 Cal. Rptr. 829 (1991)(judicial determination on merits not necessary to an award of attorneys' fees under statute); *Motorola Communication & Electronics Inc. v. Department of General Services*, 55 Cal. App. 4th 1340, 64 Cal. Rptr. 2d 477 (1997)(timing alone may be sufficient to prove that plaintiff is prevailing party but where agency's delay could be attributed to uncertain nature of request and fact that agency's attorney on vacation, plaintiff did not show disclosure was motivated by lawsuit).

In *Bernardi*, the court approved a multiplier of 1.25 to enhance the lodestar amount of attorney fees "in recognition of counsel's contingency fee risk and the significant delay in obtaining payment of attorney fees, as well as the unique issues presented." *Bernardi*, 167 Cal. App. 4th at 1399. This despite the arguments advanced by the county that the petition was only partially successful, obtaining one-third of the documents requested. *Id.* at 1396.

Orders either granting or denying attorney fees under Section 6259(d) are reviewable by appeal. *Los Angeles Times*, 88 Cal. App. 4th at 1388.

The CPRA also provides for recovery of fees from the plaintiff should the agency prevail and the court find the lawsuit was clearly frivolous. Cal. Gov't Code § 6259(d).

b. Court and litigation costs.

Section 6259(d) provides that the court "shall award costs and reasonable attorney fees" to the plaintiff should the plaintiff prevail in proceedings to compel disclosure of public records pursuant to CPRA. Cal. Gov't Code § 6259(d).

10. Fines.

The CPRA does not provide for the imposition of fines; however, other statutes may. *See, e.g.*, Cal. Ed. Code § 67380(b)(\$1,000 penalty may be assessed against post-secondary educational institutions receiving state funds for failing to disclose records pertaining to certain specified crimes occurring on campus property).

11. Other penalties.

The CPRA itself does not provide for the imposition of any penalties.

12. Settlement, pros and cons.

Settlement is always an option that should be explored if the circumstances are appropriate. Usually, settlement discussions will involve the extent of redaction or deletion the agency wants to make to the public records in question prior to disclosure. If time is of the essence and it is a matter of "all or nothing," *i.e.*, the documents would not be useful if any redactions are made and the agency is not willing to provide the copies of the records without the deletions, then entering into settlement discussions is not a viable option. The risk of incurring the requester's attorney fees and costs should the requester prevail in a lawsuit also can be a strong incentive for an agency to settle.

E. Appealing initial court decisions.

1. Appeal routes.

An order of the trial court under the CPRA is not appealable, but is immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Cal. Gov't Code § 6259(c); *Filarsky v. Superior Court*, 28 Cal. 4th 419, 426-27, 121 Cal. Rptr. 2d 844, 49 P.3d 194 (2002)(purpose of requiring writ review is to minimize delay of disclosure); *Powers v. City of Richmond*, 10 Cal. 4th 85, 40 Cal. Rptr. 2d 839, 893 P.2d 1130 (1995). Additionally, as the California Supreme Court has held, trial court orders under the CPRA shall be reviewable on their merits. *Times Mirror Co. v. Superior Court*, 53 Cal. 3d 1325, 1336, 813 P.2d 240, 283 Cal. Rptr. 893 (1991).

Orders either granting or denying attorney fees under Section 6259(d) are reviewable by appeal, however. *Los Angeles Times v. Alameda Corridor Transp. Authority*, 88 Cal. App. 4th 1381, 107 Cal. Rptr. 2d 29 (2001).

It is nevertheless critical to win at the trial court level. The trial court should be presented with every piece of evidence and testimony, by declaration under penalty of perjury, that may persuade the court in favor of the petitioner, and which would make a complete record in the event that the trial court order becomes the subject of appellate review.

2. Time limits for filing appeals.

The petition for extraordinary writ (writ of mandate) must be filed within 20 days after service on the party of the notice of entry of order (plus an additional 5 days if service is by mail), or within such further time (not exceeding an additional 20 days) as the trial court for good cause may allow. Cal. Gov't Code § 6259(c). An order of the trial court is not automatically stayed and any party wishing a stay must affirmatively seek one. *Id.*

3. Contact of interested amici.

Briefs of *Amici Curiae* may be accepted by the appellate courts. Prior permission of the court must be sought and obtained. The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues.

F. Addressing government suits against disclosure.

The California Supreme Court has held that an agency may not initiate a declaratory relief action to determine its obligation to disclose records to a member of the public. *Filarsky v. Superior Court*, 28 Cal. 4th 419, 426, 121 Cal. Rptr. 2d 844, 49 P.3d 194 (2002). Whether third parties may initiate an action to bar disclosure of public records has not been decided. *Id.* (declining to address issue); *see also Teamsters Local 856 v. Priceless, LLC*, 112 Cal. App. 4th 1500, 1508 n.6, 5 Cal. Rptr. 3d 847 (2004)(recognizing unresolved nature of issue but expressing no opinion on it).

Open Meetings

I. STATUTE — BASIC APPLICATION.

A. Who may attend?

All persons are permitted to attend any meeting of a state body or legislative body of a local agency, subject to the specific exceptions set forth in the Bagley-Keene Open Meeting Act, Government Code Sections 11120-11132 (governing state bodies) and the Ralph M. Brown Act, Government Code Sections 54950-54963 (governing legislative bodies of local agencies).

Attendance cannot be conditioned on registering, completing a questionnaire, signing an attendance list, or providing other information. Cal. Gov't Code §§ 11124 (Bagley-Keene Act); 54953.3 (Brown Act). If such a list or questionnaire is posted near the entrance or circulated during the meeting, it must state that completion is voluntary and that all persons may attend regardless of whether they complete the document. Cal. Gov't Code §§ 11124 (Bagley-Keene Act); 54953.3 (Brown Act).

B. What governments are subject to the law?

The Bagley-Keene Act applies to all specified state boards, commissions, agencies, committees and advisory groups of such multimember bodies. Cal. Gov't Code §§ 11121, 11121.2, 11121.7 and 11121.8.

The Brown Act applies to the legislative body of a local agency or any other local body created by state or federal law, including all counties, cities, towns, school districts, municipal corporations, districts, political subdivisions or any board, commission or agency thereof. Cal. Gov't Code §§ 54951, 54952. The Legislature intended that all state and local agencies be included under the provisions of some open meeting act, unless expressly excluded. *Torres v. Board of Commissioners*, 89 Cal. App.3d 545, 549, 152 Cal. Rptr. 506 (1979).

1. State.

The Bagley-Keene Act applies to a “state body.” A “state body” is:

- (1) every state board, commission or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order. Cal. Gov't Code § 11121;
- (2) a board, commission, committee or similar multimember body that exercises any authority of a state body delegated to it by that state body. Cal. Gov't Code § 11121(b);
- (3) an advisory board, advisory commission, advisory committee, advisory subcommittee or similar multimember advisory body of a state body, if created by formal action and of the state body or of any members of the state body, and if the advisory body so created consists of three or more persons. Cal. Gov't Code § 11121(c); or
- (4) a board, commission, committee or similar multimember body on which a member of a body that is a state body pursuant to this section serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation. Cal. Gov't Code § 11121(d).

2. County.

The Brown Act applies to the legislative body of any county, city, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency, notwithstanding the conflicting provisions of any other state law. Cal. Gov't Code §§ 54951, 54958.

3. Local or municipal.

The Brown Act applies to the legislative body of any local agency or local body created by state or federal statute, including a school

district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, notwithstanding conflicting state laws. Cal. Gov't Code §§ 54951, 54952, 54958. Factors which determine whether an agency is “local” include: the agency's scope and character, its geographic area of operation, and the extent of its power or jurisdiction. *Torres v. Board of Commissioners*, 89 Cal. App. 3d 545, 550, 152 Cal. Rptr. 506 (1979).

Many cities in California have also enacted local “sunshine laws” extending the public's access to meetings.

C. What bodies are covered by the law?

1. Executive branch agencies.

a. What officials are covered?

The Bagley-Keene Act applies to members of state bodies, when actions are taken by them as a state board, commission or similar multimember group. Cal. Gov't Code § 11121. The Act also applies to members who have been appointed or elected and have not yet assumed office. Cal. Gov't Code § 11121.95. The Act does not apply to officials when acting in their individual capacity.

The Brown Act does not apply to executive agencies.

b. Are certain executive functions covered?

Where a member of a state body, in his or her official capacity, sits as a member of a board, commission, committee or similar multimember body, the Bagley-Keene Act also applies to that body if it receives funds from the state body, regardless of whether the body is organized and operated by the state body or by a private corporation. Cal. Gov't Code § 11121(d).

c. Are only certain agencies subject to the act?

The Bagley-Keene Act applies to all state bodies unless specifically excluded. Cal. Gov't Code § 11121.

2. Legislative bodies.

State Legislature: Neither the Bagley-Keene Act nor the Brown Act apply to bodies of the State Legislature. However, separate open meeting laws for both houses of the California State Legislature can be found at Government Code Sections 9027-9031. The law requires that meetings of either house of the Legislature or any of their committees be open and public. Cal. Gov't Code § 9027. Whenever a meeting is required to be open, notice must be given in accordance with the Joint Rules of the Assembly and the Senate. Cal. Gov't Code § 9028. Closed sessions are permissible for the same reasons as set forth in the Bagley-Keene and Brown Acts, and also may be held for party caucuses and to consider matters affecting the safety and security of members of the Legislature and their employees. Cal. Gov't Code §§ 9029, 9029.5.

Local bodies: The Brown Act applies to the legislative body of every local agency, notwithstanding a conflicting state law. Cal. Gov't Code § 54958. A “legislative body” is:

- (1) the governing body of any local agency or any other local body created by state or federal statute,
- (2) a commission, committee, board or other body of a local agency, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution or formal action of a legislative body,
- (3) a board, commission, committee or other multimember body that governs a private corporation, limited liability company, or other entity that is either created by the legislative body to exercise authority or that receives funds from a local agency and includes as a full voting member, a member of the legislative body of the local agency, or
- (4) the lessee of any hospital that was first leased after January 1,

1994 pursuant to Health and Safety Code Section 32121, which exercises any material authority of a legislative body of a local agency. Cal. Gov't Code § 54952.

An appellate court in Los Angeles found that the Hollywood Entertainment Property Owners Association violated the state's open meetings laws by not holding its meetings in public and failing to post an agenda 72 hours in advance. The appellate court determined that the nonprofit organization was a "legislative body" subject to the terms of the Brown Act. A 1996 city ordinance authorized the association to govern taxpayer-funded programs within business districts and this caused the association to fall under the Brown Act because the association exercised governmental authority otherwise controlled by the city. See *Epstein v. Hollywood Entertainment District II Business Improvement District*, 87 Cal. App. 4th 862, 104 Cal. Rptr. 2d 857 (2001).

3. Courts.

Neither the Bagley-Keene Act nor Brown Act applies to state courts. Cal. Gov't Code §§ 11121.1 (Bagley-Keene Act), 54951, 54952 (Brown Act).

4. Nongovernmental bodies receiving public funds or benefits.

Any board, commission, committee or similar multimember body, whether the multimember body is organized and operated by the state body or by a private corporation, is subject to the Bagley-Keene Act if: (1) it receives funds provided by a state body, and (2) it includes a member of a state body serving in his or her official capacity of that state body. Cal. Gov't Code § 11121(d).

A body that governs a private corporation or entity is subject to the Brown Act if: (1) it is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the body, or (2) it receives funds from the local agency and it includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency. Cal. Gov't Code § 54952(c). See, e.g., *Epstein v. Hollywood Entertainment Dist. II Bus. Improvement Dist.*, 87 Cal. App. 4th 862, 869-73, 104 Cal. Rptr. 2d 857 (2001); 85 Ops. Cal. Att'y. Gen. 55 (2002)(private, nonprofit corporation that received funds from school district and had on its corporate board one of district's trustees with full voting rights, and was created by the City, which lawfully delegated authority to it to operate an educational access channel, was subject to CPRA and opening meetings laws).

5. Nongovernmental groups whose members include governmental officials.

Any board, commission, committee or similar multimember body is subject to the Bagley-Keene Act if: (1) it receives funds provided by a state body, and (2) it includes a member of a state body serving in his or her official capacity. Cal. Gov't Code § 11121(d).

A body that governs a private corporation or entity is subject to the Brown Act if: (1) it is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the body, or (2) it receives funds from a local agency and it includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency. Cal. Gov't Code § 54952(c). See, e.g., *Epstein v. Hollywood Entertainment Dist. II Bus. Improvement Dist.*, 87 Cal. App. 4th 862, 869-73, 104 Cal. Rptr. 2d 857 (2001); 85 Ops. Cal. Att'y. Gen. 55 (2002)(private, nonprofit corporation that received funds from school district and had on its corporate board one of district's trustees with full voting rights, and was created by the City, which lawfully delegated authority to it to operate an educational access channel, was subject to CPRA and opening meetings laws).

6. Multi-state or regional bodies.

A multistate body could presumably be subject to the Bagley-Keene Act if a member of a state body serves on it in his or her official capac-

ity and the multistate body is supported by funds from a state body. See Cal. Gov't Code § 11121(d).

Regional bodies, if they fall within the definition of a "state body" in the Bagley-Keene Act or "legislative body" of a "local agency" in the Brown Act, would be governed by the open meeting requirements of that Act. For example, a planning commission is subject to the Brown Act. 73 Ops. Cal. Atty. Gen. 1 (1990).

An interagency police department task force is a "local agency" subject to the Brown Act where the agency was formed as a separate legal entity under the Joint Exercise Powers Act, pursuant to written agreements by the participating city councils, and where the agency had a budget of more than \$9 million and had the authority to enter into contracts. *McKee v. Los Angeles Interagency Metropolitan Police Apprehensive Crime Task Force*, 134 Cal. App. 4th 354, 359, 36 Cal. Rptr. 3d 47 (2005).

7. Advisory boards and commissions, quasi-governmental entities.

The Bagley-Keene Act applies to any advisory board, advisory commission, advisory committee, advisory subcommittee or similar multimember advisory body of a state body, consisting of three or more persons, and that was created by formal action of a state body or any member of the state body. Cal. Gov't Code § 11121(c).

The Brown Act applies to a commission, committee, board or other body of a local agency, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution or formal action of a legislative body. Cal. Gov't Code § 54952(b). Advisory committees composed only of members of the legislative body that are less than a quorum of the legislative body are not subject to the Brown Act. Cal. Gov't Code § 54952(b). However standing committees of a legislative body, regardless of their composition, which have continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution or formal action of a legislative body are subject to the Brown Act. Cal. Gov't Code § 54952(b).

Two city councilmen who joined together to study an issue and present a report to the full five-member city council did not constitute an "other body" subject to the Brown Act where they did not form a quorum and their recommendations to the full council were advisory only. *Taxpayers for Livable Communities v. City of Malibu*, 126 Cal. App. 4th 1123, 1128-29, 24 Cal. Rptr. 3d 493 (2005).

8. Other bodies to which governmental or public functions are delegated.

The Bagley-Keene Act applies to all multimember bodies that exercise authority delegated to them by a state body. Cal. Gov't Code § 11121(b).

The Brown Act applies to all multimember bodies that govern a private entity and that are created by a legislative body in order to exercise authority delegated to it by the legislative body. Cal. Gov't Code § 54952(c)(1)(A). For example, the board of directors of a private corporation is a legislative body when formed to design, construct and operate an export facility on land leased from the city. *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal*, 69 Cal. App. 4th 287, 295-96, 81 Cal. Rptr. 2d 456 (1999). Similarly, a private non-profit corporation formed to administer the use of funds raised through the city's tax assessments on local businesses is a legislative body when it was formed to "take over administrative functions that normally would be handled by [the] City" and the city played a role in the corporation's creation. *Epstein v. Hollywood Entertainment District II Business Improvement District*, 87 Cal. App. 4th 862, 869-70, 104 Cal. Rptr. 2d 857 (2001).

9. Appointed as well as elected bodies.

Neither the Bagley-Keene Act nor the Brown Act distinguishes between appointed and elected bodies. As long as the body falls within the definition of "state body" under the Bagley-Keene Act and "legis-

lative body” of a “local agency” under the Brown Act, it will be subject to the open meeting laws.

D. What constitutes a meeting subject to the law.

Under the Bagley-Keene Act meetings “include any congregation of a majority of the members of a state body at the same time and place to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.” Cal. Gov’t Code § 11122.5(a).

Similarly, the Brown Act defines “meetings” as “any congregation of a majority of the members of a legislative body at the same time and location, including teleconference locations as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.” Cal. Gov’t Code § 54952.2(a).

The Brown Act extends to a legislative body’s “informal sessions or conferences,” even if no vote is taken. *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors*, 263 Cal. App. 2d 41, 51, 69 Cal. Rptr. 480 (1968) (superseded by statute on the issue of attorney-client privilege). The Brown Act includes “deliberation as well as action” because “deliberation and action [are] dual components of the collective decision-making process” and “the meeting concept cannot be split off and confined to one component only[.]” *Id.* at 47. The Court of Appeal held that when the Sacramento County Board of Supervisors attended an Elks Club luncheon and discussed a county workers’ strike with staff members, labor leaders and staff attorneys, the Board held a “meeting” in violation of the action, even though it did not take any formal vote. *Id.* See also *Frazer v. Dixon Unified School District*, 18 Cal. App. 4th 781, 794, 22 Cal. Rptr. 2d 641 (1993) (a “meeting” under the Brown Act includes “not only collective decision making, but also the collective acquisition and exchange of facts preliminary to the ultimate decision). A pre-meeting briefing session held by a city council with the city manager, assistant city manager, city attorney and planning director is a “meeting” subject to the open meeting requirements. 42 Ops. Cal. Att’y Gen. 61 (1963).

However, the attendance of the majority of the members of a legislative body at the following gatherings does not constitute a meeting provided that a majority of the members do not discuss, other than as part of the scheduled program or meeting, business of a specific nature within the subject matter jurisdiction of the local agency: (1) individual contacts or conversations between members of a legislative body and any other person that do not violate other provisions, (2) a conference, (3) an open and publicized meeting organized to address a topic of local community concern, (4) an open and noticed meeting of another body of the local agency or of a legislative body at another local agency, (5) a purely social or ceremonial occasion, or (5) an open and noticed meeting of a standing committee of that body, as observers. Cal. Gov’t Code § 54952.2(c). Attendance at a standing committee as observers means that majority members may not ask questions, make statements, or sit at the table with the committee members. 81 Ops. Cal. Att’y Gen. 156 (1998).

1. Number that must be present.

a. Must a minimum number be present to constitute a “meeting”?

Under the Brown Act, two or more people must be present to conduct a meeting. *Wilson v. San Francisco Municipal Ry.*, 29 Cal. App. 3d 870, 878-79, 105 Cal. Rptr. 855 (1973). A majority of the members of a legislative body of a local agency constitutes a meeting under the Brown Act. Cal. Gov’t Code § 54952.2.

b. What effect does absence of a quorum have?

If a meeting of a legislative body of a local agency lacks a quorum, it does not constitute a meeting under the Brown Act. Cal. Gov’t Code § 54952.2. The Brown Act also prohibits “seriatim” meetings whereby, through a series of meetings comprised of less than a quorum, a topic

is communicated to a quorum or a quorum is briefed or deliberates on an issue. *Stockton Newspapers v. Members of Redevelopment Agency of City of Stockton*, 171 Cal. App. 3d 95, 105, 214 Cal. Rptr. 561 (1985); *Page v. Miracosta Community College Dist.*, 180 Cal. App. 4th 471, 503-04, 102 Cal. Rptr. 3d 902 (2010) (taxpayer stated a claim that a board of trustees of a community college district violated the Brown Act’s prohibition against seriatim meetings when during a mediation of claims brought by the college president some members of the board repeatedly left closed meeting to talk to mediator regarding potential claims); 63 Ops. Cal. Att’y Gen. 820 (1980).

2. Nature of business subject to the law.

Neither Act was drafted to make any particular categories of subject matter fall within the law. All meetings of a state body or legislative body of a local agency are subject to the law.

a. “Information gathering” and “fact-finding” sessions.

Information-gathering and fact-finding sessions are not specifically exempted and are therefore subject to the requirements of the Bagley-Keene Act.

A meeting is subject to the Brown Act where members are briefed about a matter, even though no action is taken. *Frazer v. Dixon Unified Sch. Dist.*, 18 Cal. App. 4th 781, 796, 22 Cal. Rptr. 2d 641 (1993) (session of school board where information was gathered from prospective contractors about qualifications is a meeting even where no commitment is made to retain person interviewed). Collective acquisition and exchange of facts prior to the ultimate decision is part of “deliberation,” and deliberation by the legislative body of a local agency is subject to the Brown Act. Cal. Gov’t Code § 54952.2; *216 Sutter Bay Ass’n v. County of Sutter*, 58 Cal. App. 4th 860, 877, 68 Cal. Rptr. 2d 492 (1997); *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors*, 263 Cal. App. 2d 41, 47-48, 69 Cal. Rptr. 480 (1968) (superseded by statute on the issue of attorney-client privilege).

b. Deliberations toward decisions.

Deliberations toward decisions are not specifically exempted from the Bagley-Keene Act and are therefore subject to the requirements of the Act.

The Brown Act specifically states that the deliberation of a legislative body during a meeting is subject to the Act. Cal. Gov’t Code § 54952.2; *216 Sutter Bay Ass’n v. County of Sutter*, 58 Cal. App. 4th 860, 877, 68 Cal. Rptr. 2d 492 (1997); *Frazer v. Dixon Unified Sch. Dist.*, 18 Cal. App. 4th 781, 796, 22 Cal. Rptr. 2d 641 (1993); *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors*, 263 Cal. App. 2d 41, 47-48, 69 Cal. Rptr. 480 (1968) (superseded by statute on the issue of attorney-client privilege).

3. Electronic meetings.

a. Conference calls and video/Internet conferencing.

Bagley-Keene Act: A state body is not prohibited from holding an open or closed meeting by teleconference. Cal. Gov’t Code § 11123(b) (1). A “teleconference” is “a conference of individuals in different locations, connected by electronic means, through either audio or both audio and video.” Cal. Gov’t Code § 11123(b)(2).

The teleconferenced meeting must meet the following requirements:

- (1) it must comply with all of the Act’s requirements applicable to other meetings and be conducted in a manner that protects the rights of any parties or member of the public appearing before the state body;
- (2) it must be audible to the public at the location specified in the notice of the open meeting;

(3) each teleconference location must be identified in the notice and agenda of the meeting and be accessible to the public and the agenda must provide an opportunity for members of the public to address the state body directly at each telephone conference location;

(4) all votes must be taken by roll call;

(5) any portion of the teleconferenced meeting that is closed to the public may not include consideration of any agenda item being heard pursuant to emergency situations involving matters upon which prompt action is necessary; and

(6) at least one member of the state body must be physically present at the location specified in the notice of the meeting. Cal. Gov't Code § 11123.

Brown Act: The legislative body of a local agency may use teleconferencing in connection with any meeting or proceeding authorized by law. Cal. Gov't Code § 54953(b)(1). A "teleconference" is "a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both." Cal. Gov't Code § 54953(b)(4). A local agency may provide the public with additional teleconference locations. Cal. Gov't Code § 54953(b)(4).

The teleconferenced meeting must meet the following requirements:

(1) it must comply with all of the Act's requirements applicable to other meetings;

(2) all votes must be taken by roll call;

(3) agendas must be posted at all teleconference locations and the meeting must be conducted in a manner that protects the statutory and constitutional rights of the parties or public appearing before the body;

(4) each teleconference location must be identified in the notice and agenda and each location must be accessible to the public;

(5) during the teleconferenced meeting, at least a quorum of the members of the legislative body must participate from locations within the boundaries of the body's jurisdiction; and

(6) the agenda must provide the public with an opportunity to address the legislative body at each teleconference location. Cal. Gov't Code § 54953(b).

While the Act allows public meets to be held by teleconference, it does not allow a majority of a legislative body, either directly or through intermediaries, to use telephones or any other form of communication "to hear, discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body." Cal. Gov't Code 54952.2 (b)(1). This language, adopted in 2008, expressly overrules the holding in *Wolfe v. City of Fremont*, 144 Cal. App. 4th 533, 545, 50 Cal. Rptr. 3d 524 (2006), to the extent it construed the prohibition against serial meetings as requiring a series of individual meetings result in collective concurrence to violate the Act rather than also including the process of developing a collective concurrence.

The California Supreme Court has emphasized that "the intent of the Brown Act cannot be avoided by subterfuge; a concerted plan to engage in collective deliberation on public business through a series of letters or telephone calls passing from one member of the governing body to the next would violate the open meeting requirement." *Roberts v. City of Palmdale*, 5 Cal. 4th 363, 376, 20 Cal. Rptr. 2d 330, 853 P.2d 641 (1993).

In *Stockton Newspapers Inc. v. Redevelopment Agency of the City of Stockton*, 171 Cal. App. 3d 95, 99, 214 Cal. Rptr. 561 (1985), the court examined whether members of a city board held a "meeting" under the Brown Act by taking part in a secret telephone poll conducted by

a staff attorney about transferring city real estate. *Id.* at 103. Although the board members never met in the same room, the court concluded that they participated in "a series of one-to-one nonpublic and unnotified telephone conversations with the agency's attorney for the commonly agreed purpose of collectively deciding to approve" an item of business, which "constitute[d] a 'meeting' at which 'action' was taken in violation of the Brown Act." *Id.* at 105.

b. E-mail.

The Brown Act prohibits a legislative body from circumventing the open meeting requirements by using e-mail, telephones, letters or surrogates to conduct serial discussions about the public's business. "A majority of the members of the legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body." Cal. Gov't Code § 54952.2(b).

c. Text messages.

Use of text messaging by a majority of the legislative body, either directly or through intermediaries, "to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body" would violate the Brown Act. Cal. Gov't Code § 54952.2(b).

d. Instant messaging.

Use of instant messaging by a majority of the legislative body, either directly or through intermediaries, "to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body" would violate the Brown Act. Cal. Gov't Code § 54952.2(b).

e. Social media and online discussion boards.

Use of social media and online discussion boards by a majority of the legislative body, either directly or through intermediaries, "to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body" would violate the Brown Act. Cal. Gov't Code § 54952.2(b).

E. Categories of meetings subject to the law.

Both the Bagley-Keene and Brown Acts classify meetings as regular, special or emergency.

1. Regular meetings.

a. Definition.

Neither the Bagley-Keene Act nor Brown Act defines the term "regular meeting." The Brown Act requires that each legislative body of a local agency, except for advisory or standing committees, provide by ordinance, resolution, bylaws or other rule the time and place for holding "regular meetings." Cal. Gov't Code § 54954(a). A meeting of an advisory or standing committee, where an agenda is posted at least 72 hours in advance of the meeting, is considered a regular meeting of the legislative body. Cal. Gov't Code § 54954(a).

b. Notice.

(1). Time limit for giving notice.

Bagley-Keene Act: At least 10 days before the regular meeting, the state body shall provide notice of its meeting to anyone who requests it in writing, and shall also give notice on the Internet. Cal. Gov't Code § 11125(a). The notice shall include the name, address and phone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses who will appear at the meeting. Cal. Gov't Code § 11125(a). The written notice shall also contain the Internet site address where notice is available. Cal. Gov't Code § 11125(a).

Brown Act: The legislative body of a local agency must post an agen-

da and mail a copy of the agenda or the agenda packet to anyone who has requested it at least 72 hours before a regular meeting or upon distribution to all, or a majority of all, of the members of a legislative body, whichever occurs first. Cal. Gov't Code §§ 54954.1, 54954.2(a).

(2). To whom notice is given.

Bagley-Keene Act: Notice of a state body meeting must be given to any person who in writing requests that notice. Cal. Gov't Code § 11125(a). A person may request and be provided with notice to all meetings of a state body or to a specific meeting or meetings. Cal. Gov't Code § 11125(d). At the state body's discretion, a person may request and be provided with notice to only those meetings at which a particular subject or subjects will be discussed. Cal. Gov't Code § 11125(d).

Brown Act: Any person may request a copy of the agenda or agenda packet of any meeting of a legislative body to be mailed to that person. Cal. Gov't Code § 54954.1. A request for a mailed copy of the agenda or agenda packet is valid during the calendar year in which it is filed, and must be renewed following January 1st of each year. Cal. Gov't Code § 54954.1. The legislative body may charge a fee for mailing the agenda or agenda packet, but the fee cannot exceed the actual cost of the service. Cal. Gov't Code § 54954.1.

(3). Where posted.

Bagley-Keene Act: The state body must give written notice at least 10 days before its meeting, and also post notice on the Internet. See (1) above.

Brown Act: The legislative body of the local agency shall post the agenda in a location that is freely accessible to members of the public. Cal. Gov't Code § 54954.2(a).

(4). Public agenda items required.

Bagley-Keene Act: The notice of a meeting shall include a specific agenda for the meeting, which shall include a brief description of any items of business to be transacted or discussed in either open or closed session. Cal. Gov't Code § 11125(b). A description of an item to be transacted or discussed in closed session must include a citation to the specific statutory authority under which the closed session is being held. Cal. Gov't Code § 11125(b). The notice must include a brief, general description which need not exceed 20 words, and no item can be added to the agenda after this notice is given. Cal. Gov't Code § 11125(b). Notice of a state body complying with the above requirements shall also constitute notice of an advisory body meeting of that state body, if the business to be discussed is covered by the notice, and the time and place of the advisory meeting is disclosed during the state body's open meeting. Cal. Gov't Code § 11125(c). The advisory meeting must be conducted within a reasonable time of and nearby to the state body's meeting. Cal. Gov't Code § 11125(c).

Brown Act: The agenda must contain a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session, as well as the time and location of the regular meeting. Cal. Gov't Code § 54954.2(a). A brief general description of an item generally need not exceed 20 words. Cal. Gov't Code § 54954.2(a).

Every agenda for a regular meeting must provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item. Cal. Gov't Code § 54954.3(a). However, no public input is necessary on any item that has already been considered by a committee composed exclusively of the members of the legislative body, at a public meeting wherein the public was already provided an opportunity to be heard. Cal. Gov't Code § 54954.3 (a).

(5). Other information required in notice.

No other information is required by either the Bagley-Keene Act or the Brown Act.

(6). Penalties and remedies for failure to give adequate notice.

Under both the Bagley-Keene and Brown Acts, the notice is not required to reach the person requesting it before the meeting takes place. Cal. Gov't Code §§ 11125 (Bagley-Keene Act); 54954.1 (Brown Act). The descriptions of the items of business must not be vague and must inform the reader of the subject matter. See 67 Ops. Cal. Att'y Gen. 84 (1984). No action may be taken on any item not listed in the agenda *unless*:

Bagley-Keene Act: (1) upon a determination by a majority vote of the state body that an emergency situation exists, or (2) a 2/3 vote of the state body that there is a need for immediate action and that need came to the attention of the state body after the agenda was posted. Cal. Gov't Code § 11125.3(a). If less than 2/3 of the members are present, then a unanimous vote of those members present will suffice. Cal. Gov't Code § 11125.3(a)(2). Notice of the additional item shall be provided to each member of the state body and all persons who have requested notice as soon as is practicable after the determination of immediacy is made, but must be delivered in a manner so that it is received by newspapers and radio or television stations at least 48 hours before the meeting. Cal. Gov't Code § 11125.3(b).

Brown Act: (1) upon determination by a majority vote that an emergency situation exists, (2) a 2/3 vote of the legislative body that there is a need for immediate action (if less than 2/3 of the members are present, then a unanimous vote of those members present will suffice) and that need came to the attention of the local agency after posting the agenda, or (3) the item was posted for a prior meeting of the legislative body occurring not more than 5 calendar days prior to the date action is taken on the item and at the prior meeting, the item was continued to the meeting at which action is being taken. Cal. Gov't Code § 54954.2(b).

It is a misdemeanor for a member of a legislative body of a local agency or a state body to knowingly attend a meeting where action is taken in violation of any provision of the open meeting laws, where the member intends to deprive the public of information to which it is entitled. Cal. Gov't Code §§ 11130.7 (Bagley-Keene Act); 54959 (Brown Act).

Mandamus, injunctive or declaratory relief is available to stop or prevent violations of the Bagley-Keene or Brown Acts. Cal. Gov't Code §§ 11130 (Bagley-Keene Act); 54960 (Brown Act). Additionally, mandamus or injunctive relief is available to declare as null and void action taken in violation of the Brown Act, Sections 54953 (open and public meetings), 54954.2 (posting of agenda), 54954.5 (description requirements for closed sessions), 54954.6 (public meeting in general tax or assessment of notice thereof), 54956 (special meetings and notice thereof), or 54956.5 (emergency meeting rules). Cal. Gov't Code § 54960.1(a). Similarly, mandamus or injunctive relief is available to declare as null and void an action in violation of the Bagley-Keene Act, Sections 11123 (open meetings) and 11125 (notice of meetings).

c. Minutes.

(1). Information required.

Neither Act contains any specific provisions for contents of minutes of open meetings. However, the minutes must record all "actions" taken by the legislative body, whether the vote is taken in open or closed session. "No legislative body shall take action by secret ballot, whether preliminary or final." Cal. Gov't Code § 54953(c).

(2). Are minutes public record?

Minutes of open meetings are public records under the California Public Records Act. Cal. Gov't Code § 6250 et. seq.

In *Register Div. of Freedom Newspapers Inc. v. County of Orange*, 158 Cal. App. 3d 893, 906-907, 205 Cal. Rptr. 92 (1984), the Court of Appeal held that closed session minutes must be disclosed under the *Public Records Act* if a legislative body calls a closed session in violation

of the Brown Act and no other privileges apply to the discussions. But another Court of Appeal has held that the Brown Act does not contain any provision for disclosing the minutes of a closed session meeting where the legislative agency correctly convened a closed session under the Brown Act, but strayed into topics that were not on the agenda or not proper for discussion in closed session. *County of Los Angeles v. Superior Court (Union of American Physicians and Dentists)*, 130 Cal. App. 4th 1099, 1105-1106, 30 Cal. Rptr. 3d 708 (2005). In that case, the Court held that minutes of a closed session meeting remained privileged from discovery, even where the body may have violated the Brown Act. *Id.* at 1105. This case should be distinguished by pointing out that the plaintiff had never filed a Brown Act lawsuit, and that the issue of whether the Brown Act had been violated had not been fully litigated in the trial court, and the plaintiff was seeking discovery of closed session minutes in a non-Brown Act lawsuit.

But given the holding of *Union of American Physicians and Dentists*, it is advisable to combine any Brown Act demand letter and lawsuit with a demand under the California Public Records Act for the minutes of the portion of the closed session that violated the Brown Act, and assert that release of the documents is being sought under the Public Records Act *and* the Brown Act.

2. Special or emergency meetings.

a. Definition.

Special Meetings:

Bagley-Keene Act. A special meeting may be called any time by the presiding officer or by a majority of the state body. Cal. Gov't Code § 11125.4(a). A special meeting may only be called where compliance with the 10-day notice requirement for regular meetings places a substantial hardship on the state body or where immediate action is required to protect the public interest. Cal. Gov't Code § 11125.4(a). At the beginning of a special meeting, the body must make specific factual findings in open session that the 10-day notice requirement for a regular meeting places a substantial hardship on the state body or that immediate action is required to protect the public interest. Cal. Gov't Code § 11125.4(c). The finding must be adopted by a 2/3 vote of the body, or if less than 2/3 of the members are present, then by a unanimous vote of all present, otherwise the meeting must terminate. Cal. Gov't Code § 11125.4(c). The finding must be made available on the Internet. Cal. Gov't Code § 11125.4(c).

Only the following items may be considered during a special meeting: (1) pending litigation, (2) proposed litigation, (3) issuance of a legal opinion, (4) disciplinary action involving a state officer or employee, (5) the purchase, sale, exchange or lease of real property, (6) license examinations and applications, (7) action on a loan or grant pursuant to California Health and Safety Code Section 50000 et. seq. (housing and home finance), (8) response to a confidential final draft audit report as permitted by Section 11126.2. Cal. Gov't Code § 11125.4(a). No other business shall be considered at the special meeting. Cal. Gov't Code § 11125.4(b).

Brown Act. A special meeting may be called any time by a presiding officer or by a majority of the legislative body of a local agency by delivering written notice to each member of the legislative body to each local newspaper of general circulation, and to radio or television stations that have requested such notice in writing. Cal. Gov't Code § 54956. The notice must be "received" at least 24 hours before the time of the meeting, and must specify the time, place and business to be transacted or discussed. Cal. Gov't Code § 54956. Only the items of business specified in the notice can be considered at a special meeting. Cal. Gov't Code § 54956.

Emergency Meetings:

Under the Bagley-Keene Act, a body may hold an emergency meeting in case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities. Cal. Gov't Code § 11125.5.

An "emergency situation" means any of the following, as determined by a majority of the state body during a meeting prior to the emergency meeting or at the beginning of an emergency meeting: (1) work stoppage or other activity that severely impairs public health or safety, or both, or (2) a crippling disaster that severely impairs public health or safety, or both. Cal. Gov't Code § 11125.5(b).

Under the Brown Act, a legislative body may hold an emergency meeting if there is an "emergency situation," which is defined by both of the following:

An emergency, which shall be defined as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

A dire emergency, which shall be defined as a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one-hour notice before holding an emergency meeting under this section may endanger the public health, safety or both, as determined by a majority of the members of the legislative body. Cal. Gov't Code § 54956.5(a)(1) and (a)(2).

b. Notice requirements.

(1). Time limit for giving notice.

Special Meetings:

Bagley-Keene Act. The state body must provide notice of a special meeting to each member of the state body, to all parties who have requested notice, and on the Internet as soon as is practicable after the decision to hold a special meeting has been made. Cal. Gov't Code § 11125.4(b). However, the state body must deliver notice in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the special meeting. Cal. Gov't Code § 11125.4(b). Notice must also be posted on the Internet at least 48 hours before the special meeting. Cal. Gov't Code § 11125.4(b).

Brown Act. Notice of a special meeting shall be delivered and received at least 24 hours prior to the meeting to each member of the legislative body and to each local newspaper of general circulation and radio or television stations that requested notice. Cal. Gov't Code § 54956.

Emergency Meetings:

Bagley-Keene Act. Newspapers of general circulation and radio or television stations that have requested notice of meetings pursuant to Section 11125 shall be notified by the presiding officer of the state body, or his designee, one hour prior to the emergency meeting by telephone. Cal. Gov't Code § 11125.5(c). Notice shall also be made available on the Internet as soon as is practicable after the decision to call the emergency meeting has been made. Cal. Gov't Code § 11125.5(c). If telephone services are not functioning, the notice requirements are waived and the presiding officer or his designee shall notify those newspapers and radio or television stations of the holding of an emergency meeting, the purpose of the meeting, and any action taken, as soon after the meeting as possible. Cal. Gov't Code § 11125.5(c).

Brown Act. Each local newspaper of general circulation and radio or television station that has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body or his designee, one hour prior to the emergency meeting by telephone, or in the case of a dire emergency, at or near the time that the members of the legislative body have been notified of the emergency meeting. Cal. Gov't Code § 54956.5(b)(2). All telephone numbers for the newspaper or station provided in the most recent request for notice shall be exhausted. Cal. Gov't Code § 54956.5(b)(2). If telephone services are not functioning, the notice requirements are waived and the legislative body or their designee shall notify the

newspapers and stations of the holding of an emergency meeting, the purpose of the meeting and any action taken, as soon after the meeting as possible. Cal. Gov't Code § 54956.5(b)(2).

(2). To whom notice is given.

Special Meetings:

Bagley-Keene Act. Notice shall be given to each member of the state body and to all parties that have requested notice of its meetings. Cal. Gov't Code § 11125.4(b). Notice shall be given to newspapers of general circulation and radio or television stations by providing notice to all national press wire services. Cal. Gov't Code § 11125.4(b). Notice shall also be made available on the Internet. Cal. Gov't Code § 11125.4(b). Notice is required regardless of whether any action is taken at the special meeting. Cal. Gov't Code § 11125.4(b).

Brown Act. Notice shall be given to each member of the legislative body and each local newspaper of general circulation and radio or television station that has requested notice in writing. Cal. Gov't Code § 54956.

Emergency Meetings:

Bagley-Keene Act. Notice of an emergency meeting shall be given to newspapers of general circulation and radio or television stations that have requested notice of meetings, pursuant to Section 11125. Cal. Gov't Code § 11125.5(c). Notice shall also be made available on the Internet. Cal. Gov't Code § 11125.5(c).

Brown Act. Notice shall be given to each local newspaper of general circulation and radio or television station that has requested notice of special meetings. Cal. Gov't Code § 54956.5(b)(2).

(3). Where posted.

Special Meetings:

Bagley-Keene Act. Notice of a special meeting shall be posted on the Internet. Cal. Gov't Code § 11125.4(c).

Brown Act. The call and notice of a special meeting must be posted at least 24 hours before the special meeting in a location that is freely accessible to all members of the public. Cal. Gov't Code § 54956.

Emergency Meetings:

Notice is not required to be posted prior to an emergency meeting. However, the minutes of the meeting, a list of the persons notified or upon whom an attempt to notify was made, a copy of any roll call votes and any action taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible. Cal. Gov't Code §§ 11125.5(d) (Bagley-Keene Act); 54956.5(e) (Brown Act).

In addition, the Bagley-Keene Act requires the notice to be posted on the Internet. Cal. Gov't Code § 11125.5(d).

(4). Public agenda items required.

Special Meetings. Under the Bagley-Keene Act, the notice shall specify the time and place of the special meeting, the business to be transacted, and the address of the Internet site where notice is available. Cal. Gov't Code § 11125.4(b). Under the Brown Act, the call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed. Cal. Gov't Code § 54956.

Emergency Meetings. Emergency meetings have no agenda requirements under either Act.

(5). Other information required in notice.

No other information for emergency meetings is required in the notice under the Bagley-Keene or Brown Acts.

(6). Penalties and remedies for failure to give adequate notice.

It is a misdemeanor for a member of a legislative body of a local agency or a state body to knowingly attend a meeting where action is taken in violation of any provision of the open meeting laws, where the member intends to deprive the public of information to which it is entitled. Cal. Gov't Code §§ 11130.7 (Bagley-Keene Act); 54959 (Brown Act).

Mandamus, injunctive or declaratory relief is available to stop or prevent violations of the Bagley-Keene or Brown Acts. Cal. Gov't Code §§ 11130 (Bagley-Keene Act); 54960 (Brown Act). Additionally, mandamus or injunctive relief is available to declare as null and void action taken in violation of the Brown Act, Sections 54953 (open and public meetings), 54954.2 (posting of agenda), 54954.5 (description requirements for closed sessions), 54954.6 (public meeting in general tax or assessment of notice thereof), 54956 (special meetings and notice thereof), or 54956.5 (emergency meeting rules). Gov't Code § 54960.1(a). Similarly, mandamus or injunctive relief is available to declare as null and void an action in violation of the Bagley-Keene Act, Sections 11123 (open meetings) and 11125 (notice of meetings).

c. Minutes.

(1). Information required.

Special Meetings. Neither Act contains any specific provisions for contents of minutes of special meetings.

Emergency Meetings. Minutes of emergency meetings are required by both the Bagley-Keene Act and Brown Act and must include: the list of persons the presiding officer notified or attempted to notify, a copy of any roll call votes and any action taken at the meeting. Cal. Gov't Code §§ 11125.5(d) (Bagley-Keene Act); 54956.5(e) (Brown Act).

(2). Are minutes a public record?

Minutes of special and/or emergency meetings are disclosable public records under the California Public Records Act, Government Code Section 6252.

Comment: In *Register Div. of Freedom Newspapers Inc. v. County of Orange*, 158 Cal. App. 3d 893, 906-907, 205 Cal. Rptr. 92 (1984), the Court of Appeal held that closed session minutes must be disclosed under the Public Records Act if a legislative body calls a closed session in violation of the Brown Act and no other privileges apply to the discussions. But another Court of Appeal has held that the Brown Act does not contain any provision for disclosing the minutes of a closed session meeting where the legislative agency correctly convened a closed session under the Brown Act, but strayed into topics that were not on the agenda or not proper for discussion in closed session. *County of Los Angeles v. Superior Court (Union of American Physicians and Dentists)*, 130 Cal. App. 4th 1099, 1105-1106, 30 Cal. Rptr. 3d 708 (2005). In that case, the Court held that minutes of a closed session meeting remained privileged from discovery, even where the body may have violated the Brown Act. *Id.* at 1105. This case should be distinguished by pointing out that the plaintiff had never filed a Brown Act lawsuit, and that the issue of whether the Brown Act had been violated had not been fully litigated in the trial court, and the plaintiff was seeking discovery of closed session minutes in a non-Brown Act lawsuit.

But given the holding of *Union of American Physicians and Dentists*, it is advisable to combine any Brown Act demand letter and lawsuit with a demand under the California Public Records Act for the minutes of the portion of the closed session that violated the Brown Act, and assert that release of the documents is being sought under the Public Records Act *and* the Brown Act.

3. Closed meetings or executive sessions.

a. Definition.

Although both Acts permit closed sessions for specific and limited purposes, neither Act provides a specific definition of a "closed session" or an "executive session," but a closed session is not open to the

public. For a list of the type of meetings that are categorized as closed sessions, or meetings to which the Acts do not apply, refer to sections II (“Exemptions and Other Limitations (Closed Sessions)”) and III (“Meeting Categories — Open or Closed”).

b. Notice requirements.

(1). Time limit for giving notice.

Bagley-Keene Act: For a regular meeting, the state body must post 10-days advance notice on the Internet and give notice to any person who requests it in writing. Cal. Gov’t Code § 11125(a). The notice shall include a specific agenda for the meeting, including business to be transacted or discussed in open or closed session. A description of an item to be transacted or discussed in closed session must include a citation to the specific statutory authority under which a closed session is being held. Cal. Gov’t Code § 11125(b). A special meeting may be called any time by the presiding officer or by a majority of the state body. Cal. Gov’t Code § 11125.4(a). The state body must provide notice of a special meeting to each member of the state body, to all parties who have requested notice, and on the Internet as soon as is practicable after the decision to hold a special meeting has been made. Cal. Gov’t Code § 11125.4(b). However, the state body must deliver notice in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the special meeting. Cal. Gov’t Code § 11125.4(b). Notice must also be posted on the Internet at least 48 hours before the special meeting. Cal. Gov’t Code § 11125.4(b).

Brown Act: For regular meetings, the legislative body of the local agency shall post the agenda, describing each item to be discussed in open and closed session, at least 72 hours in advance of the meeting in a location that is freely accessible to members of the public. Cal. Gov’t Code § 54954.2(a). Notice of a special meeting shall be delivered and received at least 24 hours prior to the meeting to each member of the legislative body and to each local newspaper of general circulation and radio or television stations that requested notice. Cal. Gov’t Code § 54956.

In addition to posting an agenda with a brief description of items to be discussed in a closed session, a state body or legislative body of a local agency must also disclose in an open meeting, prior to the closed session, the nature of the items to be discussed. Cal. Gov’t Code §§ 11126.3(a) (Bagley-Keene Act); 54957.7(a) (Brown Act). The disclosure may take the form of a reference to the items as they are listed by number or letter on the agenda. Cal. Gov’t Code §§ 11126.3(a) (Bagley-Keene Act); 54957.7(a) (Brown Act). The Brown Act suggests agenda descriptions for various closed sessions. Cal. Gov’t Code § 54954.5.

If the closed session is to discuss complaints or disciplinary action against a public employee, the body must give 24 hours advance written notice to the employee of his or her right to have a public hearing. Cal. Gov’t Code §§ 11126(a)(2) (Bagley-Keene Act); 54957(b)(2) (Brown Act). If the state or legislative body does not give the employee such notice, any action taken against the employee is null and void. Cal. Gov’t Code §§ 11126(a)(2) (Bagley-Keene Act); 54957(b)(2) (Brown Act).

(2). To whom notice is given.

The public is entitled to oral disclosure of the items to be discussed in the closed session and by description in the posted agenda. Cal. Gov’t Code §§ 11126.3(a) (Bagley-Keene Act); 54954.5, 54956.9(c) (Brown Act).

(3). Where posted.

Bagley-Keene Act: The state body must post 10-days advance notice of a regular meeting on the Internet and give notice to any person who requests it in writing. Cal. Gov’t Code § 11125(a). The notice shall include a specific agenda for the meeting, including business to be transacted or discussed in open or closed session. A description of

an item to be transacted or discussed in closed session must include a citation to the specific statutory authority under which a closed session is being held. Cal. Gov’t Code § 11125(b).

Brown Act: At least 72 hours before a regular meeting, the legislative body of the local agency shall post the agenda, describing each item to be discussed in open and closed session, in a location that is freely accessible to members of the public. Cal. Gov’t Code § 54954.2(a).

(4). Public agenda items required.

A brief, general description of business to be transacted or discussed in a closed session shall be contained in the agenda. Cal. Gov’t Code §§ 11125(b) (Bagley-Keene Act); 54954.2(a) (Brown Act). The description need not exceed 20 words. Cal. Gov’t Code §§ 11125(b) (Bagley-Keene Act); 54954.2(a) (Brown Act). The Bagley-Keene Act further requires the inclusion of a citation to the specific statutory authority under which the closed session is being held. Cal. Gov’t Code § 11125(b).

(5). Other information required in notice.

Under the Bagley-Keene Act, the notice shall include the name, address, and telephone number of any person who can provide further information prior to the meeting. The notice shall additionally include the address of the Internet site where notices required by this article are made available. Cal. Gov’t Code § 11125(a). Under the Brown Act, the notice must specify the time and location of the meeting and shall be posted in a location that is freely accessible to members of the public. Cal. Gov’t Code § 54954.2(a)(1).

(6). Penalties and remedies for failure to give adequate notice.

It is a misdemeanor for a member of a legislative body of a local agency or a state body to knowingly attend a meeting where action is taken in violation of any provision of the open meeting laws, where the member intends to deprive the public of information to which it is entitled. Cal. Gov’t Code §§ 11130.7 (Bagley-Keene Act); 54959 (Brown Act). The state or legislative body must disclose in open session, the nature of the item to be discussed. Cal. Gov’t Code §§ 11126.3 (Bagley-Keene Act); 54957.7 (Brown Act).

Mandamus, injunctive or declaratory relief is available to stop or prevent such violations of the Bagley-Keene Act or Brown Act. Cal. Gov’t Code §§ 11130 (Bagley-Keene Act); 54960 (Brown Act). Additionally, mandamus or injunctive relief is available to declare as null and void action taken in violation of the Brown Act, Sections 54953 (open and public meetings), 54954.2 (posting of agenda), 54954.5 (description requirements for closed sessions), 54954.6 (public meeting in general tax or assessment of notice thereof), 54956 (special meetings and notice thereof), or 54956.5 (emergency meeting rules). Gov’t Code § 54960.1(a). Similarly, mandamus or injunctive relief is available to declare as null and void an action in violation of the Bagley-Keene Act, Sections 11123 (open meetings) and 11125 (notice of meetings). Cal. Gov’t Code § 11130.3. However, under both Acts, the code authorizes nullification of action taken in violation of these provisions only if the action was not in substantial compliance with the requirements. Cal. Gov’t Code §§ 11130.3(b)(3) (Bagley-Keene Act); 54960.1(d)(1) (Brown Act); *see also Regents of University of California v. Superior Court*, 20 Cal. 4th 509, 527, 85 Cal. Rptr. 2d 257, 976 P.2d 808 (1999); *North Pacific LLC v. California Coastal Commission*, 166 Cal. App. 4th 1416, 1431-32, 83 Cal. Rptr. 3d 636 (2008) (“[S]tate actions in violation of [the notice] requirements should not be nullified, so long as the state agency’s reasonably effective efforts to notify interested persons of a public meeting serve the statutory objectives of ensuring that state actions taken and deliberations made at such meetings are open to the public.”). Additionally, even when technical violations of the Acts are shown, action will not be invalidated absent a showing of prejudice. *California Coastal Commission*, 166 Cal. App. 4th at 1433 (Bagley-Keene Act); *Coban v. City of Thousand Oaks*, 30 Cal. App. 4th 547, 555-56, 35 Cal. Rptr. 2d 782 (1994) (Brown Act).

c. Minutes.

(1). Information required.

Under the Bagley-Keene Act, a state body shall designate a clerk or other officer or employee of the state body who shall attend closed sessions and record in a minute book, all topics discussed and decisions made at the meeting. Cal. Gov't Code § 11126.1. The minute book may consist of a recording of the closed session. Cal. Gov't Code § 11126.1.

Under the Brown Act, the legislative body does not have to keep minutes of a closed session but may designate a clerk pursuant to the same guidelines as above. Cal. Gov't Code § 54957.2. Furthermore, members of a legislative body do not have to disclose their personal recollections of a closed session. *Kleitman v. Superior Court (Wesley)*, 74 Cal. App. 4th 324, 87 Cal. Rptr. 2d 813 (1999).

After any closed session, a state body or a legislative body of a local agency must reconvene in open session prior to adjournment to report on any action taken. Cal. Gov't Code §§ 11126.3(f) (Bagley-Keene Act); 54957.1(a) (Brown Act). The Bagley-Keene Act requires the state body to make any reports and disclosures, provide any documentation and make any other disclosures required by Section 11125.2 of action taken; announcements may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location. Cal. Gov't Code § 11126.3(f) and (e). The Brown Act requires disclosure of copies of any contracts, settlement agreements or other documents that were finally approved or adopted in closed session to anyone requesting disclosure within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956. Cal. Gov't Code § 54957.1(b).

The Brown Act provides that the body shall publicly report, orally and in writing, any action taken in closed session and every member's vote or abstention, as follows:

(1) approval of a final agreement on the purchase, sale, exchange or lease of real estate for or by the local agency. The body shall disclose the fact of approval and the substance of the agreement at the public meeting during which the closed session is held. *See* Cal. Gov't Code § 54957.1(a)(1);

(2) approval to legal counsel to initiate or intervene in an action, to defend, or seek or refrain from seeking appellate review, or to enter an action as an *amicus curiae*. The report shall identify, if known, the adverse party or parties and the substance of the litigation and shall be reported in open session at the meeting during which the closed session is held. However, if the action is to initiate or intervene in an action, the body need not identify the action, the defendants or other particulars, but shall state that a directive was given and that once the action is formally commenced, the particulars shall be disclosed to any person upon request, unless disclosure would jeopardize the body's ability to serve a party or negotiate settlement. *See* Cal. Gov't Code § 54957.1(a)(2);

(3) approval to legal counsel to settle pending litigation. The body shall report its acceptance and disclose the substance of the agreement once it is final, as further specified by the statute. *See* Cal. Gov't Code § 54957.1(a)(3);

(4) disposition of a claim for tort liability, public liability or worker's compensation. The body shall report the name of the claimant and local agency to whom the claim was directed, the substance of the claim, and the amount approved and agreed upon by the claimant as soon as the disposition is reached. *See* Cal. Gov't Code § 54957.1(a)(4);

(5) action taken to appoint, employ, dismiss, accept the resignation of, or any other action affecting a public employee's employment status shall be reported at the public meeting during which the closed session is held. The body shall report the title of the position. However, the report of a dismissal or decision not to renew an employment contract shall be made at the first public meeting following the employee's exhaustion of administrative remedies. *See* Cal. Gov't Code § 54957.1(a)(5);

(6) approval of a final labor agreement with represented employees that has been ratified and accepted by the other party. The body shall disclose items approved and the parties to the negotiation and shall be made after the agreement is final and has been accepted or ratified by the other party. *See* Cal. Gov't Code § 54957.1(a)(6);

(7) pension fund investment transaction decisions made pursuant to Section 54956.81 shall be disclosed at the first open meeting after the earlier of the close of the investment transaction or the transfer of pension fund assets for the investment transaction. Cal. Gov't Code § 54957.1(a)(7);

The legislative body must also provide documents finally approved or adopted to any person who submitted a written request to the body within 24 hours of the posting of the agenda, or any person who has a standing request for all documentation. Cal. Gov't Code § 54957.1(b). Documentation shall be made available to any other person on the next business day following the meeting. Cal. Gov't Code § 54957.1(c).

(2). Are minutes a public record?

The minute book of a closed session is not a public record subject to inspection pursuant to the California Public Records Act and must be kept confidential. Cal. Gov't Code §§ 11126.1 (Bagley-Keene Act); 54957.2(a) (Brown Act).

Comment: In *Register Div. of Freedom Newspapers Inc. v. County of Orange*, 158 Cal. App. 3d 893, 906-907, 205 Cal. Rptr. 92 (1984), the Court of Appeal held that closed session minutes must be disclosed under the *Public Records Act* if a legislative body calls a closed session in violation of the Brown Act and no other privileges apply to the discussions. But another Court of Appeal has held that the Brown Act does not contain any provision for disclosing the minutes of a closed session meeting where the legislative agency correctly convened a closed session under the Brown Act, but strayed into topics that were not on the agenda or not proper for discussion in closed session. *County of Los Angeles v. Superior Court (Union of American Physicians and Dentists)*, 130 Cal. App. 4th 1099, 1105-1106, 30 Cal. Rptr. 3d 708 (2005). In that case, the Court held that minutes of a closed session meeting remained privileged from discovery, even where the body may have violated the Brown Act. *Id.* at 1105. This case should be distinguished by pointing out that the plaintiff had never filed a Brown Act lawsuit, and that the issue of whether the Brown Act had been violated had not been fully litigated in the trial court, and the plaintiff was seeking discovery of closed session minutes in a non-Brown Act lawsuit.

But given the holding of *Union of American Physicians and Dentists*, it is advisable to combine any Brown Act demand letter and lawsuit with a demand under the California Public Records Act for the minutes of the portion of the closed session that violated the Brown Act, and assert that release of the documents is being sought under the Public Records Act *and* the Brown Act.

d. Requirement to meet in public before closing meeting.

The Bagley-Keene Act provides that a closed session shall only be held during a regular or special meeting of the state body. Cal. Gov't Code § 11128. Both Acts require the state body or the legislative body of a local agency to disclose in an open meeting, prior to the closed session, the nature of the items to be discussed. Cal. Gov't Code §§ 11126.3(a) (Bagley-Keene Act); 54957.7(a) (Brown Act).

e. Requirement to state statutory authority for closing meetings before closure.

Bagley-Keene Act: The specific agenda of a closed session, to be included with the notice, must contain a brief general description of items of business to be transacted or discussed. Cal. Gov't Code § 11125(b). The description shall include a citation to the specific statutory authority under which a closed session is being held. Cal. Gov't Code § 11125(b).

Brown Act: The Brown Act does not require a citation to statutory authority for holding a closed meeting.

f. Tape recording requirements.

Both Acts provide that the minute book of a closed session may, but need not, consist of a recording of the closed session. Cal. Gov't Code §§ 11126.1 (Bagley-Keene Act); 54957.2 (Brown Act). A plaintiff may ask the court to order a state or legislative body to tape record its closed sessions and preserve them if the court finds that the body has violated the provisions regarding closed sessions. Cal. Gov't Code §§ 11130(b) (Bagley-Keene Act); 54960(b) (Brown Act). The tapes will then be subject to discovery procedures outlined in each Act if the entity violates the Act in a closed session. Cal. Gov't Code §§ 11130(c) (Bagley-Keene Act); 54960(c) (Brown Act).

F. Recording/broadcast of meetings.

1. Sound recordings allowed.

Under both Acts, any person attending an open and public meeting of a state body or a legislative body of a local agency has the right to record and broadcast the proceedings with an audio or video tape recorder or motion picture camera unless the body reasonably finds that the recording disrupts the proceedings by noise, illumination or obstruction of view. Cal. Gov't Code §§ 11124.1(a) and (c) (Bagley-Keene Act); 54953.5(a), 54953.6 (Brown Act).

2. Photographic recordings allowed.

Under both Acts, any person attending an open and public meeting of a state body or a legislative body of a local agency has the right to record and broadcast the proceedings with a video recorder or motion picture camera unless the body reasonably finds that the recording disrupts the proceedings by noise, illumination or obstruction of view. Cal. Gov't Code §§ 11124.1(a) and (c) (Bagley-Keene Act); 54953.5(a), 54953.6 (Brown Act).

G. Are there sanctions for noncompliance?

There is no provision for sanctions for a violation of the open meeting requirements of either of the Acts except those which may be imposed if a member is found to be guilty of a misdemeanor. Both Acts provide that it is a misdemeanor for a member of a state or legislative body to attend a meeting in violation of any provision of the Act, where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled. Cal. Gov't Code §§ 11130.7 (Bagley-Keene Act); 54959 (Brown Act).

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open meetings statute.

The Bagley-Keene and Brown Acts provide that all meetings of state bodies and legislative bodies of local agencies are to be open and public. The only exemptions contained within either Act are those discussed below.

Both Acts contain a broad opening statement of public policy, which provides that the local and state bodies exist to "aid in the conduct of the people's business" and that it is the intent of the law that "their actions be taken openly and their deliberations be conducted openly." Cal. Gov't Code §§ 11120 (Bagley-Keene Act); 54950 (Brown Act). With respect to any claim of exemption that may be advanced by such bodies or agencies, each of the Acts state, "The people of this State

do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know." Cal. Gov't Code §§ 11120 (Bagley-Keene Act); 54950 (Brown Act).

1. Character of exemptions.

a. General or specific.

Both Acts specifically provide that the conduct of the people's business is to be conducted in the open. It is therefore the general rule that all meetings of anybody covered by either Act must be open to the public. If a meeting is to be conducted or any action taken by a covered agency in other than a public forum, a specific exemption from the general rule must be identified by the agency. Where there is no specific exemption, the meeting must remain open to the public. Meetings may be closed to the public only in accordance with the specific provisions of the Acts. Cal. Gov't Code §§ 11132 (Bagley-Keene Act); 54962 (Brown Act).

b. Mandatory or discretionary closure.

Both Acts are discretionary and permit closure in designated circumstances; neither Act requires closures. The Bagley-Keene Act states, "Nothing in this article shall be construed to prevent a state body from holding a closed session . . ." Cal. Gov't Code § 11126. The Brown Act sets forth the minimal standards for public access and a legislative body of a local agency may impose requirements upon themselves which allow greater access to their meetings. Cal. Gov't Code § 54953.7. Many cities in California have enacted "sunshine ordinances" to expand the public's access to meetings. However, a body cannot hold an open meeting where an individual or business under discussion has a legally protected right to confidentiality.

2. Description of each exemption.

Bagley-Keene Act: A state body is exempt from the open meeting requirements of the Bagley-Keene Act in the following circumstances:

- (1) to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or complaints or charges against a public employee, unless the employee requests that the hearing be public. However, if notice is not given to the employee 24 hours in advance of his or her right to have a public hearing on complaints, charges or to consider dismissal, any disciplinary or other action taken at the closed session shall be null and void. Cal. Gov't Code § 11126(a);
- (2) where a state body administers business or professional licenses to persons, to prepare, approve, grade or administer examinations. Cal. Gov't Code § 11126(c)(1);
- (3) a meeting of an advisory body to a state licensing body to discuss matters concerning a licensee or applicant that would constitute an unwarranted invasion of privacy, including a review of an applicant's qualifications or any inquiry related to the licensing body's enforcement program. Cal. Gov't Code § 11126(c)(2);
- (4) to deliberate on a decision regarding evidence in an administrative hearing pursuant to Government Code Section 11500 (Administrative Adjudication Act) or similar provisions of law. Cal. Gov't Code § 11126(c)(3);
- (5) to consider and act upon the determination of a term, parole, release or other disposition of a prison inmate. Cal. Gov't Code § 11126(c)(4)
- (6) to consider the conferring of honorary degrees or gifts, donations, and bequests that the donor has requested in writing to be kept confidential. Cal. Gov't Code § 11126(c)(5);
- (7) a deliberative conference by the Alcoholic Beverage Control Appeals Board. Cal. Gov't Code § 11126(c)(6);

(8) to meet with its negotiator prior to the purchase, sale, exchange or lease of real property by or for the state body, to give instructions regarding the price and terms of payment, provided that an open session is held prior to the closed session to identify the property at issue and the persons with whom its negotiator may negotiate. Cal. Gov't Code § 11126(c)(7);

(9) to consider the appointment or termination of the Director of the California Post-secondary Education Commission and the Executive Director of the Council for Private Post-secondary and Vocational Education. Cal. Gov't Code § 11126(c)(8) & (9);

(10) a discussion by the Franchise Tax Board of confidential tax returns or information that cannot be lawfully disclosed to the public, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board. Cal. Gov't Code § 11126(c)(10);

(11) the Franchise Tax Board need not disclose any confidential information considered or documents executed in a closed session, which cannot be legally disclosed to the public. Cal. Gov't Code § 11126(c)(11);

(12) consideration by the Board of Corrections of reports of crime conditions under section 6027 of the Penal Code. Cal. Gov't Code § 11126(c)(12);

(13) consideration by the State Air Resources Board of proprietary specifications and performance data of manufacturers. Cal. Gov't Code § 11126(c)(13);

(14) review by the State Board of Education, the Superintendent of Public Instruction, or any committee advising them, of assessment instruments pursuant to Education Code Sections 60600 et seq. (school testing programs) and 60850 et seq. (high school exit exams). Cal. Gov't Code § 11126(c)(14);

(15) discussion by the California Integrated Waste Management Board or its committees of confidential tax returns, trade secrets or confidential or proprietary information in its possession. Cal. Gov't Code § 11126(c)(15);

(16) a meeting of a state body that invests retirement, pension or endowment funds to consider investment decisions. Cal. Gov't Code § 11126(c)(16);

(17) a meeting of a state body, or boards, commissions, administrative officers or other representatives with its labor negotiators for the purpose of discharging its responsibilities under Government Code Sections 3500, 3512, 3525, 3540 (regarding local public employee organizations, excluded employees Bill of Rights, and public educational employment) pertaining to salaries, salary schedules, and fringe benefits. Cal. Gov't Code § 11126(c)(17);

(18) deliberation by the Public Utilities Commission on the institution of proceedings or disciplinary actions against any person or entity under the commission's jurisdiction. However, any meeting to change the rates of entities under the commission's jurisdiction shall be open and public. Cal. Gov't Code § 11126(d)(1) & (2);

(19) to confer with or receive advice from its legal counsel regarding pending litigation when discussion in open session would prejudice the state body's position in the litigation. This subdivision is the exclusive expression of lawyer-client privilege in the Bagley-Keene Act and all other expressions of attorney-client privilege are specifically abrogated. Cal. Gov't Code § 11126(e)(1);

(20) a meeting of a state body operating under a joint powers agreement for insurance pooling of a claim for the payment of tort liability or public liability losses incurred by the state body or a member agency. Cal. Gov't Code § 11126(f)(1);

(21) consideration by the examining committee of the Board of

Forestry of disciplinary action against an individual professional forester prior to filing an accusation against the forester. Cal. Gov't Code § 11126(f)(2);

(22) consideration by an administrative committee of the State Board of Accountancy of disciplinary action against an individual accountant prior to filing an accusation against the accountant, or to interview an individual applicant or accountant regarding his or her qualifications. Cal. Gov't Code § 11126(f)(3);

(23) a meeting of a state body, as defined by Government Code Sections 11121.2, 11121.7, 11121.8, to consider any matter that properly could be considered in a closed session. Cal. Gov't Code § 11126(f)(4),(5)&(6);

(24) consideration by the State Board of Equalization of the appointment or removal of the executive secretary of the Board or confidential taxpayer appeals or data, which is prohibited from public disclosure. Cal. Gov't Code § 11126(f)(7);

(25) the State Board of Equalization need not disclose any action taken or documents executed in a closed session, which cannot be legally disclosed to the public. Cal. Gov't Code § 11126(f)(8);

(26) consideration by the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of the Office of Emergency Services or the Governor of matters relating to volcanic or earthquake predictions. Cal. Gov't Code § 11126(f)(9);

(27) consideration by the Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System of matters pertaining to the recruitment, appointment, employment or removal of the chief executive officer or the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System. Cal. Gov't Code § 11126(g)(1);

(28) consideration by the Commission on Teacher Credentialing of matters relating to recruitment, appointment or removal of its executive director. Cal. Gov't Code § 11126(g)(2).

Brown Act: A legislative body of a local agency is exempt from the open meeting requirements of the Brown Act in the following circumstances:

(1) to discuss and determine whether an applicant for a license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain a license. Cal. Gov't Code § 54956.7;

(2) to discuss the agency's response to a confidential final draft audit report from the Bureau of State Audits. Cal. Gov't Code § 54956.75. However, the body must meet in public to discuss the audit report after it is publicly released by the Bureau of State Audits. Cal. Gov't Code § 54956.75(b).

(3) to meet with its negotiator prior to the purchase, sale, exchange or lease of real property by or for the local agency, to grant authority to its negotiator regarding the price and terms of payment. However, prior to the closed session, the legislative body must hold an open session in which it identifies its negotiators, the real property that is the subject of negotiations and the persons with whom its negotiators may negotiate. Cal. Gov't Code § 54956.8;

(4) to consider the purchase or sale of particular, specific pension fund investments, for those legislative bodies that invest pension funds. Cal. Gov't Code § 54956.81;

(5) when the agency provides services pursuant to a contract with health care providers for services to Medi-Cal providers (Welfare and Institutions Code Section 14087.3), to hear a charge or complaint from a member enrolled in its health plan if the member does not want his or her name, medical status or other information that is protected by federal law publicly disclosed. However,

prior to the closed session, the legislative body must inform the member in writing of his or her right to have an open session. Cal. Gov't Code § 54956.86;

(6) the records of a health plan that is licensed under the Knox-Keene Health Care Service Plan Act of 1975 (Health and Safety Code section 1340) and governed by a county board of supervisors, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulas or calculations for these payments, and contract negotiations with providers of health care for alternative rates, are exempt from disclosure for three years after the contract is fully executed. Notwithstanding any other provision of law, the governing board of a health plan that is licensed under the Knox-Keene Health Care Service Plan Act of 1975 and that is governed by a county board of supervisors may order that a meeting held solely to discuss or act on health plan trade secrets, as defined in the statute, shall be held in closed session. Additionally, the governing board of a health plan may meet in closed session to consider and take action on matters pertaining to contracts and contract negotiations by the health plan with providers of health care service concerning all matters related to rates of payment. Cal. Gov't Code § 54956.87;

(7) to meet to confer with, or receive advice from, its legal counsel regarding pending litigation whenever discussion in open session concerning those matters would prejudice the local agency's position in the litigation. This subdivision is the exclusive expression of lawyer-client privilege in the Brown Act and all other expressions of attorney-client privilege are specifically abrogated. Cal. Gov't Code § 54956.9;

(8) a meeting of a joint powers agency formed for the purposes of insurance pooling, or a local agency member of the joint powers agency, to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the joint powers agency or a local agency member thereof. Cal. Gov't Code § 54956.95;

(9) a meeting of a joint powers agency formed for the purposes of insurance pooling to receive, discuss or take action concerning information obtained in closed session of the joint powers agency, provided the agency has adopted a policy or bylaw, or included in its joint powers agreement provisions that authorize the designation of confidential documents received in a closed session. Cal. Gov't Code § 54956.96;

(10) to meet with the Attorney General, district attorney, agency counsel, sheriff, chief of police or their respective deputies, security consultant or security operations manager on matters posing a threat to the security of public buildings or a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service and electric service, or a threat to the public's right of access to public services or public facilities. Cal. Gov't Code § 54957;

(11) to consider the appointment, employment, evaluation of performance, discipline or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee. However, the employee must be given 24 hours' notice of his or her right to have complaints or charges heard in an open session, otherwise any action taken against the employee is null and void. Any closed session held pursuant to this provision shall *not* include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline. Cal. Gov't Code § 54957;

(12) to meet with its designated representative (negotiator) regarding salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation. However, prior

to the closed session, the body must identify its designated representatives in an open and public session. Cal. Gov't Code § 54957.6;

(13) a meeting of a multijurisdictional drug law enforcement agency, or an advisory body of such an agency, to discuss case records of any ongoing criminal investigation of the multijurisdictional drug law enforcement agency or of any party to the joint powers agreement, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases. Cal. Gov't Code § 54957.8;

(14) to discuss a local agency employee's application for early withdrawal of funds in a deferred compensation plan when the application is based on financial hardship due to an unforeseeable emergency due to illness, accident, casualty, or other extraordinary event as specified in the deferred compensation plan. Cal. Gov't Code § 54957.10.

(15) for an educational body to hold a closed session for any purpose authorized under the Education Code. Cal. Gov't Code § 54962. The Education Code authorizes a school board, county board of education or community college district board to consider discipline, suspension or expulsion of a student unless the student or his or her parent requests an open hearing. *See, e.g.*, Cal. Educ. Code §§ 35146 (suspension and discipline by school board); 48912 (suspension and discipline by county school board); 48918(c)(expulsion by county school board); 72122 (suspension and discipline by community college district). Under the Education Code, the body's final action is to be in open session. Cal. Educ. Code § 48918(j); *but see Rim of the World Unified School Dist. v. Superior Court*, 104 Cal. App. 4th 1393, 129 Cal. Rptr. 2d 11 (2002)(holding that the federal Family Education Rights and Privacy Act preempts Section 48918 to the extent it requires disclosure of pupil expulsion records). The Education Code also authorizes a closed session of a pupil's challenge of the accuracy or completeness of his or her student records. Cal. Educ. Code § 49070.

(16) as expressly authorized under specific provisions of the California Health and Safety Code and Government Code for a hospital board to consider whether to grant privileges to a physician or to conduct hearings on the reports or medical audits or quality assurance committees that may reflect adversely on physicians with privileges and to discuss or deliberate on hospital district trade secrets. Cal. Gov't Code § 54962 (citing §§ 1461, 1462, 32106 and 32155 of the Health & Safety Code and 37606, 37606.1 and 37624.3 of the Government Code).

B. Any other statutory requirements for closed or open meetings.

Both Acts provide that no meeting, conference or other function shall be held in any facility that has discriminatory admission policies, or that is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. Cal. Gov't Code §§ 11131 (Bagley-Keene Act); 54961(a) (Brown Act).

Both Acts provide that no notice, agenda, announcement or report required under the Act need identify any victim or alleged victim of tortious sexual conduct or child abuse unless the identity of the person has been publicly disclosed. Cal. Gov't Code §§ 11131.5 (Bagley-Keene Act); 54961(b) (Brown Act).

The Brown Act provides that closed sessions of hospitals are subject to the requirements of Health and Safety Code Sections 1461, 1462, 32106, 32155 and Government Code Sections 37606, 37624.3 (regarding meetings of boards of trustees and governing bodies of hospitals and quorum requirements, hospital trade secrets, and medical audit reports). Cal. Gov't Code § 54962. School districts and community college districts are subject to provisions of the Education Code. Cal. Gov't Code § 54962.

C. Court mandated opening, closing.

Under both the Bagley-Keene and Brown Acts, a court may grant mandamus, injunctive or declaratory relief to stop or prevent violations of the Acts. Cal. Gov't Code §§ 11130 (Bagley-Keene Act); 54960 (Brown Act). A court may also invalidate the body's decision in certain circumstances. Cal. Gov't Code §§ 11130 (Bagley-Keene Act); 54960.1 (Brown Act). In addition, the court has discretion to award court costs or attorneys' fees to a prevailing plaintiff. Cal. Gov't Code §§ 11130.5 (Bagley-Keene Act); 54960.5 (Brown Act). Pursuant to one of these avenues for relief, a court may direct a meeting to be opened or closed, depending on the nature of the relief requested.

III. MEETING CATEGORIES — OPEN OR CLOSED.

Both Acts expressly state that unless specifically provided for in the open meeting acts and other specifically designated statutes, no closed session may be held by any state body or legislative body of any local agency. Cal. Gov't Code §§ 11132 (Bagley-Keene Act); 54962 (Brown Act).

The California Constitution requires the court to “narrowly construe” the closed session exemptions to the open meeting provisions. *See* Cal. Const., Art. I, § 3(b)(2) (“[a] statute . . . shall be . . . narrowly construed if it limits the right of [public] access” to government records and proceedings).

Under the Brown Act, the legislative body may not stray into topics not listed on the agenda and not expressly permitted for closed session, even if those topics are “reasonably related” to the posted agenda item or topic permitted for closed session. Cal. Gov't Code § 54956 (“No other business shall be considered at these meetings by the legislative body.”); *Shapiro v. San Diego City Council*, 96 Cal. App. 4th 904, 924, 117 Cal. Rptr. 2d 631 (2002).

In *Shapiro*, the San Diego City Council stated on its agenda that it would meet in closed session to discuss real estate negotiations — which are permitted for closed session — for a new baseball stadium. *Id.* at 908. But the City Council moved beyond the real estate negotiations topic, and discussed a wide variety of related topics, including the architectural design for the stadium, an environmental impact report, traffic issues, naming rights, and the impact the project would have on the homeless. *Id.* at 923–24. The City argued that the Brown Act permitted such “background deliberations” because they were “reasonably related” to the real estate negotiations listed on the agenda. *Id.* at 922. But the Court of Appeal disagreed, holding that the City Council violated the Brown Act when its deliberations “range[d] far afield” of the listed agenda item. *Id.* at 924.

The litigation provision is most likely to be abused by legislative bodies. As the California Attorney General has instructed, “[i]t should also be emphasized that the purpose of [pending litigation] exception is to permit the body to receive legal advice and make litigation decisions only; it is not to be used as a subterfuge to reach nonlitigation decisions.” *The Brown Act: Open Meetings for Local Legislative Bodies* (Cal. Att’y Gen. 2003 ed.) at 40, *citing* 71 Ops. Cal. Att’y Gen. 96, 104–105 (1988).

A. Adjudications by administrative bodies.

1. Deliberations closed, but not fact-finding.

Under the Bagley-Keene Act, a state body conducting an administrative adjudication or making decisions relating to those proceedings may hold a closed session. Cal. Gov't Code § 11125.7. Under both Acts, a body may also deliberate in closed session on a matter that is properly the subject of a closed session. Cal. Gov't Code §§ 11126 (Bagley-Keene Act); 54952.7 (Brown Act). *See* below.

2. Only certain adjudications closed, i.e. under certain statutes.

Bagley-Keene Act: A state body that administers the licensing of persons engaged in business or professions may hold a closed session to

prepare, approve, grade or administer examinations. Cal. Gov't Code § 11126(c)(1). An advisory body to a state licensing body may hold a closed session to discuss matters concerning a licensee or applicant that would constitute an unwarranted invasion of privacy, including a review of an applicant's qualifications or any inquiry related to the licensing body's enforcement program. Cal. Gov't Code § 11126(c)(2). A state body may hold a closed session to deliberate on a decision regarding evidence in an administrative hearing pursuant to Government Code Section 11500 (Administrative Adjudication Act) or similar provisions of law. Cal. Gov't Code § 11126(c)(3).

Brown Act: A legislative body of a local agency may hold a closed session to discuss and determine whether an applicant for a license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain a license. Cal. Gov't Code § 54956.7. When a local agency provides services pursuant to a contract with health care providers for services to Medi-Cal providers (Welfare and Institutions Code Section 14087.3), it may hold a closed session to hear a charge or complaint from a member enrolled in its health plan if the member does not want his or her name, medical status or other information that is protected by federal law publicly disclosed. Cal. Gov't Code § 54956.86. However, prior to the closed session, the legislative body must inform the member in writing of his or her right to have an open session. Cal. Gov't Code § 54956.86.

B. Budget sessions.

Open — no specific exemption from open meeting requirements.

C. Business and industry relations.

Open — no specific exemption from open meeting requirements.

D. Federal programs.

Open — no specific exemption from open meeting requirements.

E. Financial data of public bodies.

Open — no specific exemption from open meeting requirements.

F. Financial data, trade secrets or proprietary data of private corporations and individuals.

Business and financial records are open to public access when used as the basis for a public agency's decision-making. *San Gabriel Valley Tribune v. Superior Court*, 143 Cal. App. 3d 762, 192 Cal. Rptr. 415 (1983). However, information that constitutes a trade secret is generally exempt from disclosure. Gov't Code § 6254.(k)(engrafting into CPRA exemptions under federal and state law, including provisions of California Evidence Code relating to privileges). Trade secret protection, however, is not absolute. *See, e.g., Coalition of Univ. Employees v. Regents of Univ. of Cal.*, 32 Med. L. Rptr. 1212 (Cal. Sup. Ct. 2003) (even assuming internal rates of return of private equity investments made by university were trade secrets, disclosure turns on balancing of interests and public interest in disclosure outweighed interest in nondisclosure).

In addition, the Bagley-Keene Act specifically provides that the following organizations may hold closed sessions to discuss financial or trade secret information:

(1) The Franchise Tax Board may meet in closed session to discuss confidential tax returns or information that cannot be lawfully disclosed to the public. Cal. Gov't Code § 11126(c)(10). *See, e.g., General Am. Trans. Corp. v. State Bd. Of Equalization*, 193 Cal. App. 3d 1175, 238 Cal. Rptr. 865 (1987).

(2) The State Air Resources Board may meet in closed session to consider proprietary specifications and performance data of manufacturers. Cal. Gov't Code § 11126(c)(13).

(3) The California Integrated Waste Management Board or its committees may meet in closed session to discuss confidential tax returns, trade secrets or confidential or proprietary information

in its possession. Cal. Gov't Code § 11126(c)(15).

(4) The State Board of Equalization may meet in closed session to consider confidential taxpayer appeals or data, which cannot be lawfully disclosed to the public. Cal. Gov't Code § 11126(f)(8).

In addition, the Brown Act provides that hospitals may conduct closed sessions to discuss trade secrets pursuant to Government Code Section 1462. Cal. Gov't Code § 54962.

G. Gifts, trusts and honorary degrees.

Under the Bagley-Keene Act, a body may meet in a closed session when the donor or proposed donor has requested in writing that the matter be kept confidential. Cal. Gov't Code § 11126(c)(5).

H. Grand jury testimony by public employees.

The Brown Act is not to be construed to prohibit members of the legislative body of a local agency from giving testimony in private before a grand jury, either as individuals or as a body. Cal. Gov't Code § 54953.1. However, Penal Code Section 939 prohibits the attendance of the public at grand jury proceedings, except when the foreman of the grand jury, acting through the attorney general or district attorney, makes a joint written request for public sessions and the court finds that the subject matter of the investigation affects the general public welfare, involving the alleged corruption, misfeasance or malfeasance in office or dereliction of duty of public officials or employees, and makes an order directing the grand jury to conduct its investigation in public sessions. Cal. Penal Code § 939.1. Notwithstanding the foregoing, deliberations of the grand jury and its voting shall be in private session. Cal. Penal Code § 939.1.

I. Licensing examinations.

Under the Bagley-Keene Act, a state body that administers business or professional licenses to people may hold a closed session to prepare, approve, grade or administer exams. Cal. Gov't Code § 11126(c)(1). Under the Brown Act, a legislative body of a local agency may hold a closed session to discuss and determine whether an applicant for a license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain a license. Cal. Gov't Code § 54956.7.

J. Litigation; pending litigation or other attorney-client privileges.

Bagley-Keene Act: A state body may hold a closed session to confer with, or receive advice from its legal counsel about “pending litigation” when discussion in open session would prejudice the state body’s position in the litigation. Cal. Gov't Code § 11126(e)(1). “Pending litigation” exists where:

- (1) an adjudicatory proceeding has been formally initiated before a court, administrative body exercising its adjudicatory authority, hearing officer or arbitrator, where the state body is a party,
- (2) the state body has, or is deciding whether it has, a significant exposure to litigation, based on existing facts and circumstances or
- (3) the state body has initiated or is deciding whether to initiate litigation. Cal. Gov't Code § 11126(e)(2).

The state body’s legal counsel must prepare and submit a memorandum stating the specific reasons and legal authority for the closed meeting, including where applicable: the title of the litigation or the “existing facts and circumstances” supporting the state body’s lawsuit or liability. Cal. Gov't Code § 11126(e)(2)(C)(ii). The memorandum should be submitted to the state body before the closed session, but must be submitted no later than one week after the closed session. Cal. Gov't Code § 11126(e)(2)(C)(ii). The memorandum does not have to be disclosed under the California Public Records Act, Government Code Section 6254.25. However, if the state body discloses the memorandum, it is not deemed as a waiver of its lawyer-client privilege. Cal. Gov't Code § 11126(e)(2)(C)(iv).

This section is the sole expression of the lawyer-client privilege under the Bagley-Keene Act. Cal. Gov't Code § 11126(e)(2).

Brown Act: The Brown Act provides the same exception for a closed session for “pending litigation” as the Bagley-Keene Act. Cal. Gov't Code § 54956.9. However, the Brown Act defines “existing facts and circumstances” with regard to the agency’s significant exposure to litigation as follows:

- (1) Facts and circumstances that may result in litigation against the agency but which the local agency believes are not yet known to plaintiffs or potential plaintiffs;
- (2) Facts and circumstances including an accident, disaster, incident or transactional occurrence that might result in litigation against the agency, that are known to plaintiffs or potential plaintiffs — these facts and circumstances must be on the agenda or announced;
- (3) The receipt of a claim or written communication from a potential plaintiff under the Tort Claims Act. The claim or written communication must be made available for public inspection;
- (4) A statement by a person made in an open and public meeting threatening litigation on a specific matter for which the agency is responsible;
- (5) A statement of the type described in (4) above that was recorded by an official or employee of the agency prior to the meeting. The record does not have to identify the alleged victim of unlawful or tortious sexual conduct or the person threatening litigation on their behalf, or a public employee who is the alleged perpetrator, unless the identity has been publicly disclosed. The record must be made available for public inspection. Cal. Gov't Code § 54956.9(b)(1)(3).

“[T]he purpose of [section 54956.9] is to permit the body to receive legal advice and make litigation decisions only; it is not to be used as a subterfuge to reach nonlitigation oriented policy decisions.” *Trancas Property Owners Assn. v. City of Malibu*, 138 Cal. App. 4th 172, 184-84, 41 Cal. Rptr. 3d 200 “Pending litigation” also includes taking action upon the settlement of a lawsuit. 75 Ops. Cal. Att’y Gen. 14 (1992). Advisory committees may also meet with legal counsel in a closed session to discuss pending litigation. 67 Ops. Cal. Att’y Gen. 111 (1984). It would not include meeting with an adversary and his or her counsel to settle potential litigation. *Page v. Miracosta Community College Dist.*, 180 Cal. App. 4th 471, 502, 102 Cal. Rptr. 3d 902 (2009). Nor would legal counsel include a mediator with whom members of a legislative body conferred with during a mediation with an adversary to settle potential litigation. *Id.* at 504.

During the public meeting in which the closed session is held, the legislative body shall report any action taken in closed session regarding approval given to its legal counsel to initiate, intervene or defend a lawsuit, or approval to settle pending litigation. Cal. Gov't Code § 54957.1(a)(2) and (a)(3). The body must report the adverse parties and the substance of the litigation. However, in the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendant or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, defendants and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless disclosure would jeopardize service of process on a party or affect settlement negotiations. Cal. Gov't Code § 54957.1(a)(2).

K. Negotiations and collective bargaining of public employees.

1. Any sessions regarding collective bargaining.

Under the Bagley-Keene Act, a state body or boards, commissions, administrative officers, or other representatives may hold a closed session with its representatives for the purpose of discharging its responsibilities under Government Code Sections 3500, 3512, 3525, 3540

(regarding local public employee organizations, excluded employees Bill of Rights, and public educational employment) pertaining to salaries, salary schedules, or compensation paid in the form of fringe benefits. Cal. Gov't Code § 11126(c)(17).

Under the Brown Act, a legislative body of a local agency may hold a closed session to meet with its designated representative (negotiator) regarding salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and for represented employees, any other matter within the statutorily provided scope of representation. Cal. Gov't Code § 54957.6(a). However, the body cannot take final action on a proposed compensation of one or more unrepresented employees in a closed session. Cal. Gov't Code § 54957.6(a). Prior to the closed session, the body must identify its designated representatives in an open and public session. Cal. Gov't Code § 54957.6(a).

During the public meeting in which the closed session is held, the legislative body shall report any action taken in closed session regarding approval of a final labor agreement with represented employees, which has been accepted or ratified by the other party. Cal. Gov't Code § 54957.1(a)(6). The body shall identify the approved item and the parties to the negotiation. Cal. Gov't Code § 54957.1(a)(6).

2. Only those between the public employees and the public body.

Under the Brown Act, a legislative body may hold a closed session during consultations and discussions with representatives of employee organizations and unrepresented employees, but shall not take final action in a closed session on proposed compensation of unrepresented employees. Cal. Gov't Code § 54957.6(a).

L. Parole board meetings, or meetings involving parole board decisions.

Under the Bagley-Keene Act, a state body may hold a closed session to consider and act upon the determination of a term, parole, release or other disposition of a prison inmate. Cal. Gov't Code § 1126(c)(4).

M. Patients; discussions on individual patients.

Under the Brown Act, a legislative body of a local agency that provides services pursuant to a contract with health care providers for services to Medi-Cal providers (Welfare and Institutions Code Section 14087.3), may hold a closed session to hear a charge or complaint from a member enrolled in its health plan if the member does not want his or her name, medical status or other information that is protected by federal law, publicly disclosed. Cal. Gov't Code § 54956.86. Prior to the closed session, the body must inform the member in writing, of his or her right to have an open session. Cal. Gov't Code § 54956.86.

N. Personnel matters.

Bagley-Keene Act: The Bagley-Keene Act distinguishes between public employees and public officers. Public employees expressly do not include “any person who is elected to, or appointed to a public office by, any state body.” Cal. Gov't Code § 11126(d). If a state body meets to consider the appointment, employment or dismissal of a public officer, it must hold an open session. 66 Ops. Cal. Att’y Gen. 34 (1985). A public officer is one who carries out a public duty delegated to him or her as an agent, and which is a part of governmental functions of the particular department. *Id.* A public officer is also one who “exercises some part of the sovereignty of the state, holds an office created by the Constitution or some statute, and has a position which is continuing rather than occasional or temporary.” *Id.*

A state body may hold a closed session to consider a public employee’s appointment, employment, evaluation of performance, or dismissal, or to hear complaints and charges against that employee. Cal. Gov't Code § 11126(a)(1). An employee may request a public hearing. Cal. Gov't Code § 11126(a)(2). The following positions are among those considered public employees, and therefore a state body may hold a closed session to consider the appointment or termination of

that position:

- (1) officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses. Cal. Gov't Code § 11126(b);
- (2) the Director of the California Post-secondary Education Commission. Cal. Gov't Code § 11126(c)(8);
- (3) the Executive Director of the Council for Private Post-secondary and Vocational Education. Cal. Gov't Code § 11126(c)(9);
- (4) the Executive Officer of the Franchise Tax Board. Cal. Gov't Code § 11126(c)(10);
- (5) the Executive Secretary of the State Board of Equalization. Cal. Gov't Code § 11126(f)(7);
- (6) the Chief Executive Officer of the Teachers’ Retirement Board or the Board of Administration of the Public Employees’ Retirement System, or the Chief Investment Officer of the State Teachers’ Retirement System or the Public Employees’ Retirement System. Cal. Gov't Code § 11126(g)(1); and
- (7) the Executive Director of the Commission on Teacher Credentialing. Cal. Gov't Code § 1126(g)(2).

Brown Act: Under the Brown Act, a legislative body may hold a closed session “to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the public employee requests a public session.” Cal. Gov't Code § 54957(b)(1). The term “employee” shall include an officer or an independent contractor who functions as an officer or any employee but shall not include any elected official, member of a legislative body or other independent contractor. Cal. Gov't Code § 54957(b)(4). *See, e.g., Hoffman Ranch v. Yuba County Local Agency Formation Commission*, 172 Cal. App. 4th 805, 810-13, 91 Cal. Rptr. 3d 458 (2009) (holding that contractor assigned to perform “executive officer services” for county local agency formation commission was an “officer and thus an “employee” within meaning of statute, despite contract specifying that contractor was an independent contractor not agent or officer of commission). In order to hold a closed session on specific complaints or charges against an employee, the employee must be given written notice of his or her right to have the complaints or charges heard in open session. The notice must be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. Cal. Gov't Code § 54957(b)(2). This notice provision has been held not to apply to a closed session to consider or deliberate on whether complaints or charges brought against an employee justify dismissal or disciplinary action, but to meetings “to hear” – as in a proceeding where witnesses are heard and evidence presented – the complaints or charges against the employee. *Bollinger v. San Diego Civil Service Com.*, 71 Cal. App. 4th 568, 574-75, 84 Cal. Rptr. 2d 27 (1999) (closed session to consider whether to affirm demotion recommendation did not require notice to employee and thus action could not be nullified where prior public evidentiary hearing was afforded employee); *Kolter v. Commission on Professional Competence of the Los Angeles Unified School Dist.*, 170 Cal. App. 4th 1346, 1352, 88 Cal. Rptr. 3d 620 (2009) (closed hearing to consider whether charges against employee justified initiation of dismissal proceedings did not trigger notice provision where employee was thereafter provided public evidentiary hearing on charges). However, another court has held that a legislative body must give an employee notice and an opportunity for an open session before a meeting to discuss the findings of an arbitrator regarding the possible firing of the employee, even if no vote is taken at that discussion meeting, and the notice given for the subsequent “ceremonial” meeting where the legislative body voted to fire the employee did not satisfy the requirement or cure the previous violation. *Morrison v. Housing Authority of the City of Los Angeles Board of Commissioners*, 107 Cal. App. 4th 860, 876-76, 132 Cal. Rptr. 2d 453 (2003); *see also Moreno v. City of King*, 127 Cal. App. 4th 17, 28-29, 25 Cal. Rptr. 3d 29 (2005) (receiving accusations against employee and

considering whether to dismiss employee based on those allegations in closed session triggered notice requirements).

1. Interviews for public employment.

Closed under both Acts. A body may hold a closed session to consider the appointment or employment of a public employee, including interviews. Cal. Gov't Code §§ 11126(a) (Bagley-Keene Act); 54957(b)(1) (Brown Act). This includes a closed session to discuss an employee's employment upon return from a leave of absence. *Travis v. Board of Trustees of the California State Univ.*, 161 Cal. App. 4th 335, 347, 73 Cal. Rptr. 3d 854 (2008). Furthermore, under the Brown Act, a legislative body may hold a closed session to select nominees for an appointed position. *Gillespie v. San Francisco Public Library Comm'n*, 67 Cal. App. 4th 1165, 1169, 79 Cal. Rptr. 2d 649 (1998).

2. Disciplinary matters, performance or ethics of public employees.

Closed under both Acts. A body may hold a closed session to evaluate performance or to hear charges or complaints against a public employee. Cal. Gov't Code §§ 11126(a) (Bagley-Keene Act); 54957(b)(1) (Brown Act). “[T]o consider the ... evaluation of performance’ clearly is meant to extend to all employer consideration of an employee’s discharge of his or her job duties after ‘appointment’ or ‘employment’ of the employee, up to (but excluding) ‘discipline’ or ‘dismissal’ of the employee.” *Duval v. Board of Trustees*, 93 Cal. App. 4th 902, 909, 113 Cal. Rptr. 2d 517 (2001). The public employee must be given 24 hours advance notice of his or her right to have complaints or charges heard in an open session, otherwise any action taken against the employee is null and void. Cal. Gov't Code §§ 11126(a)(2) (Bagley-Keene Act); 54957(b)(2) (Brown Act). This notice provision has been held not to apply to a closed session to consider or deliberate on whether complaints or charges brought against an employee justify dismissal or disciplinary action, but to meetings “to hear” – as in a proceeding where witnesses are heard and evidence presented – the complaints or charges against the employee. *Bollinger v. San Diego Civil Service Com.*, 71 Cal. App. 4th 568, 574-75, 84 Cal. Rptr. 2d 27 (1999) (closed session to consider whether to affirm demotion recommendation did not require notice to employee and thus action could not be nullified where prior public evidentiary hearing was afforded employee); *Kolter v. Commission on Professional Competence of the Los Angeles Unified School Dist.*, 170 Cal. App. 4th 1346, 1352, 88 Cal. Rptr. 3d 620 (2009) (closed hearing to consider whether charges against employee justified initiation of dismissal proceedings did not trigger notice provision where employee was thereafter provided public evidentiary hearing on charges). However, another court has held that a legislative body must give an employee notice and an opportunity for an open session before a meeting to discuss the findings of an arbitrator regarding the possible firing of the employee, even if no vote is taken at that discussion meeting, and the notice given for the subsequent “ceremonial” meeting where the legislative body voted to fire the employee did not satisfy the requirement or cure the previous violation. *Morrison v. Housing Authority of the City of Los Angeles Board of Commissioners*, 107 Cal. App. 4th 860, 876-76, 132 Cal. Rptr. 2d 453 (2003); see also *Moreno v. City of King*, 127 Cal. App. 4th 17, 28-29, 25 Cal. Rptr. 3d 29 (2005) (receiving accusations against employee and considering whether to dismiss employee based on those allegations in a closed session triggered the notice requirements). Additionally, an employee does not have the right to notice and a public session with regard to a personnel evaluation or negative comments about the employee's performance. *Bell v. Vista Unified School District*, 82 Cal. App. 4th 672, 683, 98 Cal. Rptr. 2d 263 (2000); *Furtado v. Sierra Comm. College*, 68 Cal. App. 4th 876, 882, 80 Cal. Rptr. 2d 589 (1998). A legislative body may meet in closed session to discuss the criteria for evaluating an employee. *Duval*, 93 Cal. App. 4th at 909.

The Brown Act provides that a closed session shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline. Cal. Gov't Code § 54957(b)(4).

3. Dismissal; considering dismissal of public employees.

Closed under both Acts. A body may hold a closed session to consider the dismissal of a public employee. Cal. Gov't Code §§ 11126(a) (Bagley-Keene Act); 54957(b)(1) (Brown Act). Under both Acts, the public employee must be given 24 hours advance notice of his or her right to have an open session, otherwise any action taken against the employee is null and void. Cal. Gov't Code § 11126(a) (Bagley-Keene Act); Cal. Gov't Code § 54956.96(b)(2).

Under the Brown Act, the legislative body must report any action taken in a closed session to affect the employment status of a public employee. Cal. Gov't Code § 54957.1(a)(5). An employee does not have the right to a 24-hour notice and public hearing option regarding dismissal if it is not based upon charges or complaint of misconduct. *Moreno v. City of King*, 127 Cal. App. 4th 17, 25 Cal. Rptr. 3d 29 (2005). If the legislative body terminates the public employee without giving the required notice, there is no cure; the termination is null and void. *Id.* at 28-29. The body shall report the information at the public meeting during which the closed session is held, and must disclose the title of the position. Cal. Gov't Code § 54957.1(a)(5); *Moreno*, 127 Cal. App. 4th at 27. However, the body shall report a dismissal or nonrenewal of an employment contract at the first meeting following the employee's exhaustion of administrative remedies. Cal. Gov't Code § 54957.1(a)(5).

O. Real estate negotiations.

Closed under both Acts. A body may hold a closed session with its negotiator prior to the purchase, sale, exchange or lease of real property by or for the body to grant authority or give instructions to its negotiator regarding the price and terms of payment. Prior to the closed session, the body must identify its negotiator, the real property, and the persons with whom its negotiators must negotiate. Cal. Gov't Code §§ 11126(c)(7) (Bagley-Keene Act); 54956.8 (Brown Act).

Under the Brown Act, the legislative body shall report any action taken in closed session regarding approval of a final agreement on the sale, purchase, exchange or lease of real property. Cal. Gov't Code § 54957.1(a)(1). The body shall make a report during the public meeting in which the closed session is held, and shall disclose the substance of the agreement. Cal. Gov't Code § 54957.1(a)(1).

P. Security, national and/or state, of buildings, personnel or other.

Under the Bagley-Keene Act, the Board of Corrections may hold a closed session when considering reports of crime conditions under Penal Code Section 6027. Cal. Gov't Code § 11126(c)(12).

Under the Brown Act, a body may hold a closed session to meet with the Attorney General, district attorney, sheriff, chief of police, or their respective deputies, agency counsel, security consultant or security operations manager on matters posing a threat to the security of public buildings or a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service and electric service, or a threat to the public's right of access to public services or public facilities. Cal. Gov't Code § 54957(a).

Q. Students; discussions on individual students.

Community Colleges, State Universities and the Regents of the University of California: The meetings of the governing boards of state universities and the Regents of the University of California are subject to the Bagley-Keene Act and must be open to the public. Cal. Educ. Code §§ 89920, 92030. *Tafuya v. Hastings College of the Law*, 191 Cal. App. 3d 437, 445, 236 Cal. Rptr. 395 (1987). The meetings of the governing boards of community colleges are subject to the Brown Act. Cal. Educ. Code § 71022. However, meetings of bodies that advise the Regents or exercise authority delegated to them by the Regents are not subject to the Act. Cal. Educ. Code § 92030; see *Tafuya, supra.*; see also 66 Ops. Cal. Att'y Gen. 458 (1983). For instance, meetings of the

faculty and the UC Academic Senate may be closed. *See Tafoya, supra.*

School Districts and County Boards of Education: The meetings of school districts, county boards of education, and school boards are subject to the Brown Act. Cal. Educ. Code § 71022; *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F.Supp. 719 (C.D. Cal., 1996); 66 Ops. Cal. Att’y Gen. 252 (1983). A governing board of a school district may hold a closed session to consider the suspension of, disciplinary action against, or any other action against a student, if a public hearing would lead to the disclosure of “directory information” on that student, in violation of Education Code Section 49073. Cal. Educ. Code § 35146. However, this rule does not apply if the governing board is considering expulsion of a student. Cal. Educ. Code § 35146.

“Directory information” consists of a “student’s name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous public or private school attended by the student.” Cal. Educ. Code § 49061.

IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS

A. When to challenge.

1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?

Yes. Both Acts provide for immediate judicial review to stop or to prevent violations or threatened violations of the statutory open meeting laws or to determine the applicability of the Acts to actions or threatened future actions by the state body or the legislative body of a local agency. Cal. Gov’t Code §§ 11130(a) (Bagley-Keene Act); 54960 (Brown Act). Unlike the Brown Act, the Bagley-Keene Act expressly allows for actions to determine the applicability of the Act to “past” actions by the state body. Cal. Gov’t Code §§ 11130(a); *see Regents of Univ. of California v. Superior Court*, 20 Cal. 4th 509, 85 Cal. Rptr. 2d 257, 976 P.2d 808 (1999)(holding Bagley-Keene Act applies only to present and future violations of Act, not past ones)(superseded by statute).

Additionally, mandamus or injunctive relief is available to declare as null and void action taken in violation of the Brown Act, Sections 54953 (open and public meetings), 54954.2 (posting of agenda), 54954.5 (description requirements for closed sessions), 54954.6 (public meeting in general tax or assessment of notice thereof), 54956 (special meetings and notice thereof), or 54956.5 (emergency meeting rules). Gov’t Code § 54960.1(a). Similarly, mandamus or injunctive relief is available to declare as null and void an action in violation of the Bagley-Keene Act, Sections 11123 (open meetings) and 11125 (notice of meetings).

2. When barred from attending.

A state body or legislative body of a local agency cannot bar a person from attending or place conditions on attending a meeting; such action constitutes a violation of the open meeting laws and is actionable. Cal. Gov’t Code §§ 11123, 11124, 11130 (Bagley-Keene Act); 54953, 54953.3, 54960 (Brown Act).

3. To set aside decision.

Under the Bagley-Keene Act, any interested person may commence an action by mandamus, injunction or declaratory relief to obtain a judicial determination that an action taken by a state body in violation of Section 11123 (providing for open meetings) or 11125 (notice requirements) is null and void. Cal. Gov’t Code § 11130.3(a).

Under the Brown Act, any interested person may commence an action by mandamus, injunction or declaratory relief to obtain a judicial determination that an action taken by a legislative body of a local agency in violation of Sections 54953 (open and public meetings),

54954.2 (posting of agenda), 54954.5 (description requirements for closed sessions), 54954.6 (public meeting in general tax or assessment of notice thereof), 54956 (special meetings and notice thereof), or 54956.5 (emergency meeting rules) is null and void. Cal. Gov’t Code § 54960.1(a).

However, to set aside an action, in addition to meeting the threshold procedural requirements, a petitioner must show prejudice. *Galbisio v. Orosi Public Utility Dist.*, 182 Cal. App. 4th 652, 670-71, 107 Cal. Rptr. 3d 36 (2010); *see also San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.*, 139 Cal. App. 4th 1356, 1410, 44 Cal. Rptr. 3d 128 (2006).

4. For ruling on future meetings.

Both Acts provide for actions by mandamus, injunctive and declaratory relief to stop threatened violations of the statutory open meeting laws or to determine the applicability of the Acts to threatened future actions by the state body or the legislative body of a local agency. Cal. Gov’t Code §§ 11130(a)(Bagley-Keene Act); 54960(a) (Brown Act).

5. Other.

Under both Acts, any person may commence an action by mandamus, injunction or declaratory relief to determine whether any rule or action by the state body or legislative body of a local agency to penalize or discourage the expression of its members is legal, or to compel the state body to tape record its closed sessions. Cal. Gov’t Code §§ 11130(b) (Bagley-Keene Act); 54960(b) (Brown Act).

B. How to start.

1. Where to ask for ruling.

a. Administrative forum.

The Bagley-Keene Act does not provide for a ruling from an administrative forum. The Brown Act’s requirements are set forth below.

(1). Agency procedure for challenge.

To challenge a completed action taken by the legislative body of a local agency in violation of the Brown Act, Sections 54953 (open and public meetings), 54954.2 (posting of agenda), 54954.5 (description requirements for closed sessions), 54954.6 (public meeting in general tax or assessment of notice thereof), 54956 (special meetings and notice thereof), or 54956.5 (emergency meeting rules), a written demand must be made to the body to cure or correct the action. Cal. Gov’t Code § 54960.1(b). The demand must clearly describe the action and the nature of the alleged violation. Cal. Gov’t Code § 54960.1(b).

(2). Commission or independent agency.

There is no commission or independent agency that hears matters involving actions taken by a legislative body of a local agency.

b. State attorney general.

Neither Act specifically provides any mechanism to request a ruling from California’s Attorney General regarding a challenged action. However, certain government officials may request the Attorney General’s opinion to interpret any statute, including a provision of the Bagley-Keene or Brown Act. For a list of authorized requesters, see <http://ag.ca.gov/opinions/faq.htm#q1>. California Assembly members and Senators are permitted to request for an opinion to the California Attorney General’s Office on any question of law relating to their respective offices, and might entertain a request from a constituent to seek an opinion from the Attorney General.

c. Court.

Under both Acts, any person may commence an action in court to stop or to prevent violations or threatened violations of the open meeting laws, to determine the applicability of the Acts to actions or threatened future actions by the state body or the legislative body of

a local agency, to determine whether any rule or action by the state body or legislative body of the local agency to penalize or discourage the expression of its members is legal, or to compel the state body or legislative body of the local agency to tape record its closed sessions. Cal. Gov't Code §§ 11130, 11130.3(a) (Bagley-Keene Act); 54960(a) (Brown Act).

(The Bagley-Keene Act was amended in 1999 to supersede the decision by the California Supreme Court in *Regents of the Univ. of California v. Superior Court (Molloy)*, 20 Cal. 4th 509, 976 P.2d 808, 85 Cal. Rptr. 2d 257 (1999), which held that the Act applies only to present and future violations, but not past ones.)

Additionally, mandamus or injunctive relief is available to declare as null and void action taken in violation of the Brown Act, Sections 54953 (open and public meetings), 54954.2 (posting of agenda), 54954.5 (description requirements for closed sessions), 54954.6 (public meeting in general tax or assessment of notice thereof), 54956 (special meeting and notice thereof), or 54956.5 (emergency meeting rules). Cal. Gov't Code § 54960.1(a). Similarly, mandamus or injunctive relief is available to declare as null and void an action in violation of the Bagley-Keene Act, Sections 11123 (open meetings) and 11125 (notice of meetings).

2. Applicable time limits.

Under the Bagley-Keene Act, a court action must be filed within 90 days of the date the action was taken. Cal. Gov't Code § 11130.3.

(The Legislature also amended this section of the Bagley-Keene Act in 1999 to supersede *Regents of the Univ. of California v. Superior Court (Molloy)*, 20 Cal.4th 509, 976 P.2d 808, 85 Cal. Rptr. 2d 257 (1999), where the California Supreme Court held that a suit must be brought within 30 days of the violation to nullify the action.)

Under the Brown Act, a person who seeks to declare an action null and void in violation of Sections 54953 (open and public meetings), 54954.2 (posting of agenda), 54954.5 (description requirements for closed sessions), 54954.6 (public meeting on general tax or assessment and notice thereof), or 54956 (special meetings and notice thereof), must make a written demand to the legislative body to cure or correct the action within 90 days from the date the action was taken. Cal. Gov't Code § 54960.1; *Ingram v. Flippo*, 74 Cal. App. 4th 1280, 84 Cal. Rptr. 2d 60 (1999). However, if the action was taken in an open session but in violation of Section 54954.2 (action or discussion on item not appearing on posted agenda), the written demand must be made within 30 days of the date the action was taken. Cal. Gov't Code § 54960.1(c) (1). A written demand to cure and correct does not apply when the action is initiated to determine the applicability of the Brown Act to past conduct or threatened future conduct. *Ingram, supra*.

3. Contents of request for ruling.

When making a written demand to a legislative body to cure or correct the alleged violation under the Brown Act, the demand must clearly describe the challenged action and the nature of the alleged violation. Cal. Gov't Code § 54960.1(b).

4. How long should you wait for a response?

Under the Brown Act, the legislative body has 30 days from the date of receipt of the demand to cure or correct the challenged action and inform the demanding person in writing of its decision. Cal. Gov't Code § 54960.1(c)(2). The challenger must commence an action within 15 days of receipt of the legislative body's written decision, or if there is no written decision, within 15 days of the day after the expiration of the 30-day period. Cal. Gov't Code § 54960.1(c)(4).

5. Are subsequent or concurrent measures (formal or informal) available?

Although the Bagley-Keene Act does not require making a written demand on the state body before filing an action in court, one way to

resolve an alleged violation may be to initiate correspondence with the state body, urging them to correct the alleged violation. Section 11130.3 states, "Nothing in this section shall be construed to prevent a state body from curing or correcting an action challenged pursuant to this section." Cal. Gov't Code § 11130.3.

C. Court review of administrative decision.

1. Who may sue?

Technically, there is no administrative decision for the court to review. Violations or threatened violations of the Bagley-Keene and Brown Acts may be challenged by filing an action against the entity in the Superior Court. Cal. Gov't Code §§ 11130, 11130.3 (Bagley-Keene Act); 54960 (Brown Act). Under the Brown Act, before a person may file an action in court challenging an action (vote) taken by the legislative body as "null and void," they must demand that the legislative body cure or correct an action taken in violation of certain provisions. Cal. Gov't Code § 54960.1(b). This provision is not required for actions seeking declaratory judgment or injunctive relief for a past violation of the Brown Act that does not involve an illegal vote. *Ingram v. Flippo*, 74 Cal. App. 4th 1280, 84 Cal. Rptr. 2d 60 (1999).

Any California citizen has standing to sue a legislative body for violating the Brown Act, even if the citizen does not live in the county or city where the alleged violation occurred. *McKee v. Orange Unified School District*, 110 Cal. App. 4th 1310, 1316, 2 Cal. Rptr. 3d 774 (2003). Standing is not limited to persons; a newspaper labor union has standing to bring a Brown Act lawsuit. *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors*, 263 Cal. App. 2d 41, 46, 69 Cal. Rptr. 480 (1968). However, a member of the governing body does not have standing to sue for violations of the Brown Act as a member of the general public unless he or she has a personal stake in the outcome of the relief sought. *Galbisio v. Orosi Public Utility Dist.*, 182 Cal. App. 4th 652, 668-69, 107 Cal. Rptr. 3d 36 (2010); *see also Holbrook v. City of Santa Monica*, 144 Cal. App. 4th 1242, 1257, 51 Cal. Rptr. 3d 181 (2006).

Additionally, under both Acts the Attorney General is authorized to commence an action by mandamus, injunction or declaratory relief for purposes of stopping or preventing violations or threatened violations of the Act or to determine the applicability of the Act to actions or threatened future actions by members of the state body or by the legislative body, or to determine whether any action by the state or legislative body to penalize the expression of any of its members is valid. Cal. Gov't Code §§ 11130(a) (Bagley-Keene Act); 54960(a) (Brown Act). Under the Bagley-Keene Act, district attorneys also are authorized to bring these actions. Cal. Gov't Code § 11130(a).

2. Will the court give priority to the pleading?

Both the Bagley-Keene and Brown Acts provide for writs of mandate or injunctions, which are typically handled in an accelerated manner or are afforded some priority over other civil actions in the court system. Cal. Gov't Code §§ 11130.3 (Bagley-Keene Act); 54960.1 (Brown Act). It is not unusual to receive a decision from the court regarding a challenge to an action taken in violation of either of the Acts within a few weeks.

3. Pro se possibility, advisability.

Although the Acts provide that any person may commence an action in court and it is permissible for an individual to represent himself in an individual capacity (*pro se*), it is not advisable to attempt to draft the required pleadings and participate in the subsequent proceedings without the assistance of an attorney. Drafting pleadings and supporting papers that contain the requisite claims and contentions in a format that meets the legal requirements is technically challenging for a *pro se* litigant. It is likely that any local agency or body whose action is challenged will be represented by City or County Counsel, who will seek to challenge the sufficiency of the pleadings to obtain a dismissal of the action without a decision on the merits.

4. What issues will the court address?

a. Open the meeting.

The court has the discretion to order a meeting to be open if it does not fit within one of the exemptions specifically authorized by the relevant Act. The court may also require the body to tape record its future closed sessions and preserve the recordings if past violations of closed session requirements are found. Cal. Gov't Code §§ 11130(b) (Bagley-Keene Act); 54960(b) (Brown Act). The tapes will then be subject to discovery procedures, although only under those procedures outlined by the Acts. Cal. Gov't Code §§ 11130(c)(2) (Bagley-Keene Act); 54960 (Brown Act)(c)(2).

b. Invalidate the decision.

Under the Bagley-Keene Act, the court will only invalidate action taken in violation of Section 11123 (providing for open meetings) or Section 11125 (notice requirements). Cal. Gov't Code § 11130.3(a). Under the Brown Act, the court will invalidate action taken in violation of Sections 54953 (open and public meetings), 54954.2 (posting of agenda), 54954.5 (description requirements for closed sessions), 54954.6 (public meeting in general tax or assessment of notice thereof), 54956 (special meetings and notice thereof), or 54956.5 (emergency meeting rules). Gov't Code § 54960.1(a).

However, under both Acts, the court will not invalidate any action: (1) taken in connection with the sale or issuance of bonds, (2) giving rise to a contract that a party has relied on in good faith, (3) taken in substantial compliance with the sections, or (4) taken in connection with the collection of any tax. Cal. Gov't Code §§ 11130.3(b)(Bagley-Keene Act); 54960.1(d) (Brown Act).

c. Order future meetings open.

The court has the authority to order a future meeting to be open if it does not fit within one of the exemptions specifically authorized by the relevant Act.

5. Pleading format.

A petition for mandamus must meet all statutory requirements for a pleading under the Code of Civil Procedure, the local rules of the court, and any applicable case law. Lawsuits for declaratory or injunctive relief must contain the required allegations and must comply with state law.

6. Time limit for filing suit.

Under the Bagley-Keene Act, lawsuits challenging an alleged violation of Section 11123 or 11125 must be filed within 90 days from the date the action was taken. Cal. Gov't Code § 11130.3(a). Under the Brown Act, the legislative body has 30 days from the date of receipt of the demand to cure or correct an alleged violation of Sections 54953 (open and public meetings), 54954.2 (posting of agenda), 54954.5 (description requirements for closed sessions), 54954.6 (public meeting in general tax or assessment of notice thereof), 54956 (special meetings and notice thereof), or 54956.5 (emergency meeting rules), and to inform the demanding person in writing of its decision. Cal. Gov't Code § 54960.1(c)(2). The challenger must commence an action within 15 days of receipt of the legislative body's written decision, or if there is no written decision, within 15 days of the day after the expiration of the 30-day period. Cal. Gov't Code § 54960.1(c)(4). The challenger may file suit on the same day he or she makes the demand to cure or correct. *See, e.g., Bell v. Vista Unified Sch. Dist.*, 82 Cal. App. 4th 672, 82 Cal. App. 4th 672 (2000).

Under the Brown Act, a plaintiff who is simply seeking declaratory judgment that an action or practice of the legislative body violates the Brown Act and/or related injunctive relief to stop future violations, there is no requirement for a "cure and correct" letter and no express deadline for filing a lawsuit. *Ingram v. Flippo*, 74 Cal. App. 4th 1280, 84 Cal. Rptr. 2d 60 (1999). However, it is a good idea to write a com-

plaint letter to the legislative body to give notice of the violation to give the legislative body a chance to admit that the practice or action violated the Brown Act and institute new procedures to avoid future violations, and to request a response by a specified date. It is advisable to file an action within 30 days of the date the alleged violation took place; a petition for writ of mandamus should be filed within 60 days and an action for declaratory or injunctive relief should be filed within six months of the date of the challenged action.

7. What court.

The action should be filed in the Superior Court of the county in which the violation of the Act occurred.

8. Judicial remedies available.

Under the Bagley-Keene Act, the court may invalidate actions taken by the state body in violation of Section 11123 (open meetings) or 11125 (notice requirements). Cal. Gov't Code § 11130.3(a). Under the Brown Act, the court may invalidate actions taken by the legislative body of a local agency in violation of Section 54953 (open and public meetings), 54954.2 (posting of agenda), 54954.5 (description requirements for closed sessions), 54954.6 (public meeting in general tax or assessment of notice thereof), 54956 (special meetings and notice thereof), or 54956.5 (emergency meeting rules). Cal. Gov't Code § 54960.1(a).

However, under both Acts, the court will not invalidate any action: (1) taken in connection with the sale or issuance of bonds, (2) giving rise to a contract that a party has relied on in good faith, (3) taken in substantial compliance with the sections, or (4) taken in connection with the collection of any tax. Cal. Gov't Code §§ 11130.3(b)(Bagley-Keene Act); 54960.1(d) (Brown Act). *See also Regents of University of California v. Superior Court*, 20 Cal. 4th 509, 527, 85 Cal. Rptr. 2d 257, 976 P.2d 808 (1999) (Regents held in substantial compliance with notice provisions); *North Pacific LLC v. California Coastal Commission*, 166 Cal. App. 4th 1416, 1431-32, 83 Cal. Rptr. 3d 636 (2008) (holding commission in substantial compliance with notice provisions and stating "state actions in violation of [the notice] requirements should not be nullified, so long as the state agency's reasonably effective efforts to notify interested persons of a public meeting serve the statutory objectives of ensuring that state actions taken and deliberations made at such meetings are open to the public."). Additionally, even when technical violations of the Acts are shown, action will not be invalidated absent a showing of prejudice. *California Coastal Commission*, 166 Cal. App. 4th at 1433 (Bagley-Keene Act); *Cohan v. City of Thousand Oaks*, 30 Cal. App. 4th 547, 555-56, 35 Cal. Rptr. 2d 782 (1994) (Brown Act).

With respect to other lawsuits under either Act, the court may order the body to refrain from violating the Act, may determine the applicability of the Act to a particular action taken or about to be taken, may determine the legality of a rule or action by the body that penalizes or discourages the expression of its members, or may compel the body to tape record its closed sessions. Cal. Gov't Code §§ 11130(a) (Bagley-Keene Act); 54960(a) (Brown Act).

The Brown Act authorizes a court to enter a declaratory judgment against a legislative body for violating the Brown Act in the past where "there is a controversy over whether a past violation of law has occurred." *California Alliance for Utility Etc. Education v. City of San Diego*, 56 Cal. App. 4th 1024, 1025, 1030, 65 Cal. Rptr. 2d 833 (1997). "[T]he ripeness doctrine does not require that to obtain declaratory relief [plaintiffs must] allege and prove a pattern or practice of past violations." *Id.* at 1029 (emphasis added). Rather, a declaratory relief action is proper if plaintiffs allege that a government body has violated the law, and the body or its counsel refuse to acknowledge a violation. *Common Cause v. Stirling*, 147 Cal. App. 3d 518, 524, 195 Cal. Rptr. 163 (1983). The legislative body's refusal to acknowledge a past violation is generally sufficient evidence that future violations are likely to occur. *Id.*

The Brown Act authorizes injunctive relief when a legislative body engages in an “on going procedure from which the court could reasonably infer, in light of the [body’s] attorney’s refusal to change that procedure, that there would be continuing or future threatened Brown Act violations.” *Shapiro v. San Diego City Council*, 96 Cal. App. 4th 904, 915, 117 Cal. Rptr. 2d 631 (2002). In that case, the San Diego City Council argued that the trial court lacked jurisdiction to grant injunctive relief because the petitioner did not seek to overturn any City actions and because the City changed some of its practices to comply with the Brown Act. “Accordingly, the City believes there can be no showing of any present or threatened future violations of the Act.” *Id.* at 913. The Court of Appeal disagreed. Citing the City Council’s repeated Brown Act violations and the refusal of the city attorney to admit all of the violations alleged in the complaint, the Court found that “there was a likelihood that such conduct would recur in the future and that injunctive relief was warranted.” *Id.* at 917.

A judge may order closed-session minutes released to the public. In *Register Div. of Freedom Newspapers Inc. v. County of Orange*, 158 Cal. App. 3d 893, 906-907, 205 Cal. Rptr. 92 (1984), the Court of Appeal held that closed session minutes must be disclosed under the Public Records Act if a legislative body calls a closed session in violation of the Brown Act and no other privileges apply to the discussions. But another Court of Appeal has held that the Brown Act does not contain any provision for disclosing the minutes of a closed session meeting where the legislative agency correctly convened a closed session under the Brown Act, but strayed into topics that were not on the agenda or not proper for discussion in closed session. *County of Los Angeles v. Superior Court (Union of American Physicians and Dentists)*, 130 Cal. App. 4th 1099, 1105-1106, 30 Cal. Rptr. 3d 708 (2005). In that case, the Court held that minutes of a closed session meeting remained privileged from discovery, even where the body may have violated the Brown Act. *Id.* at 1105. This case should be distinguished by pointing out that the plaintiff had never filed a Brown Act lawsuit, and that the issue of whether the Brown Act had been violated had not been fully litigated in the trial court, and the plaintiff was seeking discovery of closed session minutes in a non-Brown Act lawsuit.

But given the holding of *Union of American Physicians and Dentists*, it is advisable to combine any Brown Act demand letter and lawsuit with a demand under the California Public Records Act for the minutes of the portion of the closed session that violated the Brown Act, and assert that release of the documents is being sought under the Public Records Act *and* the Brown Act.

9. Availability of court costs and attorneys’ fees.

The court, in its discretion, may award court costs and attorneys’ fees to the plaintiff under either Act where it is determined that a body or agency has violated the Act. Cal. Gov’t Code §§ 11130.5 (Bagley-Keene Act); 54960.5 (Brown Act). The fees are to be paid by the body and are not the personal liability of any individual officer or employee. Cal. Gov’t Code §§ 11130.5 (Bagley-Keene Act); 54960.5 (Brown Act). The court is also authorized to award attorney fees to a defendant in any action under the Act where the defendant prevails and the court finds that the action was clearly frivolous *and* totally lacking in merit. Cal. Gov’t Code §§ 11130.5 (Bagley-Keene Act); 54960.5 (Brown Act).

Under the Brown Act, an award of attorneys’ fees is “presumptively appropriate” and a prevailing plaintiff should “ordinarily recover an attorney’s fees unless special circumstances would render such an award unjust.” *Los Angeles Times Communications LLC v. Superior Court*, 112 Cal. App.4th 1313, 1327, 5 Cal. Rptr. 3d 776, 787 (2004); *see also Galbiso v. Orosi Public Utility Dist.*, 167 Cal. App. 4th 1063, 1083, 84 Cal. Rptr. 3d 788 (2008). In *Los Angeles Times*, the appellate court held that fees were required because the litigation conferred a “public benefit” in part because the legislative body and its counsel continued to assert that it had done nothing wrong, leaving “open the possibility that the same violation would recur.” *Id.* at 1322. Where the Brown

Act plaintiff has prevailed on both Brown Act and non-Brown Act claims, the trial court must apportion the fees and award fees only for the Brown Act causes of action. *Bell v. Vista Unified School District*, 82 Cal. App. 4th 672, 98 Cal. Rptr. 2d 263 (2000).

10. Fines.

There is no provision for fines for violation of the open meeting requirements of either of the Acts except those which may be imposed if a member is found to be guilty of a misdemeanor. *See* below.

11. Other penalties.

Both Acts provide that it is a misdemeanor for a member of a state or legislative body to attend a meeting in violation of any provision of the Act, where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled. Cal. Gov’t Code §§ 11130.7 (Bagley-Keene Act); 54959 (Brown Act).

D. Appealing initial court decisions.

1. Appeal routes.

Unlike the Public Records Act, there is no special procedure for appealing final judgments or orders under the Bagley-Keene or Brown Act. An appeal after final judgment or a writ or extraordinary review brought under the Bagley-Keene Act or the Brown Act is subject to California’s rules of civil procedure and appellate process. The rules vary depending upon the nature of the original action filed, *i.e.*, whether declarative or injunctive relief was sought, or whether a petition for a writ of mandate was filed.

2. Time limits for filing appeals.

Upon a final judgment, any party wishing to appeal must file a jurisdictional notice of appeal in the trial court on or before the earlier of: (1) 60 days after the date of mailing by the clerk of the court of the “notice of entry” of judgment; (2) 60 days after the date of service of “notice of entry” of judgment by any party upon the party filing the notice of appeal, or by the party filing the notice of appeal; or (3) 180 days after the date of entry of the judgment. Cal. R. Ct. 8.100. Thereafter, the appellant must forward the trial transcript, papers and other records in the court’s file that he or she wishes the appellate court to have, and then file the opening appellate brief.

3. Contact of interested amici.

Amicus curiae (“friend of the court”) briefs may be filed, with the permission of the court, by any person not a party to the appeal who wants to argue the merits of the case. California Rules of Court, Rule 14. It is advisable to give serious consideration to filing *amicus* briefs in appellate proceedings.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state’s highest court.

V. ASSERTING A RIGHT TO COMMENT.

A. Is there a right to participate in public meetings?

Yes, during a regular or special meeting, but not during a closed meeting. Under both Acts, a body must provide an opportunity for members of the public to directly address each agenda item under consideration by the body either before or during the body’s discussion. Cal. Gov’t Code §§ 11125.7(a) (Bagley-Keene Act); 54954.3(a) (Brown Act). Additionally, under the Brown Act, during a regular session but not during a special session, the public has a right to comment “on *any* item of interest to the public, before or during the legislative body’s consideration of the item, that is within the subject matter jurisdiction of the legislative body” Cal. Gov’t Code § 54954.3(a). This right has been construed to mean that there must be a period of time provided for general public comment on *any* matter within the

subject matter jurisdiction of the legislative body, as well as an opportunity for public comment on each specific agenda item as it is taken up by the body. *Galbiso v. Orosi Public Utility Dist.*, 167 Cal. App. 4th 1063, 1080, 84 Cal. Rptr. 3d 788 (2008); see also *Chaffee v. San Francisco Library Commission*, 115 Cal. App. 4th 461, 468-69, 9 Cal. Rptr. 3d 336 (2004). Under the Brown Act, the right to comment includes the right to comment on matters to be considered by the body in closed session. *Galbiso*, 167 Cal. App. 4th at 1080; see also *Leventhal v. Vista Unified School Dist.*, 149 Cal. App. 4th 11424, 1437-39, 57 Cal. Rptr. 3d 885 (2007).

Under both Acts, the right to comment on agenda items does not apply if the agenda item has already been considered by a committee composed exclusively of members of the body at a public meeting where the public had the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the body. Cal. Gov't Code §§ 11125.7(a) (Bagley-Keene Act); 54954.3(a) (Brown Act).

The Bagley-Keene Act further provides that public testimony may be taken at a regular or special meeting if the state body takes no action at the same meeting on matters not on the notice and agenda that are brought before the body by the public. Cal. Gov't Code § 11125.7(a).

Under both Acts, the state body or the legislative body of a local agency may not prohibit public criticism of the policies, procedures, programs or services of the body, or the acts or omissions of the body. Cal. Gov't Code §§ 11125.7(c) (Bagley-Keene Act); 54954.3(c) (Brown Act).

B. Must a commenter give notice of intentions to comment?

Neither Act requires a commenter to give notice of an intention to comment. However, a body may impose reasonable regulations to ensure an orderly meeting. See below.

C. Can a public body limit comment?

Under the Bagley-Keene Act, a body does not have to listen to comments on items that are not on the agenda or that were already considered in a public meeting where there was an opportunity to comment. Cal. Gov't Code §§ 11125.7(a). Under the Brown Act, the public is entitled to comment on any matter within the subject matter jurisdiction of the legislative body, as well as any agenda item. Cal. Gov't Code § 54954.3(a). See *Galbiso v. Orosi Public Utility Dist.*, 167 Cal. App. 4th 1063, 1080, 84 Cal. Rptr. 3d 788 (2008). Thus, under the Brown Act, the legislative body does not have to listen to comments on items that are not within its subject matter jurisdiction. 78 Ops.

Cal. Att'y Gen. 224 (1995). And, as under the Bagley-Keene Act, a legislative body under the Brown Act does not have to listen to comments on items that were already considered in a public meeting where there was an opportunity to comment. Cal. Gov't Code § 54954.3(a).

In addition, under both Acts, the body may adopt reasonable regulations to ensure that the above provisions are carried out, including, but not limited to, regulations limiting the total amount of time allocated to each individual speaker for public testimony or comment on particular issues. Cal. Gov't Code §§ 11125.7(b) (Bagley-Keene Act); 54954.3(b) (Brown Act). A legislative body of a local agency may regulate the time, place and manner for speech to ensure orderly discussion. *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719 (C.D. Cal. 1996) (Brown Act).

D. How can a participant assert rights to comment?

Under both Acts, the body must give members of the public an opportunity to comment before or during the body's discussion or consideration of the agenda item. Cal. Gov't Code §§ 11125.7(a) (Bagley-Keene Act); 54954.3(a) (Brown Act). Under the Brown Act, the public must be given an opportunity to comment on any matter within the subject matter jurisdiction of the body, in addition to agenda items. Presumably, the body will invite public comment at the appropriate time, but if not, the participant could probably interrupt the meeting and request an opportunity to speak on the particular item, or on any matter within the subject matter of the legislative body.

E. Are there sanctions for unapproved comment?

Comments by members of the public do not need to be approved under either Act. Under the Brown Act, if a meeting is willfully interrupted by a group of persons, the body may order the room cleared and continue in session if order cannot be restored by removing the individuals. Cal. Gov't Code § 54957.9. In such a situation, the body can only consider items on the agenda, and representatives of the press or other news media, except those participating in the disturbance, must be allowed to attend. Cal. Gov't Code § 54957.9. The body may readmit individuals who did not willfully disturb the orderly conduct of the meeting. Cal. Gov't Code § 54957.9.

Appendix

The California Attorney General has published a good guide for both the Bagley-Keene Act and Brown Act, *The Brown Act: Open Meetings for Local Legislative Bodies* (Calif. Attorney Gen. 2003 ed.) and *A Handy Guide to the Bagley-Keene Opening Meeting Act* (Calif. Attorney Gen. 2004 ed.).

Both are available online. See <http://www.caag.state.ca.us/publications/bagleykeene.pdf> and http://www.caag.state.ca.us/publications/2003_Intro_BrownAct.pdf.

Statute

Constitution

California Constitution

Article 1 Declaration Of Rights

Sec. 3.

(a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b)

(1) 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.

(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

(3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

(4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.

(5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

(6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions; nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

2011 California Rules of Court

Rule 10.500. Public access to judicial administrative records

(a) Intent

(1) The Judicial Council intends by this rule to implement Government Code section 68106.2(g), added by Senate Bill X4 13 (Stats. 2009-10, 4th Ex. Sess. ch. 22), which requires adoption of rules of court that provide public access to nondeliberative and nonadjudicative court records, budget and management information.

(2) This rule clarifies and expands the public's right of access to judicial administrative records and must be broadly construed to further the public's right of access.

(b) Application

(1) This rule applies to public access to judicial administrative records, including records of budget and management information relating to the administration of the courts.

(2) This rule does not apply to, modify or otherwise affect existing law regarding public access to adjudicative records.

(3) This rule does not restrict the rights to disclosure of information otherwise granted by law to a recognized employee organization.

(4) This rule does not affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state, nor does it limit or impair any rights of discovery in a criminal case.

(5) This rule does not apply to electronic mail and text messages sent or received before the effective date of this rule.

(c) Definitions As used in this rule:

(1) "Adjudicative record" means any writing prepared for or filed or used in a court proceeding, the judicial deliberation process, or the assignment or reassignment of cases and of justices, judges (including temporary and assigned judges), and subordinate judicial officers, or of counsel appointed or employed by the court.

(2) "Judicial administrative record" means any writing containing information relating to the conduct of the people's business that is prepared, owned, used, or retained by a judicial branch entity regardless of the writing's physical form or characteristics, except an adjudicative record. The term "judicial administrative record" does not include records of a personal nature that are not used in or do not relate to the people's business, such as personal notes, memoranda, electronic mail, calendar entries, and records of Internet use.

(3) "Judicial branch entity" means the Supreme Court, each Court of Appeal, each superior court, the Judicial Council, and the Administrative Office of the Courts.

(4) "Judicial branch personnel" means justices, judges (including temporary and assigned judges), subordinate judicial officers, members of the Judicial Council and its advisory bodies, and directors, officers, employees, volunteers, and agents of a judicial branch entity.

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

(6) "Writing" means any handwriting, typewriting, printing, photographing, photocopying, electronic mail, fax, and every other means of recording on any tangible thing any form of communication or representation, including letters, words, pictures, sounds, symbols, or combinations, regardless of the manner in which the record has been stored.

(d) Construction of rule

(1) Unless otherwise indicated, the terms used in this rule have the same meaning as under the Legislative Open Records Act (Gov. Code, § 9070 et seq.) and the California Public Records Act (Gov. Code, § 6250 et seq.) and must be interpreted consistently with the interpretation applied to the terms under those acts.

(2) This rule does not require the disclosure of a record if the record is exempt from disclosure under this rule or is the type of record that would not be subject to disclosure under the Legislative Open Records Act or the California Public Records Act.

(e) Public access

(1) Access

(A) A judicial branch entity must allow inspection and copying of judicial administrative records unless the records are exempt from disclosure under this rule or by law.

(B) Nothing in this rule requires a judicial branch entity to create any record or to compile or assemble data in response to a request for judicial administrative records if the judicial branch entity does not compile or assemble the data in the requested form for its own use or for provision to other agencies. For purposes of this rule, selecting data from extractable fields in a single database using software already owned or licensed by the judicial branch entity does not constitute creating a record or compiling or assembling data.

(C) If a judicial administrative record contains information that is exempt from disclosure and the exempt portions are reasonably segregable, a judicial branch entity must allow inspection and copying of the record after deletion of the portions that are exempt from disclosure. A judicial branch entity is not required to allow inspection or copying of the portion of a writing that is a judicial administrative record unless that portion is reasonably segregable from the portion that constitutes an adjudicative record.

(D) If requested, a superior court must provide a copy of the certified judicial administrative record if the judicial administrative record requested has previously been certified by the superior court.

(2) Examples

Judicial administrative records subject to inspection and copying unless exempt from disclosure under subdivision (f) include, but are not limited to, the following:

(A) Budget information submitted to the Administrative Office of the Courts after enactment of the annual Budget Act;

(B) Any other budget and expenditure document pertaining to the administrative operation of the courts, including quarterly financial statements and statements of revenue, expenditure, and reserves;

(C) Actual and budgeted employee salary and benefit information;

(D) Copies of executed contracts with outside vendors and payment information and policies concerning goods and services provided by outside vendors without an executed contract;

(E) Final audit reports; and

(F) Employment contracts between judicial branch entities and their employees.

(3) Procedure for requesting records

A judicial branch entity must make available on its public Web site or otherwise publicize the procedure to be followed to request a copy of or to inspect a judicial administrative record. At a minimum, the procedure must include the address to which requests are to be addressed, to whom requests are to be directed, and the office hours of the judicial branch entity.

(4) Costs of duplication, search, and review

(A) A judicial branch entity, on request, must provide a copy of a judicial administrative record not exempt from disclosure if the record is of a nature permitting copying, subject to payment of the fee specified in this rule or other applicable statutory fee. A judicial branch entity may require advance payment of any fee.

(B) A judicial branch entity may impose on all requests a fee reasonably calculated to cover the judicial branch entity's direct costs of duplication of a record or of production of a record in an electronic format under subdivision (i). The fee includes:

(i) A charge per page, per copy, or otherwise, as established and published by the Judicial Council, or as established by the judicial branch entity following a notice and comment procedure specified by the Judicial Council, representing the direct costs of equipment, supplies, and staff time required to duplicate or produce the requested record; and

(ii) Any other direct costs of duplication or production, including, but not limited to, the costs incurred by a judicial branch entity in retrieving the record from a remote storage facility or archive and the costs of mailing responsive records.

(C) In the case of requests for records for commercial use, a judicial branch entity may impose, in addition to the fee in (B), a fee reasonably calculated to cover the actual costs of staff search and review time, based on an hourly rate for salary and benefits of each employee involved.

(D) For purposes of this rule:

(i) "Commercial use" means a request for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is being made. A request from a representative of the news media that supports its news-dissemination function is not a request for a commercial use.

(ii) "Representative of the news media" means a person who regularly gathers, prepares, collects, photographs, records, writes, edits, reports, or publishes news or information that concerns local, national, or international events or other matters of public interest for dissemination to the public for a substantial portion of the person's livelihood or for substantial financial gain.

(iii) "Search and review time" means actual time spent identifying and locating judicial administrative records, including material within documents, responsive to a request; determining whether any portions are exempt from disclosure; and performing all tasks necessary to prepare the records for disclosure, including redacting portions exempt from disclosure. "Search and review time" does not include time spent resolving general legal or policy issues regarding the applicability of particular exemptions.

(E) By January 1, 2012, the Judicial Council will review and evaluate the numbers of requests received, the time necessary to respond, and the fees

imposed by judicial branch entities for access to records and information. The Judicial Council's review will consider the impact of this rule on both the public's access to records and information and on judicial branch entities' ability to carry out and fund core judicial operations.

(5) Inspection

A judicial branch entity must make judicial administrative records in its possession and not exempt from disclosure open to inspection at all times during the office hours of the judicial branch entity provided that the record is of a nature permitting inspection.

(6) Time for determination of disclosable records

A judicial branch entity, on a request that reasonably describes an identifiable record or records, must determine, within 10 calendar days from receipt of the request, whether the request, in whole or in part, seeks disclosable judicial administrative records in its possession and must promptly notify the requesting party of the determination and the reasons for the determination.

(7) Response

If a judicial branch entity determines that a request seeks disclosable judicial administrative records, the judicial branch entity must make the disclosable judicial administrative records available promptly. The judicial branch entity must include with the notice of the determination the estimated date and time when the records will be made available. If the judicial branch entity determines that the request, in whole or in part, seeks nondisclosable judicial administrative records, it must convey its determination in writing, include a contact name and telephone number to which inquiries may be directed, and state the express provision of this rule justifying the withholding of the records not disclosed.

(8) Extension of time for determination of disclosable records

In unusual circumstances, to the extent reasonably necessary to the proper processing of the particular request, a judicial branch entity may extend the time limit prescribed for its determination under (c)(6) by no more than 14 calendar days by written notice to the requesting party, stating the reasons for the extension and the date on which the judicial branch entity expects to make a determination. As used in this section, "unusual circumstances" means the following:

(A) The need to search for and collect the requested records from multiple locations or facilities that are separate from the office processing the request;

(B) The need to search for, collect, and appropriately examine a voluminous amount of records that are included in a single request; or

(C) The need for consultation, which must be conducted with all practicable speed, with another judicial branch entity or other governmental agency having substantial subject matter interest in the determination of the request, or with two or more components of the judicial branch entity having substantial subject matter interest in the determination of the request.

(9) Reasonable efforts

(A) On receipt of a request to inspect or obtain a copy of a judicial administrative record, a judicial branch entity, in order to assist the requester in making a focused and effective request that reasonably describes an identifiable judicial administrative record, must do all of the following to the extent reasonable under the circumstances:

(i) Assist the requester in identifying records and information 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 inspection or copying of the records or information sought.

(B) The requirements of (A) will be deemed to have been satisfied if the judicial branch entity is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that helps identify the record or records.

(C) The requirements of (A) do not apply to a request for judicial administrative records if the judicial branch entity makes the requested records available or determines that the requested records are exempt from disclosure under this rule.

(10) No obstruction or delay

Nothing in this rule may be construed to permit a judicial branch entity to delay or obstruct the inspection or copying of judicial administrative records that are not exempt from disclosure.

(11) Greater access permitted

Except as otherwise prohibited by law, a judicial branch entity may adopt requirements for itself that allow for faster, more efficient, or greater access to judicial administrative records than prescribed by the requirements of this rule.

(12) Control of records

A judicial branch entity must not sell, exchange, furnish, or otherwise provide a judicial administrative record subject to disclosure under this rule to a private entity in a manner that prevents a judicial branch entity from providing the record directly under this rule. A judicial branch entity must not allow a private entity to control the disclosure of information that is otherwise subject to disclosure under this rule.

(f) Exemptions Nothing in this rule requires the disclosure of judicial administrative records that are any of the following:

(1) Preliminary writings, including drafts, notes, working papers, and inter-judicial branch entity or intra-judicial branch entity memoranda, that are not retained by the judicial branch entity in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure;

(2) Records pertaining to pending or anticipated claims or litigation to which a judicial branch entity is a party or judicial branch personnel are parties, until the pending litigation or claim has been finally adjudicated or otherwise resolved;

(3) Personnel, medical, or similar files, or other personal information whose disclosure would constitute an unwarranted invasion of personal privacy, including, but not limited to, records revealing home addresses, home telephone numbers, cellular telephone numbers, private electronic mail addresses, and social security numbers of judicial branch personnel and work electronic mail addresses and work telephone numbers of justices, judges (including temporary and assigned judges), subordinate judicial officers, and their staff attorneys;

(4) Test questions, scoring keys, and other examination data used to develop, administer, and score examinations for employment, certification, or qualification;

(5) Records whose disclosure is exempted or prohibited under state or federal law, including provisions of the California Evidence Code relating to privilege, or by court order in any court proceeding;

(6) Records whose disclosure would compromise the security of a judicial branch entity or the safety of judicial branch personnel, including but not limited to, court security plans, and security surveys, investigations, procedures, and assessments;

(7) Records related to evaluations of, complaints regarding, or investigations of justices, judges (including temporary and assigned judges), subordinate judicial officers, and applicants or candidates for judicial office;

(8) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the judicial branch entity related to the acquisition of property or to prospective public supply and construction contracts, until all of the property has been acquired or the relevant contracts have been executed. This provision does not affect the law of eminent domain;

(9) Records related to activities governed by Government Code sections 71600 et seq. and 71800 et seq. that reveal deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy or that provide instruction, advice, or training to employees who are not represented by employee organizations under those sections. Nothing in this subdivision limits the disclosure duties of a judicial branch entity with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision;

(10) Records that contain trade secrets or privileged or confidential commercial and financial information submitted in response to a judicial branch entity's solicitation for goods or services or in the course of a judicial branch entity's contractual relationship with a commercial entity. For purposes of this rule:

(A) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(i) Derives independent economic value, actual or potential, from not be-

ing generally known to the public or to other persons who can obtain economic value from its disclosure or use; and

(ii) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy;

(B) "Privileged information" means material that falls within recognized constitutional, statutory, or common law privileges;

(C) "Confidential commercial and financial information" means information whose disclosure would:

(i) Impair the judicial branch entity's ability to obtain necessary information in the future; or

(ii) Cause substantial harm to the competitive position of the person from whom the information was obtained.

(11) Records whose disclosure would disclose the judicial branch entity's or judicial branch personnel's decision-making process, provided that, on the facts of the specific request for records, the public interest served by nondisclosure clearly outweighs the public interest served by disclosure of the record; or

(12) If, on the facts of the specific request for records, the public interest served by nondisclosure of the record clearly outweighs the public interest served by disclosure of the record.

(g) Computer software; copyrighted materials

(1) Computer software developed by a judicial branch entity or used by a judicial branch entity for the storage or manipulation of data is not a judicial administrative record under this rule. For purposes of this rule "computer software" includes computer mapping systems, computer graphic systems, and computer programs, including the source, object, and other code in a computer program.

(2) This rule does not limit a judicial branch entity's ability to sell, lease, or license computer software for commercial or noncommercial use.

(3) This rule does not create an implied warranty on the part of any judicial branch entity for errors, omissions, or other defects in any computer software.

(4) This rule does not limit any copyright protection. A judicial branch entity is not required to duplicate records under this rule in violation of any copyright.

(5) Nothing in this subdivision is intended to affect the judicial administrative record status of information merely because the information is stored in a computer. Judicial administrative records stored in a computer will be disclosed as required in this rule.

(h) Waiver of exemptions

(1) Disclosure of a judicial administrative record that is exempt from disclosure under this rule or provision of law by a judicial branch entity or judicial branch personnel acting within the scope of their office or employment constitutes a waiver of the exemptions applicable to that particular record.

(2) This subdivision does not apply to disclosures:

(A) Made through discovery proceedings;

(B) Made through other legal proceedings or as otherwise required by law;

(C) Made to another judicial branch entity or judicial branch personnel for the purposes of judicial branch administration;

(D) Within the scope of a statute that limits disclosure of specified writings to certain purposes; or

(E) Made to any governmental agency or to another judicial branch entity or judicial branch personnel if the material will be treated confidentially.

(i) Availability in electronic format

(1) A judicial branch entity that has information that constitutes an identifiable judicial administrative record not exempt from disclosure under this rule and that is in an electronic format must, on request, produce that information in the electronic format requested, provided that:

(A) No law prohibits disclosure;

(B) The record already exists in the requested electronic format, or the judicial branch entity has previously produced the judicial administrative record in the requested format for its own use or for provision to other agencies;

(C) The requested electronic format is customary or standard for records of a similar type and is commercially available to private entity requesters; and

(D) The disclosure does not jeopardize or compromise the security or integrity of the original record or the computer software on which the original record is maintained.

(2) In addition to other fees imposed under this rule, the requester will bear the direct cost of producing a record if:

(A) In order to comply with (1), the judicial branch entity would be required to produce a record and the record is one that is produced only at otherwise regularly scheduled intervals or;

(B) Producing the requested record would require data compilation or extraction or any associated programming that the judicial branch entity is not required to perform under this rule but has agreed to perform in response to the request.

(3) Nothing in this subdivision shall be construed to require a judicial branch entity to reconstruct a record in an electronic format if the judicial branch entity no longer has the record available in an electronic format.

(j) Public access disputes

(1) Unless the petitioner elects to proceed under (2) below, disputes and appeals of decisions with respect to disputes with the Judicial Council, Administrative Office of the Courts, or a superior court regarding access to budget and management information required to be maintained under rule 10.501 are subject to the process described in rule 10.803.

(2) Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any judicial administrative record under this rule.

(3) Whenever it is made to appear by verified petition that a judicial administrative record is being improperly withheld from disclosure, the court with jurisdiction will order the judicial branch entity to disclose the records or show cause why it should not do so. The court will decide the case after examining the record (in camera if appropriate), papers filed by the parties, and any oral argument and additional evidence as the court may allow.

(4) If the court finds that the judicial branch entity's decision to refuse disclosure is not justified under this rule, the court will order the judicial branch entity to make the record public. If the court finds that the judicial branch entity's decision was justified, the court will issue an order supporting the decision.

(5) An order of the court, either directing disclosure or supporting the decision of the judicial branch entity refusing disclosure, is not a final judgment or order within the meaning of Code of Civil Procedure section 904.1 from which an appeal may be taken, but will be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of an order under this subdivision, a party must, in order to obtain review of the order, file a petition within 20 days after service of a written notice of entry of the order or within such further time not exceeding an additional 20 days as the court may for good cause allow. If the notice is served by mail, the period within which to file the petition will be extended by 5 days. A stay of an order or judgment will not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court will be cited to show cause why that is not in contempt of court.

(6) The court will award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed under this subdivision. The costs and fees will be paid by the judicial branch entity and will not become a personal liability of any individual. If the court finds that the plaintiff's case is clearly frivolous, it will award court costs and reasonable attorney fees to the judicial branch entity.

Rule 10.500 adopted effective January 1, 2010.

Open Records

California Codes

Government Code

Title 1. General

Division 7. Miscellaneous

Chapter 3.5. Inspection of Public Records

Article 1. General Provisions

§ 6250. Legislative findings and declarations

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

§ 6251. Short title

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

§ 6252. Definitions

As used in this chapter:

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

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

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

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

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

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

(g) "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.

§ 6252.5. Elected member or officer of state or local agency

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

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

§ 6252.6. Disclosure of name, date of birth, and date of death of foster child to county child welfare agency

Notwithstanding paragraph (2) of subdivision (a) of Section 827 of the Welfare and Institutions Code, after the death of a foster child who is a minor, the name, date of birth, and date of death of the child shall be subject to disclosure by the county child welfare agency pursuant to this chapter.

§ 6252.7.

Notwithstanding Section 6252.5 or any other provision of law, when the members of a legislative body of a local agency are authorized to access a writing of the body or of the agency as permitted by law in the administration of their duties, the local agency, as defined in Section 54951, shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available.

§ 6253. Public records open to inspection; agency duties; time limits

(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public

record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

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

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

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

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

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

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

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

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

§ 6253.1. Assistance to members of the public regarding requests to inspect a public record or obtain a copy; duties of the public agency

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

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

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

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

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

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

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

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

(2) The public agency determines that the request should be denied and

bases that determination solely on an exemption listed in Section 6254.

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

§ 6253.2. In-home supportive services; personal care services

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

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

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

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

§ 6253.3

A state or local agency may not allow another party to control the disclosure of information that is otherwise subject to disclosure pursuant to this chapter.

§ 6253.31.

Notwithstanding any contract term to the contrary, a contract entered into by a state or local agency subject to this chapter, including the University of California, that requires a private entity to review, audit, or report on any aspect of that agency shall be public to the extent the contract is otherwise subject to disclosure under this chapter.

§ 6253.4. Agency regulations and guidelines

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

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

Department of Motor Vehicles
 Department of Consumer Affairs
 Department of Transportation
 Department of Real Estate
 Department of Corrections
 Department of the Youth Authority
 Department of Justice
 Department of Insurance
 Department of Corporations
 Department of Managed Health Care Secretary of State State Air Resources Board
 Department of Water Resources
 Department of Parks and Recreation
 San Francisco Bay Conservation and Development Commission
 State Board of Equalization State
 Department of Health Care Services Employment Development Department State
 Department of Public Health State
 Department of Social Services State
 Department of Mental Health State
 Department of Developmental Services State
 Department of Alcohol and Drug Abuse
 Office of Statewide Health Planning and Development
 Public Employees' Retirement System
 Teachers' Retirement Board

Department of Industrial Relations
 Department of General Services
 Department of Veterans Affairs
 Public Utilities Commission
 California Coastal Commission
 State Water Resources Control Board
 San Francisco Bay Area Rapid Transit District
 All regional water quality control boards
 Los Angeles County Air Pollution Control District
 Bay Area Air Pollution Control District
 Golden Gate Bridge, Highway and Transportation District
 Department of Toxic Substances Control
 Office of Environmental Health Hazard Assessment

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

§ 6253.5. *Initiative, referendum, recall petitions, and petitions for reorganization of school districts or community college districts deemed not public records; examination by proponents*

Notwithstanding Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions, petitions circulated pursuant to Section 5091 of the Education Code, petitions for the reorganization of school districts submitted pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, petitions for the reorganization of community college districts submitted pursuant to Part 46 (commencing with Section 74000) of the Education Code and all memoranda prepared by the county elections officials in the examination of the petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving the petitions or who are responsible for the preparation of that memoranda and, if the petition is found to be insufficient, by the proponents of the petition and the representatives of the proponents as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor. However, the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a school district or a community college district attorney, and a city attorney shall be permitted to examine the material upon approval of the appropriate superior court.

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

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

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

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

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

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

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

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

(6) For petitions circulated pursuant to Part 46 (commencing with Section 74000) of the Education Code, the person or persons designated as chief petitioners under Sections 74102, 74133, and 74152 of the Education Code.

§ 6253.6. *Bilingual ballot or ballot pamphlet requests not deemed public records*

(a) Notwithstanding the provisions of Sections 6252 and 6253, information compiled by public officers or public employees revealing the identity of per-

sons who have requested bilingual ballots or ballot pamphlets, made in accordance with any federal or state law, or other data that would reveal the identity of the requester, shall not be deemed to be public records and shall not be provided to any person other than public officers or public employees who are responsible for receiving those requests and processing the same.

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

§ 6253.7. *Repealed by Stats.1996, c. 8 (A.B.1095), § 2, operative Jan. 1, 2001*

§ 6253.8. *Enforcement orders; Internet website*

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

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

(1) The State Air Resources Board.

(2) The California Integrated Waste Management Board.

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

(4) The Department of Pesticide Regulation.

(5) The Department of Toxic Substances Control.

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

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

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

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

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

§ 6253.9. *Information in an electronic format; costs; application; availability*

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

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

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

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

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

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

(c) Nothing in this section shall be construed to require the public agency

to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

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

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

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

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

§ 6254. Exemption of particular records

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

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

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

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

(d) Contained in or related to any of the following:

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

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

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

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

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that 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, the California Emergency Management Agency, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. However, state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflects the analysis or conclusions of the investigating officer.

Customer lists provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision.

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

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

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined in any of the sections of the Penal Code set forth in this subdivision may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code. However, the address of the victim of any crime defined by Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph may not be used directly or indirectly, or furnished to another, to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury. Nothing in this paragraph shall be construed to prohibit or limit a scholarly, journalistic, political, or government use of address information obtained pursuant to this paragraph.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of Division 14 of Title 3 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(l) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's Legal Affairs Secretary. However, public records shall not be transferred to the custody of the Governor's Legal Affairs Secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel, except those records in the public database maintained by the Legislative Counsel that are described in Section 10248.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application that are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under these chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Article 2.6 (commencing with Section 14081), Article 2.8 (commencing with Section 14087.5), and Article 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. If a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee and the Legislative Analyst's Office. The committee and that office shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places and records of Native American places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Care Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Part 2 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u)

(1) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(2) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(3) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(v)

(1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 6.3 (commencing with Section 12695), Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), and Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code, and that reveal any of the following:

(A) The deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board, entities with which the board is considering a contract, or entities with which the board is considering or enters into any other arrangement under which the board provides, receives, or arranges services or reimbursement.

(B) The impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2)

(A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.3 (commencing with Section 12695), Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after their effective dates.

(B) If a contract that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after the effective date of the amendment.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contracts or amendments to the contracts are open to inspection pursuant to paragraph (3).

(w)

(1) Records of the Managed Risk Medical Insurance Board related to activities governed by Chapter 8 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 8 (commencing

with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contracts or amendments to the contracts are open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

(y)

(1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, and that reveal any of the following:

(A) The deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board, entities with which the board is considering a contract, or entities with which the board is considering or enters into any other arrangement under which the board provides, receives, or arranges services or reimbursement.

(B) The impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2)

(A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, on or after January 1, 1998, shall be open to inspection one year after their effective dates.

(B) If a contract entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the effective date of the amendment.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).

(5) The exemption from disclosure provided pursuant to this subdivision for the contracts, deliberative processes, discussions, communications, negotiations, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff shall also apply to the contracts, deliberative processes, discussions, communications, negotiations, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of applicants pursuant to Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code.

(z) Records obtained pursuant to paragraph (2) of subdivision (c) of Section 2891.1 of the Public Utilities Code.

(aa) A document prepared by or for a state or local agency that assesses its vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency's operations and that is for distribution or consideration in a closed session.

(ab) 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 used in this subdivision, "voluntarily submitted" means submitted in the absence of the office exercising any legal authority to compel access to or submission of critical infrastructure information. This subdivision shall not affect the status of information in the possession of any other state or local governmental agency.

(ac) All information provided to the Secretary of State by a person for the purpose of registration in the Advance Health Care Directive Registry, except that those records shall be released at the request of a health care provider, a public guardian, or the registrant's legal representative.

(ad) The following records of the State Compensation Insurance Fund:

(1) Records related to claims pursuant to Chapter 1 (commencing with Section 3200) of Division 4 of the Labor Code, to the extent that confidential medical information or other individually identifiable information would be disclosed.

(2) Records related to the discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the fund, and any related deliberations.

(3) Records related to the impressions, opinions, recommendations, meeting minutes of meetings or sessions that are lawfully closed to the public, research, work product, theories, or strategy of the fund or its staff, on the development of rates, contracting strategy, underwriting, or competitive strategy pursuant to the powers granted to the fund in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code.

(4) Records obtained to provide workers' compensation insurance under Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, including, but not limited to, any medical claims information, policyholder information provided that nothing in this paragraph shall be interpreted to prevent an insurance agent or broker from obtaining proprietary information or other information authorized by law to be obtained by the agent or broker, and information on rates, pricing, and claims handling received from brokers.

(5)

(A) Records that are trade secrets pursuant to Section 6276.44, or Article 11 (commencing with Section 1060) of Chapter 4 of Division 8 of the Evidence Code, including without limitation, instructions, advice, or training provided by the State Compensation Insurance Fund to its board members, officers, and employees regarding the fund's special investigation unit, internal audit unit, and informational security, marketing, rating, pricing, underwriting, claims handling, audits, and collections.

(B) Notwithstanding subparagraph (A), the portions of records containing trade secrets shall be available for review by the Joint Legislative Audit Committee, the Bureau of State Audits, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.

(6)

(A) Internal audits containing proprietary information and the following records that are related to an internal audit:

(i) Personal papers and correspondence of any person providing assistance to the fund when that person has requested in writing that his or her papers and correspondence be kept private and confidential. Those papers and correspondence shall become public records if the written request is withdrawn, or upon order of the fund.

(ii) Papers, correspondence, memoranda, or any substantive information pertaining to any audit not completed or an internal audit that contains proprietary information.

(B) Notwithstanding subparagraph (A), the portions of records containing proprietary information, or any information specified in subparagraph (A) shall be available for review by the Joint Legislative Audit Committee, the Bureau of State Audits, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.

(7)

(A) Except as provided in subparagraph (C), contracts entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code shall be open to inspection one year after the contract has been fully executed.

(B) If a contract entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(C) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(D) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to this paragraph.

(E) Nothing in this paragraph is intended to apply to documents related to contracts with public entities that are not otherwise expressly confidential as to that public entity.

(F) For purposes of this paragraph, "fully executed" means the point in time when all of the necessary parties to the contract have signed the contract.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act (29 U.S.C. Sec. 158).

§ 6254.1. Disclosure of residence, mailing address or results of test for competency to safely operate motor vehicle

(a) Except as provided in Section 6254.7, nothing in this chapter requires disclosure of records that are the residence address of any person contained in the records of the Department of Housing and Community Development, if the person has requested confidentiality of that information, in accordance with Section 18081 of the Health and Safety Code.

(b) Nothing in this chapter requires the disclosure of the residence or mailing address of any person in any record of the Department of Motor Vehicles except in accordance with Section 1808.21 of the Vehicle Code.

(c) Nothing in this chapter requires the disclosure of the results of a test undertaken pursuant to Section 12804.8 of the Vehicle Code.

§ 6254.2. Pesticide safety and efficacy information; public disclosure; limitations; procedures

(a) Nothing in this chapter exempts from public disclosure the same categories of pesticide safety and efficacy information that are disclosable under paragraph (1) of subsection (d) of Section 10 of the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136h(d)(1)), if the individual requesting the information is not an officer, employee, or agent specified in subdivision (h) and signs the affirmation specified in subdivision (h).

(b) The Director of Pesticide Regulation, upon his or her initiative, or upon receipt of a request pursuant to this chapter for the release of data submitted and designated as a trade secret by a registrant or applicant, shall determine whether any or all of the data so submitted is a properly designated trade secret. In order to assure that the interested public has an opportunity to obtain and review pesticide safety and efficacy data and to comment prior to the expiration of the public comment period on a proposed pesticide registration, the director shall provide notice to interested persons when an application for registration enters the registration evaluation process.

(c) If the director determines that the data is not a trade secret, the director shall notify the registrant or applicant by certified mail.

(d) The registrant or applicant shall have 30 days after receipt of this notification to provide the director with a complete justification and statement of the grounds on which the trade secret privilege is claimed. This justification and statement shall be submitted by certified mail.

(e) The director shall determine whether the data is protected as a trade secret within 15 days after receipt of the justification and statement or, if no justification and statement is filed, within 45 days of the original notice. The director shall notify the registrant or applicant and any party who has requested the data pursuant to this chapter of that determination by certified mail. If the director determines that the data is not protected as a trade secret, the final notice shall also specify a date, not sooner than 15 days after the date of mailing of the final notice, when the data shall be available to any person requesting information pursuant to subdivision (a).

(f) "Trade secret" means data that is nondisclosable under paragraph (1) of subsection (d) of Section 10 of the federal Insecticide, Fungicide, and Rodenticide Act.

(g) This section shall be operative only so long as, and to the extent that, enforcement of paragraph (1) of subsection (d) of Section 10 of the federal Insecticide, Fungicide, and Rodenticide Act has not been enjoined by federal

court order, and shall become inoperative if an unappealable federal court judgment or decision becomes final that holds that paragraph invalid, to the extent of the invalidity.

(h) The director shall not knowingly disclose information submitted to the state by an applicant or registrant pursuant to Article 4 (commencing with Section 12811) of Chapter 2 of Division 7 of the Food and Agricultural Code to any officer, employee, or agent of any business or other entity engaged in the production, sale, or distribution of pesticides in countries other than the United States or in countries in addition to the United States, or to any other person who intends to deliver this information to any foreign or multi-national business or entity, unless the applicant or registrant consents to the disclosure. To implement this subdivision, the director shall require the following affirmation to be signed by the person who requests such information:

AFFIRMATION OF STATUS This affirmation is required by Section 6254.2 of the Government Code.

I have requested access to information submitted to the Department of Pesticide Regulation (or previously submitted to the Department of Food and Agriculture) by a pesticide applicant or registrant pursuant to the California Food and Agricultural Code. I hereby affirm all of the following statements:

(1) I do not seek access to the information for purposes of delivering it or offering it for sale to any business or other entity, including the business or entity of which I am an officer, employee, or agent engaged in the production, sale, or distribution of pesticides in countries other than the United States or in countries in addition to the United States, or to the officers, employees, or agents of such a business or entity.

(2) I will not purposefully deliver or negligently cause the data to be delivered to a business or entity specified in paragraph (1) or its officers, employees, or agents.

I am aware that I may be subject to criminal penalties under Section 118 of the Penal Code if I make any statement of material facts knowing that the statement is false or if I willfully conceal any material fact.

Name of Requester	Name of Requester's Organization

Signature of Requester	Address of Requester

Telephone Number of Date	Request No.
Requester _____	

Name, Address, and Telephone Number of Requester's Client, if the requester has requested access to the information on behalf of someone other than the requester or the requester's organization listed above.

(i) Notwithstanding any other provision of this section, the director may disclose information submitted by an applicant or registrant to any person in connection with a public proceeding conducted under law or regulation, if the director determines that the information is needed to determine whether a pesticide, or any ingredient of any pesticide, causes unreasonable adverse effects on health or the environment.

(j) The director shall maintain records of the names of persons to whom data is disclosed pursuant to this section and the persons or organizations they represent and shall inform the applicant or registrant of the names and the affiliation of these persons.

(k) Section 118 of the Penal Code applies to any affirmation made pursuant to this section.

(l) Any officer or employee of the state or former officer or employee of the state who, because of this employment or official position, obtains possession of, or has access to, material which is prohibited from disclosure by this section, and who, knowing that disclosure of this material is prohibited by this section, willfully discloses the material in any manner to any person not entitled to receive it, shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment in the county jail for not more than one year, or by both fine and imprisonment.

For purposes of this subdivision, any contractor with the state who is furnished information pursuant to this section, or any employee of any contractor, shall be considered an employee of the state.

(m) This section does not prohibit any person from maintaining a civil action for wrongful disclosure of trade secrets.

(n) The director may limit an individual to one request per month pursuant to this section if the director determines that a person has made a frivolous request within the past 12-month period.

§ 6254.3. State, school district and county office of education employees; home address and phone number as public records; disclosure

(a) The home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

(1) To an agent, or a family member of the individual to whom the information pertains.

(2) To an officer or employee of another state agency, school district, or county office of education when necessary for the performance of its official duties.

(3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed.

(4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to state, school districts, and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

(b) Upon written request of any employee, a state agency, school district, or county office of education shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and an agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee.

§ 6254.4. Voter registration information; confidentiality

(a) The home address, telephone number, e-mail address, precinct number, or other number specified by the Secretary of State for voter registration purposes, and prior registration information shown on the voter registration card for all registered voters, are confidential and shall not be disclosed to any person, except pursuant to Section 2194 of the Elections Code.

(b) For purposes of this section, "home address" means street address only, and does not include an individual's city or post office address.

(c) The California driver's license number, the California identification card number, the social security number, and any other unique identifier used by the State of California for purposes of voter identification shown on a voter registration card of a registered voter, or added to the voter registration records to comply with the requirements of the Help America Vote Act of 2002 (42 U.S.C. Sec. 15301 et seq.), are confidential and shall not be disclosed to any person.

(d) The signature of the voter that is shown on the voter registration card is confidential and shall not be disclosed to any person.

§ 6254.5. Disclosures of public records; waiver of exemptions; application of section

Notwithstanding any other provisions of the law, whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law. For purposes of this section, "agency" includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment.

This section, however, shall not apply to disclosures:

(a) Made pursuant to the Information Practices Act (commencing with Section 1798 of the Civil Code) or discovery proceedings.

(b) Made through other legal proceedings or as otherwise required by law.

(c) Within the scope of disclosure of a statute which limits disclosure of specified writings to certain purposes.

(d) Not required by law, and prohibited by formal action of an elected legislative body of the local agency which retains the writings.

(e) Made to any governmental agency which agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes which are consistent with existing law.

(f) Of records relating to a financial institution or an affiliate thereof, if the disclosures are made to the financial institution or affiliate by a state agency responsible for the regulation or supervision of the financial institution or affiliate.

(g) Of records relating to any person that is subject to the jurisdiction of the Department of Corporations, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Corporations.

(h) Made by the Commissioner of Financial Institutions under Section 280, 282, 8009, or 18396 of the Financial Code.

(i) Of records relating to any person that is subject to the jurisdiction of the Department of Managed Health Care, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Managed Health Care.

§ 6254.6. Private industry wage data from federal bureau of labor statistics; identity of employers; confidentiality

Whenever a city and county or a joint powers agency, pursuant to a mandatory statute or charter provision to collect private industry wage data for salary setting purposes, or a contract entered to implement that mandate, is provided this data by the federal Bureau of Labor Statistics on the basis that the identity of private industry employers shall remain confidential, the identity of the employers shall not be open to the public or be admitted as evidence in any action or special proceeding.

§ 6254.7. Air pollution data; public records; notices and orders to building owners; trade secrets; data used to calculate costs of obtaining emission offsets

(a) All information, analyses, plans, or specifications that disclose the nature, extent, quantity, or degree of air contaminants or other pollution which any article, machine, equipment, or other contrivance will produce, which any air pollution control district or air quality management district, or any other state or local agency or district, requires any applicant to provide before the applicant builds, erects, alters, replaces, operates, sells, rents, or uses the article, machine, equipment, or other contrivance, are public records.

(b) All air or other pollution monitoring data, including data compiled from stationary sources, are public records.

(c) All records of notices and orders directed to the owner of any building of violations of housing or building codes, ordinances, statutes, or regulations which constitute violations of standards provided in Section 1941.1 of the Civil Code, and records of subsequent action with respect to those notices and orders, are public records.

(d) Except as otherwise provided in subdivision (e) and Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code, trade secrets are not public records under this section. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

(e) Notwithstanding any other provision of law, all air pollution emission data, including those emission data which constitute trade secrets as defined in subdivision (d), are public records. Data used to calculate emission data are not emission data for the purposes of this subdivision and data which constitute trade secrets and which are used to calculate emission data are not public records.

(f) Data used to calculate the costs of obtaining emissions offsets are not public records. At the time that an air pollution control district or air quality

management district issues a permit to construct to an applicant who is required to obtain offsets pursuant to district rules and regulations, data obtained from the applicant consisting of the year the offset transaction occurred, the amount of offsets purchased, by pollutant, and the total cost, by pollutant, of the offsets purchased is a public record. If an application is denied, the data shall not be a public record.

§ 6254.8. Employment contracts between state or local agency and public official or employee; public record

Every employment contract between a state or local agency and any public official or public employee is a public record which is not subject to the provisions of Sections 6254 and 6255.

§ 6254.9. Computer software; status as public record; sale, lease, or license authorized; limitations

(a) Computer software developed by a state or local agency is not itself a public record under this chapter. The agency may sell, lease, or license the software for commercial or noncommercial use.

(b) As used in this section, "computer software" includes computer mapping systems, computer programs, and computer graphics systems.

(c) This section shall not be construed to create an implied warranty on the part of the State of California or any local agency for errors, omissions, or other defects in any computer software as provided pursuant to this section.

(d) Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer. Public records stored in a computer shall be disclosed as required by this chapter.

(e) Nothing in this section is intended to limit any copyright protections.

§ 6254.10. Disclosure of records relating to archaeological site information and specified reports not required

Nothing in this chapter requires disclosure of records that relate to archaeological site information and reports maintained by, or in the possession of, the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, the Native American Heritage Commission, another state agency, or a local agency, including the records that the agency obtains through a consultation process between a California Native American tribe and a state or local agency.

§ 6254.11. Volatile organic compounds or chemical substances information

Nothing in this chapter requires the disclosure of records that relate to volatile organic compounds or chemical substances information received or compiled by an air pollution control officer pursuant to Section 42303.2 of the Health and Safety Code.

§ 6254.12. Broker-dealer license information; disciplinary records

Any information reported to the North American Securities Administrators Association/National Association of Securities Dealers' Central Registration Depository and compiled as disciplinary records which are made available to the Department of Corporations through a computer system, shall constitute a public record. Notwithstanding any other provision of law, the Department of Corporations may disclose that information and the current license status and the year of issuance of the license of a broker-dealer upon written or oral request pursuant to Section 25247 of the Corporations Code.

§ 6254.13. Statewide testing program; test questions or materials; disclosure to Member of Legislature or Governor; confidentiality

Notwithstanding Section 6254, upon the request of any Member of the Legislature or upon request of the Governor or his or her designee, test questions or materials that would be used to administer an examination and are provided by the State Department of Education and administered as part of a statewide testing program of pupils enrolled in the public schools shall be disclosed to the requester. These questions or materials may not include an individual examination that has been administered to a pupil and scored. The requester may not take physical possession of the questions or materials, but may view the questions or materials at a location selected by the department. Upon viewing this information, the requester shall keep the materials that he or she has seen confidential.

§ 6254.14. Health care services contract records of the Corrections Department or the California Medical Assistance Commission

(a) Except as provided in Sections 6254 and 6254.7, nothing in this chapter shall be construed to require disclosure of records of the Department of Cor-

rections and Rehabilitation that relate to health care services contract negotiations, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations, including, but not limited to, records related to those negotiations such as meeting minutes, research, work product, theories, or strategy of the department, or its staff, or members of the California Medical Assistance Commission, or its staff, who act in consultation with, or on behalf of, the department.

Except for the portion of a contract that contains the rates of payment, contracts for health services entered into by the Department of Corrections and Rehabilitation or the California Medical Assistance Commission on or after July 1, 1993, shall be open to inspection one year after they are fully executed. In the event that a contract for health services that is entered into prior to July 1, 1993, is amended on or after July 1, 1993, the amendment, except for any portion containing rates of payment, shall be open to inspection one year after it is fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee and the Bureau of State Audits. The Joint Legislative Audit Committee and the Bureau of State Audits shall maintain the confidentiality of the contracts and amendments until the contract or amendment is fully open to inspection by the public.

It is the intent of the Legislature that confidentiality of health care provider contracts, and of the contracting process as provided in this subdivision, is intended to protect the competitive nature of the negotiation process, and shall not affect public access to other information relating to the delivery of health care services.

(b) The inspection authority and confidentiality requirements established in subdivisions (q), (v), and (y) of Section 6254 for the Legislative Audit Committee shall also apply to the Bureau of State Audits.

§ 6254.15. Information relating to retention, location, or expansion of corporate facility within the state; redaction

Nothing in this chapter shall be construed to require the disclosure of records that are any of the following: corporate financial records, corporate proprietary information including trade secrets, and information relating to siting within the state furnished to a government agency by a private company for the purpose of permitting the agency to work with the company in retaining, locating, or expanding a facility within California. Except as provided below, incentives offered by state or local government agencies, if any, shall be disclosed upon communication to the agency or the public of a decision to stay, locate, relocate, or expand, by a company, or upon application by that company to a governmental agency for a general plan amendment, rezone, use permit, building permit, or any other permit, whichever occurs first.

The agency shall delete, prior to disclosure to the public, information that is exempt pursuant to this section from any record describing state or local incentives offered by an agency to a private business to retain, locate, relocate, or expand the business within California.

§ 6254.16. Utility customers; disclosure of names, credit histories, usage data, addresses, or telephone numbers

Nothing in this chapter shall be construed to require the disclosure of the name, credit history, utility usage data, home address, or telephone number of utility customers of local agencies, except that disclosure of name, utility usage data, and the home address of utility customers of local agencies shall be made available upon request as follows:

(a) To an agent or authorized family member of the person to whom the information pertains.

(b) To an officer or employee of another governmental agency when necessary for the performance of its official duties.

(c) Upon court order or the request of a law enforcement agency relative to an ongoing investigation.

(d) Upon determination by the local agency that the utility customer who is the subject of the request has used utility services in a manner inconsistent with applicable local utility usage policies.

(e) Upon determination by the local agency that the utility customer who is the subject of the request is an elected or appointed official with authority

to determine the utility usage policies of the local agency, provided that the home address of an appointed official shall not be disclosed without his or her consent.

(f) Upon determination by the local agency that the public interest in disclosure of the information clearly outweighs the public interest in nondisclosure.

§ 6254.17. Requests for assistance by crime victims

(a) Nothing in this chapter shall be construed to require disclosure of records of the California Victim Compensation and Government Claims Board that relate to a request for assistance under Article 1 (commencing with Section 13950) of Chapter 5 of Part 4 of Division 3 of Title 2.

(b) This section shall not apply to a disclosure of the following information, if no information is disclosed that connects the information to a specific victim, derivative victim, or applicant under Article 1 (commencing with Section 13950) of Chapter 5 of Part 4 of Division 3 of Title 2:

(1) The amount of money paid to a specific provider of services.

(2) Summary data concerning the types of crimes for which assistance is provided.

§ 6254.18. Exemption of personal information received, collected, or compiled by public agency regarding employees, volunteers, board members, owners, etc. of reproductive health services facilities; definitions; injunctive relief; notification of application; term of protection; notice of separation

(a) Nothing in this chapter shall be construed to require disclosure of any personal information received, collected, or compiled by a public agency regarding the employees, volunteers, board members, owners, partners, officers, or contractors of a reproductive health services facility who have notified the public agency pursuant to subdivision (d) if the personal information is contained in a document that relates to the facility.

(b) For purposes of this section, the following terms have the following meanings:

(1) "Contractor" means an individual or entity that contracts with a reproductive health services facility for services related to patient care.

(2) "Personal information" means the following information related to an individual that is maintained by a public agency: social security number, physical description, home address, home telephone number, statements of personal worth or personal financial data filed pursuant to subdivision (n) of Section 6254, personal medical history, employment history, electronic mail address, and information that reveals any electronic network location or identity.

(3) "Public agency" means all of the following:

- (A) The State Department of Health Care Services.
- (B) The Department of Consumer Affairs.
- (C) The Department of Managed Health Care.
- (D) The State Department of Public Health.

(4) "Reproductive health services facility" means the office of a licensed physician and surgeon whose specialty is family practice, obstetrics, or gynecology, or a licensed clinic, where at least 50 percent of the patients of the physician or the clinic are provided with family planning or abortion services.

(c) Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to obtain access to employment history information pursuant to Sections 6258 and 6259. If the court finds, based on the facts of a particular case, that the public interest served by disclosure of employment history information clearly outweighs the public interest served by not disclosing the information, the court shall order the officer or person charged with withholding the information to disclose employment history information or show cause why he or she should not do so pursuant to Section 6259.

(d) In order for this section to apply to an individual who is an employee, volunteer, board member, officer, or contractor of a reproductive health services facility, the individual shall notify the public agency to which his or her personal information is being submitted or has been submitted that he or she falls within the application of this section. The reproductive health services facility shall retain a copy of all notifications submitted pursuant to this section. This notification shall be valid if it complies with all of the following:

(1) Is on the official letterhead of the facility.

(2) Is clearly separate from any other language present on the same page and is executed by a signature that serves no other purpose than to execute the notification.

(3) Is signed and dated by both of the following:

(A) The individual whose information is being submitted.

(B) The executive officer or his or her designee of the reproductive health services facility.

(e) The privacy protections for personal information authorized pursuant to this section shall be effective from the time of notification pursuant to subdivision (d) until either one of the following occurs:

(1) Six months after the date of separation from a reproductive health services facility for an individual who has served for not more than one year as an employee, contractor, volunteer, board member, or officer of the reproductive health services facility.

(2) One year after the date of separation from a reproductive health services facility for an individual who has served for more than one year as an employee, contractor, volunteer, board member, or officer of the reproductive health services facility.

(f) Within 90 days of separation of an employee, contractor, volunteer, board member, or officer of the reproductive health services facility who has provided notice to a public agency pursuant to subdivision (c), the facility shall provide notice of the separation to the relevant agency or agencies.

(g) Nothing in this section shall prevent the disclosure by a government agency of data regarding age, race, ethnicity, national origin, or gender of individuals whose personal information is protected pursuant to this section, so long as the data contains no individually identifiable information compiled by a public agency regarding the employees, volunteers, board members, owners, partners, officers, or contractors of a reproductive health services facility who have notified the public agency pursuant to subdivision (d) if the personal information is contained in a document that relates to the facility.

§ 6254.20. Electronically collected personal information

Nothing in this chapter shall be construed to require the disclosure of records that relate to electronically collected personal information, as defined by Section 11015.5, received, collected, or compiled by a state agency.

§ 6254.21. Posting or sale of elected or appointed official's personal information on Internet; remedies for violation; liability of computer service or software provider

(a) No state or local agency shall post the home address or telephone number of any elected or appointed official on the Internet without first obtaining the written permission of that individual.

(b) No person shall knowingly post the home address or telephone number of any elected or appointed official, or of the official's residing spouse or child, on the Internet knowing that person is an elected or appointed official and intending to cause imminent great bodily harm that is likely to occur or threatening to cause imminent great bodily harm to that individual. A violation of this subdivision is a misdemeanor. A violation of this subdivision that leads to the bodily injury of the official, or his or her residing spouse or child, is a misdemeanor or a felony.

(c)

(1)

(A) No person, business, or association shall publicly post or publicly display on the Internet the home address or telephone number of any elected or appointed official if that official has made a written demand of that person, business, or association to not disclose his or her home address or telephone number.

(B) A written demand made under this paragraph by a state constitutional officer, a mayor, or a Member of the Legislature, a city council, or a board of supervisors shall include a statement describing a threat or fear for the safety of that official or of any person residing at the official's home address.

(C) A written demand made under this paragraph by an elected official shall be effective for four years, regardless of whether or not the official's term has expired prior to the end of the four-year period.

(D)

(i) A person, business, or association that receives the written demand of an elected or appointed official pursuant to this paragraph shall remove the of-

ficial's home address or telephone number from public display on the Internet, including information provided to cellular telephone applications, within 48 hours of delivery of the written demand, and shall continue to ensure that this information is not reposted on the same Internet Web site, subsidiary site, or any other Internet Web site maintained by the recipient of the written demand.

(ii) After receiving the elected or appointed official's written demand, the person, business, or association shall not transfer the appointed or elected official's home address or telephone number to any other person, business, or association through any other medium.

(iii) Clause (ii) shall not be deemed to prohibit a telephone corporation, as defined in Section 234 of the Public Utilities Code, or its affiliate, from transferring the elected or appointed official's home address or telephone number to any person, business, or association, if the transfer is authorized by federal or state law, regulation, order, or tariff, or necessary in the event of an emergency, or to collect a debt owed by the elected or appointed official to the telephone corporation or its affiliate.

(E) For purposes of this paragraph, "publicly post" or "publicly display" means to intentionally communicate or otherwise make available to the general public.

(2) An official whose home address or telephone number is made public as a result of a violation of paragraph (1) may bring an action seeking injunctive or declarative relief in any court of competent jurisdiction. If a court finds that a violation has occurred, it may grant injunctive or declarative relief and shall award the official court costs and reasonable attorney's fees. A fine not exceeding one thousand dollars (\$1,000) may be imposed for a violation of the court's order for an injunction or declarative relief obtained pursuant to this paragraph.

(3) An elected or appointed official may designate in writing the official's employer, a related governmental entity, or any voluntary professional association of similar officials to act, on behalf of that official, as that official's agent with regard to making a written demand pursuant to this section. A written demand made by an agent pursuant to this paragraph shall include a statement describing a threat or fear for the safety of that official or of any person residing at the official's home address.

(d)

(1) No person, business, or association shall solicit, sell, or trade on the Internet the home address or telephone number of an elected or appointed official with the intent to cause imminent great bodily harm to the official or to any person residing at the official's home address.

(2) Notwithstanding any other law, an official whose home address or telephone number is solicited, sold, or traded in violation of paragraph (1) may bring an action in any court of competent jurisdiction. If a jury or court finds that a violation has occurred, it shall award damages to that official in an amount up to a maximum of three times the actual damages but in no case less than four thousand dollars (\$4,000).

(e) An interactive computer service or access software provider, as defined in Section 230(f) of Title 47 of the United States Code, shall not be liable under this section unless the service or provider intends to abet or cause imminent great bodily harm that is likely to occur or threatens to cause imminent great bodily harm to an elected or appointed official.

(f) For purposes of this section, "elected or appointed official" includes, but is not limited to, all of the following:

- (1) State constitutional officers.
- (2) Members of the Legislature.
- (3) Judges and court commissioners.
- (4) District attorneys.
- (5) Public defenders.
- (6) Members of a city council.
- (7) Members of a board of supervisors.
- (8) Appointees of the Governor.
- (9) Appointees of the Legislature.
- (10) Mayors.
- (11) City attorneys.
- (12) Police chiefs and sheriffs.
- (13) A public safety official, as defined in Section 6254.24.
- (14) State administrative law judges.
- (15) Federal judges and federal defenders.
- (16) Members of the United States Congress and appointees of the President.

(g) Nothing in this section is intended to preclude punishment instead under Sections 69, 76, or 422 of the Penal Code, or any other provision of law.

§ 6254.22. *Records of certain health plans*

Nothing in this chapter or any other provision of law shall require the disclosure of records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors, whether paper records, records maintained in the management information system, or records in any other form, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulae or calculations for these payments, and contract negotiations with providers of health care for alternative rates for a period of three years after the contract is fully executed. The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the board of supervisors shall be subject to this same exemption. The provisions of this section shall not prevent access to any records by the Joint Legislative Audit Committee in the exercise of its powers pursuant to Article 1 (commencing with Section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The provisions of this section also shall not prevent access to any records by the Department of Corporations in the exercise of its powers pursuant to Article 1 (commencing with Section 1340) of Chapter 2.2 of Division 2 of the Health and Safety Code.

§ 6254.24. *"Public safety official" defined*

As used in this chapter, "public safety official" means the following parties, whether active or retired:

(a) A peace officer as defined in Sections 830 to 830.65, inclusive, of the Penal Code, or a person who is not a peace officer, but may exercise the powers of arrest during the course and within the scope of their employment pursuant to Section 830.7 of the Penal Code.

(b) A public officer or other person listed in Sections 1808.2 and 1808.6 of the Vehicle Code.

(c) An "elected or appointed official" as defined in subdivision (f) of Section 6254.21.

(d) An attorney employed by the Department of Justice, the State Public Defender, or a county office of the district attorney or public defender, the United States Attorney, or the Federal Public Defender.

(e) A city attorney and an attorney who represent cities in criminal matters.

(f) An employee of the Department of Corrections and Rehabilitation who supervises inmates or is required to have a prisoner in his or her care or custody.

(g) A sworn or nonsworn employee who supervises inmates in a city police department, a county sheriff's office, the Department of the California Highway Patrol, federal, state, or a local detention facility, and a local juvenile hall, camp, ranch, or home, and a probation officer as defined in Section 830.5 of the Penal Code.

(h) A federal prosecutor, a federal criminal investigator, and a National Park Service Ranger working in California.

(i) The surviving spouse or child of a peace officer defined in Section 830 of the Penal Code, if the peace officer died in the line of duty.

(j) State and federal judges and court commissioners.

(k) An employee of the Attorney General, a district attorney, or a public defender who submits verification from the Attorney General, district attorney, or public defender that the employee represents the Attorney General, district attorney, or public defender in matters that routinely place that employee in personal contact with persons under investigation for, charged with, or convicted of, committing criminal acts.

(l) A nonsworn employee of the Department of Justice or a police department or sheriff's office that, in the course of his or her employment, is responsible for collecting, documenting, and preserving physical evidence at crime scenes, testifying in court as an expert witness, and other technical duties, and a nonsworn employee that, in the course of his or her employment, performs a variety of standardized and advanced laboratory procedures in the examination of physical crime evidence, determines their results, and provides expert testimony in court.

§ 6254.25. *Memorandum from legal counsel to state body or local agency; pending litigation*

Nothing in this chapter or any other provision of law shall require the disclosure of a memorandum submitted to a state body or to the legislative body of a local agency by its legal counsel pursuant to subdivision (q) of Section 11126 or Section 54956.9 until the pending litigation has been finally adjudicated or otherwise settled. The memorandum shall be protected by the attorney work-product privilege until the pending litigation has been finally adjudicated or otherwise settled.

§ 6254.26. Alternative investments of public investment funds; records exempt from disclosure

(a) Notwithstanding any provision of this chapter or other law, the following records regarding alternative investments in which public investment funds invest shall not be subject to disclosure pursuant to this chapter, unless the information has already been publicly released by the keeper of the information:

- (1) Due diligence materials that are proprietary to the public investment fund or the alternative investment vehicle.
- (2) Quarterly and annual financial statements of alternative investment vehicles.
- (3) Meeting materials of alternative investment vehicles.
- (4) Records containing information regarding the portfolio positions in which alternative investment funds invest.
- (5) Capital call and distribution notices.
- (6) Alternative investment agreements and all related documents.

(b) Notwithstanding subdivision (a), the following information contained in records described in subdivision (a) regarding alternative investments in which public investment funds invest shall be subject to disclosure pursuant to this chapter and shall not be considered a trade secret exempt from disclosure:

- (1) The name, address, and vintage year of each alternative investment vehicle.
- (2) The dollar amount of the commitment made to each alternative investment vehicle by the public investment fund since inception.
- (3) The dollar amount of cash contributions made by the public investment fund to each alternative investment vehicle since inception.
- (4) The dollar amount, on a fiscal yearend basis, of cash distributions received by the public investment fund from each alternative investment vehicle.
- (5) The dollar amount, on a fiscal yearend basis, of cash distributions received by the public investment fund plus remaining value of partnership assets attributable to the public investment fund's investment in each alternative investment vehicle.
- (6) The net internal rate of return of each alternative investment vehicle since inception.
- (7) The investment multiple of each alternative investment vehicle since inception.
- (8) The dollar amount of the total management fees and costs paid on an annual fiscal yearend basis, by the public investment fund to each alternative investment vehicle.
- (9) The dollar amount of cash profit received by public investment funds from each alternative investment vehicle on a fiscal year-end basis.

(c) For purposes of this section, the following definitions shall apply:

- (1) "Alternative investment" means an investment in a private equity fund, venture fund, hedge fund, or absolute return fund.
- (2) "Alternative investment vehicle" means the limited partnership, limited liability company, or similar legal structure through which the public investment fund invests in portfolio companies.
- (3) "Portfolio positions" means individual portfolio investments made by the alternative investment vehicles.
- (4) "Public investment fund" means any public pension or retirement system, and any public endowment or foundation.

§ 6255. Justification for withholding of records

(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.

§ 6257.5. Purpose of request for disclosure; effect

This chapter does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure.

§ 6258. Proceedings to enforce right to inspect or to receive copy of record

Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter. The times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.

§ 6259. Order of court; review; contempt; court costs and attorney fees

(a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

(c) In an action filed on or after January 1, 1991, an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

§ 6260. Effect of chapter on prior rights and proceedings

The provisions of this chapter shall not be deemed in any manner to affect the status of judicial records as it existed immediately prior to the effective date of this section, nor to affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state, nor to limit or impair any rights of discovery in a criminal case.

§ 6261. Itemized statement of total expenditures and disbursement of any agency

Notwithstanding Section 6252, an itemized statement of the total expenditures and disbursement of any agency provided for in Article VI of the California Constitution shall be open for inspection.

§ 6262. Exemption of records of complaints to, or investigations by, any state or local agency for licensing purposes; application to district attorney

The exemption of records of complaints to, or investigations conducted by,

any state or local agency for licensing purposes under subdivision (f) of Section 6254 shall not apply when a request for inspection of such records is made by a district attorney.

§ 6263. District attorney; inspection or copying of nonexempt public records

A state or local agency shall allow an inspection or copying of any public record or class of public records not exempted by this chapter when requested by a district attorney.

§ 6264. Order to allow district attorney to inspect or copy records

The district attorney may petition a court of competent jurisdiction to require a state or local agency to allow him to inspect or receive a copy of any public record or class of public records not exempted by this chapter when the agency fails or refuses to allow inspection or copying within 10 working days of a request.

The court may require a public agency to permit inspection or copying by the district attorney unless the public interest or good cause in withholding such records clearly outweighs the public interest in disclosure.

§ 6265. Disclosure of records to district attorney; status of records

Disclosure of records to a district attorney under the provisions of this chapter shall effect no change in the status of the records under any other provision of law.

§ 6267. Libraries supported by public funds; registration and circulation records; confidentiality; exceptions

All registration and circulation records of any library which is in whole or in part supported by public funds shall remain confidential and shall not be disclosed to any person, local agency, or state agency except as follows:

(a) By a person acting within the scope of his or her duties within the administration of the library.

(b) By a person authorized, in writing, by the individual to whom the records pertain, to inspect the records.

(c) By order of the appropriate superior court.

As used in this section, the term "registration records" includes any information which a library requires a patron to provide in order to become eligible to borrow books and other materials, and the term "circulation records" includes any information which identifies the patrons borrowing particular books and other material.

This section shall not apply to statistical reports of registration and circulation nor to records of fines collected by the library.

§ 6268. Public records in custody or control of governor leaving office; transfer to state archives; restriction on public access; conditions

Public records, as defined in Section 6252, in the custody or control of the Governor when he or she leaves office, either voluntarily or involuntarily, shall, as soon as is practical, be transferred to the State Archives. Notwithstanding any other provision of law, the Governor, by written instrument, the terms of which shall be made public, may restrict public access to any of the transferred public records, or any other writings he or she may transfer, which have not already been made accessible to the public.

With respect to public records, public access, as otherwise provided for by this chapter, shall not be restricted for a period greater than 50 years or the death of the Governor, whichever is later, nor shall there be any restriction whatsoever with respect to enrolled bill files, press releases, speech files, or writings relating to applications for clemency or extradition in cases which have been closed for a period of at least 25 years. Subject to any restrictions permitted by this section, the Secretary of State, as custodian of the State Archives, shall make all such public records and other writings available to the public as otherwise provided for in this chapter.

Except as to enrolled bill files, press releases, speech files, or writings relating to applications for clemency or extradition, this section shall not apply to public records or other writings in the direct custody or control of any Governor who held office between 1974 and 1988 at the time of leaving office, except to the extent that that Governor may voluntarily transfer those records or other writings to the State Archives.

Notwithstanding any other provision of law, the public records and other writings of any Governor who held office between 1974 and 1988 may be transferred to any educational or research institution in California provided

that with respect to public records, public access, as otherwise provided for by this chapter, shall not be restricted for a period greater than 50 years or the death of the Governor, whichever is later. No records or writings may be transferred pursuant to this paragraph unless the institution receiving them agrees to maintain, and does maintain, the materials according to commonly accepted archival standards. No public records transferred shall be destroyed by that institution without first receiving the written approval of the Secretary of State, as custodian of the State Archives, who may require that the records be placed in the State Archives rather than being destroyed. An institution receiving those records or writings shall allow the Secretary of State, as custodian of the State Archives, to copy, at state expense, and to make available to the public, any and all public records, and inventories, indices, or finding aids relating to those records, which the institution makes available to the public generally. Copies of those records in the custody of the State Archives shall be given the same legal effect as is given to the originals.

§ 6270. Sale, exchange or otherwise providing records subject to disclosure to private entities; prohibition; exception

(a) Notwithstanding any other provision of law, no state or local agency shall sell, exchange, furnish, or otherwise provide a public record subject to disclosure pursuant to this chapter to a private entity in a manner that prevents a state or local agency from providing the record directly pursuant to this chapter. Nothing in this section requires a state or local agency to use the State Printer to print public records. Nothing in this section prevents the destruction of records pursuant to law.

(b) This section shall not apply to contracts entered into prior to January 1, 1996, between the County of Santa Clara and a private entity for the provision of public records subject to disclosure under this chapter.

§ 6275. Legislative intent; effect of listing in article

It is the intent of the Legislature to assist members of the public and state and local agencies in identifying exemptions to the California Public Records Act. It is the intent of the Legislature that, after January 1, 1999, each addition or amendment to a statute that exempts any information contained in a public record from disclosure pursuant to subdivision (k) of Section 6254 shall be listed and described in this article pursuant to a bill authorized by a standing committee of the Legislature to be introduced during the first year of each session of the Legislature. The statutes listed in this article may operate to exempt certain records, or portions thereof, from disclosure. The statutes listed and described may not be inclusive of all exemptions. The listing of a statute in this article does not itself create an exemption. Requesters of public records and public agencies are cautioned to review the applicable statute to determine the extent to which the statute, in light of the circumstances surrounding the request, exempts public records from disclosure.

§ 6276. Records or information not required to be disclosed

Records or information not required to be disclosed pursuant to subdivision (k) of Section 6254 may include, but shall not be limited to, records or information identified in statutes listed in this article.

§ 6276.02. "Accident reports" to "Adoption records"

Acquired Immune Deficiency Syndrome, blood test results, written authorization not necessary for disclosure, Section 121010, Health and Safety Code.

Acquired Immune Deficiency Syndrome, blood test subject, compelling identity of, Section 120975, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of personal data of patients in State Department of Public Health programs, Section 120820, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of research records, Sections 121090, 121095, 121115, and 121120, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of vaccine volunteers, Section 121280, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of information obtained in prevention programs at correctional facilities and law enforcement agencies, Sections 7552 and 7554, Penal Code.

Acquired Immune Deficiency Syndrome, confidentiality of test results of person convicted of prostitution, Section 1202.6, Penal Code.

Acquired Immune Deficiency Syndrome, disclosure of results of HIV test, penalties, Section 120980, Health and Safety Code.

Acquired Immune Deficiency Syndrome, personal information, insurers tests, confidentiality of, Section 799, Insurance Code.

Acquired Immune Deficiency Syndrome, public safety and testing disclosure, Sections 121065 and 121070, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, production or discovery of records for use in criminal or civil proceedings

against subject prohibited, Section 121100, Health and Safety Code.

Acquired Immune Deficiency Syndrome Public Health Records Confidentiality Act, personally identifying information confidentiality, Section 121025, Health and Safety Code.

Acquired Immune Deficiency Syndrome, test of criminal defendant pursuant to search warrant requested by victim, confidentiality of, Section 1524.1, Penal Code.

Acquired Immune Deficiency Syndrome, test results, disclosure to patient's spouse and others, Section 121015, Health and Safety Code.

Acquired Immune Deficiency Syndrome, test of person under Youth Authority, disclosure of results, Section 1768.9, Welfare and Institutions Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, financial audits or program evaluations, Section 121085, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, violations, Section 121100, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, personally identifying research records not to be disclosed, Section 121075, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, permitte disclosure, Section 121080, Health and Safety Code.

Administrative procedure, adjudicatory hearings, interpreters, Section 11513.

Adoption records, confidentiality of, Section 102730, Health and Safety Code.

Advance Health Care Directive Registry, exemption from disclosure for registration information provided to the Secretary of State, subdivision (ac), Section 6254.

§ 6276.04. "Aeronautics Act" to "Avocado handler transaction records"

Aeronautics Act, reports of investigations and hearings, Section 21693, Public Utilities Code.

Agricultural producers marketing, access to records, Section 59616, Food and Agricultural Code.

Aiding disabled voters, Section 14282, Elections Code.

Air pollution data, confidentiality of trade secrets, Section 6254.7, and Sections 42303.2 and 43206, Health and Safety Code.

Air toxics emissions inventory plans, protection of trade secrets, Section 44346, Health and Safety Code.

Alcohol and drug abuse records and records of communicable diseases, confidentiality of, Section 123125, Health and Safety Code.

Alcoholic beverage licensees, confidentiality of corporate proprietary information, Section 25205, Business and Professions Code.

Ambulatory Surgery Data Record, confidentiality of identifying information, Section 128737, Health and Safety Code.

Apiary registration information, confidentiality of, Section 29041, Food and Agricultural Code.

Archaeological site information and reports maintained by state and local agencies, disclosure not required, Section 6254.10.

Arrest not resulting in conviction, disclosure or use of records, Sections 432.7 and 432.8, Labor Code.

Arsonists, registered, confidentiality of certain information, Section 457.1, Penal Code.

Artificial insemination, donor not natural father, confidentiality of records, Section 7613, Family Code.

Assessor's records, confidentiality of information in, Section 408, Revenue and Taxation Code.

Assessor's records, confidentiality of information in, Section 451, Revenue and Taxation Code.

Assessor's records, display of documents relating to business affairs or property of another, Section 408.2, Revenue and Taxation Code.

Assigned risk plans, rejected applicants, confidentiality of information, Section 11624, Insurance Code.

Attorney applicant, investigation by State Bar, confidentiality of, Section 6060.2, Business and Professions Code.

Attorney-client confidential communication, Section 6068, Business and Professions Code, and Sections 952 and 954, Evidence Code.

Attorney, disciplinary proceedings, confidentiality prior to formal proceedings, Section 6086.1, Business and Professions Code.

Attorney, disciplinary proceeding, State Bar access to nonpublic court records, Section 6090.6, Business and Professions Code.

Attorney, law corporation, investigation by State Bar, confidentiality of, Section 6168, Business and Professions Code.

Attorney work product confidentiality in administrative adjudication, Section 11507.6.

Attorney, work product, confidentiality of, Section 6202, Business and Professions Code.

Attorney work product, discovery, Chapter 4 (commencing with Section

2018.010) of Title 4 of Part 4 of the Code of Civil Procedure.

Auditor General, access to records for audit purposes, Sections 10527 and 10527.1.

Auditor General, disclosure of audit records, Section 10525.

Automated forward facing parking control devices, confidentiality of video imaging records from the devices, Section 40240, Vehicle Code.

Automated traffic enforcement system, confidentiality of photographic records made by the system, Section 21455.5, Vehicle Code.

Automobile Insurance Claims Depository, confidentiality of information, Section 1876.3, Insurance Code.

Automobile insurance, investigation of fraudulent claims, confidential information, Section 1872.8, Insurance Code.

Avocado handler transaction records, confidentiality of information, Section 44984, Food and Agricultural Code.

§ 6276.06. "Bank and Corporation Tax" to "Business and professions licensee exemption for social security number"

Bank and Corporation Tax, disclosure of information, Article 2 (commencing with Section 19542), Chapter 7, Part 10.2, Division 2, Revenue and Taxation Code.

Bank employees, confidentiality of criminal history information, Sections 777.5 and 4990, Financial Code.

Bank reports, confidentiality of, Section 289, Financial Code.

Basic Property Insurance Inspection and Placement Plan, confidential reports, Section 10097, Insurance Code.

Beef Council of California, confidentiality of fee transactions information, Section 64691.1, Food and Agricultural Code.

Bids, confidentiality of, Section 10304, Public Contract Code.

Birth, death, and marriage licenses, confidential information contained in, Sections 102100, 102110, and 102230, Health and Safety Code.

Birth defects, monitoring, confidentiality of information collected, Section 103850, Health and Safety Code.

Birth, live, confidential portion of certificate, Sections 102430, 102475, 103525, and 103590, Health and Safety Code.

Blood tests, confidentiality of hepatitis and AIDS carriers, Section 1603.1, Health and Safety Code.

Blood-alcohol percentage test results, vehicular offenses, confidentiality of, Section 1804, Vehicle Code.

Business and professions licensee exemption for social security number, Section 30, Business and Professions Code.

§ 6276.08. "Cable television subscriber information" to "California Wine Grape Commission"

Cable television subscriber information, confidentiality of, Section 637.5, Penal Code.

California AIDS Program, personal data, confidentiality, Section 120820, Health and Safety Code.

California Apple Commission, confidentiality of lists of persons, Section 75598, Food and Agricultural Code.

California Apple Commission, confidentiality of proprietary information from producers or handlers, Section 75633, Food and Agricultural Code.

California Asparagus Commission, confidentiality of lists of producers, Section 78262, Food and Agricultural Code.

California Asparagus Commission, confidentiality of proprietary information from producers, Section 78288, Food and Agricultural Code.

California Avocado Commission, confidentiality of information from handlers, Section 67094, Food and Agricultural Code.

California Avocado Commission, confidentiality of proprietary information from handlers, Section 67104, Food and Agricultural Code.

California Cherry Commission, confidentiality of proprietary information from producers, processors, shippers, or grower-handlers, Section 76144, Food and Agricultural Code.

California Children's Services Program, confidentiality of factor replacement therapy contracts, Section 123853, Health and Safety Code.

California Cut Flower Commission, confidentiality of lists of producers, Section 77963, Food and Agricultural Code.

California Cut Flower Commission, confidentiality of proprietary information from producers, Section 77988, Food and Agricultural Code.

California Date Commission, confidentiality of proprietary information from producers and grower-handlers, Section 77843, Food and Agricultural Code.

California Egg Commission, confidentiality of proprietary information from handlers or distributors, Section 75134, Food and Agricultural Code.

California Forest Products Commission, confidentiality of lists of persons, Section 77589, Food and Agricultural Code.

California Forest Products Commission, confidentiality of proprietary information from producers, Section 77624, Food and Agricultural Code.

California Iceberg Lettuce Commission, confidentiality of information from handlers, Section 66624, Food and Agricultural Code.

California Kiwifruit Commission, confidentiality of proprietary information from producers or handlers, Section 68104, Food and Agricultural Code.

California Navel Orange Commission, confidentiality of proprietary information from producers or handlers and lists of producers and handlers, Section 73257, Food and Agricultural Code.

California Pepper Commission, confidentiality of lists of producers and handlers, Section 77298, Food and Agricultural Code.

California Pepper Commission, confidentiality of proprietary information from producers or handlers, Section 77334, Food and Agricultural Code.

California Pistachio Commission, confidentiality of proprietary information from producers or processors, Section 69045, Food and Agricultural Code.

California Salmon Commission, confidentiality of fee transactions records, Section 76901.5, Food and Agricultural Code.

California Salmon Commission, confidentiality of request for list of commercial salmon vessel operators, Section 76950, Food and Agricultural Code.

California Seafood Council, confidentiality of fee transaction records, Section 78553, Food and Agricultural Code.

California Seafood Council, confidentiality of information on volume of fish landed, Section 78575, Food and Agricultural Code.

California Sheep Commission, confidentiality of proprietary information from producers or handlers and lists of producers, Section 76343, Food and Agricultural Code.

California State University contract law, bids, questionnaires and financial statements, Section 10763, Public Contract Code.

California State University Investigation of Reported Improper Governmental Activities Act, confidentiality of investigative audits completed pursuant to the act, Section 89574, Education Code.

California Table Grape Commission, confidentiality of information from shippers, Section 65603, Food and Agricultural Code.

California Tomato Commission, confidentiality of lists of producers, handlers, and others, Section 78679, Food and Agricultural Code.

California Tomato Commission, confidentiality of proprietary information, Section 78704, Food and Agricultural Code.

California Tourism Marketing Act, confidentiality of information pertaining to businesses paying the assessment under the act, Section 13995.54.

California Victim Compensation and Government Claims Board, disclosure not required of records relating to assistance requests under Article 1 (commencing with Section 13950) of Chapter 5 of Part 4 of Division 3 of Title 2, Section 6254.17.

California Walnut Commission, confidentiality of lists of producers, Section 77101, Food and Agricultural Code.

California Walnut Commission, confidentiality of proprietary information from producers or handlers, Section 77154, Food and Agricultural Code.

California Wheat Commission, confidentiality of proprietary information from handlers and lists of producers, Section 72104, Food and Agricultural Code.

California Wheat Commission, confidentiality of requests for assessment refund, Section 72109, Food and Agricultural Code.

California Wine Commission, confidentiality of proprietary information from producers or vintners, Section 74655, Food and Agricultural Code.

California Wine Grape Commission, confidentiality of proprietary information from producers and vintners, Section 74955, Food and Agricultural Code.

§ 6276.10. “Cancer registries” to “Community college employee”
Cancer registries, confidentiality of information, Section 103885, Health and Safety Code.

Candidate for local nonpartisan elective office, confidentiality of ballot statement, Section 13311, Elections Code.

Child abuse information, exchange by multidisciplinary personnel teams, Section 830, Welfare and Institutions Code.

Child abuse report and those making report, confidentiality of, Sections 11167 and 11167.5, Penal Code.

Child care liability insurance, confidentiality of information, Section 1864, Insurance Code.

Child concealer, confidentiality of address, Section 278.7, Penal Code.

Child custody investigation report, confidentiality of, Section 3111, Family Code.

Child day care facility, nondisclosure of complaint, Section 1596.853, Health and Safety Code.

Child health and disability prevention, confidentiality of health screening and evaluation results, Section 124110, Health and Safety Code.

Child sexual abuse reports, confidentiality of reports filed in a contested proceeding involving child custody or visitation rights, Section 3118, Family Code.

Child support, confidentiality of income tax return, Section 3552, Family Code.

Child support, promise to pay, confidentiality of, Section 7614, Family Code.

Childhood lead poisoning prevention, confidentiality of blood lead findings, Section 124130, Health and Safety Code.

Children and families commission, local, confidentiality of individually identifiable information, Section 130140.1, Health and Safety Code.

Cigarette tax, confidential information, Section 30455, Revenue and Taxation Code.

Civil actions, delayed disclosure for 30 days after complaint filed, Section 482.050, Code of Civil Procedure.

Closed sessions, document assessing vulnerability of state or local agency to disruption by terrorist or other criminal acts, subdivision (aa), Section 6254.

Closed sessions, meetings of local governments, pending litigation, Section 54956.9.

Colorado River Board, confidential information and records, Section 12519, Water Code.

Commercial fishing licensee, confidentiality of records, Section 7923, Fish and Game Code.

Commercial fishing reports, Section 8022, Fish and Game Code.

Community care facilities, confidentiality of client information, Section 1557.5, Health and Safety Code.

Community college employee, candidate examination records, confidentiality of, Section 88093, Education Code.

Community college employee, notice and reasons for nonreemployment, confidentiality of, Section 87740, Education Code.

§ 6276.12. “Conservatee” to “Customer list of telephone answering service”

Conservatee, confidentiality of the conservatee’s report, Section 1826, Probate Code.

Conservatee, estate plan of, confidentiality of, Section 2586, Probate Code.

Conservatee with disability, confidentiality of report, Section 1827.5, Probate Code.

Conservator, confidentiality of conservator’s birthdate and driver’s license number, Section 1834, Probate Code.

Conservator, supplemental information, confidentiality of, Section 1821, Probate Code.

Conservatorship, court review of, confidentiality of report, Section 1851, Probate Code.

Consumer fraud investigations, access to complaints and investigations, Section 26509.

Consumption or utilization of mineral materials, disclosure of, Section 2207.1, Public Resources Code.

Contractor, evaluations and contractor responses, confidentiality of, Section 10370, Public Contract Code.

Contractor, license applicants, evidence of financial solvency, confidentiality of, Section 7067.5, Business and Professions Code.

Controlled Substance Law violations, confidential information, Section 818.7.

Controlled substance offenders, confidentiality of registration information, Section 11594, Health and Safety Code.

Cooperative Marketing Association, confidential information disclosed to conciliator, Section 54453, Food and Agricultural Code.

Coroner, inquests, subpoena duces tecum, Section 27491.8.

County aid and relief to indigents, confidentiality of investigation, supervision, relief, and rehabilitation records, Section 17006, Welfare and Institutions Code.

County alcohol programs, confidential information and records, Section 11812, Health and Safety Code.

County Employees’ Retirement, confidential statements and records, Section 31532.

County mental health system, confidentiality of client information, Section 5610, Welfare and Institutions Code.

County social services, investigation of applicant, confidentiality, Section 18491, Welfare and Institutions Code.

County social services rendered by volunteers, confidentiality of records of recipients, Section 10810, Welfare and Institutions Code.

County special commissions, disclosure of health care peer review and quality assessment records not required, Section 14087.58, Welfare and Institutions Code.

County special commissions, disclosure of records relating to the commission’s rates of payment for publicly assisted medical care not required, Section 14087.58, Welfare and Institutions Code.

Court files, access to, restricted for 60 days, Section 1161.2, Code of Civil Procedure.

Court reporters, confidentiality of records and reporters, Section 68525.

Court-appointed special advocates, confidentiality of information acquired or reviewed, Section 105, Welfare and Institutions Code.

Crane employers, previous business identities, confidentiality of, Section

7383, Labor Code.

Credit unions, confidentiality of investigation and examination reports, Section 14257, Financial Code.

Credit unions, confidentiality of employee criminal history information, Section 14409.2, Financial Code.

Criminal defendant, indigent, confidentiality of request for funds for investigators and experts, Section 987.9, Penal Code.

Criminal offender record information, access to, Sections 11076 and 13202, Penal Code.

Crop reports, confidential, subdivision (e), Section 6254.

Customer list of employment agency, trade secret, Section 16607, Business and Professions Code.

Customer list of telephone answering service, trade secret, Section 16606, Business and Professions Code.

§ 6276.14. “Dairy Council of California” to “Driving school and driving instructor licensee records”

Dairy Council of California, confidentiality of ballots, Section 64155, Food and Agricultural Code.

Death, report that physician’s or podiatrist’s negligence or incompetence may be cause, confidentiality of, Section 802.5, Business and Professions Code.

Dental hygienist drug and alcohol diversion program, confidentiality of records pertaining to treatment, Section 1966.5, Business and Professions Code.

Dentist advertising and referral contract exemption, Section 650.2, Business and Professions Code.

Dentist, alcohol or dangerous drug rehabilitation and diversion, confidentiality of records, Section 1698, Business and Professions Code.

Department of Consumer Affairs licensee exemption for alcohol or dangerous drug treatment and rehabilitation records, Section 156.1, Business and Professions Code.

Department of Motor Vehicles, confidentiality of information provided by an insurer, Section 4750.4, Vehicle Code.

Department of Motor Vehicles, confidentiality of the home address of specified persons in the records of the Department of Motor Vehicles, Section 1808.6, Vehicle Code.

Developmentally disabled conservatee confidentiality of reports and records, Sections 416.8 and 416.18, Health and Safety Code.

Developmentally disabled person, access to information provided by family member, Section 4727, Welfare and Institutions Code.

Developmentally disabled person and person with mental illness, access to and release of information about, by protection and advocacy agency, Section 4903, Welfare and Institutions Code.

Developmentally disabled person, confidentiality of patient records, state agencies, Section 4553, Welfare and Institutions Code.

Developmentally disabled person, confidentiality of records and information, Sections 4514 and 4518, Welfare and Institutions Code.

Diesel Fuel Tax information, disclosure prohibited, Section 60609, Revenue and Taxation Code.

Disability compensation, confidential medical records, Section 2714, Unemployment Insurance Code.

Disability insurance, access to registered information, Section 789.7, Insurance Code.

Discrimination complaint to Division of Labor Standards Enforcement, confidentiality of witnesses, Section 98.7, Labor Code.

Dispute resolution participants confidentiality, Section 471.5, Business and Professions Code.

Division of Workers’ Compensation, confidentiality of data obtained by the administrative director and derivative works created by the division, Sections 3201.5, 3201.7, and 3201.9, Labor Code.

Division of Workers’ Compensation, individually identifiable information and residence addresses obtained or maintained by the division on workers’ compensation claims, confidentiality of, Section 138.7, Labor Code.

Division of Workers’ Compensation, individually identifiable information of health care organization patients, confidentiality of, Section 4600.5, Labor Code.

Division of Workers’ Compensation, individual workers’ compensation claim files and auditor’s working papers, confidentiality of, Section 129, Labor Code.

Division of Workers’ Compensation, peer review proceedings and employee medical records, confidentiality of, Section 4600.6, Labor Code.

Domestic violence counselor and victim, confidentiality of communication, Sections 1037.2 and 1037.5, Evidence Code.

Driver arrested for traffic violation, notice of reexamination for evidence of incapacity, confidentiality of, Section 40313, Vehicle Code.

Driving school and driving instructor licensee records, confidentiality of, Section 11108, Vehicle Code.

§ 6276.16. “Educational psychologist-patient” to “Executive Department”
Educational psychologist-patient, privileged communication, Section 1010.5, Evidence Code.

Electronic and appliance repair dealer, service contractor, financial data in applications, subdivision (x), Section 6254.

Electronic Recording Delivery Act of 2004, exemption from disclosure for computer security reports, Section 27394.

Emergency Care Data Record, exemption from disclosure for identifying information, Section 128736, Health and Safety Code.

Emergency Medical Services Fund, patient named, Section 1797.98c, Health and Safety Code.

Emergency medical technicians, confidentiality of disciplinary investigation information, Section 1798.200, Health and Safety Code.

Emergency Medical Technician-Paramedic (EMT-P), exemption from disclosure for records relating to personnel actions against, or resignation of, an EMT-P for disciplinary cause or reason, Section 1799.112, Health and Safety Code.

Eminent domain proceedings, use of state tax returns, Section 1263.520, Code of Civil Procedure.

Employment agency, confidentiality of customer list, Section 16607, Business and Professions Code.

Employment application, nondisclosure of arrest record or certain convictions, Sections 432.7 and 432.8, Labor Code.

Employment Development Department, furnishing materials, Section 307, Unemployment Insurance Code.

Enteral nutrition products, confidentiality of contracts by the State Department of Health Care Services with manufacturers of enteral nutrition products, Section 14105.8, Welfare and Institutions Code.

Equal wage rate violation, confidentiality of complaint, Section 1197.5, Labor Code.

Equalization, State Board of, prohibition against divulging information, Section 15619.

Escrow Agents’ Fidelity Corporation, confidentiality of examination and investigation reports, Section 17336, Financial Code.

Escrow agents’ confidentiality of reports on violations, Section 17414, Financial Code.

Escrow agents’ confidentiality of state summary criminal history information, Section 17414.1, Financial Code.

Estate tax, confidential records and information, Section 14251, Revenue and Taxation Code.

Excessive rates or complaints, reports, Section 1857.9, Insurance Code.

Executive Department, closed sessions and the record of topics discussed, Sections 11126 and 11126.1.

Executive Department, investigations and hearings, confidential nature of information acquired, Section 11183.

§ 6276.18. “Family counselor and client” to “Fur dealer licensee”

Family Court, records, Section 1818, Family Law Code.

Farm product processor license, confidentiality of financial statements, Section 55523.6, Food and Agricultural Code.

Farm product processor licensee, confidentiality of grape purchases, Section 55601.5, Food and Agricultural Code.

Fee payer information, prohibition against disclosure by Board of Equalization and others, Section 55381, Revenue and Taxation Code.

Financial institutions, issuance of securities, reports and records of state agencies, subdivision (d), Section 6254.

Financial statements of insurers, confidentiality of information received, Section 925.3, Insurance Code.

Financial statements and questionnaires, of prospective bidders for the state, confidentiality of, Section 10165, Public Contract Code.

Financial statements and questionnaires, of prospective bidders for California State University contracts, confidentiality of, Section 10763, Public Contract Code.

Firearms, centralized list of exempted federal firearms licensees, disclosure of information compiled from, Section 12083, Penal Code.

Firearms, centralized list of dealers and licensees, disclosure of information compiled from, Section 12071, Penal Code.

Firearm license applications, subdivision (u), Section 6254.

Firearm sale or transfer, confidentiality of records, Section 12082, Penal Code.

Fishing and hunting licenses, confidentiality of names and addresses contained in records submitted to the Department of Fish and Game to obtain recreational fishing and hunting licenses, Section 1050.6, Fish and Game Code.

Food stamps, disclosure of information, Section 18909, Welfare and Institutions Code.

Foreign marketing of agricultural products, confidentiality of financial information, Section 58577, Food and Agricultural Code.

Forest fires, anonymity of informants, Section 4417, Public Resources Code.
Foster homes, identifying information, Section 1536, Health and Safety Code.

Franchise Tax Board, access to Franchise Tax Board information by the State Department of Social Services, Section 11025, Welfare and Institutions Code.
Franchise Tax Board, auditing, confidentiality of, Section 90005.

Franchises, applications, and reports filed with Commissioner of Corporations, disclosure and withholding from public inspection, Section 31504, Corporations Code.

Fur dealer licensee, confidentiality of records, Section 4041, Fish and Game Code.

§ 6276.22. “Genetic test results” to “Guardianship”

Gambling Control Act, exemption from disclosure for records of the California Gambling Control Commission and the Department of Justice, Sections 19819 and 19821, Business and Professions Code.

Genetically Handicapped Person’s Program, confidentiality of factor replacement therapy contracts, Section 125191, Health and Safety Code.

Governor, correspondence of and to Governor and Governor’s office, subdivision (l), Section 6254.

Governor, transfer of public records in control of, restrictions on public access, Section 6268.

Grand jury, confidentiality of request for special counsel, Section 936.7, Penal Code.

Grand jury, confidentiality of transcription of indictment or accusation, Section 938.1, Penal Code.

Group Insurance, public employees, Section 53202.25.

Guardian, confidentiality of report used to check ability, Section 2342, Probate Code.

Guardianship, confidentiality of report regarding the suitability of the proposed guardian, Section 1543, Probate Code.

Guardianship, disclosure of report and recommendation concerning proposed guardianship of person or estate, Section 1513, Probate Code.

§ 6276.24. “Harmful matter” to “Housing authorities”

Hazardous substance tax information, prohibition against disclosure, Section 43651, Revenue and Taxation Code.

Hazardous waste control, business plans, public inspection, Section 25506, Health and Safety Code.

Hazardous waste control, notice of unlawful hazardous waste disposal, Section 25180.5, Health and Safety Code.

Hazardous waste control, trade secrets, disclosure of information, Sections 25511 and 25538, Health and Safety Code.

Hazardous waste control, trade secrets, procedures for release of information, Section 25358.2, Health and Safety Code.

Hazardous waste generator report, protection of trade secrets, Sections 25244.21 and 25244.23, Health and Safety Code.

Hazardous waste licenseholder disclosure statement, confidentiality of, Section 25186.5, Health and Safety Code.

Hazardous waste recycling, information clearing house, confidentiality of trade secrets, Section 25170, Health and Safety Code.

Hazardous waste recycling, list of specified hazardous wastes, trade secrets, Section 25175, Health and Safety Code.

Hazardous waste recycling, trade secrets, confidential nature, Sections 25173 and 25180.5, Health and Safety Code.

Healing arts licensees, central files, confidentiality, Section 800, Business and Professions Code.

Health authorities, special county, confidentiality of records, Sections 14087.35, 14087.36, and 14087.38, Welfare and Institutions Code.

Health care provider disciplinary proceeding, confidentiality of documents, Section 805.1, Business and Professions Code.

Health care service plans, review of quality of care, privileged communications, Sections 1370 and 1380, Health and Safety Code.

Health commissions, special county, confidentiality of peer review proceedings, rates of payment, and trade secrets, Section 14087.31, Welfare and Institutions Code.

Health facilities, patient’s rights of confidentiality, subdivision (c) of Section 128745 and Sections 128735, 128736, 128737, 128755, and 128765, Health and Safety Code.

Health personnel, data collection by the Office of Statewide Health Planning and Development, confidentiality of information on individual licentiates, Section 127780, Health and Safety Code.

Health plan governed by a county board of supervisors, exemption from

disclosure for records relating to provider rates or payments for a three-year period after execution of the provider contract, Sections 6254.22 and 54956.87.

Hereditary Disorders Act, legislative finding and declaration, confidential information, Sections 124975 and 124980, Health and Safety Code.

Hereditary Disorders Act, rules, regulations, and standards, breach of confidentiality, Section 124980, Health and Safety Code.

HIV, disclosures to blood banks by department or county health officers, Section 1603.1, Health and Safety Code.

Home address of public employees and officers in Department of Motor Vehicles, records, confidentiality of, Sections 1808.2 and 1808.4, Vehicle Code.

Horse racing, horses, blood or urine test sample, confidentiality, Section 19577, Business and Professions Code.

Hospital district and municipal hospital records relating to contracts with insurers and service plans, subdivision (t), Section 6254.

Hospital final accreditation report, subdivision (s), Section 6254.

Housing authorities, confidentiality of rosters of tenants, Section 34283, Health and Safety Code.

Housing authorities, confidentiality of applications by prospective or current tenants, Section 34332, Health and Safety Code.

§ 6276.26. “Improper obtaining or distributing of information from Department of Motor Vehicles” to “Investigative consumer reporting agency”

Improper governmental activities reporting, confidentiality of identity of person providing information, Section 8547.5.

Improper governmental activities reporting, disclosure of information, Section 8547.6.

Industrial loan companies, confidentiality of financial information, Section 18496, Financial Code.

Industrial loan companies, confidentiality of investigation and examination reports, Section 18394, Financial Code.

Influenza vaccine, trade secret information and information relating to recipient of vaccine, Section 120155, Health and Safety Code.

In forma pauperis litigant, rules governing confidentiality of financial information, Section 68511.3.

Infrastructure information, exemption from disclosure for information voluntarily submitted to the California Emergency Management Agency, subdivision (ab), Section 6254.

In-Home Supportive Services Program, exemption from disclosure for information regarding persons paid by the state to provide in-home supportive services, Section 6253.2.

Initiative, referendum, recall, and other petitions, confidentiality of names of signers, Section 6253.5.

Insurance claims analysis, confidentiality of information, Section 1875.16, Insurance Code.

Insurance Commissioner, confidential information, Sections 735.5, 1067.11, 1077.3, and 12919, Insurance Code.

Insurance Commissioner, informal conciliation of complaints, confidential communications, Section 1858.02, Insurance Code.

Insurance Commissioner, information from examination or investigation, confidentiality of, Sections 1215.7, 1433, and 1759.3, Insurance Code.

Insurance Commissioner, writings filed with nondisclosure, Section 855, Insurance Code.

Insurance fraud reporting, information acquired not part of public record, Section 1873.1, Insurance Code.

Insurance licensee, confidential information, Section 1666.5, Insurance Code.

Insurer application information, confidentiality of, Section 925.3, Insurance Code.

Insurer financial analysis ratios and examination synopses, confidentiality of, Section 933, Insurance Code.

Integrated Waste Management Board information, prohibition against disclosure, Section 45982, Revenue and Taxation Code.

International wills, confidentiality of registration information filed with the Secretary of State, Section 6389, Probate Code.

Intervention in regulatory and ratemaking proceedings, audit of customer seeking and award, Section 1804, Public Utilities Code.

Investigation and security records, exemption from disclosure for records of the Attorney General, the Department of Justice, the California Emergency Management Agency, and state and local police agencies, subdivision (f), Section 6254.

Investigative consumer reporting agency, limitations on furnishing an investigative consumer report, Section 1786.12, Civil Code.

§ 6276.28. “Joint Legislative Ethics Committee” to “Long-term health facilities”
Joint Legislative Ethics Committee, confidentiality of reports and records,

Section 8953.

Judicial candidates, confidentiality of communications concerning, Section 12011.5.

Judicial proceedings, confidentiality of employer records of employee absences, Section 230.2, Labor Code.

Jurors' lists, lists of registered voters and licensed drivers as source for, Section 197, Code of Civil Procedure.

Juvenile court proceedings to adjudge a person a dependent child of court, sealing records of, Section 389, Welfare and Institutions Code.

Juvenile criminal records, dissemination to schools, Section 828.1, Welfare and Institutions Code.

Juvenile delinquents, notification of chief of police or sheriff of escape of minor from secure detention facility, Section 1155, Welfare and Institutions Code.

Labor dispute, investigation and mediation records, confidentiality of, Section 65, Labor Code.

Lanterman-Petris-Short Act, mental health services recipients, confidentiality of information and records, mental health advocate, Sections 5540, 5541, 5542, and 5550, Welfare and Institutions Code.

Law enforcement vehicles, registration disclosure, Section 5003, Vehicle Code.

Legislative Counsel records, subdivision (m), Section 6254.

Library circulation records and other materials, subdivision (i), Section 6254 and Section 6267.

Life and disability insurers, actuarial information, confidentiality of, Section 10489.15, Insurance Code.

Litigation, confidentiality of settlement information, Section 68513.

Local agency legislative body, closed sessions, disclosure of materials, Section 54956.9.

Local government employees, confidentiality of records and claims relating to group insurance, Section 53202.25.

Local summary criminal history information, confidentiality of, Sections 13300 and 13305, Penal Code.

Local agency legislative body, closed session, nondisclosure of minute book, Section 54957.2.

Local agency legislative body, meeting, disclosure of agenda, Section 54957.5.

Long-term health facilities, confidentiality of complaints against, Section 1419, Health and Safety Code.

Long-term health facilities, confidentiality of records retained by State Department of Public Health, Section 1439, Health and Safety Code.

Los Angeles County Tourism Marketing Commission, confidentiality of information obtained from businesses to determine their assessment, Section 13995.108.

§ 6276.30. "*Major Risk Medical Insurance Program*" to "*Multijurisdictional drug law enforcement agency*"

Managed care health plans, confidentiality of proprietary information, Section 14091.3, Welfare and Institutions Code.

Managed Risk Medical Insurance Board, negotiations with entities contracting or seeking to contract with the board, subdivisions (v) and (y) of Section 6254.

Mandated blood testing and confidentiality to protect public health, prohibition against compelling identification of test subjects, Section 120975, Health and Safety Code.

Mandated blood testing and confidentiality to protect public health, unauthorized disclosures of identification of test subjects, Sections 1603.1, 1603.3, and 121022, Health and Safety Code.

Mandated blood testing and confidentiality to protect public health, disclosure to patient's spouse, sexual partner, needle sharer, or county health officer, Section 121015, Health and Safety Code.

Manufactured home, mobile home, floating home, confidentiality of home address of registered owner, Section 18081, Health and Safety Code.

Marital confidential communications, Sections 980, 981, 982, 983, 984, 985, 986, and 987, Evidence Code.

Market reports, confidential, subdivision (e), Section 6254.

Marketing of commodities, confidentiality of financial information, Section 58781, Food and Agricultural Code.

Marketing orders, confidentiality of processors' or distributors' information, Section 59202, Food and Agricultural Code.

Marriage, confidential, certificate, Section 511, Family Code.

Medi-Cal Benefits Program, confidentiality of information, Section 14100.2, Welfare and Institutions Code.

Medi-Cal Benefits Program, Request of Department for Records of Information, Section 14124.89, Welfare and Institutions Code.

Medi-Cal Fraud Bureau, confidentiality of complaints, Section 12528.

Medi-Cal managed care program, exemption from disclosure for financial and utilization data submitted by Medi-Cal managed care health plans to establish rates, Section 14301.1, Welfare and Institutions Code.

Medi-Cal program, exemption from disclosure for best price contracts between the State Department of Health Care Services and drug manufacturers, Section 14105.33, Welfare and Institutions Code.

Medical information, disclosure by provider unless prohibited by patient in writing, Section 56.16, Civil Code.

Medical information, types of information not subject to patient prohibition of disclosure, Section 56.30, Civil Code.

Medical and other hospital committees and peer review bodies, confidentiality of records, Section 1157, Evidence Code.

Medical or dental licensee, action for revocation or suspension due to illness, report, confidentiality of, Section 828, Business and Professions Code.

Medical or dental licensee, disciplinary action, denial or termination of staff privileges, report, confidentiality of, Sections 805, 805.1, and 805.5, Business and Professions Code.

Meetings of state agencies, disclosure of agenda, Section 11125.1.

Mentally abnormal sex offender committed to state hospital, confidentiality of records, Section 4135, Welfare and Institutions Code.

Mentally disordered and developmentally disabled offenders, access to criminal histories of, Section 1620, Penal Code.

Mentally disordered persons, court-ordered evaluation, confidentiality of reports, Section 5202, Welfare and Institutions Code.

Mentally disordered or mentally ill person, confidentiality of written consent to detention, Section 5326.4, Welfare and Institutions Code.

Mentally disordered or mentally ill person, voluntarily or involuntarily detained and receiving services, confidentiality of records and information, Sections 5328, 5328.15, 5328.2, 5328.4, 5328.8, and 5328.9, Welfare and Institutions Code.

Mentally disordered or mentally ill person, weapons restrictions, confidentiality of information about, Section 8103, Welfare and Institutions Code.

Milk marketing, confidentiality of records, Section 61443, Food and Agricultural Code.

Milk product certification, confidentiality of, Section 62121, Food and Agricultural Code.

Milk, market milk, confidential records and reports, Section 62243, Food and Agricultural Code.

Milk product registration, confidentiality of information, Section 38946, Food and Agricultural Code.

Milk equalization pool plan, confidentiality of producers' voting, Section 62716, Food and Agricultural Code.

Mining report, confidentiality of report containing information relating to mineral production, reserves, or rate of depletion of mining operation, Section 2207, Public Resources Code.

Minor, criminal proceeding testimony closed to public, Section 859.1, Penal Code.

Minors, material depicting sexual conduct, records of suppliers to be kept and made available to law enforcement, Section 1309.5, Labor Code.

Misdemeanor and felony reports by police chiefs and sheriffs to Department of Justice, confidentiality of, Sections 11107 and 11107.5, Penal Code.

Monetary instrument transaction records, confidentiality of, Section 14167, Penal Code.

Missing persons' information, disclosure of, Sections 14201 and 14203, Penal Code.

Morbidity and mortality studies, confidentiality of records, Section 100330, Health and Safety Code.

Motor vehicle accident reports, disclosure, Sections 16005, 20012, and 20014, Vehicle Code.

Motor vehicles, department of, public records, exceptions, Sections 1808 to 1808.7, inclusive, Vehicle Code.

Motor vehicle insurance fraud reporting, confidentiality of information acquired, Section 1874.3, Insurance Code.

Motor vehicle liability insurer, data reported to Department of Insurance, confidentiality of, Section 11628, Insurance Code.

Multijurisdictional drug law enforcement agency, closed sessions to discuss criminal investigation, Section 54957.8.

§ 6276.32. "*Narcotic addict outpatient revocation proceeding*" to "*Osteopathic physician and surgeon*"

Narcotic addict outpatient revocation proceeding, confidentiality of reports, Section 3152.5, Welfare and Institutions Code.

Narcotic and drug abuse patients, confidentiality of records, Section 11845.5, Health and Safety Code.

Native American graves, cemeteries and sacred places, records of, subdivision (r), Section 6254.

Notary public, confidentiality of application for appointment and commission, Section 8201.5.

Nurse, alcohol or dangerous drug diversion and rehabilitation records, confidentiality of, Section 2770.12, Business and Professions Code.

Obscene matter, defense of scientific or other purpose, confidentiality of recipients, Section 311.8, Penal Code.

Occupational safety and health investigations, confidentiality of complaints and complainants, Section 6309, Labor Code.

Occupational safety and health investigations, confidentiality of trade secrets, Section 6322, Labor Code.

Official information acquired in confidence by public employee, disclosure of, Sections 1040 and 1041, Evidence Code.

Oil and gas, confidentiality of proposals for the drilling of a well, Section 3724.4, Public Resources Code.

Oil and gas, disclosure of onshore and offshore exploratory well records, Section 3234, Public Resources Code.

Oil and gas, disclosure of well records, Section 3752, Public Resources Code.

Oil and gas leases, surveys for permits, confidentiality of information, Section 6826, Public Resources Code.

Oil spill feepayer information, prohibition against disclosure, Section 46751, Revenue and Taxation Code.

Older adults receiving county services, providing information between county agencies, confidentiality of, Section 9401, Welfare and Institutions Code.

Organic food certification organization records, release of, Section 110845, Health and Safety Code.

Osteopathic physician and surgeon, rehabilitation and diversion records, confidentiality of, Section 2369, Business and Professions Code.

§ 6276.34. "Parole revocation proceedings" to "Postmortem or autopsy photos"
Parole revocation proceedings, confidentiality of information in reports, Section 3063.5, Penal Code.

Passenger fishing boat licenses, records, Section 7923, Fish and Game Code.

Paternity, acknowledgement, confidentiality of records, Section 102760, Health and Safety Code.

Patient-physician confidential communication, Sections 992 and 994, Evidence Code.

Patient records, confidentiality of, Section 123135, Health and Safety Code.

Payment instrument licensee records, inspection of, Section 33206, Financial Code.

Payroll records, confidentiality of, Section 1776, Labor Code.

Peace officer personnel records, confidentiality of, Sections 832.7 and 832.8, Penal Code.

Penitential communication between penitent and clergy, Sections 1032 and 1033, Evidence Code.

Personal Care Services Program, exemption from disclosure for information regarding persons paid by the state to provide personal care services, Section 6253.2.

Personal Income Tax, disclosure of information, Article 2 (commencing with Section 19542), Chapter 7, Part 10.2, Division 2, Revenue and Taxation Code.

Personal information, Information Practices Act, prohibitions against disclosure by state agencies, Sections 1798.24 and 1798.75, Civil Code.

Personal information, subpoena of records containing, Section 1985.4, Code of Civil Procedure.

Personal representative, confidentiality of personal representative's birth date and driver's license number, Section 8404, Probate Code.

Personnel Administration, Department of, confidentiality of pay data furnished to, Section 19826.5.

Petition signatures, Section 18650, Elections Code.

Petroleum supply and pricing, confidential information, Sections 25364 and 25366, Public Resources Code.

Pharmacist, alcohol or dangerous drug diversion and rehabilitation records, confidentiality of, Section 4372, Business and Professions Code.

Physical therapist or assistant, records of dangerous drug or alcohol diversion and rehabilitation, confidentiality of, Section 2667, Business and Professions Code.

Physical or mental condition or conviction of controlled substance offense, records in Department of Motor Vehicles, confidentiality of, Section 1808.5, Vehicle Code.

Physician and surgeon, rehabilitation and diversion records, confidentiality of, Section 2355, Business and Professions Code.

Physician assistant, alcohol or dangerous drug diversion and rehabilitation records, confidentiality of, Section 3534.7, Business and Professions Code.

Physician competency examination, confidentiality of reports, Section 2294, Business and Professions Code.

Physicians and surgeons, confidentiality of reports of patients with a lapse of consciousness disorder, Section 103900, Health and Safety Code.

Physician Services Account, confidentiality of patient names in claims, Sec-

tion 16956, Welfare and Institutions Code.

Pilots, confidentiality of personal information, Section 1157.1, Harbors and Navigation Code.

Pollution Control Financing Authority, financial data submitted to, subdivision (o), Section 6254.

Postmortem or autopsy photos, Section 129, Code of Civil Procedure.

§ 6276.36. "Pregnancy tests" to "Pupil records"

Pregnancy tests by local public health agencies, confidentiality of, Section 123380, Health and Safety Code.

Pregnant women, confidentiality of blood tests, Section 125105, Health and Safety Code.

Prehospital emergency medical care, release of information, Sections 1797.188 and 1797.189, Health and Safety Code.

Prenatal syphilis tests, confidentiality of, Section 120705, Health and Safety Code.

Prescription drug discounts, confidentiality of corporate proprietary information, Section 130506, Health and Safety Code.

Prisoners, behavioral research on, confidential personal information, Section 3515, Penal Code.

Prisoners, confidentiality of blood tests, Section 7530, Penal Code.

Prisoners, medical testing, confidentiality of records, Sections 7517 and 7540, Penal Code.

Prisoners, transfer from county facility for mental treatment and evaluation, confidentiality of written reasons, Section 4011.6, Penal Code.

Private industry wage data collected by public entity, confidentiality of, Section 6254.6.

Private railroad car tax, confidentiality of information, Section 11655, Revenue and Taxation Code.

Probate referee, disclosure of materials, Section 8908, Probate Code.

Probation officer reports, inspection of, Section 1203.05, Penal Code.

Produce dealer, confidentiality of financial statements, Section 56254, Food and Agricultural Code.

Products liability insurers, transmission of information, Section 1857.9, Insurance Code.

Professional corporations, financial statements, confidentiality of, Section 13406, Corporations Code.

Property on loan to museum, notice of intent to preserve an interest in, not subject to disclosure, Section 1899.5, Civil Code.

Property taxation, confidentiality of change of ownership, Section 481, Revenue and Taxation Code.

Property taxation, confidentiality of exemption claims, Sections 63.1, 69.5, and 408.2, Revenue and Taxation Code.

Property taxation, confidentiality of property information, Section 15641, Government Code and Section 833, Revenue and Taxation Code.

Proprietary information, availability only to the director and other persons authorized by the operator and the owner, Section 2778, Public Resources Code.

Psychologist and client, confidential relations and communications, Section 2918, Business and Professions Code.

Psychotherapist-patient confidential communication, Sections 1012 and 1014, Evidence Code.

Public employees' home addresses and telephone numbers, confidentiality of, Section 6254.3.

Public Employees' Medical and Hospital Care Act, confidentiality of data relating to health care services rendered by participating hospitals to members and annuitants, Section 22854.5.

Public Employees' Retirement System, confidentiality of data filed by member or beneficiary with board of administration, Section 20134.

Public investment funds, exemption from disclosure for records regarding alternative investments, Section 6254.26.

Public school employees organization, confidentiality of proof of majority support submitted to Public Employment Relations Board, Sections 3544, 3544.1, and 3544.5.

Public social services, confidentiality of digest of decisions, Section 10964, Welfare and Institutions Code.

Public social services, confidentiality of information regarding child abuse or elder or dependent persons abuse, Section 10850.1, Welfare and Institutions Code.

Public social services, confidentiality of information regarding eligibility, Section 10850.2, Welfare and Institutions Code.

Public social services, confidentiality of records, Section 10850, Welfare and Institutions Code.

Public social services, disclosure of information to law enforcement agencies, Section 10850.3, Welfare and Institutions Code.

Public social services, disclosure of information to law enforcement agen-

cies regarding deceased applicant or recipient, Section 10850.7, Welfare and Institutions Code.

Public utilities, confidentiality of information, Section 583, Public Utilities Code.

Pupil, confidentiality of personal information, Section 45345, Education Code.

Pupil drug and alcohol use questionnaires, confidentiality of, Section 11605, Health and Safety Code.

Pupil, expulsion hearing, disclosure of testimony of witness and closed session of district board, Section 48918, Education Code.

Pupil, personal information disclosed to school counselor, confidentiality of, Section 49602, Education Code.

Pupil record contents, records of administrative hearing to change contents, confidentiality of, Section 49070, Education Code.

Pupil records, access authorized for specified parties, Section 49076, Education Code.

Pupil records, disclosure in hearing to dismiss or suspend school employee, Section 44944.1, Education Code.

Pupil records, release of directory information to private entities, Sections 49073 and 49073.5, Education Code.

§ 6276.38. “Radioactive materials” to “Reward by governor”

Radioactive materials, dissemination of information about transportation of, Section 33002, Vehicle Code.

Railroad infrastructure protection program, disclosure not required for risk assessments filed with the Public Utilities Commission, the Secretary of California Emergency Management, or the California Emergency Management Agency, Section 6254.23.

Real estate broker, annual report to Department of Real Estate of financial information, confidentiality of, Section 10232.2, Business and Professions Code.

Real property, acquisition by state or local government, information relating to feasibility, subdivision (h), Section 6254.

Real property, change in ownership statement, confidentiality of, Section 27280.

Records of contract purchasers, inspection by public prohibited, Section 85, Military and Veterans Code.

Registered public obligations, inspection of records of security interests in, Section 5060.

Registration of exempt vehicles, nondisclosure of name of person involved in alleged violation, Section 5003, Vehicle Code.

Rehabilitation, Department of, confidential information, Section 19016, Welfare and Institutions Code.

Reinsurance intermediary-broker license information, confidentiality of, Section 1781.3, Insurance Code.

Relocation assistance, confidential records submitted to a public entity by a business or farm operation, Section 7262.

Rent control ordinance, confidentiality of information concerning accommodations sought to be withdrawn from, Section 7060.4.

Report of probation officer, inspection, copies, Section 1203.05, Penal Code.

Repossession agency licensee application, confidentiality of information, Sections 7503, 7504, and 7506.5, Business and Professions Code.

Reproductive health facilities, disclosure not required for personal information regarding employees, volunteers, board members, owners, partners, officers, and contractors of a reproductive health services facility who have provided requisite notification, Section 6254.18.

Residence address in any record of Department of Housing and Community Development, confidentiality of, Section 6254.1.

Residence address in any record of Department of Motor Vehicles, confidentiality of, Section 6254.1, Government Code, and Section 1808.21, Vehicle Code.

Residence and mailing addresses in records of Department of Motor Vehicles, confidentiality of, Section 1810.7, Vehicle Code.

Residential care facilities, confidentiality of resident information, Section 1568.08, Health and Safety Code.

Residential care facilities for the elderly, confidentiality of client information, Section 1569.315, Health and Safety Code.

Respiratory care practitioner, professional competency examination reports, confidentiality of, Section 3756, Business and Professions Code.

Restraint of trade, civil action by district attorney, confidential memorandum, Section 16750, Business and Professions Code.

Reward by governor for information leading to arrest and conviction, confidentiality of person supplying information, Section 1547, Penal Code.

Safe surrender site, confidentiality of information pertaining to a parent or individual surrendering a child, Section 1255.7, Health and Safety Code.

§ 6276.40. “Sales and use tax” to “Social security number”

Sales and use tax, disclosure of information, Section 7056, Revenue and Taxation Code.

Santa Barbara Regional Health Authority, exemption from disclosure for records maintained by the authority regarding negotiated rates for the California Medical Assistance Program, Section 14499.6, Welfare and Institutions Code.

Savings association employees, disclosure of criminal history information, Section 6525, Financial Code.

Savings associations, inspection of records by shareholders, Section 6050, Financial Code.

School district governing board, disciplinary action, disclosure of pupil information, Section 35146, Education Code.

School employee, merit system examination records, confidentiality of, Section 45274, Education Code.

School employee, notice and reasons for hearing on nonreemployment of employee, confidentiality of, Sections 44948.5 and 44949, Education Code.

School meals for needy pupils, confidentiality of records, Section 49558, Education Code.

Sealed records, arrest for misdemeanor, Section 851.7, Penal Code.

Sealed records, misdemeanor convictions, Section 1203.45, Penal Code.

Sealing and destruction of arrest records, determination of innocence, Section 851.8, Penal Code.

Search warrants, special master, Section 1524, Penal Code.

Sex change, confidentiality of birth certificate, Section 103440, Health and Safety Code.

Sex offenders, registration form, Section 290.021, Penal Code.

Sexual assault forms, confidentiality of, Section 13823.5, Penal Code.

Sexual assault counselor and victim, confidential communication, Sections 1035.2, 1035.4, and 1035.8, Evidence Code.

Shorthand reporter’s complaint, Section 8010, Business and Professions Code.

Small family day care homes, identifying information, Section 1596.86, Health and Safety Code.

Social security number, applicant for driver’s license or identification card, nondisclosure of, Section 1653.5, Vehicle Code, and Section 6254.29.

Social security number, official record or official filing, nondisclosure of, Section 9526.5, Commercial Code, and Sections 6254.27 and 6254.28.

Social Security Number Truncation Program, Article 3.5 (commencing with Section 27300), Chapter 6, Part 3, Division 2, Title 3.

Social security numbers within records of local agencies, nondisclosure of, Section 6254.29.

§ 6276.42. “State agency activities” to “Sturgeon egg processors”

State agency activities relating to unrepresented employees, subdivision (p) of Section 6254.

State agency activities relating to providers of health care, subdivision (a) of Section 6254.

State Auditor, access to barred records, Section 8545.2.

State Auditor, confidentiality of records, Sections 8545, 8545.1, and 8545.3.

State civil service employee, confidentiality of appeal to state personnel board, Section 18952.

State civil service employees, confidentiality of reports, Section 18573.

State civil service examination, confidentiality of application and examination materials, Section 18934.

State Compensation Insurance Fund, exemption from disclosure for various records maintained by the State Compensation Insurance Fund, subdivision (ad), Section 6254.

State Contract Act, bids, questionnaires and financial statements, Section 10165, Public Contract Code.

State Contract Act, bids, sealing, opening and reading bids, Section 10304, Public Contract Code.

State Energy Resources Conservation and Development Commission, confidentiality of proprietary information submitted to, Section 25223, Public Resources Code.

State hospital patients, information and records in possession of Superintendent of Public Instruction, confidentiality of, Section 56863, Education Code.

State Long-Term Care Ombudsman, access to government agency records, Section 9723, Welfare and Institutions Code.

State Long-Term Care Ombudsman office, confidentiality of records and files, Section 9725, Welfare and Institutions Code.

State Long-Term Care Ombudsman office, disclosure of information or communications, Section 9715, Welfare and Institutions Code.

State Lottery Evaluation Report, disclosure, Section 8880.46.

State prisoners, exemption from disclosure for surveys by the California Research Bureau of children of female prisoners, Section 7443, Penal Code.

State summary criminal history information, confidentiality of information, Sections 11105, 11105.1, 11105.3, and 11105.4, Penal Code.

State Teachers' Retirement System, confidentiality of information filed with the system by a member, participant, or beneficiary, Sections 22306 and 26215, Education Code.

Sterilization of disabled, confidentiality of evaluation report, Section 1955, Probate Code.

Strawberry marketing information, confidentiality of, Section 63124, Food and Agricultural Code.

Structural pest control licensee records relating to pesticide use, confidentiality of, Section 15205, Food and Agricultural Code.

Student driver, records of physical or mental condition, confidentiality of, Section 12661, Vehicle Code.

Student, community college, information received by school counselor, confidentiality of, Section 72621, Education Code.

Student, community college, records, limitations on release, Section 76243, Education Code.

Student, community college, record contents, records of administrative hearing to change contents, confidentiality of, Section 76232, Education Code.

Student, sexual assault on private higher education institution campus, confidentiality of information, Section 94385, Education Code.

Student, sexual assault on public college or university, confidentiality of information, Section 67385, Education Code.

Sturgeon egg processors, records, Section 10004, Fish and Game Code.

§ 6276.44. "Taxpayer information" to "Trust companies"

Taxpayer information, confidentiality, local taxes, subdivision (i), Section 6254.

Tax preparer, disclosure of information obtained in business of preparing tax returns, Section 17530.5, Business and Professions Code.

Teacher, credential holder or applicant, information provided to Commission on Teacher Credentialing, confidentiality of, Section 44341, Education Code.

Teacher, certified school personnel examination results, confidentiality of, Section 44289, Education Code.

Telephone answering service customer list, trade secret, Section 16606, Business and Professions Code.

Timber yield tax, disclosure to county assessor, Section 38706, Revenue and Taxation Code.

Timber yield tax, disclosure of information, Section 38705, Revenue and Taxation Code.

Title insurers, confidentiality of notice of noncompliance, Section 12414.14, Insurance Code.

Tobacco products, exemption from disclosure for distribution information provided to the State Department of Public Health, Section 22954, Business and Professions Code.

Tow truck driver, information in records of California Highway Patrol, Department of Motor Vehicles, or other agencies, confidentiality of, Sections 2431 and 2432.3, Vehicle Code.

Toxic substances, Department of, inspection of records of, Section 25152.5, Health and Safety Code.

Trade secrets, Section 1060, Evidence Code.

Trade secrets, confidentiality of, occupational safety and health inspections, Section 6322, Labor Code.

Trade secrets, disclosure of public records, Section 3426.7, Civil Code.

Trade secrets, food, drugs, cosmetics, nondisclosure, Sections 110165 and 110370, Health and Safety Code.

Trade secrets, protection by Director of the Department of Pesticide Regulation, Section 6254.2.

Trade secrets and proprietary information relating to pesticides, confidentiality of, Sections 14022 and 14023, Food and Agricultural Code.

Trade secrets, protection by Director of Industrial Relations, Section 6396, Labor Code.

Trade secrets relating to hazardous substances, disclosure of, Sections 25358.2 and 25358.7, Health and Safety Code.

Traffic violator school licensee records, confidentiality of, Section 11212, Vehicle Code.

Traffic offense, dismissed for participation in driving school or program, record of, confidentiality of, Section 1808.7, Vehicle Code.

Transit districts, questionnaire and financial statement information in bids, Section 99154, Public Utilities Code.

Tribal-state gaming contracts, exemption from disclosure for records of an Indian tribe relating to securitization of annual payments, Section 63048.63.

Trust companies, disclosure of private trust confidential information, Section 1582, Financial Code.

§ 6276.46. "Unclaimed property" to "Wards and dependent children, inspection of juvenile court documents"

Unclaimed property, Controller records of, disclosure, Section 1582, Code of Civil Procedure.

Unemployment compensation, disclosure of confidential information, Section 2111, Unemployment Insurance Code.

Unemployment compensation, information obtained in administration of code, Section 1094, Unemployment Insurance Code.

Unemployment fund contributions, publication of annual tax paid, Section 989, Unemployment Insurance Code.

University of California, exemption from disclosure for information submitted by bidders for award of best value contracts, Section 10506.6, Public Contract Code.

Unsafe working condition, confidentiality of complainant, Section 6309, Labor Code.

Use fuel tax information, disclosure prohibited, Section 9255, Revenue and Taxation Code.

Utility systems development, confidential information, subdivision (e), Section 6254.

Utility user tax return and payment records, exemption from disclosure, Section 7284.6, Revenue and Taxation Code.

Vehicle registration, confidentiality of information, Section 4750.4, Vehicle Code.

Vehicle accident reports, disclosure of, Sections 16005, 20012, and 20014, Vehicle Code and Section 27177, Streets and Highways Code.

Vehicular offense, record of, confidentiality five years after conviction, Section 1807.5, Vehicle Code.

Veterans Affairs, Department of, confidentiality of records of contract purchasers, Section 85, Military and Veterans Code.

Veterinarian or animal health technician, alcohol or dangerous drugs diversion and rehabilitation records, confidentiality of, Section 4871, Business and Professions Code.

Victims' Legal Resource Center, confidentiality of information and records retained, Section 13897.2, Penal Code.

Voter, registration by confidential affidavit, Section 2194, Elections Code.

Voter registration card, confidentiality of information contained in, Section 6254.4.

Voting, secrecy, Section 1050, Evidence Code.

Wards and dependent children, inspection of juvenile court documents, Section 827, Welfare and Institutions Code.

§ 6276.48. "Wards and dependent children, release of description information about minor escapees" to "Youth service bureau"

Wards, petition for sealing records, Section 781, Welfare and Institutions Code.

Winegrowers of California Commission, confidentiality of producers' or vintners' proprietary information, Sections 74655 and 74955, Food and Agricultural Code.

Workers' Compensation Appeals Board, injury or illness report, confidentiality of, Section 6412, Labor Code.

Workers' compensation insurance, dividend payment to policyholder, confidentiality of information, Section 11739, Insurance Code.

Workers' compensation insurance fraud reporting, confidentiality of information, Section 1877.4, Insurance Code.

Workers' compensation insurer or rating organization, confidentiality of notice of noncompliance, Section 11754, Insurance Code.

Workers' compensation insurer, rating information, confidentiality of, Section 11752.7, Insurance Code.

Workers' compensation, notice to correct noncompliance, Section 11754, Insurance Code.

Workers' compensation, release of information to other governmental agencies, Section 11752.5, Insurance Code.

Workers' compensation, self-insured employers, confidentiality of financial information, Section 3742, Labor Code.

Workplace inspection photographs, confidentiality of, Section 6314, Labor Code.

Youth Authority, parole revocation proceedings, confidentiality of, Section 1767.6, Welfare and Institutions Code.

Youth Authority, release of information in possession of Youth Authority for offenses under Sections 676, 1764.1, and 1764.2, Welfare and Institutions Code.

§ 6277. Repealed

Open Meetings

Government Code Title 5. Local Agencies Division 2. Cities, Counties and Other Agencies Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies

Title 5. Local Agencies

Division 2. Cities, Counties and Other Agencies

Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies

Chapter 9. Meetings

§ 54950. Declaration, intent; sovereignty

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

§ 54950.5. Short title

This chapter shall be known as the Ralph M. Brown Act.

§ 54951. Local agency

As used in this chapter, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

§§ 54951.1, 54951.7. Repealed by Stats.1993, c. 1138 (S.B.1140), §§ 2.3, 2.5, operative April 1, 1994

§§ 54951.1, 54951.7. Repealed by Stats.1993, c. 1138 (S.B.1140), §§ 2.3, 2.5, operative April 1, 1994

§ 54952. Legislative body, definition

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

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

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

(c)

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

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

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

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

(d) The lessee of any hospital the whole or part of which is first leased pursuant to subdivision (p) of Section 32121 of the Health and Safety Code after

January 1, 1994, where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority.

§ 54952.1. Member of a legislative body of a local agency; conduct

Any person elected to serve as a member of a legislative body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.

§ 54952.2. Meeting; prohibited devices for obtaining collective concurrence; exclusions from chapter

(a) As used in this chapter, "meeting" means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.

(b)

(1) A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.

(2) Paragraph (1) shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

(c) Nothing in this section shall impose the requirements of this chapter upon any of the following:

(1) Individual contacts or conversations between a member of a legislative body and any other person that do not violate subdivision (b).

(2) The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(4) The attendance of a majority of the members of a legislative body at an open and noticed meeting of another body of the local agency, or at an open and noticed meeting of a legislative body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(5) The attendance of a majority of the members of a legislative body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(6) The attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers.

§§ 54952.3, 54952.5. Repealed by Stats.1993, c. 1138 (S.B.1140), §§ 5, 6 operative April 1, 1994

§§ 54952.3, 54952.5. Repealed by Stats.1993, c. 1138 (S.B.1140), §§ 5, 6 operative April 1, 1994

§ 54952.6. *Action taken*

As used in this chapter, “action taken” means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

§ 54952.7. *Copies of chapter to members of legislative body of local agencies*

A legislative body of a local agency may require that a copy of this chapter be given to each member of the legislative body and any person elected to serve as a member of the legislative body who has not assumed the duties of office. An elected legislative body of a local agency may require that a copy of this chapter be given to each member of each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body.

§ 54953. *Meetings to be open and public; attendance*

(a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b)

(1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by roll call.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency.

Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) No legislative body shall take action by secret ballot, whether preliminary or final.

(d)

(1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), when a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and that number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(4) This subdivision shall remain in effect only until January 1, 2009.

§ 54953.1. *Testimony of members before grand jury*

The provisions of this chapter shall not be construed to prohibit the members of the legislative body of a local agency from giving testimony in private before a grand jury, either as individuals or as a body.

§ 54953.2. *Legislative body meetings to meet protections and prohibitions of the Americans with Disabilities Act*

All meetings of a legislative body of a local agency that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

§ 54953.3. *Conditions to attendance*

A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to the persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

§ 54953.5. *Right to record proceedings; conditions; tape or film records made by or under direction of local agencies*

(a) Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera in the absence of a reasonable finding by the legislative body of the local agency that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any audio or video recording of an open and public meeting made for whatever purpose by or at the direction of the local agency shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but, notwithstanding Section 34090, may be erased or destroyed 30 days after the recording. Any inspection of an audio or video recording shall be provided without charge on equipment made available by the local agency.

§ 54953.6. *Prohibitions or restrictions on broadcasts of proceedings of legislative body; reasonable findings*

No legislative body of a local agency shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

§ 54953.7. *Allowance of greater access to meetings than minimal standards in this chapter*

Notwithstanding any other provision of law, legislative bodies of local agencies may impose requirements upon themselves which allow greater access to their meetings than prescribed by the minimal standards set forth in this chapter. In addition thereto, an elected legislative body of a local agency may impose such requirements on those appointed legislative bodies of the local agency of which all or a majority of the members are appointed by or under the authority of the elected legislative body.

§ 54954. *Time and place of regular meetings; special meetings; emergencies*

(a) Each legislative body of a local agency, except for advisory committees or standing committees, shall provide, by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body, the

time and place for holding regular meetings. Meetings of advisory committees or standing committees, for which an agenda is posted at least 72 hours in advance of the meeting pursuant to subdivision (a) of Section 54954.2, shall be considered for purposes of this chapter as regular meetings of the legislative body.

(b) Regular and special meetings of the legislative body shall be held within the boundaries of the territory over which the local agency exercises jurisdiction, except to do any of the following:

(1) Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the local agency is a party.

(2) Inspect real or personal property which cannot be conveniently brought within the boundaries of the territory over which the local agency exercises jurisdiction provided that the topic of the meeting is limited to items directly related to the real or personal property.

(3) Participate in meetings or discussions of multiagency significance that are outside the boundaries of a local agency's jurisdiction. However, any meeting or discussion held pursuant to this subdivision shall take place within the jurisdiction of one of the participating local agencies and be noticed by all participating agencies as provided for in this chapter.

(4) Meet in the closest meeting facility if the local agency has no meeting facility within the boundaries of the territory over which the local agency exercises jurisdiction, or at the principal office of the local agency if that office is located outside the territory over which the agency exercises jurisdiction.

(5) Meet outside their immediate jurisdiction with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.

(6) Meet outside their immediate jurisdiction if the meeting takes place in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.

(7) Visit the office of the local agency's legal counsel for a closed session on pending litigation held pursuant to Section 54956.9, when to do so would reduce legal fees or costs.

(c) Meetings of the governing board of a school district shall be held within the district, except under the circumstances enumerated in subdivision (b), or to do any of the following:

(1) Attend a conference on nonadversarial collective bargaining techniques.

(2) Interview members of the public residing in another district with reference to the trustees' potential employment of an applicant for the position of the superintendent of the district.

(3) Interview a potential employee from another district.

(d) Meetings of a joint powers authority shall occur within the territory of at least one of its member agencies, or as provided in subdivision (b). However, a joint powers authority which has members throughout the state may meet at any facility in the state which complies with the requirements of Section 54961.

(e) If, by reason of fire, flood, earthquake, or other emergency, it shall be unsafe to meet in the place designated, the meetings shall be held for the duration of the emergency at the place designated by the presiding officer of the legislative body or his or her designee in a notice to the local media that have requested notice pursuant to Section 54956, by the most rapid means of communication available at the time.

§ 54954.1. Mailed notice to persons who filed written request; time; duration and renewal of requests; fee

Any person may request that a copy of the agenda, or a copy of all the documents constituting the agenda packet, of any meeting of a legislative body be mailed to that person. If requested, the agenda and documents in the agenda packet shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Upon receipt of the written request, the legislative body or its designee shall cause the requested materials to be mailed at the time the agenda is posted pursuant to Section 54954.2 and 54956 or upon distribution to all, or a majority of all, of the members of a legislative body, whichever occurs first. Any request for mailed copies of agendas or agenda packets shall be valid for the calendar year in which it is filed, and must be renewed following January 1 of each year. The legislative body may establish

a fee for mailing the agenda or agenda packet, which fee shall not exceed the cost of providing the service. Failure of the requesting person to receive the agenda or agenda packet pursuant to this section shall not constitute grounds for invalidation of the actions of the legislative body taken at the meeting for which the agenda or agenda packet was not received.

§ 54954.2. Agenda; posting; action on other matters

(a)

(1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

(2) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities.

Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(c) This section is necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

§ 54954.3. Opportunity for public to address legislative body; adoption of regulations; public criticism of policies

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting shall provide an opportunity for

members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

(b) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

(c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.

Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

§ 54954.4. Reimbursements to local agencies and school districts for costs

(a) The Legislature hereby finds and declares that Section 12 of Chapter 641 of the Statutes of 1986, authorizing reimbursement to local agencies and school districts for costs mandated by the state pursuant to that act, shall be interpreted strictly. The intent of the Legislature is to provide reimbursement for only those costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986.

(b) In this regard, the Legislature directs all state employees and officials involved in reviewing or authorizing claims for reimbursement, or otherwise participating in the reimbursement process, to rigorously review each claim and authorize only those claims, or parts thereof, which represent costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986 and for which complete documentation exists. For purposes of Section 54954.2, costs eligible for reimbursement shall only include the actual cost to post a single agenda for any one meeting.

(c) The Legislature hereby finds and declares that complete, faithful, and uninterrupted compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) is a matter of overriding public importance. Unless specifically stated, no future Budget Act, or related budget enactments, shall, in any manner, be interpreted to suspend, eliminate, or otherwise modify the legal obligation and duty of local agencies to fully comply with Chapter 641 of the Statutes of 1986 in a complete, faithful, and uninterrupted manner.

§ 54954.5. Closed session item descriptions

For purposes of describing closed session items pursuant to Section 54954.2, the agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in substantial compliance with this section.

Substantial compliance is satisfied by including the information provided below, irrespective of its format.

(a) With respect to a closed session held pursuant to Section 54956.7:

LICENSE/PERMIT DETERMINATION Applicant(s): (Specify number of applicants)

(b) With respect to every item of business to be discussed in closed session pursuant to Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)

Agency negotiator: (Specify names of negotiators attending the closed session) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Negotiating parties: (Specify name of party (not agent))

Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

(c) With respect to every item of business to be discussed in closed session pursuant to Section 54956.9:

CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION (Subdivision (a) of Section 54956.9)

Name of case: (Specify by reference to claimant's name, names of parties,

case or claim numbers) or Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9: (Specify number of potential cases) (In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to subparagraphs (B) to (E), inclusive, of paragraph (3) of subdivision (b) of Section 54956.9.)

Initiation of litigation pursuant to subdivision (c) of Section 54956.9: (Specify number of potential cases)

(d) With respect to every item of business to be discussed in closed session pursuant to Section 54956.95:

LIABILITY CLAIMS Claimant: (Specify name unless unspecified pursuant to Section 54961)

Agency claimed against: (Specify name)

(e) With respect to every item of business to be discussed in closed session pursuant to Section 54957:

THREAT TO PUBLIC SERVICES OR FACILITIES Consultation with: (Specify name of law enforcement agency and title of officer, or name of applicable agency representative and title)

PUBLIC EMPLOYEE APPOINTMENT Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

(No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.)

(f) With respect to every item of business to be discussed in closed session pursuant to Section 54957.6:

CONFERENCE WITH LABOR NEGOTIATORS Agency designated representatives: (Specify names of designated representatives attending the closed session) (If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Employee organization: (Specify name of organization representing employee or employees in question) or Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations)

(g) With respect to closed sessions called pursuant to Section 54957.8:

CASE REVIEW/PLANNING

(No additional information is required in connection with a closed session to consider case review or planning.)

(h) With respect to every item of business to be discussed in closed session pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code:

REPORT INVOLVING TRADE SECRET Discussion will concern: (Specify whether discussion will concern proposed new service, program, or facility)

Estimated date of public disclosure: (Specify month and year)

HEARINGS Subject matter: (Specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee)

(i) With respect to every item of business to be discussed in closed session pursuant to Section 54956.86:

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW

(No additional information is required in connection with a closed session to discuss a charge or complaint pursuant to Section 54956.86.)

(j) With respect to every item of business to be discussed in closed session pursuant to Section 54956.96:

CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by name)

Discussion will concern: (Specify closed session description used by the joint powers agency)

Name of local agency representative on joint powers agency board:

(Specify name)

(Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives.)

(k) With respect to every item of business to be discussed in closed session pursuant to Section 54956.75:

AUDIT BY BUREAU OF STATE AUDITS

§ 54954.6. *New or increased taxes or assessments; public meetings and public hearings; joint notice requirements*

(a)

(1) Before adopting any new or increased general tax or any new or increased assessment, the legislative body of a local agency shall conduct at least one public meeting at which local officials shall allow public testimony regarding the proposed new or increased general tax or new or increased assessment in addition to the noticed public hearing at which the legislative body proposes to enact or increase the general tax or assessment.

For purposes of this section, the term “new or increased assessment” does not include any of the following:

(A) A fee that does not exceed the reasonable cost of providing the services, facilities, or regulatory activity for which the fee is charged.

(B) A service charge, rate, or charge, unless a special district’s principal act requires the service charge, rate, or charge to conform to the requirements of this section.

(C) An ongoing annual assessment if it is imposed at the same or lower amount as any previous year.

(D) An assessment that does not exceed an assessment formula or range of assessments previously specified in the notice given to the public pursuant to subparagraph (G) of paragraph (2) of subdivision (c) and that was previously adopted by the agency or approved by the voters in the area where the assessment is imposed.

(E) Standby or immediate availability charges.

(2) The legislative body shall provide at least 45 days’ public notice of the public hearing at which the legislative body proposes to enact or increase the general tax or assessment. The legislative body shall provide notice for the public meeting at the same time and in the same document as the notice for the public hearing, but the meeting shall occur prior to the hearing.

(b)

(1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased general tax shall be accomplished by placing a display advertisement of at least one-eighth page in a newspaper of general circulation for three weeks pursuant to Section 6063 and by a first-class mailing to those interested parties who have filed a written request with the local agency for mailed notice of public meetings or hearings on new or increased general taxes. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the first publication of the joint notice pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision.

Notwithstanding paragraph (2) of subdivision (a), the joint notice need not include notice of the public meeting after the meeting has taken place. The public hearing pursuant to subdivision (a) shall take place no earlier than 45 days after the first publication of the joint notice pursuant to this subdivision. Any written request for mailed notices shall be effective for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(2) The notice required by paragraph (1) of this subdivision shall include, but not be limited to, the following:

(A) The amount or rate of the tax. If the tax is proposed to be increased from any previous year, the joint notice shall separately state both the existing tax rate and the proposed tax rate increase.

(B) The activity to be taxed.

