

Public Records Act Implementation

Summary

The Ventura County 2003-2004 Grand Jury received a citizen complaint that officials of a city within the county were not responsive to requests for records and were otherwise being obstructionist in their dealings. Investigation revealed that the officials were not acting improperly under the law or city policy. However, because of the importance the Grand Jury placed on a citizen's ability to gain access to public records and that ability's profound effect on sound government, the Grand Jury instituted a general survey on the issue of all government offices within the county. All respondents were cooperative and forthcoming. This report is the result of that survey.

Background

The citizen complained that city officials never responded, responded late or otherwise withheld available records from the complainant, which, if revealed, would demonstrate wrongdoing in city operations. The Grand Jury found after investigating, that either the records sought simply did not exist or were in a format not agreeable to the complainant.

The California legislature passed sweeping legislation to cover requests for records maintained by state and local government offices patterned after the Freedom of Information Act ("FOIA") for records maintained by the federal government. Under these laws, records that exist in the respective government offices are public records and must be released for review and copying upon request by anyone unless certain narrowly-defined exceptions apply to the records in question. These exceptions reflect a balancing of the citizen's and government's interests in fostering free and open government operations against certain government and private interests in keeping the records confidential. These might include ongoing police investigations, certain valuable proprietary and trade secret information in the hands of the government, personal information protected by privacy laws, candid deliberation discussions and advice (which are thought to produce better government policy and decisions).

This California legislation is popularly know as the "California Public Records Act," and it can be found beginning at section 6250 of the California Government Code. It requires that all records, unless they fall within one of the narrow exceptions in the statute, be made available for viewing and copying upon request. The statute expressly states that it applies to all levels of government within the state, except the courts and the state legislature.

Methodology

The Grand Jury designed a seven-page questionnaire and sent it to 30 Ventura County government offices, to all 10 cities located in the county and to 21 special districts located in or under the control of the county. Recipients were asked to answer each question and attach explanatory or supplemental material that might assist the Grand Jury in understanding the responses. All county offices, cities, districts and commissions responded except the seven districts listed in Attachment 1.

A few of the districts that responded and the County Treasurer-Tax Collector elected not to complete the questionnaire but submitted a letter instead, explaining they had no history of ever receiving a request for records or a similar situation, which prevented meaningful answers to the questionnaire.

The Ventura County Health Care Agency and its several sub-agencies and departments did not submit questionnaire responses. In addition, the Ventura County Human Services Agency was able to provide only a few meaningful responses.

The Grand Jury organized the responses into a table in order to discover whether patterns in implementation existed among respondents and to better organize the data for analysis and reporting.

No “field work,” interviewing, site visits or other testing was done in support of this report, which is solely based on the responses submitted.

Findings

General

- F-01.** California Government Code sections 6250 and 6251 contain a California Legislative declaration that, “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.” This series of statutory sections is known as the California Public Records Act (“Act”).
- F-02.** The Act applies to virtually every state office and officer except the courts and the state legislature. In addition, it applies to all “local agencies” including cities, counties, all districts, and other local agencies of every type and description. (Gov. Code, §6252)
- F-03.** The Act covers every writing in existence that is prepared, retained, owned or used by any state or local agency, regardless of physical form or media, containing any information, form of communication or representation, regardless of word, picture, sound, symbol, drawing or method of storage or depiction. (Gov. Code, §6252)
- F-04.** The Act requires that all non-exempt records be open to public inspection during office hours. It gives every person the right to inspect and copy such records after deletion of exempt portions, if any. Such records will be made

available “promptly.” Only the direct costs of duplication may be charged unless a statutory fee specific to that type of record applies. (Gov. Code, §6253)

- F-05.** The Act requires that the decision whether to honor the request for records be made within 10 days and communicated to the requestor promptly. If more time is needed to make the decision, the head of the agency or his designee may extend the 10-day limit by an additional 14 days by written notice communicated to the requestor. The notice shall give the reason for the extension and a date for announcement of the determination, which must fall within the 14 day extension. Such extensions are appropriate in situations such as extended record searches, examination of voluminous records, intra- and inter-government consultation and the need to generate programming language to extract requested information from an existing data base. (Gov. Code, §6253)
- F-06.** If a decision is made to deny access to all or part of the records requested, it must be communicated to the requestor in writing, identify by name and title the person(s) responsible for the denial, and state specific statutory justification for the determination that the denied record is exempt from disclosure. (Gov. Code, §§6253, 6255)
- F-07.** The Act requires that the requested agency do all the following to assist the requestor: assist in identifying records that are responsive to the request or to the purpose of the request, describe the information technology and physical location of the requested records and provide suggestions for overcoming practical bases for denying the request. It can avoid these requirements by providing the records, providing an index of its records or determining that the records are not disclosable under the Act. (Gov. Code, §6253.1)
- F-08.** Certain types of records such as public petitions and associated documents or requests for bilingual ballots fall outside the definition of public records and are therefore not disclosable. (Gov. Code §§6253.5, 6253.6)
- F-09.** The Act generally exempts several types of documents from disclosure such as: preliminary drafts and notes that are not retained in the normal course of business; records relating to pending litigation; personnel; medical and similar files which involve an unwarranted invasion of personal privacy; proprietary commercial information and other commercial information obtained in confidence; certain police; intelligence and law enforcement records; licensing test questions and associated documents; certain real estate information; library borrowing records; certain records maintained by the governor; and any record that reveals a state agency’s deliberative processes; impressions, evaluations, or recommendations. A detailed list is contained in the statute. (Gov. Code, §6254)
- F-10.** The purpose for the record request is irrelevant to any decision whether to release (Gov. Code, §6257.5) However, should the purpose be volunteered, knowing the purpose may assist in record identification.
- F-11.** The sole statutory remedy for an unjustified withholding of public records is a court order to release the records and pay the requestor’s reasonable attorney

fees and court costs. However, if the court finds the requestor's lawsuit clearly frivolous, it may award court costs and reasonable attorney fees to the government agency.

- F-12. Absent the existence of an administrative appeal procedure within the agency or a petition to the city, district, department, directorate or other government agency head or council or board, an unsatisfied requestor is left with filing a law suit for the remedy recited in F-11, above.

Districts

- F-13. Generally speaking, the 21 districts queried, as a group, were poor responders to the questionnaire. Follow-up phone calls disclosed that many of the smaller districts had literally no staff or one clerk to run the office for the board. The vast majority of the districts have little or no experience with public records requests. They report not receiving a request during the specified time period or maybe having received one, once, several years ago.
- F-14. Only three districts (Camarillo Health Care, Ojai Valley Sanitary, and Ventura River Water) maintain logs or request files. Of these, only one had request activity in the past year, and that was for one request, which was granted.
- F-15. Three districts, the Oxnard Harbor District/Port of Hueneme, the Ventura Port District and the Casitas Municipal Water District reported minimally significant request volume (10 to 30 requests each per year). None resulted in denial action.
- F-16. Only four of the 14 reporting districts have written procedures to handle public record requests. Although 11 districts require that the request be in writing, only one has developed a standard form. No district reported exceeding the 10-day deadline to respond to the document request. The vast majority of requests to districts resulted in full release of requested documents. One request resulted in a partial denial, which was not pursued further.
- F-17. Three districts report charging a minimum fee, a search fee or a processing fee. This would seem to be not in compliance with the Act, which provides only for the direct cost of copying or for a statutory fee. The remainder reported charging no fees (or waived fees) or a copying fee ranging up to \$0.50 per page.
- F-18. The Camarillo Health Care District, Oxnard Harbor/Port of Hueneme District, United Water Conservation District and the Ventura County Resource Conservation District report voluntarily making available to the requestor internal administrative appeal procedures in case of initial denials of record requests. These are generally appeals to the board concerned.

Cities

- F-19. Five of the 10 cities require a written request and four of those have developed a standard form. Only six of the 10 cities report maintaining a request log or files. This results in the inability to report discrete, accurate statistics. In some cases, numbers reported by cities are estimates based on city employee recollection.

- F-20.** Oxnard reports receiving the most requests (250) in the most recent annual reporting period, followed by Ventura (227), Ojai at a distant third (156), and Camarillo (105). The remainder of the cities report receiving 15 or less requests annually. Most of the requests result in full releases. Among all cities during the last annual period, 12 requests resulted in partial denials and seven resulted in full denials. Reasons given for these denials included, “non-existent records,” “attorney client privilege,” “privacy” and other statutory grounds.
- F-21.** Six cities report formal designation of a proponent for proper implementation of the Act. Five of these appointed the city clerk. Camarillo, Santa Paula, Simi Valley and Thousand Oaks did not report formal designation.
- F-22.** All cities report initially answering record requests within the statutory 10 days. Three cities report taking up to 24 days to publish a final response. Reasons given for delay include: vague request preventing identification of records sought, large volume of documents requested, no contact information or other administrative reasons.
- F-23.** Seven cities report that they help the requestor succeed by suggesting rewording to identify possible matches. Fillmore, Moorpark and Port Hueneme did not respond to that question.
- F-24.** Most cities report that all requests are treated as requests under the Act even though the request does not mention the Act. Fillmore did not respond to that question.
- F-25.** Eight cities report they do not ask the purpose of the request.
- F-26.** Nine cities report charging only copy fees. However, several of these nine cities report charging a “first page” or “first copy” fee, which is typically up to 10 times higher than subsequent page or copy charges. This appears to be a “minimum fee,” which, in turn, appears to violate the statutory language to charge the direct cost of copying only. The tenth city reports the possibility of charging a search fee calculated on the amount of time consumed in searching for and locating a document and the pay grade of the employee concerned. This appears to be noncompliant with the statutory language to charge only the direct cost of copying. None of these instances was identified as “statutory fees.”
- F-27.** All cities issue denials in writing either signed by or after review by the city attorney. Only Moorpark reports offering an administrative appeal of a denial action.

County Offices

- F-28.** All county agencies under the control of the Ventura County Health Care Agency, i.e., the Ventura County Behavioral Health Department, Ventura County Medical Center, the Ventura County Medical Examiner’s Office, and the Ventura County Public Health Department, as well as the Health Care Agency itself, with a combined payroll of 2,100 employees and combined annual budget of \$253,663,000, report that they have maintained no records or statistics which would allow them to meaningfully respond to this

questionnaire. Despite a second effort to confidently estimate public record request activity at these agencies, done in response to the Grand Jury's follow-on request, no useful estimates could be generated. Accordingly, these agencies are excluded from further consideration in the Findings.

- F-29.** The Human Services Agency, with over 1,000 employees and an annual budget in excess of \$160,000,000, reports that they have maintained no records or statistics that would allow them to meaningfully respond to this questionnaire. In addition, the only guidance document cited in their response is a portion of the Welfare and Institutions Code relating to Juvenile Court records. (Welfare and Inst. Code, §§ 825 through 830.1)
- F-30.** Although the Sheriff's Department, with over 1,340 regular employees and an annual budget of \$165,000,000, reports processing over "several thousand" public record requests annually, it could not provide statistics the Grand Jury requested relating to number of requests, number of denials, number of requests satisfied in a timely manner, etc.
- F-31.** A review of the collection of responses from county agencies and departments discloses that there is no common policy or procedure document extant in county government. Except for a series of county counsel legal memoranda generated on various occasions over the years (which exists in collections of varying composition among the county offices), there is no central policy or guidance document which addresses implementation of the Act county-wide. Each department or agency is allowed to develop and publish its own document for the guidance of its employees. These few lower level policy or procedure documents vary in sophistication and coverage.
- F-32.** There was no consistency among several county office respondents in identifying or submitting to the Grand Jury guidance documents from higher organizational levels including legal memoranda on which they may be relying. The Fire Protection District reported that it was charging "search" fees upon auditor-controller advice that full cost recovery was mandatory. Most other county office respondents were charging variations of the Board of Supervisors approved \$0.50 per page copying charge. In some cases these latter respondents reported charging other fees as well.
- F-33.** Some county offices and agencies report that they release or withhold some records in their control under statutes other than the Public Records Act (e.g., Welfare and Institutions Code, Penal Code, Probate Code, Elections Code, Health and Safety Code, Revenue and Taxation Code, Education Code). These agencies might include the county clerk and recorder, the county tax collector, the district attorney, the public defender, the Human Services Agency. However, they report that requests for any remaining records in their control would be processed under the Act.
- F-34.** Seven of 28 reporting county offices report that they have not developed an internal procedure for processing record requests under the Act. These offices typically report a history of a low volume of requests under the Act and/or high volumes of requests handled under provisions of other codes. They also report having developed comprehensive procedures for those latter requests. The vast majority of the remaining 21 reporting county offices have simply adopted

their collection of county counsel memoranda as their “internal procedure” document.

- F-35.** Only five county offices report making their Public Records Act procedure available to the public: agricultural department, The air pollution control district, animal regulation, county clerk, and resource management-environmental health. Other county offices follow “internal procedure” documents that are collections of county counsel memoranda, not intended for the public.
- F-36.** The agriculture department, Air Pollution control district, fire protection district, the sheriff’s department and the resource management division-environmental health report use of a standard request form developed within their agency.
- F-37.** Fully 16 of 28 reporting county offices report maintaining neither a public record request log nor file.
- F-38.** The overwhelming majority of requests received at county offices are reported to result in complete release of documents. Reasons reported for full or partial denial include: request too broad, failure to pay fee, attorney client privilege, under investigation and other recognizable statutory grounds. The sheriff’s department reported one denial on the grounds of “ineligible (requestor).” One agency reported “not readily available” as a ground for denial.
- F-39.** Eight of the 28 county offices reported not having designated a proponent officer or manager to insure proper implementation of the Act.
- F-40.** All county offices reported responding to record requests within the statutory ten days. However, some reported taking as much as 30 days to complete final action on the request.
- F-41.** As of the date of each questionnaire response, there were reported to be 19 open requests countywide.
- F-42.** Reasons given for any delays in processing these requests included vague request, low priority, voluminous, and personnel shortage.
- F-43.** Almost all reporting county offices reported good “counterside” manner in assisting the requestor’s wording of the request. They also reported handling document requests as being under the Public Records Act whether or not the request mentioned the Act.
- F-44.** The vast majority of county offices reported charging the Board of Supervisors approved copying fee of \$0.50 per page. However, several county offices, including those who charged the approved fee, imposed other charges as well. These charges were labeled: “processing fee,” “actual cost of outside duplication services,” “minimum fee,” “search fee,” “clerical time,” “flat rate per document,” “cost of compiling,” “staff time,” “evaluation fee,” “review fee,” and “contract hourly rate.” Except for one response, “flat rate per document” which expressly stated that the flat rate had been approved by a 1991 Board of Supervisors resolution (copy provided to the Grand Jury), and except for fees which were identified to specific statutory provisions elsewhere, no legal basis

was provided for these latter fees, which appeared to be neither “direct costs of copying,” nor “statutory fees.”

- F-45. One county office reported that it charged 7.25 percent sales tax on its per page copying charge. It also provided a copy of its web page which contained the tax.
- F-46. Two county offices reported issuing only oral denials of requests unless the requestor requested a denial in writing.
- F-47. Eleven county offices report consulting with legal counsel in making or reviewing a decision to deny release of records before notifying the requestor. None of the remaining county offices, some sizeable, report consultation with counsel before issuing denial letters.

Conclusions

- C-01. The California Public Records Act requires that all county, city and district government offices located within Ventura County respond to requests for records from the public in accordance with the Act. The Act is based on a legislative policy of open government. The Act reaches every writing, regardless of form, media or method of storage. (F-01, F-02, F-03, F-07, F-10)
- C-02. The Act provides that all requests for records be honored “promptly,” and that the requestor receive the documents or an acknowledgement stating when documents will or will not be released, within a capped time period. (F-04, F-05, F-06)
- C-03. The Act allows only for collection of fees for the direct cost of copying and “statutory fees.” Minimum, search, review, contractor cost pass-through and fees based on time are not provided for. (F-01, F-04)
- C-04. The only remedy provided under the Act for government’s failure to timely comply with the Act is initiation of a costly lawsuit by the requestor, whose sole remedy is release of the records and possible award of attorney fees and costs. (F-11, F-12)
- C-05. All agencies under the Ventura County Health Care agency, the Agency itself, the human services agency and the sheriff’s department are severely deficient in their ability to produce meaningful statistics or records that would demonstrate their compliance with the Act. (F-28, F-29, F-30).
- C-06. Several county offices are charging or calculating fees for requests under the Act, which appear to be other than “direct costs of copying” or “statutory fees.” Despite past attempts by county government officials to establish a statutory fee through Board of Supervisors resolution, which would better reimburse the total actual costs of responding to a request, except for the Sheriff’s Department’s flat rate, no other “statutory fee” has been established by the county. (F-44, F-45)
- C-07. No document provided to the Grand Jury justified the imposition of sales tax on a document copying fee. (F-45)

- C-08.** Conflicting guidance from differing sources exists among county offices regarding what is a proper fee chargeable for record requests under the Act. (F-32, F-44, F-45)
- C-09.** Some county offices erroneously believe that lack of staff is a legally sufficient reason to delay a request or even deny a request that otherwise should be granted under the Act. (F-38, F-42)
- C-10.** There is no county-wide policy which requires consultation with counsel (or any other single compliance official or office) before deciding to deny a request under the Act. (F-39, F-46, F-47)
- C-11.** There is no published county-wide policy which addresses the Act and which would require record keeping such that implementation of the Act could be assessed. Similarly, only a very few county offices have attempted to fill the policy void by writing their own policies, and their provisions are inconsistent. It is apparent that these lower level documents have received no review, review in different eras or by different offices. (F-31, F-32, F-34, F-35)
- C-12.** The absence of a county-wide policy or procedure document that addresses the Act has undermined proper implementation of the Act in the various county offices. (F-28 through F-32, F-34, F-37, F-38, F-39, F-42, F-44 through F-47).
- C-13.** Although the districts were the least informed and responsive to this inquiry, this is not seen as a matter of great concern, given the lack of public record requests experienced, low or non-existent staffing levels and the ability of the districts to react to any request that might arrive by immediately contacting dedicated counsel. (F-13 through F-18).
- C-14.** Responses submitted by the cities indicate overall satisfactory compliance with the Act. (F-19 through F-27).

Recommendations

- R-01.** The Board of Supervisors and the County Executive Officer should develop and publish a written county-wide policy regarding implementation of the Public Records Act, with particular emphasis on proper fee charging, timely responses to requests, record keeping for future audit, and proper grounds for denial.
- R-02.** The Board of Supervisors and the County Executive Officer should consider the development and publication of fee schedules by County resolution that are designed to recover the total cost of responding to Public Records Act requests that are practical and allowable as “statutory fees” under current law.
- R-03.** The Board of Supervisors and the County Executive Officer should schedule Public Records Act compliance as a periodic audit topic.
- R-04.** The mayor or city manager of each of the cities of Camarillo, Fillmore, Moorpark, Port Hueneme and Santa Paula should develop and publish, or review and update, a policy manual addressing implementation of the Public Records Act, with emphasis on proper fee charging, assistance in formulating the public record request, a requirement to maintain logs or files of requests

for compliance audit, counsel review of any proposal to deny a request, timely responses to the requestor, and availability of administrative appeal.

Responses

Recommendations	R-01	R-02	R-03	R-04
Responses Required From:				
County Board of Supervisors	X	X	X	
Auditor-Controller			X	
City Council, Camarillo				X
City Council, Fillmore				X
City Council, Moorpark				X
City Council, Port Hueneme				X
City Council, Santa Paula				X

Attachment 1: Districts Not Responding

1. Bell Canyon Community Services
2. Camrosa Water
3. Hidden Valley Water
4. Meiners Oaks Water
5. Ocean View Water
6. Russell Valley Water
7. Saticoy Sanitary