COUNTY OF VENTURA

GUIDE TO THE

CALIFORNIA PUBLIC RECORDS ACT

2008

Office of the County Counsel

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I. INTRODUCTION: The Public's Right to Access and the Public Agency's Duty

The California Public Records Act ("CPRA") was enacted by the Legislature to further the concept of government accountability. The CPRA allows the public access to inspect and obtain copies of most public records. It also provides specific, limited circumstances in which a public entity may refuse to produce requested records.

A. Public Access Is a Fundamental Right

The CPRA is set forth in the California Government Code at section 6250 et seq. At the outset, the Legislature declares its intent that:

> "In enacting this chapter [the CPRA], the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (Gov. Code, § 6250.)

The courts have said the CPRA was intended to safeguard the accountability of government to the public. (*San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 771.) The CPRA was enacted for the purpose of increasing freedom of information and is designed to give the public access to information in the possession of public agencies. (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651.)

B. A CPRA Request Requires Immediate Action

A CPRA request to a public agency triggers legal obligations of the public agency with specific timelines. Failure to act in a timely manner may result in litigation against the County. (See section X below.)

If the request presents no questions or issues and identifies records that are routinely provided to members of the public, the department should comply with the request. If the request presents questions or issues on which legal advice is needed, immediately send the request via facsimile or hand-delivery to County Counsel for review and advice.

While a more detailed discussion of various issues appears in subsequent sections, the following abbreviated guidelines are recommended:

1. What to Do?

- Establish procedures to be followed when making records available for public inspection or copying.

- Upon receipt of a request for a public record, make the record promptly available, or determine within 10 days whether to comply with the request, and if complying, notify the requestor of the estimated date and time the records will be made available.

- If the request explicitly requests records from within your department only, you may respond accordingly. If the request seeks records from "the County of Ventura," you should advise the requester of the scope of your records and suggest he/she contact the County Executive Officer, the Chief Deputy Clerk of the Board and/or other departments likely to have the requested records. You may also forward the request to other departments you know will have responsive records.

- If it is determined to deny a written request, after consulting with counsel about grounds for denial, provide written notification of the denial. The denial must set forth the reasons for the denial of access to the record. If the request is in writing, the denial must also state the names and titles or positions of persons responsible for the denial. Provide a copy of the denial to the County Executive Office.

- If necessary in unusual circumstances, the time to respond may be extended by not more than 14 days.

- A notification of extension must be made by the County in writing, setting forth the reasons for the delay and the expected date of determination.

- Check with County Counsel if you are uncertain how to handle a request for public records.

2. What Not to Do

- Do not delay in responding to a request if you are not the custodian of the requested records. Notify the requester and refer the request immediately to the appropriate custodian of the records if you know it is part of the County.

- Do not wait until the ninth or tenth day before beginning to process a request.

- Do not provide records which statutes specifically make confidential.

- Do not charge a fee for the retrieval and *inspection* of requested public records. A fee for the retrieval and *copying* of a public record may be charged in accordance with Ventura County Ordinance No. 4339.

- Do not obstruct the inspection or copying of public records.

II. WHAT IS A "PUBLIC RECORD" UNDER CPRA

Almost every document in the possession of a public agency is a "public record" under the CPRA. Some public records are, however, exempt from disclosure.

A. Government Code Section 6252 Defines "Public Record"

The term "public record" is broadly defined 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. Code, § 6252, subd. (e); italics added.)

> "'*Writing*' means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and any record thereby created, regardless of the manner in which the record has been stored." (Gov. Code, § 6252, subd. (g), italics added.)

> **Example:** A tape recording of a city council meeting prepared by the city clerk to facilitate the preparation of the minutes of the meeting is a public record. (64 Ops.Cal.Atty.Gen. 317 (1981).)

B. The Statutory Definition Is Construed Broadly

The definition of "public record" is intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record-keeping instrument as it is developed. Only purely personal information unrelated to the conduct of the public's business could be considered exempt from this definition, e.g., the shopping list telephoned from home, the letter to a public officer from a friend which is totally void of reference to governmental activities. (*Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 340.)

The fact that someone other than a public employee prepared the writing and submitted it to the public agency does not remove it from the definition of "public record." (*Gallagher v. Boller* (1964) 231 Cal.App.2d 482.)

III. PUBLIC'S RIGHT TO INSPECT – GENERALLY

A. When and Where, Who and Why

In general, the CPRA is not to be construed to permit a local agency to delay or obstruct the inspection or copying of public records. (Gov. Code, § 6253, subd. (d).)

1. When and Where: With limited exceptions relating to the gathering of voluminous or hard-to-find documents, or segregating out those records or parts of records that are exempt from disclosure, public records are *open to inspection at all times during office hours of a public agency*. (Gov. Code, § 6253, subd. (a).)

The right of public inspection, however, is subject to an implied rule of reason which enables the custodian of public records to formulate regulations necessary to protect the safety of the records against theft, mutilation or accidental damage, to prevent inspection from interfering with the orderly function of his office and its employees, and generally to avoid chaos in the record archives. (*Bruce v. Gregory* (1967) 65 Cal.2d 666, 676 [construing the predecessor statutes to the CPRA].)

> **Example**: Unprocessed absentee ballot applications are public records subject to inspection under the CPRA by any member of the public, including candidates. However, a county clerk may temporarily refuse to give access to unprocessed absentee ballot applications where, due to staffing and security needs, doing so would unduly interfere with the work of the office. (76 Ops.Cal.Atty.Gen. 235 (1993).)

2. Who: Every person has a right to inspect any public record, unless the CPRA specifically authorizes nondisclosure. (Gov. Code, § 6253, subd. (a).) Public records are open to inspection at all times during office hours of the agency and every person has a right to inspect any public record, except as provided in the CPRA or other law. 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. (Gov. Code, § 6253, subd. (a).)

3. Why: In general, the purpose for the request of records is irrelevant to whether access is permitted. (Gov. Code, § 6257.5.) For example, the fact that a requesting party is a commercial entity using the information for strictly commercial purposes does not diminish the public interest in the material requested. (*Connell v. Superior Court* (1997) 56 Cal.App.4th 601.)

B. Exemptions to Disclosure Are Specifically Limited by the CPRA

The CPRA states a general policy in favor of disclosure, so that support for refusal to disclose information must be found among specified exceptions to that general policy. (*Johnson v. Winter* (1982) 127 Cal.App.3d 435.) Please find more on exemptions from disclosure in section IX, below.

C. Segregating Exempt Materials

Where nonexempt materials are not inextricably intertwined with exempt materials and are otherwise reasonably segregable therefrom, segregation is required so that the nonexempt materials may be disclosed. (Gov. Code, § 6253, subd. (a); *Northern Cal. Police Practices Project v. Craig* (1979) 90 Cal.App.3d 116.) If the exempt information can be removed or redacted, then you should do so and disclose the nonexempt portions of the record.

IV. CPRA DISCLOSURE EXEMPTIONS ARE PERMISSIVE BUT, IN GENERAL, SHOULD BE ASSERTED

The CPRA provisions authorizing nondisclosure of certain records do not prevent a local agency from opening those records to public inspection, unless disclosure is otherwise prohibited by law. (Gov. Code, § 6254.) However, in general, applicable exemptions should be asserted in order to protect privacy and to prevent waiver of confidentiality. Specific statutory exemptions from disclosure are discussed in section IX, below.

Government Code section 6254 sets forth certain categories of documents that are exempt from disclosure and also exceptions to the exemptions. Thus, section 6254 requires careful reading. However, it is clear that the exemptions from disclosure in Government Code section 6254 are *permissive, not mandatory*, i.e., they *permit* nondisclosure but do not *require* nondisclosure. (*Register Div. of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 905.)

V. WAIVER OF DISCLOSURE EXEMPTIONS: NO TURNING BACK

With very limited exceptions, if a document that would otherwise be exempt from disclosure is disclosed to any member of the public, any applicable exemption *is waived* and may not later be asserted. Waiver of the exemption occurs even if the disclosure was inadvertent.

Government Code section 6254.5 provides, in part, as follows:

> "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."

It does not matter that a disclosure of an exempt document occurred by mistake. Government Code section 6254 provides no relief to the public agency for inadvertent disclosure. In some counties, the local court has ruled that even an inadvertent disclosure results in a waiver of the applicable exemption.

There are limited circumstances, however, where a disclosure does not result in waiver. The following disclosures are among those listed in Government Code section 6254.5 that do not waive applicable exemptions.

- Disclosures made pursuant to the Information Practices Act of 1977 (Civ. Code, § 1798), or discovery proceedings (Gov. Code, § 6254.5, subd. (a)).

- Disclosures made through other legal proceedings or as otherwise required by law. (Gov. Code, § 6254.5, subd. (b).)

- Disclosures made within the scope of a statute which limits disclosure of specified writings to certain purposes. (Gov. Code, § 6254.5, subd. (c).)

- Disclosures not required by law, and prohibited by formal action of an elected legislative body of the local agency which retains the writings. (Gov. Code, § 6254.5, subd. (d).)

VI. EFFECT OF BURDEN ON PUBLIC AGENCY TO COMPLY WITH REQUEST

The CPRA and case law contemplate that there will be some burden on a government agency to comply with a request to inspect and/or copy records. The degree of burden does not excuse the agency from disclosing documents except under extreme circumstances.

Neither the CPRA nor the courts give much weight to the plight of public agencies claiming that a disclosure of documents is too burdensome on the agency. For example, in *State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, the court required the Board of Equalization to comply with a request for records consisting of 2,100 separate documents, or an estimated 6,000 pages of material, many of which would require deletion of confidential taxpayer information. The court held that the fact that it is

time consuming to segregate exempt material does not obviate the requirement to do it, unless the burden is so onerous as to clearly outweigh the public interest in disclosure. (*Id.* at p. 1190, fn. 14.) The fact that a request is for a voluminous amount of material is usually not a reason for not complying with the request. (*Id.* at p. 1177.)

In *CBS Broadcasting Inc. v. Superior Court* (2001) 91 Cal.App.4th 892, the court rejected an argument by the State Department of Social Services that estimated salary costs in the amount of $43,000 to comply with a CPRA request imposed a significant burden.

However, in *Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754, 761, the court held that public agencies may be able to impose reasonable restrictions on general requests for copies of voluminous classes of documents by giving access to the desired documents, but restricting the making of copies to specific requests for copies of specific documents.

VII. PROCEDURES UPON RECEIPT OF A REQUEST TO INSPECT AND/OR COPY RECORDS

Members of the public may ask to inspect records, copy records, or both. A person may want to just look at records, or may want to look at the records for purposes of picking out those she or he wants to copy, or a person may just order copies of documents without reviewing them first.

Government Code section 6253, subdivision (b), provides as follows:

> "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." (Italics added.)

As discussed in subsection K, below, a fee for expenses of copying a public record may be charged in accordance with Ventura County Ordinance No. 4339.

A. Requests to Inspect Records

A person desiring to inspect public records is not required to give any particular notice in order to inspect those records during normal working hours. (See Gov. Code, § 6253, subd. (a).) The CPRA does not require a request for records to be in writing. (*Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381.) You may ask the requester to provide a written request to assist you in

understanding the scope of the identifiable records the requester seeks, but the requester may refuse. You must then attempt to comply with the oral request.

B. Agency to Assist Persons Making Requests

To the extent reasonable under the circumstances, public agencies must *assist members of the public to make a focused and effective request that reasonably describes an identifiable record or records*. (Gov. Code, § 6253.1, subd. (a).) A public agency may not require that the request be made in writing or that persons identify themselves prior to inspecting a public record. Public agencies must assist members of the public by doing the following:

- Assisting the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.

- Describing the information technology and physical location in which the records exist.

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

If the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester which would help identify the record or records, the requirement to assist the member of the public is deemed satisfied.

Additionally, the requirement to assist the member of the public does not apply if:

- The public agency makes the requested records available.

- The public agency determines that the request should be denied and "bases that determination solely on an exemption listed in Government Code section 6254." (Gov. Code, § 6253.1, subd. (d)(2).)

- The public agency makes available an index of its records.

C. Agency Allowed to Segregate Exempt Documents

Government Code section 6253, subdivision (a), provides, in part, 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." Thus, the agency is allowed a reasonable period of time to segregate exempt documents and/or redact exempt material.

D. Agency Allowed Reasonable Time to Find Documents, but Only 10 Calendar Days to Respond to Request

Within 10 ***calendar*** days from receipt of a request for copies of records, a public agency must: (a) determine whether the request seeks copies of disclosable public records that it possesses; and (b) notify the person making the request, (i) whether the records are disclosable, (ii) if it determines that an extension is necessary, the reasons for the extension, and (iii) the estimated date and time the records will be made available, if disclosable.

Where records are not immediately available, or are not in possession of the public agency at the time of the request, but are "public records" of the agency, the agency will be in compliance with the CPRA if it provides a timely response to the requester, searches for the documents and discloses them promptly upon locating them. (*Rogers v. Superior Court* (1993) 19 Cal.App.4th 469.)

While the CPRA provides that copies shall be made promptly available, it also gives the agency time to determine which, if any, documents or portions thereof are exempt. Thus, the situations in which the records requested can be made available immediately will be those where the records requested have already been screened for exempt material and are indeed otherwise readily available. If a person appears at an agency office and asks to inspect documents that are not readily available, the agency may properly advise the requester a search will be made and the agency will, within the statutory period, advise the requester of the approximate date the records will be available.

In unusual circumstances, the time limit for notifying the person making the request may be extended for no more than 14 days. Any extension must be by written notice by the head of the agency, or his or her designee, to the person making the request. The written notice of extension must set forth the date on which a determination is expected to be sent. (Gov. Code, § 6253, subd. (c).)

The "unusual circumstances" justifying an extension of the 10-day time limit are:

- "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." (Gov. Code, § 6253, subd. (c)(1).)

- "The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request." (Gov. Code, § 6253, subd. (c)(2).)

- "The need for consultation . . . with another agency having substantial interest in the determination of the request . . . ." (Gov. Code, § 6253, subd. (c)(3).)

- "The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data." (Gov. Code, § 6253, subd. (c)(4).)

E. "Identifiable Record" Means an Existing, Reasonably Described Record

A request for records must reasonably describe an identifiable record or records. (Gov. Code, § 6253, subd. (b).) A request for disclosure of a public record should be limited, focused and specific. (*Rogers v. Superior Court, supra,* 19 Cal.App.4th at pp. 480-481.) Since a requester has no access to public agency files and may be unable to precisely identify the documents sought, *writings may be described by their content.* The agency is then obliged to search for records based on criteria set forth in the search request. (*California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 165-166.)

A public agency is not required to transform a public record in one form (e.g., a tape recording of a legislative body meeting) into a record or copy in an entirely different form (e.g., a written transcript of every word spoken at the meeting) on the request of the person requesting a copy. (64 Ops.Cal.Atty.Gen. 317, *supra*.)

Generally, a *public agency is not required to prepare or compile a new record that does not currently exist.* (See section VIII regarding responding to requests for records in an electronic format.)

A public agency is not required to comply with a request for records that will come into existence in the future since those are not currently identifiable public records. (*Rosenthal v. Hansen, supra,* 34 Cal.App.3d at p. 757.)

F. Good Faith Efforts to Find Documents

The request itself will provide initial guidance as to the breadth of the search required. Because of the fundamental public interest in access and disclosure, public agencies have a duty to deal with CPRA requests in good faith, and the focus of efforts should be to find and disclose the documents requested, when adequately identified, bearing in mind the County's policies and the statutory exemptions from disclosure.

Consider to whom the request is addressed and how the request is phrased. A request sent to the Office of the County Executive Officer and asking that "the County of Ventura" produce all documents pertaining to a certain subject is going to require the

broadest effort to locate documents because it is addressed to the office that oversees most departments and seeks documents from the County as a whole. In such a case, documents may need to be produced from several different departments. If a CPRA request is sent directly to a particular department and explicitly seeks records of that department, then the department can respond based on a search of its own records. The department's response should make it clear that the response is confined to that particular department.

If a CPRA request is sent directly to a particular department but seeks records in the possession of "the County of Ventura" or some other broad language, then the department should search for its own responsive documents, but should also advise the requester of the scope of its records. If the department believes other County departments may have responsive records, it should advise the requester and suggest he/she contact the County Executive Office, the Chief Deputy Clerk of the Board, and those other departments. The request should also be forwarded to the other departments.

Finally, if the request presents legal questions, or relates to a major or controversial issue or project, consult and coordinate with the County Counsel's office as needed.

G. "Exact Copies"

The CPRA provides that an exact copy must be provided unless it is "impracticable" to do so. (Gov. Code, § 6253, subd. (b).)

H. Notice That Records Will Not Be Disclosed

If the request for records was not in writing and records will not be disclosed, a notification of denial of the request must advise the person making the request of the reasons for the denial. (Gov. Code, § 6253, subd. (c).) If the records were requested in writing, but will not be disclosed, a notification of denial of the request must be in writing and set forth the names and titles or positions of each person responsible for the denial in addition to the reasons for the denial. (Gov. Code, §§ 6253, subds. (c) & (d), 6255, subd. (b).)

I. Notice That Records Will Be Disclosed

When an agency makes a determination that it will make records available, it must notify the person making the request of its determination. The notice must state the estimated date and time when the records will be made available. (Gov. Code, § 6253, subd. (c).)

J. Agency May Adopt Regulations Providing *Greater* Access to Records, but Not Less Access

Local agencies may adopt procedures to be followed that provide faster, more efficient, or greater access to public records than prescribed by the minimum standards set forth in the CPRA. (Gov. Code, § 6253, subd. (e).) However, agency procedures may not be more restrictive than the CPRA.

K. Cost Recovery

Pursuant to Government Code section 54985, the County of Ventura adopted Ordinance No. 4339 which states that:

"**SECTION 2: CHARGE FOR COPIES OF PUBLIC RECORDS**

"The cost charge for *providing a copy* of a public record which is requested and produced pursuant to Government Code section 6250 et seq. is hereby determined to be the amount reasonably necessary to recover the cost of providing the copy. For purposes of this ordinance, the amount reasonably necessary to recover the cost of providing the copy is as follows:

"A. A charge per page equal to the current per page copy rate approved by the Board of Supervisors. [The charge is established annually by the Board of Supervisors at the time it approves rates for the General Services Agency.]

"B. The actual cost of the time of employees spent in locating, retrieving, reviewing, preparing, copying, and furnishing the records, provided, however, that the actual cost shall be calculated using the lower of: (1) the hourly cost recovery rate of the employees responding to the request for public records, as set by the Board of Supervisors, or (2) $24.00 per hour. There shall be no charge for the first two hours of employee time expended. Time shall be calculated by rounding to the nearest one-quarter of an hour.

"C. If the response requires duplication to a medium other than 8 ½ by 11 copy paper, the amount reasonably necessary to recover the cost of that medium and any equipment required for the duplication shall be used in place of the per page cost.

"D. All other costs incurred in providing the copy including, without limitation, mailing and shipping.

"**SECTION 3: AUTHORIZATION FOR WAIVER**

"Agency and department heads, and their delegates, are authorized to waive collection of the charge for providing copies of public records if the total cost of fulfilling a request does not exceed $15.00, and the burden of collection outweighs the benefit derived." (Italics added.)

The ordinance does not apply to fees or charges specified in Government Code section 54985, subdivision (c).

VIII. COMPUTER-STORED RECORDS; INFORMATION IN ELECTRONIC FORMAT

It is becoming more common for records to be electronically stored rather than reduced to paper. Public records stored in an electronic format remain public records subject to disclosure unless exempt under the CPRA. (Gov. Code, § 6254.9.)

A. Making Computer Records Available in Electronic Format

If a public agency keeps records in electronic format, it must *make the record available in any electronic format in which it holds the information* when requested, unless: (a) the record is otherwise exempt from disclosure; (b) the release would jeopardize or compromise the security or integrity of the record; or (c) the release would jeopardize or compromise the security or integrity of any proprietary software in which the record is maintained. The public agency is required to provide a copy of an electronic record in the format requested if it is the format that has been used by the agency to create copies for its own use or for other agencies. The electronic records must be copied to a digital medium, e.g., a compact disc, floppy disc, DVD, or flash drive, for delivery to the requester. Costs incurred in copying are recoverable under Ventura County Ordinance No. 4339.

A public agency is not required to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format. A public agency is not permitted to make information available to the public *only* in an electronic format.

If a record is available in electronic format as well as in printed form, the public agency may tell a person who requests a printed record that the information is available in electronic format.

B. Extending Time to Respond to Requests for Electronic Records

A public agency may extend the time to respond to a request for public records (up to 14 days after the initial 10 days) based on the need of the public agency to compile

data, write programming language or a computer program, or construct a computer report to extract data. (Gov. Code, § 6253, subd. (c)(4).)

C. Charging for Electronic Records

Pursuant to Ventura County Ordinance No. 4339, in addition to the staff time permitted to be charged, the amount reasonably necessary to recover the cost of the medium used for copying the electronic record (such as a CD or diskette) and the cost of operation of any equipment required for the duplication shall be used in place of the per page cost.

D. Software

Computer software developed by the County is not itself a public record. (Gov. Code, § 6254.9, subd. (a).) Computer software includes computer mapping systems, computer programs, and computer graphics systems. (Gov. Code, § 6254.9, subd. (b).) Commercial software for which the County has purchased an end-user license is not subject to disclosure for use by the requester.

E. Electronic Drafts; E-mail

Many employees keep multiple electronic drafts of documents they have created. They may do so intentionally or unintentionally. The preliminary draft exemption does not apply to items that are routinely kept. Therefore, if all copies of a document are requested, each retained draft may have to be produced.

In addition, all employees should be familiar with and should comply with the County of Ventura's Electronic Mail Policy. E-mail is to be retained in electronic form for no more than two years from the date of creation or receipt. This limitation is to be enforced through automatic, electronic means, and individual agencies and departments are encouraged to further abbreviate this two-year period to as short a time as possible. E-mail that is routinely kept may be a public record and subject to disclosure unless exempt under some other provision.

IX. EXEMPTIONS FROM DISCLOSURE

The CPRA provides a list of specific exemptions from disclosure in Government Code section 6254 and other sections. It also provides a "catchall" exemption in Government Code section 6255.

The courts have construed the statutory exemptions from disclosure narrowly in order to accomplish the general policy of disclosure. (***Braun v. City of Taft, supra,*** 154 Cal.App.3d at p. 342.)

A. Specific Statutory Exemptions

Several sections of the CPRA exempt specific records or categories of records from disclosure. Government Code section 6254 contains a number of categorical exemptions. This section sets forth the types of records that are exempt from disclosure and, in some instances, qualifies the exemptions with exceptions. For example, Government Code section 6254, subdivision (f) provides an exemption for records of complaints to and investigatory files of law enforcement agencies but then attaches a number of qualifications that give the public certain limited rights to information contained within the complaints and/or investigatory files. Therefore, an exemption should be carefully analyzed before it is asserted.

In general, these exemptions are designed to protect the privacy of persons whose data or documents come into governmental possession. (*Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 652.)

1. Preliminary Drafts, Etc. (Gov. Code, § 6254, subd. (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." (Gov. Code, § 6254, subd. (a); see also *Citizens for a Better Environment v. Department of Food & Agriculture* (1985) 171 Cal.App.3d 704.)

This exemption is not as broad as commonly thought. There are three criteria that must be met for this exemption to apply:

- The documents must be preliminary drafts, notes, or interagency or intra-agency memoranda.
- The documents must not be retained by the public agency in the ordinary course of business.
- There must be a public interest in nondisclosure that *clearly outweighs* the public interest in disclosure.

Generally, this exemption has been interpreted to foster robust discussion within the agency of policy questions attending pending administrative decisions. This has often been characterized as a part of the deliberative process privilege. A similar federal law has been construed by the courts as protecting the deliberative, but not factual, materials produced in the process of making agency decisions, but not agency law. For example, it would exempt from disclosure pre-decisional advisory opinions, recommendations and policy deliberations, but not factual materials.

The balancing test, although using similar language to that found in the "catchall" exemption, is not analyzed exactly the same way. With respect to the public interest in disclosure, if the records sought pertain to the conduct of the people's business, there is a public interest in disclosure. This conclusion is based upon the legislative declaration underlying the Public Records Act that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." With respect to the public interest in nondisclosure, the courts have said that when analyzing the exemption for drafts, that interest is limited to fostering robust agency debate. (*Citizens for a Better Environment v. Department of Food & Agriculture, supra,* 171 Cal.App.3d at p. 713 [drafts were not discarded in the ordinary course of business; factual material was therefore disclosed, but opinions on policy matters were redacted].)

2. <u>Pending Litigation</u> (Gov. Code, § 6254, subd. (b).)

"Records pertaining to pending litigation to which the [County] 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." (Gov. Code, § 6254, subd. (b).)

- "'[T]he construction we give to "pending litigation," which focuses on the purpose of the document, serves to protect documents created by a public entity for its own use in anticipation of litigation, which documents it reasonably has an interest in keeping to itself until litigation is finalized. . . .'" (*County of Los Angeles v. Superior Court* (2000) 82 Cal.App.4th 819, 832, citing *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414, 1421-1422.)

- If documents were not prepared for use in litigation, then a potential litigant may obtain them by means of a public records request, rather than filing a lawsuit and instituting formal discovery. (*Fairley v. Superior Court, supra,* 66 Cal.App.4th 1414.)

- Records generated in the ordinary course of a public agency's business which may be relevant in future litigation to which the agency might be a party are not exempt from disclosure under this subdivision. (71 Ops.Cal.Atty.Gen. 235 (1988); *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1418 [report of internal investigation prepared before claim filed not covered by pending litigation exemption].)

- Claim forms filed pursuant to the Government Tort Claims Act as a prerequisite to suit against a public entity do not come within this exemption. (*Poway Unified School Dist. v. Superior Court* (1998) 62 Cal.App.4th 1496.)

- Litigation communications between public entity attorneys and opposing counsel or opposing parties that are intended to be confidential need not be disclosed. Of course, if the opposing counsel or party elects to disclose, she or he can do so. (*Board of Trustees of California State University v. Superior Court* (2005) 132 Cal.App.4th 889.)

3. <u>Personnel Files</u> (Gov. Code, § 6254, subd. (c).)

This exemption applies to "[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." (Gov. Code, § 6254, subd. (c).)

- The exemption does not apply to payroll records that disclose the gross salaries of public employees, unless specific circumstances can be shown that the public interest in nondisclosure outweighs the interest in disclosure. (*International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319.)

- This exemption has been applied to personal performance goals where they were included in the personnel file of a school district superintendent. (*Versaci v. Superior Court* (2005) 127 Cal.App.4th 805, 818 ("*Versaci*").) The *Versaci* court sets forth a three-part test for the personnel and medical file exemption: First, the court must determine whether the records sought constitute a personnel file, a medical file or similar file. Second, if so, the court must then determine whether disclosure would compromise substantial privacy interests. (This step would presumably involve the analysis of privacy interests set forth in *International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court, supra,* 42 Cal.4th 319.) Third, the court must determine whether the potential harm to the privacy interests outweighs the public interest in disclosure.

- This exemption does not apply to such portions of a professional employee's personnel file as are necessary to disclose her professional qualifications, such as education, training, experience, awards, previous positions and publications. (*Eskaton Monterey Hospital v. Myers* (1982) 134 Cal.App.3d 788, 794.)

- Medical records filed to support a claim against a county, where a settlement was reached, are not exempt under this subdivision. (*Register Div. of Freedom Newspapers, Inc. v. County of Orange, supra,* 158 Cal.App.3d 893.)

- An employment contract between a local agency and a public official or employee is a public record not subject to this exemption. (Gov. Code, § 6254.8.)

- Records showing the amounts and reasons for performance bonuses given to city executives were not exempt from disclosure under this subdivision. (68 Ops.Cal.Atty.Gen. 73 (1985).)

- Payroll records of nongovernmental employees received by California Housing Finance Agency for purposes of assuring compliance with law on prevailing wages are private and not subject to disclosure. (64 Ops.Cal.Atty.Gen. 575, 582 (1981).)

- The State Treasurer's records specifying the owners of state registered bonds were subject to disclosure. (62 Ops.Cal.Atty.Gen. 436, 439 (1979).)

- The names of and amounts received by county retirees contained in county payroll records were subject to disclosure. (60 Ops.Cal.Atty.Gen. 110, 113 (1977).)

- This subdivision preserves the confidentiality of only a limited portion of the material found in a personnel file. As the information bears more remotely on the question of qualifications or performance, and by its personal nature, becomes more likely to be regarded as intrusive or embarrassing by its disclosure, the probability of its confidential nature increases. (53 Ops.Cal.Atty.Gen. 136 (1970).)

4. <u>Confidential Utility Systems Data</u> (Gov. Code, § 6254, subd. (e).)

This exemption covers: "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." (Gov. Code, § 6254, subd. (e).)

5. <u>Records of Complaint and Investigatory Files</u> (Gov. Code, § 6254, subd. (f).)

Government Code section 6254, subdivision (f) is a complex, and somewhat convoluted, exemption. In summary, it exempts from disclosure the following:

- Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of a local police agency. (Gov. Code, § 6254, subd. (f); see also, *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440.)

- Any investigatory or security files compiled by any local police agency. (Gov. Code, § 6254, subd. (f).)

- Any investigatory or security files compiled by a local agency for correctional, law enforcement, or licensing purposes. (Gov. Code, § 6254, subd. (f).) A government agency cannot exempt a document from disclosure by simply creating something called an "investigatory file" and putting the document in it – it must be a bona fide investigatory file.

Government Code section 6254, subdivision (f) also contains various *exceptions to exemptions* that require the disclosure of certain information to certain persons. Its provisions should be carefully reviewed in connection with a CPRA request that involves this type of material.

- Specific, listed information from records of an incident involving injury, damage or other loss must be disclosed to the victim, an insurance carrier and certain others. This exception does not require the disclosure of that portion of those investigative files that reflect the analysis or conclusions of the investigating officer. (Gov. Code, § 6254, subd. (f).)

Other records required to be disclosed include:

- Specific, listed information concerning each arrest made by the agency. (Gov. Code, § 6254, subd. (f)(1).)

- Specific, listed information concerning all complaints or requests for assistance received by the agency. (Gov. Code, § 6254, subd. (f)(2).)

- The current address of every individual arrested and the current address of the victim of a crime where the request is made for a scholarly, journalistic, political, or governmental purpose, or the request is made by a licensed private investigator for investigation purposes. (Gov. Code, § 6254, subd. (f)(3).)

- The information in the exceptions described above in Government Code section 6254, subdivision (f)(1), (2) and (3), need not be disclosed if disclosure would endanger the safety of persons involved in an investigation or would endanger the successful completion of the same or a related investigation. (Gov. Code, § 6254, subd. (f).)

6. <u>Test Questions, Scoring Keys</u> (Gov. Code, § 6254, subd. (g).)

This exemption applies to "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." (Gov. Code, § 6254, subd. (g).)

7. <u>Certain Real Estate Appraisals</u> (Gov. Code, § 6254, subd. (h).)

This exemption covers "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." (Gov. Code, § 6254, subd. (h).)

8. <u>Taxpayer Information Received in Confidence</u> (Gov. Code, § 6254, subd. (i).)

Information required from a taxpayer in connection with the collection of local taxes that is received in confidence if disclosure of the information to other persons would result in an unfair competitive disadvantage to the person supplying the information.

- Records in assessor's office relating to claim of exemption from property taxes filed by church were open to public inspection. (***Gallagher v. Boller, supra,*** 231 Cal.App.2d 482.)

- Claims for senior citizens' exemptions from assessment of a parcel tax levied by a school district are subject to inspection by members of the public. (81 Ops.Cal.Atty.Gen. 383 (1998).)

9. <u>Library Circulation Records</u> (Gov. Code, § 6254, subd. (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." (Gov. Code, § 6254, subd. (j).)

10. <u>Disclosure Prohibited by Federal or State Law</u> (Gov. Code, § 6254, subd. (k).)

This subdivision exempts records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including the privileges found in the California Evidence Code. A list of California laws that may provide exemptions is found in Government Code sections 6275 through 6276.48. Some are discussed below.

a. Confidentiality Requirements

Federal or state confidentiality provisions exempt many records from disclosure. One of the more frequent applications of this section is to assert "attorney-client privilege" (Evid. Code, § 950 et seq; Gov. Code, § 6276.04) and "attorney work product" (Code Civ. Proc., § 2018.010 et seq.; Gov. Code, § 6276.04) as exemptions to disclosure. Peace officer personnel records are confidential and may only be disclosed pursuant to certain discovery processes. (Evid. Code, §§ 1043-1047; Pen. Code, §§ 832.5, 832.7.) The Health Care Agency has several types of records that may be confidential and privileged under the Health Insurance Portability and Accountability Act and the California Medical Confidentiality Act. (See Civ. Code, § 56.10 et seq.) The Behavioral Health Department has several types of records that are confidential and privileged. (See Welf. & Inst. Code, § 5328; Evid. Code, §§ 1010 et seq., 1040.) The Human Services Agency also has records that are confidential and privileged. (See Welf. & Inst. Code, § 10850; Evid. Code, § 1040.)

An exhaustive review of all federal and state laws that provide that certain records are confidential is beyond the scope of this Guide. Each department or agency should familiarize itself with the confidentiality provisions that apply to it and its services and should consult with County Counsel if assistance is needed.

b. Trade Secrets/Proprietary Information

Many permit applicants, bidders, proposers and others file with the County business records in support of their requests. They may assert their records contain proprietary information or trade secrets. Evidence Code section 1060 et seq. provides a privilege for trade secrets which may exempt information from disclosure. (See Gov. Code, § 6276.44.) This can be, however, a difficult privilege for a claimant to establish. (See *Uribe v. Howie* (1971) 19 Cal.App.3d 194 [pesticide applicators' spray reports were not exempt from public disclosure].) There is no similar statutory exemption for mere proprietary information. Any claim of trade secret protection should be made at the time the records are provided to the County. If such a claim is made and the records are thereafter sought in a public records request, the department holding the records should consult with County Counsel before responding to the request.

11. Personal Financial Data for Licensing Purposes (Gov. Code, § 6254, subd. (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." (Gov. Code, § 6254, subd. (n).)

Financial data supplied to a county by a company under contract to perform a service to the county in order to justify a fee increase was not exempt under this subdivision. (*San Gabriel Tribune v. Superior Court, supra,* 143 Cal.App.3d at p. 779.) Assurances of confidentiality by a public agency are insufficient in themselves to justify withholding pertinent public information from the public. (*Id.* at p. 775; cf. *Johnson v. Winter, supra,* 127 Cal.App.3d 435.) Note that financial data submitted in response to a request for proposal may be exempt from disclosure under the "catchall" exemption of Government Code section 6255. (*Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065.)

l2. **Financial Data Contained in Applications for Financing under Division 27 (Commencing with Section 44500) of the Health and Safety Code** (Gov. Code, § 6254, subd. (o).)

13. **Records Showing Deliberative Processes and Strategies Related to Specific Employee Relations Activities** (Gov. Code, § 6254, subd. (p).)

14. **Special Negotiator's Deliberative Processes** (Gov. Code, § 6254, subd. (q).)

Records that reveal special negotiator's deliberative processes regarding negotiations with providers of health care services may be exempt. This is a lengthy, complicated section that must be read in full.

15. **Records of Native American Graves** (Gov. Code, § 6254, subd. (r).)

16. **Final Hospital Accreditation Report per Health and Safety Code Section 1282** (Gov. Code, § 6254, subd. (s).)

17. **Local Hospital District Insurance Contracts for Alternative Rates** (Gov. Code, § 6254, subd. (t).)

18. **Information in Concealed Weapon Permit Applications** (Gov. Code, § 6254, subd. (u).)

Information on applications that shows vulnerability to attack or that concerns the applicant's medical or psychological history of the applicant or family, e.g., home addresses and telephone numbers of peace officers, judges, court commissioners and magistrates are exempt.

19. **Records of the Managed Risk Medical Insurance Board That Reveal the Deliberative Processes in Negotiations with Health Plans Regarding Insurance Code Section 12695 Et Seq. and Insurance Code Section 12700 Et Seq.** (Gov. Code, § 6254, subd. (v).)

20. **Records of the Managed Risk Medical Insurance Board That Reveal the Deliberative Processes in Negotiations with Health Plans Regarding Insurance Code Section 10700 Et Seq.** (Gov. Code, § 6254, subd. (w).)

21. **Financial Data in Applications for Registration as a Service Provider with California Department of Consumer Affairs** (Gov. Code, § 6254, subd. (x).)

22. **Records of the Managed Risk Medical Insurance Board Reflecting Deliberative Processes of Negotiators Regarding Insurance Code Section 12693 Et Seq.** (Gov. Code, § 6254, subd. (y).)

23. **Documents 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** (Gov. Code, § 6254, subd. (aa).)

24. **Other Specific Exemptions**

Government Code sections 6275 though 6276.48 contain a listing of approximately 500 other statutes which may provide an exemption from disclosure. The list is probably not inclusive of all possible statutory exemptions. The listing of a statute does not itself create an exemption from disclosure. A few of the many other exemptions include:

a. Initiative, Referendum and Recall Petitions

Initiative, referendum, and recall petitions and all memoranda prepared by the Registrar of Voters in the examination of the petitions indicating which registered voters have signed particular petitions. (Gov. Code, § 6253.5.)

b. Information on Voter Registration Cards

The home street address (not including the city or post office address), home 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. (Gov. Code, § 6254.4, subds. (a), (b).)

The California driver's license number, California identification card number, social security number, or any other unique identifier used by the state for purposes of voter identification shown on a voter registration card. (Gov. Code, § 6254.4, subd. (c).)

c. Requests for Bilingual Ballot Materials

Requests for bilingual ballots or ballot pamphlets are exempt. (Gov. Code, § 6253.6.)

d. Posting Home Addresses and Telephone Numbers on Internet

The home address and home telephone number of elected or appointed County officials may not be posted on the Internet without first obtaining the official's written permission. (Gov. Code, § 6254.21, subd. (a).)

B. Government Code Section 6255: "Public Interest" or "Catchall" Exemption

Government Code section 6255, subdivision (a) provides as follows:

> "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." (Italics added.)

1. Burden Is on the Public Agency

If a public entity determines, after balancing the public interests, that a record should not be disclosed, it should be prepared to be able to prove the rationale for this conclusion in court, if challenged. *The burden* of demonstrating that the public interest in nondisclosure clearly outweighs the public interest in disclosure *is upon the public entity* claiming the right to withhold the information. (*Braun v. City of Taft, supra,* 154 Cal.App.3d at p. 345.)

If the records sought pertain to the conduct of the people's business, there is a public interest in disclosure. The weight of the interest in disclosure is proportionate to the gravity of the governmental tasks sought to be illuminated and the directness with

which the disclosure will serve to illuminate them. (*Citizens for a Better Environment v. Department of Food & Agriculture, supra,* 171 Cal.App.3d at p. 715.)

2. Legitimate Interests in Nondisclosure Inferred from Explicit Exemptions

For purposes of the balancing of interests, the nature of interests which might legitimately be served by not making a record public may be inferred, in part, from the specific exemptions contained in Government Code section 6254; however, those interests are not exclusive. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.)

3. Decisions

Some decisions balancing the public interest under Government Code section 6255 include:

- Names, home addresses and the application forms of persons who obtained concealed weapons permits must be disclosed. (*CBS, Inc. v. Block, supra,* 42 Cal.3d at pp. 656-657.)

- County case settlement documents ordered disclosed. (*Register Div. of Freedom Newspapers, Inc. v. County of Orange, supra,* 158 Cal.App.3d at pp. 908-910.)

- Some employment records of city employee ordered disclosed. (*Braun v. City of Taft, supra,* 154 Cal.App.3d at pp. 345-346.)

- City contractor's financial data ordered disclosed. (*San Gabriel Tribune v. Superior Court, supra,* 143 Cal.App.3d at p. 778.)

- Medi-Cal audit manual withheld. (*Eskaton Monterey Hospital v. Myers, supra,* 134 Cal.App.3d at pp. 792-794.)

- Employee applicants' personnel data given with assurance of confidentiality withheld. (*Johnson v. Winter, supra,* 127 Cal.App.3d at pp. 438-439.)

- Prison building plans and security information withheld. (*Procunier v. Superior Court* (1973) 35 Cal.App.3d 211.)

- The State Board of Corrections is not required to disclose to the public plans and specifications of local detention facilities. (73 Ops.Cal.Atty.Gen. 236 (1990).)

- Pesticide applicator's spray reports ordered disclosed. (*Uribe v. Howie, supra,* 19 Cal.App.3d at pp. 209-211.)

- Claims for senior citizens' exemptions from assessment of a parcel tax levied by school district not exempt from disclosure. (81 Ops.Cal.Atty.Gen. 383, *supra*.)

- Names, addresses and telephone numbers of persons filing noise complaints concerning the operation of a city airport are subject to public disclosure unless the city can establish that the public interest served by not making them public outweighs the public interest served by disclosure. (78 Ops.Cal.Atty.Gen. 103 (1995).) This opinion was implicitly called into question by *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1022.

- Salaries of public employees are not exempt from disclosure. (*International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court, supra,* 42 Cal.4th 319).

- Proposals of bidders in response to an RFP need not be disclosed until negotiations have been concluded. (*Michaelis, Montanari & Johnson v. Superior Court, supra,* 38 Cal.4th 1065).

4. Home Addresses and Telephone Numbers of Public Employees

Under Government Code section 6255, it is probable that the home addresses and home telephone numbers of County officers and employees would not have to be disclosed pursuant to the public interest exemption. While it is in the public interest to know who works for a public agency and how to contact them at the public agency, it does not appear that disclosure of their home addresses and home telephone numbers would serve the public interest.

5. Copyrighted Material

A public agency may refuse to honor a Public Records Act request for a copy of copyrighted material, where the reproduction of such material would constitute a copyright infringement or where it would place an unreasonable burden on the public agency to provide such a copy in compliance with copyright restrictions. (64 Ops.Cal.Atty.Gen. 186, 191-192 (1981).) Under certain limited circumstances, reproduction of copyrighted material may fall within the "fair use" exception to copyright restrictions.

Proposals for lease of a city-owned property were exempt from disclosure during the period negotiations were continuing. (*Michaelis, Montanari & Johnson v. Superior Court, supra,* 38 Cal.4th 1065.)

C. Deliberative Process Privilege

The deliberative process privilege allows nondisclosure if 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. (*Times Mirror Co. v. Superior Court, supra,* 53 Cal.3d 1325.) Policy bases for the deliberative process privilege include:

- It protects creative debate and candid consideration of alternatives within an agency, and, thereby, improves the quality of agency policy decisions.

- 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.

- 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. (*California First Amendment Coalition v. Superior Court, supra,* 67 Cal.App.4th at p. 170.)

Not every disclosure which hampers the deliberative process implicates the deliberative process privilege; *only if the public interest in nondisclosure clearly outweighs the public interest in disclosure does the deliberative process privilege spring into existence*. (*California First Amendment Coalition v. Superior Court, supra,* 67 Cal.App.4th at p. 172.)

X. COURT PROCEEDINGS TO ENFORCE PUBLIC RECORDS ACT RIGHTS

A person may institute legal proceedings in court to enforce his or her right to inspect or to receive a copy of any public records. (Gov. Code, § 6258.)

If the person prevails in the litigation, the court is required to order the public agency to pay court costs and reasonable *attorney fees*. (Gov. Code, § 6259, subd. (d).) *Award of costs and attorney fees is mandatory* where plaintiff prevails in litigation under the CPRA. Plaintiff "prevails" if litigation motivated defendant to release the requested documents. (*Motorola Communication & Electronics, Inc. v. Department of General Services* (1997) 55 Cal.App.4th 1340.) Attorney fees may also be awarded to a person requesting records where the public agency, as plaintiff, unsuccessfully seeks a protective

order from the court. (*Fontana Police Dept. v. Villegas-Banuelos* (1999) 74 Cal.App.4th 1249.)

On the other hand, if the plaintiff's case is clearly frivolous, the court is required to award court costs and reasonable attorney fees to the public agency. (Gov. Code, § 6259, subd. (d).)

The CPRA does not authorize a public agency to initiate an action after denying a request for records in order to determine its obligation to disclose documents to a member of the public. (*Filarsky v. Superior Court* (2002) 28 Cal.4th 419; see also, *City of Santa Rosa v. Press Democrat* (1986) 187 Cal.App.3d 1315.)

XI. CONCLUSION

Although this Guide provides a general framework of the CPRA and how it is applied, some situations may be complex and there may be specific rules applying to a specific request. We recommend that you consult with County Counsel if you have any questions regarding responding to a public records request or the application of an exemption. If you have any questions regarding this Guide, please do not hesitate to ask.