COMMUNITY-POLICE ENGAGEMENT COMMISSION

Agenda

Special Meeting
July 10, 2023, 2 p.m.

Council Chamber
1200 Carlsbad Village Dr.
Carlsbad, CA 92008
carlsbadca.gov

Welcome to the Community-Police Engagement Commission Meeting

We welcome your interest and involvement in the city's legislative process. This agenda includes information about topics coming before the Community-Police Engagement Commission and the action recommended by city staff. You can read about each topic in the staff reports, which are available on the city website.

How to watch

In Person

City Council Chamber
1200 Carlsbad Village Drive

Online

Watch the livestream at
carlsbadca.gov/watch

How to participate

If you would like to provide comments to the Commission, please:

- Fill out a speaker request form, located in the foyer.
- Submit the form to the Clerk before the item begins.
- When it's your turn, the Clerk will call your name and invite you to the podium.
- Speakers have three minutes, unless the presiding officer (usually the chair) changes that time.
- You may not give your time to another person, but can create a group. A group must select a single speaker as long as three other members of your group are present. All forms must be submitted to the City Clerk before the item begins and will only be accepted for items listed on the agenda (not for general public comment at the beginning of the meeting). Group representatives have 10 minutes unless that time is changed by the presiding officer or the Commission.

- **In writing:** Email comments to clerk@carlsbadca.gov. Comments received by noon the day of the meeting will be shared with the Commission prior to the meeting. When e-mailing comments, please identify in the subject line the agenda item to which your comments relate. All comments received will be included as part of the official record.

Reasonable accommodations

Reasonable Accommodations Persons with a disability may request an agenda packet in appropriate alternative formats as required by the Americans with Disabilities Act of 1990. Reasonable accommodations and auxiliary aids will be provided to effectively allow participation in the meeting. Please contact the City Manager's Office at 442-339-2821 (voice), 711 (free relay service for TTY users), 760-720-9461 (fax) or manager@carlsbadca.gov by noon on the Friday before the meeting to make arrangements. City staff will respond to requests by noon on Monday, the day of the meeting, and will seek to resolve requests before the start of the meeting in order to maximize accessibility.

CALL TO ORDER:

ROLL CALL:

PLEDGE OF ALLEGIANCE:

APPROVAL OF MINUTES: None.

PRESENTATIONS:
Staff and Commissioner introductions

DEPARTMENTAL REPORTS:

1. CHAIR AND VICE CHAIR SELECTION: Accept nominations from the floor and adopt resolutions appointing a Chair and Vice Chair for the Community-Police Engagement Commission for terms ending December 2024. (Staff contact: Sheila Cobian, City Manager Department)

   Recommended Action: Adopt resolutions appointing a Chair and Vice Chair.

PUBLIC COMMENT: *The Brown Act allows any member of the public to comment on items not on the agenda. Please treat others with courtesy, civility, and respect. Members of the public may participate in the meeting by submitting comments as provided on the front page of this agenda. The Commission will receive comments in the beginning of the meeting. In conformance with the Brown Act, no action can occur on these items.*

CONSENT CALENDAR: None.

PUBLIC HEARINGS: None.

DEPARTMENTAL REPORTS (continued):

2. RALPH M. BROWN ACT AND PUBLIC RECORDS ACT PRESENTATION: Receive a presentation regarding the Ralph M. Brown Act and Public Records Act. (Staff contact: Sheila Cobian, City Manager Department and Allegra Frost, City Attorney Department)

   Recommended Action: Receive the presentation.

3. OVERVIEW OF THE CARLSBAD POLICE DEPARTMENT: Receive an overview of the Carlsbad Police Department and provide feedback to staff regarding future Commission presentation topics. (Staff contact: Mickey Williams, Police Chief)

   Recommended Action: Receive the presentation and provide feedback to staff.

4. HOMELESSNESS ACTION PLAN PRESENTATION: Receive a presentation regarding the Homelessness Action Plan. (Staff contact: Chris Shilling and Jessica Klein, Housing & Homeless Services Department)

   Recommended Action: Receive the presentation.

5. APPROVAL OF THE COMMUNITY-POLICE ENGAGEMENT COMMISSION REGULAR MEETING SCHEDULE: Review and adopt a resolution approving the Community-Police Engagement Commission Regular Meeting Scheduled as proposed by staff. (Staff contact: Sheila Cobian, City Manager Department)

   Recommended Action: Adopt the resolution.

COMMISSION MEMBER COMMENTARY AND REQUESTS FOR CONSIDERATION OF MATTERS: *This portion of the agenda is for the Commission to make brief announcements, brief reports of their activities and requests for future agenda items.*

STAFF COMMENTS:

ADJOURNMENT:

Community-Police Engagement Commission

Staff Report

Meeting Date: July 10, 2023

To: Community-Police Engagement Commission

From: Sheila Cobian, Director of Legislative & Constituent Services

Staff Contact: Sheila Cobian, Director of Legislative & Constituent Services
sheila.cobian@carlsbadca.gov, 442-339-2917

Subject: Chair and Vice Chair Selection

District: All

Recommended Action

Accept nominations from the floor and adopt resolutions selecting a Chair and Vice Chair for the Community-Police Engagement Commission for terms ending December 2024.

Executive Summary/Explanation & Analysis

The Chair presides at all meetings of the Community-Police Engagement Commission. The Vice Chair serves in the place and stead of the Chair in the Chair's absence.

Fiscal Analysis

This action has no fiscal impact.

Environmental Evaluation

This action does not require environmental review because it does not constitute a project within the meaning of the California Environmental Quality Act under California Public Resources Code Section 21065 in that it has no potential to cause either a direct physical change or a reasonably foreseeable indirect physical change in the environment.

Exhibits

1. Community-Police Engagement Commission resolution appointing a Chair
2. Community-Police Engagement Commission resolution appointing a Vice Chair

RESOLUTION NO. _____

A RESOLUTION OF THE COMMUNITY-POLICE ENGAGEMENT COMMISSION OF THE CITY OF CARLSBAD, CALIFORNIA, APPOINTING A CHAIR TO PRESIDE AT ALL COMMUNITY-POLICE ENGAGEMENT COMMISSION MEETINGS

WHEREAS, the Community-Police Engagement Commission of the City of Carlsbad, California was established on December 13, 2022; and

WHEREAS, Carlsbad Municipal Code Section 2.15.080 requires the Commission to appoint one of its members as Chair to preside at all Commission meetings.

NOW, THEREFORE, BE IT RESOLVED by the Community-Police Engagement Commission of the City of Carlsbad, California, as follows:

1. That the above recitations are true and correct.
2. That the following Commissioner is appointed to serve as Chair of the Commission for a term ending December 2024:

_____

PASSED, APPROVED AND ADOPTED at a Special Meeting of the Community-Police Engagement Commission of the City of Carlsbad on the __ day of _____, 2023, by the following vote, to wit:

AYES:

NAYS:

ABSTAIN:

ABSENT:

_____
Chair

_____
FAVIOLA MEDINA, City Clerk Services Manager

RESOLUTION NO._____

A RESOLUTION OF THE COMMUNITY-POLICE ENGAGEMENT COMMISSION OF THE CITY OF CARLSBAD, CALIFORNIA, APPOINTING A VICE CHAIR TO PRESIDE AT COMMUNITY-POLICE ENGAGEMENT COMMISSION MEETINGS IN THE CHAIR'S ABSENCE

WHEREAS, the Community-Police Engagement Commission of the City of Carlsbad, California was established on December 13, 2022; and

WHEREAS, Carlsbad Municipal Code Section 2.15.080 requires the Commission to appoint one of its members as Vice Chair to preside at Commission meetings in the Chair's absence.

NOW, THEREFORE, BE IT RESOLVED by the Community-Police Engagement Commission of the City of Carlsbad, California, as follows:

1. That the above recitations are true and correct.
2. That the following Commissioner is appointed to serve as Vice Chair of the Commission for a term ending December 2024:

_____

PASSED, APPROVED AND ADOPTED at a Special Meeting of the Community-Police Engagement Commission of the City of Carlsbad on the __ day of _____, 2023, by the following vote, to wit:

AYES:

NAYS:

ABSTAIN:

ABSENT:

_____
Chair

_____
FAVIOLA MEDINA, City Clerk Services Manager

Community-Police Engagement Commission

Staff Report

Meeting Date: July 10, 2023

To: Community-Police Engagement Commission

From: Sheila Cobian, Director of Legislative & Constituent Services

Staff Contact: Sheila Cobian, Director of Legislative & Constituent Services
sheila.cobian@carlsbadca.gov, 442-339-2917

Allegra Frost, Assistant City Attorney
Allegra.frost@carlsbadca.gov, 442-339-2980

Subject: Ralph M. Brown Act and Public Records Act Presentation

District: All

Recommended Action

Receive a presentation regarding the Ralph M. Brown Act and Public Records Act.

Executive Summary

Staff will provide an overview of the Ralph M. Brown Act and Public Records Act. The presentation will include information relating to roles and responsibilities of staff members and commission members.

Fiscal Analysis

This action has no fiscal impact.

Environmental Evaluation

This action does not require environmental review because it does not constitute a project within the meaning of the California Environmental Quality Act under California Public Resources Code Section 21065 in that it has no potential to cause either a direct physical change or a reasonably foreseeable indirect physical change in the environment.

Exhibits

1. Open & Public V – A Guide to the Ralph M. Brown Act
2. The People's Business – A Guide to the California Public Records Act

Open & Public V

A GUIDE TO THE RALPH M. BROWN ACT

REVISED APRIL 2016

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ACKNOWLEDGEMENTS

The League thanks the following individuals for their work on this publication:

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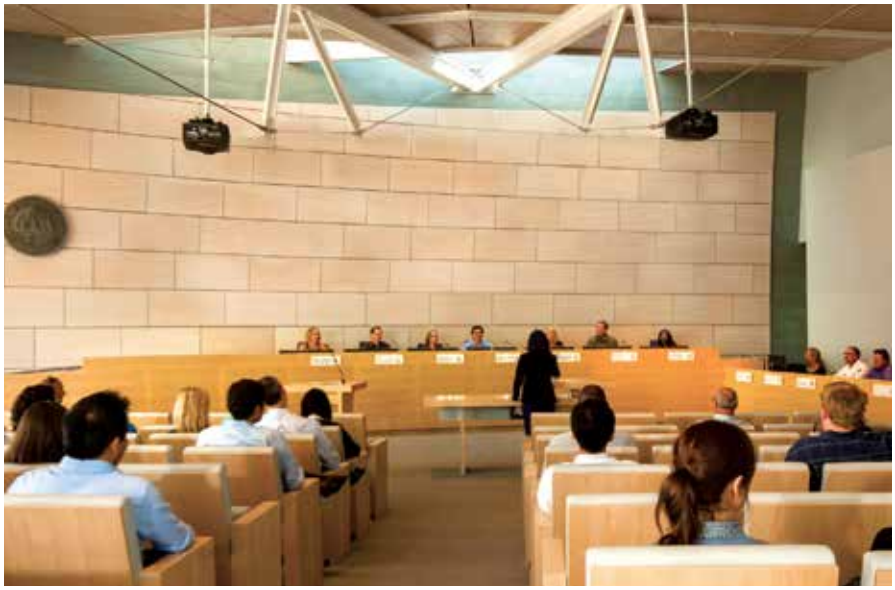

Open & Public V

A GUIDE TO THE RALPH M. BROWN ACT

REVISED APRIL 2016

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Chapter 1

IT IS THE PEOPLE'S BUSINESS

Chapter 1

IT IS THE PEOPLE'S BUSINESS

The right of access

Two key parts of the Brown Act have not changed since its adoption in 1953. One is the Brown Act's initial section, declaring the Legislature's intent:

"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."[1]

The people reconfirmed that intent 50 years later in the November 2004 election by adopting Proposition 59, amending the California Constitution to include a public right of access to government information:

> *"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]

PRACTICE TIP: The key to the Brown Act is a single sentence. In summary, all meetings shall be **open and public** except when the Brown Act authorizes otherwise.

The Brown Act's other unchanged provision is a single sentence:

> *"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."*[3]

That one sentence is by far the most important of the entire Brown Act. If the opening is the soul, that sentence is the heart of the Brown Act.

Broad coverage

The Brown Act covers members of virtually every type of local government body, elected or appointed, decision-making or advisory. Some types of private organizations are covered, as are newly-elected members of a legislative body, even before they take office.

Similarly, meetings subject to the Brown Act are not limited to face-to-face gatherings. They also include any communication medium or device through which a majority of a legislative body

discusses, deliberates or takes action on an item of business outside of a noticed meeting. They include meetings held from remote locations by teleconference.

New communication technologies present new Brown Act challenges. For example, common email practices of forwarding or replying to messages can easily lead to a serial meeting prohibited by the Brown Act, as can participation by members of a legislative body in an internet chatroom or blog dialogue. Communicating during meetings using electronic technology (such as laptop computers, tablets, or smart phones) may create the perception that private communications are influencing the outcome of decisions; some state legislatures have banned the practice. On the other hand, widespread cablecasting and web streaming of meetings has greatly expanded public access to the decision-making process.

Narrow exemptions

The express purpose of the Brown Act is to assure that local government agencies conduct the public's business openly and publicly. Courts and the California Attorney General usually broadly construe the Brown Act in favor of greater public access and narrowly construe exemptions to its general rules.[4]

Generally, public officials should think of themselves as living in glass houses, and that they may only draw the curtains when it is in the public interest to preserve confidentiality. Closed sessions may be held only as specifically authorized by the provisions of the Brown Act itself.

The Brown Act, however, is limited to meetings among a majority of the members of multi-member government bodies when the subject relates to local agency business. It does not apply to independent conduct of individual decision-makers. It does not apply to social, ceremonial, educational, and other gatherings as long as a majority of the members of a body do not discuss issues related to their local agency's business. Meetings of temporary advisory committees — as distinguished from standing committees — made up solely of less than a quorum of a legislative body are not subject to the Brown Act.

The law does not apply to local agency staff or employees, but they may facilitate a violation by acting as a conduit for discussion, deliberation, or action by the legislative body.[5]

The law, on the one hand, recognizes the need of individual local officials to meet and discuss matters with their constituents. On the other hand, it requires — with certain specific exceptions to protect the community and preserve individual rights — that the decision-making process be public. Sometimes the boundary between the two is not easy to draw.

PRACTICE TIP: Think of the government's house as being made of glass. The curtains may be drawn only to further the public's interest. A local policy on the use of laptop computers, tablets, and smart phones during Brown Act meetings may help avoid problems.

Public participation in meetings

In addition to requiring the public's business to be conducted in open, noticed meetings, the Brown Act also extends to the public the right to participate in meetings. Individuals, lobbyists, and members of the news media possess the right to attend, record, broadcast, and participate in public meetings. The public's participation is further enhanced by the Brown Act's requirement that a meaningful agenda be posted in advance of meetings, by limiting discussion and action to matters listed on the agenda, and by requiring that meeting materials be made available.

Legislative bodies may, however, adopt reasonable regulations on public testimony and the conduct of public meetings, including measures to address disruptive conduct and irrelevant speech.

Controversy

Not surprisingly, the Brown Act has been a source of confusion and controversy since its inception. News media and government watchdogs often argue the law is toothless, pointing out that there has never been a single criminal conviction for a violation. They often suspect that closed sessions are being misused.

Public officials complain that the Brown Act makes it difficult to respond to constituents and requires public discussions of items better discussed privately — such as why a particular person should not be appointed to a board or commission. Many elected officials find the Brown Act inconsistent with their private business experiences. Closed meetings can be more efficient; they eliminate grandstanding and promote candor. The techniques that serve well in business — the working lunch, the sharing of information through a series of phone calls or emails, the backroom conversations and compromises — are often not possible under the Brown Act.

As a matter of public policy, California (along with many other states) has concluded that there is more to be gained than lost by conducting public business in the open. Government behind closed doors may well be efficient and business-like, but it may be perceived as unresponsive and untrustworthy.

PRACTICE TIP: Transparency is a foundational value for ethical government practices. The Brown Act is a floor, not a ceiling, for conduct.

Beyond the law — good business practices

Violations of the Brown Act can lead to invalidation of an agency's action, payment of a challenger's attorney fees, public embarrassment, even criminal prosecution. But the Brown Act is a floor, not a ceiling for conduct of public officials. This guide is focused not only on the Brown Act as a minimum standard, but also on meeting practices or activities that, legal or not, are likely to create controversy. Problems may crop up, for example, when agenda descriptions are too brief or vague, when an informal get-together takes on the appearance of a meeting, when an agency conducts too much of its business in closed session or discusses matters in closed session that are beyond the authorized scope, or when controversial issues arise that are not on the agenda.

The Brown Act allows a legislative body to adopt practices and requirements for greater access to meetings for itself and its subordinate committees and bodies that are more stringent than the law itself requires.[6] Rather than simply restate the basic requirements of the Brown Act, local open meeting policies should strive to anticipate and prevent problems in areas where the Brown Act does not provide full guidance. As with the adoption of any other significant policy, public comment should be solicited.

A local policy could build on these basic Brown Act goals:

- A legislative body's need to get its business done smoothly;
- The public's right to participate meaningfully in meetings, and to review documents used in decision-making at a relevant point in time;
- A local agency's right to confidentially address certain negotiations, personnel matters, claims and litigation; and
- The right of the press to fully understand and communicate public agency decision-making.

An explicit and comprehensive public meeting and information policy, especially if reviewed periodically, can be an important element in maintaining or improving public relations. Such a policy exceeds the absolute requirements of the law — but if the law were enough, this guide would be unnecessary. A narrow legalistic approach will not avoid or resolve potential controversies. An agency should consider going beyond the law, and look at its unique circumstances and determine if there is a better way to prevent potential problems and promote public trust. At the very least, local agencies need to think about how their agendas are structured in order to make Brown Act compliance easier. They need to plan carefully to make sure public participation fits smoothly into the process.

Achieving balance

The Brown Act should be neither an excuse for hiding the ball nor a mechanism for hindering efficient and orderly meetings. The Brown Act represents a balance among the interests of constituencies whose interests do not always coincide. It calls for openness in local government, yet should allow government to function responsively and productively.

There must be both adequate notice of what discussion and action is to occur during a meeting as well as a normal degree of spontaneity in the dialogue between elected officials and their constituents.

The ability of an elected official to confer with constituents or colleagues must be balanced against the important public policy prohibiting decision-making outside of public meetings.

In the end, implementation of the Brown Act must ensure full participation of the public and preserve the integrity of the decision-making process, yet not stifle government officials and impede the effective and natural operation of government.

PRACTICE TIP: The Brown Act should be viewed as a tool to facilitate the business of local government agencies. Local policies that go beyond the minimum requirements of law may help instill public confidence and avoid problems.

Historical note

In late 1951, *San Francisco Chronicle* reporter Mike Harris spent six weeks looking into the way local agencies conducted meetings. State law had long required that business be done in public, but Harris discovered secret meetings or caucuses were common. He wrote a 10-part series on "Your Secret Government" that ran in May and June 1952.

Out of the series came a decision to push for a new state open meeting law. Harris and Richard (Bud) Carpenter, legal counsel for the League of California Cities, drafted such a bill and Assembly Member Ralph M. Brown agreed to carry it. The Legislature passed the bill and Governor Earl Warren signed it into law in 1953.

The Ralph M. Brown Act, known as the Brown Act, has evolved under a series of amendments and court decisions, and has been the model for other open meeting laws — such as the Bagley-Keene Act, enacted in 1967 to cover state agencies.

Assembly Member Brown is best known for the open meeting law that carries his name. He was elected to the Assembly in 1942 and served 19 years, including the last three years as Speaker. He then became an appellate court justice.

ENDNOTES:

1 California Government Code section 54950

2 California Constitution, Art. 1, section 3(b)(1)

3 California Government Code section 54953(a)

4 This principle of broad construction when it furthers public access and narrow construction if a provision limits public access is also stated in the amendment to the State's Constitution adopted by Proposition 59 in 2004. California Constitution, Art. 1, section 3(b)(2).

5 California Government Code section 54952.2(b)(2) and (c)(1); *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533

6 California Government Code section 54953.7

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at **www.cacities.org/opengovernment**. A current version of the Brown Act may be found at www.leginfo.ca.gov.

Chapter 2

LEGISLATIVE BODIES

Chapter 2

LEGISLATIVE BODIES

The Brown Act applies to the legislative bodies of local agencies. It defines "legislative body" broadly to include just about every type of decision-making body of a local agency.[1]

What is a "legislative body" of a local agency?

A "legislative body" includes:

- **The "governing body** of a local agency" and certain of its subsidiary bodies; "or any other local body created by state or federal statute."[2] This includes city councils, boards of supervisors, school boards and boards of trustees of special districts. A "local agency" is any city, county, city and county, school district, municipal corporation, successor agency to a redevelopment agency, district, political subdivision or other local public agency.[3] A housing authority is a local agency under the Brown Act even though it is created by and is an agent of the state.[4] The California Attorney General has opined that air pollution control districts and regional open space districts are also covered.[5] Entities created pursuant to joint powers agreements are also local agencies within the meaning of the Brown Act.[6]

PRACTICE TIP: The prudent presumption is that an advisory committee or task force is subject to the Brown Act. Even if one clearly is not, it may want to comply with the Brown Act. Public meetings may reduce the possibility of misunderstandings and controversy.

- **Newly-elected members** of a legislative body who have not yet assumed office must conform to the requirements of the Brown Act as if already in office.[7] Thus, meetings between incumbents and newly-elected members of a legislative body, such as a meeting between two outgoing members and a member-elect of a five-member body, could violate the Brown Act.

Q. On the morning following the election to a five-member legislative body of a local agency, two successful candidates, neither an incumbent, meet with an incumbent member of the legislative body for a celebratory breakfast. Does this violate the Brown Act?

A. *It might, and absolutely would if the conversation turns to agency business. Even though the candidates-elect have not officially been sworn in, the Brown Act applies. If purely a social event, there is no violation but it would be preferable if others were invited to attend to avoid the appearance of impropriety.*

- **Appointed bodies** — whether permanent or temporary, decision-making or advisory — including planning commissions, civil service commissions and other subsidiary committees, boards, and bodies. Volunteer groups, executive search committees, task forces, and blue ribbon committees created by formal action of the governing body are legislative bodies. When the members of two or more legislative bodies are appointed to serve on an entirely separate advisory group, the resulting body may be subject to the

Brown Act. In one reported case, a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations to the council. The court held that their joint mission made them a legislative body subject to the Brown Act. Had the two committees remained separate; and met only to exchange information and report back to their respective boards, they would have been exempt from the Brown Act.[8]

- **Standing committees** of a legislative body, irrespective of their composition, which have either: (1) a continuing subject matter jurisdiction; or (2) a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body.[9] Even if it comprises less than a quorum of the governing body, a standing committee is subject to the Brown Act. For example, if a governing body creates long-term committees on budget and finance or on public safety, those are standing committees subject to the Brown Act. Further, according to the California Attorney General, function over form controls. For example, a statement by the legislative body that the advisory committee "shall not exercise continuing subject matter jurisdiction" or the fact that the committee does not have a fixed meeting schedule is not determinative.[10] "Formal action" by a legislative body includes authorization given to the agency's executive officer to appoint an advisory committee pursuant to agency-adopted policy.[11]
- The governing body of any **private organization** either: (1) created by the legislative body in order to exercise authority that may lawfully be delegated by such body to a private corporation, limited liability company or other entity; or (2) that receives agency funding and whose governing board includes a member of the legislative body of the local agency appointed by the legislative body as a full voting member of the private entity's governing board.[12] These include some nonprofit corporations created by local agencies.[13] If a local agency contracts with a private firm for a service (for example, payroll, janitorial, or food services), the private firm is not covered by the Brown Act.[14] When a member of a legislative body sits on a board of a private organization as a private person and is not appointed by the legislative body, the board will not be subject to the Brown Act. Similarly, when the legislative body appoints someone other than one of its own members to such boards, the Brown Act does not apply. Nor does it apply when a private organization merely receives agency funding.[15]

Q: The local chamber of commerce is funded in part by the city. The mayor sits on the chamber's board of directors. Is the chamber board a legislative body subject to the Brown Act?

A: *Maybe. If the chamber's governing documents require the mayor to be on the board and the city council appoints the mayor to that position, the board is a legislative body. If, however, the chamber board independently appoints the mayor to its board, or the mayor attends chamber board meetings in a purely advisory capacity, it is not.*

Q: If a community college district board creates an auxiliary organization to operate a campus bookstore or cafeteria, is the board of the organization a legislative body?

A: *Yes. But, if the district instead contracts with a private firm to operate the bookstore or cafeteria, the Brown Act would not apply to the private firm.*

- **Certain types of hospital operators.** A lessee of a hospital (or portion of a hospital)

PRACTICE TIP: It can be difficult to determine whether a subcommittee of a body falls into the category of a standing committee or an exempt temporary committee. Suppose a committee is created to explore the renewal of a franchise or a topic of similarly limited scope and duration. Is it an exempt temporary committee or a non-exempt standing committee? The answer may depend on factors such as how meeting schedules are determined, the scope of the committee's charge, or whether the committee exists long enough to have "continuing jurisdiction."

first leased under Health and Safety Code subsection 32121(p) after January 1, 1994, which exercises "material authority" delegated to it by a local agency, whether or not such lessee is organized and operated by the agency or by a delegated authority.[16]

What is not a "legislative body" for purposes of the Brown Act?

- A temporary advisory committee composed **solely of less than a quorum** of the legislative body that serves a limited or single purpose, that is not perpetual, and that will be dissolved once its specific task is completed is not subject to the Brown Act.[17] Temporary committees are sometimes called *ad hoc* committees, a term not used in the Brown Act. Examples include an advisory committee composed of less than a quorum created to interview candidates for a vacant position or to meet with representatives of other entities to exchange information on a matter of concern to the agency, such as traffic congestion.[18]
- Groups advisory to a single decision-maker or appointed by staff are not covered. The Brown Act applies only to committees created by formal action of the legislative body and not to committees created by others. A committee advising a superintendent of schools would not be covered by the Brown Act. However, the same committee, if created by formal action of the school board, would be covered.[19]

  Q. A member of the legislative body of a local agency informally establishes an advisory committee of five residents to advise her on issues as they arise. Does the Brown Act apply to this committee?

  A. *No, because the committee has not been established by formal action of the legislative body.*

  Q. During a meeting of the city council, the council directs the city manager to form an advisory committee of residents to develop recommendations for a new ordinance. The city manager forms the committee and appoints its members; the committee is instructed to direct its recommendations to the city manager. Does the Brown Act apply to this committee?

  A. *Possibly, because the direction from the city council might be regarded as a formal action of the body notwithstanding that the city manager controls the committee.*

- Individual decision makers who are not elected or appointed members of a legislative body are not covered by the Brown Act. For example, a disciplinary hearing presided over by a department head or a meeting of agency department heads are not subject to the Brown Act since such assemblies are not those of a legislative body.[20]
- Public employees, each acting individually and not engaging in collective deliberation on a specific issue, such as the drafting and review of an agreement, do not constitute a legislative body under the Brown Act, even if the drafting and review process was established by a legislative body.[21]
- County central committees of political parties are also not Brown Act bodies.[22]

ENDNOTES:

1 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1127

2 California Government Code section 54952(a) and (b)

3 California Government Code section 54951; Health and Safety Code section 34173(g) (successor agencies to former redevelopment agencies subject to the Brown Act). But see Education Code section 35147, which exempts certain school councils and school site advisory committees from the Brown Act and imposes upon them a separate set of rules.

4 *Torres v. Board of Commissioners of Housing Authority of Tulare County* (1979) 89 Cal.App.3d 545, 549-550

5 71 Ops.Cal.Atty.Gen. 96 (1988); 73 Ops.Cal.Atty.Gen. 1 (1990)

6 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354, 362

7 California Government Code section 54952.1

8 *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799, 804-805

9 California Government Code section 54952(b)

10 79 Ops.Cal.Atty.Gen. 69 (1996)

11 *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781, 793

12 California Government Code section 54952(c)(1). Regarding private organizations that receive local agency funding, the same rule applies to a full voting member appointed prior to February 9, 1996 who, after that date, is made a non-voting board member by the legislative body. California Government Code section 54952(c)(2)

13 California Government Code section 54952(c)(1)(A); International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc. (1999) 69 Cal.App.4th 287, 300; Epstein v. Hollywood Entertainment Dist. II Business Improvement District (2001) 87 Cal.App.4th 862, 876; see also 85 Ops.Cal.Atty.Gen. 55 (2002)

14 *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal* (1999) 69 Cal. App.4th 287, 300 fn. 5

15 "*The Brown Act, Open Meetings for Local Legislative Bodies,*" California Attorney General's Office (2003), p. 7

16 California Government Code section 54952(d)

17 California Government Code section 54952(b); see also *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal.4th 821, 832.

18 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1129

19 56 Ops.Cal.Atty.Gen. 14, 16-17 (1973)

20 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870, 878-879

21 *Golightly v. Molina* (2014) 229 Cal.App.4th 1501, 1513

22 59 Ops.Cal.Atty.Gen. 162, 164 (1976)

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Chapter 3

MEETINGS

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MEETINGS

The Brown Act only applies to meetings of local legislative bodies. The Brown Act defines a meeting as: "… and 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 any action on any item that is within the subject matter jurisdiction of the legislative body."[1] The term "meeting" is not limited to gatherings at which action is taken but includes deliberative gatherings as well. A hearing before an individual hearing officer is not a meeting under the Brown Act because it is not a hearing before a legislative body.[2]

Brown Act meetings

Brown Act meetings include a legislative body's regular meetings, special meetings, emergency meetings, and adjourned meetings.

- **"Regular meetings"** are meetings occurring at the dates, times, and location set by resolution, ordinance, or other formal action by the legislative body and are subject to 72-hour posting requirements.[3]
- **"Special meetings"** are meetings called by the presiding officer or majority of the legislative body to discuss only discrete items on the agenda under the Brown Act's notice requirements for special meetings and are subject to 24-hour posting requirements.[4]
- **"Emergency meetings"** are a limited class of meetings held when prompt action is needed due to actual or threatened disruption of public facilities and are held on little notice.[5]
- **"Adjourned meetings"** are regular or special meetings that have been adjourned or re-adjourned to a time and place specified in the order of adjournment, with no agenda required for regular meetings adjourned for less than five calendar days as long as no additional business is transacted.[6]

Six exceptions to the meeting definition

The Brown Act creates six exceptions to the meeting definition:[7]

Individual Contacts

The first exception involves individual contacts between a member of the legislative body and any other person. The Brown Act does not limit a legislative body member acting on his or her own. This exception recognizes the right to confer with constituents, advocates, consultants, news reporters, local agency staff, or a colleague.

Individual contacts, however, cannot be used to do in stages what would be prohibited in one step. For example, a series of individual contacts that leads to discussion, deliberation, or action among a majority of the members of a legislative body is prohibited. Such serial meetings are discussed below.

Conferences

The second exception allows a legislative body majority to attend a conference or similar gathering open to the public that addresses issues of general interest to the public or to public agencies of the type represented by the legislative body.

Among other things, this exception permits legislative body members to attend annual association conferences of city, county, school, community college, and other local agency officials, so long as those meetings are open to the public. However, a majority of members cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within their local agency's subject matter jurisdiction.

Community Meetings

The third exception allows a legislative body majority to attend an open and publicized meeting held by another organization to address a topic of local community concern. A majority cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the legislative body's subject matter jurisdiction. Under this exception, a legislative body majority may attend a local service club meeting or a local candidates' night if the meetings are open to the public.

> **"I see we have four distinguished members of the city council at our meeting tonight," said the chair of the Environmental Action Coalition. "I wonder if they have anything to say about the controversy over enacting a slow growth ordinance?"**
>
> *The Brown Act permits a majority of a legislative body to attend and speak at an open and publicized meeting conducted by another organization. The Brown Act may nevertheless be violated if a majority discusses, deliberates, or takes action on an item during the meeting of the other organization. There is a fine line between what is permitted and what is not; hence, members should exercise caution when participating in these types of events.*

Q. The local chamber of commerce sponsors an open and public candidate debate during an election campaign. Three of the five agency members are up for re-election and all three participate. All of the candidates are asked their views of a controversial project scheduled for a meeting to occur just after the election. May the three incumbents answer the question?

A. *Yes, because the Brown Act does not constrain the incumbents from expressing their views regarding important matters facing the local agency as part of the political process the same as any other candidates.*

Other Legislative Bodies

The fourth exception allows a majority of a legislative body to attend an open and publicized meeting of: (1) another body of the local agency; and (2) a legislative body of another local agency.[8] Again, the majority cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within their subject matter jurisdiction. This exception allows, for example, a city council or a majority of a board of supervisors to attend a controversial meeting of the planning commission.

Nothing in the Brown Act prevents the majority of a legislative body from sitting together at such a meeting. They may choose not to, however, to preclude any possibility of improperly discussing local agency business and to avoid the appearance of a Brown Act violation. Further, aside from the Brown Act, there may be other reasons, such as due process considerations, why the members should avoid giving public testimony or trying to influence the outcome of proceedings before a subordinate body.

Q. The entire legislative body intends to testify against a bill before the Senate Local Government Committee in Sacramento. Must this activity be noticed as a meeting of the body?

A. *No, because the members are attending and participating in an open meeting of another governmental body which the public may attend.*

Q. The members then proceed upstairs to the office of their local Assembly member to discuss issues of local interest. Must this session be noticed as a meeting and be open to the public?

A. *Yes, because the entire body may not meet behind closed doors except for proper closed sessions. The same answer applies to a private lunch or dinner with the Assembly member.*

Standing Committees

The fifth exception authorizes the attendance of a majority at an open and noticed meeting of a standing committee of the legislative body, provided that the legislative body members who are not members of the standing committee attend only as observers (meaning that they cannot speak or otherwise participate in the meeting).[9]

Q. The legislative body establishes a standing committee of two of its five members, which meets monthly. A third member of the legislative body wants to attend these meetings and participate. May she?

A. *She may attend, but only as an observer; she may not participate.*

Social or Ceremonial Events

The final exception permits a majority of a legislative body to attend a purely social or ceremonial occasion. Once again, a majority cannot discuss business among themselves of a specific nature that is within the subject matter jurisdiction of the legislative body.

Nothing in the Brown Act prevents a majority of members from attending the same football game, party, wedding, funeral, reception, or farewell. The test is not whether a majority of a legislative body attends the function, but whether business of a specific nature within the subject matter jurisdiction of the body is discussed. So long as no such business is discussed, there is no violation of the Brown Act.

Grand Jury Testimony

In addition, members of a legislative body, either individually or collectively, may give testimony in private before a grand jury.[10] This is the equivalent of a seventh exception to the Brown Act's definition of a "meeting."

Collective briefings

None of these exceptions permits a majority of a legislative body to meet together with staff in advance of a meeting for a collective briefing. Any such briefings that involve a majority of the body in the same place and time must be open to the public and satisfy Brown Act meeting notice and agenda requirements.

Retreats or workshops of legislative bodies

Gatherings by a majority of legislative body members at the legislative body's retreats, study sessions, or workshops are covered under the Brown Act. This is the case whether the retreat, study session, or workshop focuses on long-range agency planning, discussion of critical local issues, or team building and group dynamics.[11]

Q. The legislative body wants to hold a team-building session to improve relations among its members. May such a session be conducted behind closed doors?

A. *No, this is not a proper subject for a closed session, and there is no other basis to exclude the public. Council relations are a matter of public business.*

Serial meetings

One of the most frequently asked questions about the Brown Act involves serial meetings. At any one time, such meetings involve only a portion of a legislative body, but eventually involve a majority. The Brown Act provides that "[a] majority of the members of a legislative body shall not, outside a meeting … 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."[12] The problem with serial meetings is the process, which deprives the public of an opportunity for meaningful observation of and participation in legislative body decision-making.

The serial meeting may occur by either a "daisy chain" or a "hub and spoke" sequence. In the daisy chain scenario, Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, until a quorum has discussed, deliberated, or taken action on an item within the legislative body's subject matter jurisdiction. The hub and spoke process involves at least two scenarios. In the first scenario, Member A (the hub) sequentially contacts Members B, C, and D and so on (the spokes), until a quorum has been contacted. In the second scenario, a staff member (the hub), functioning as an intermediary for the legislative body or one of its members, communicates with a majority of members (the spokes) one-by-one for for discussion, deliberation, or a decision on a proposed action.[13] Another example of a serial meeting is when a chief executive officer (the hub) briefs a majority of members (the spokes) prior to a formal meeting and, in the process, information about the members' respective views is revealed. Each of these scenarios violates the Brown Act.

A legislative body member has the right, if not the duty, to meet with constituents to address their concerns. That member also has the right to confer with a colleague (but not with a majority of the body, counting the member) or appropriate staff about local agency business. An employee or official of a local agency may engage in separate conversations or communications outside of an open and noticed meeting "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."[14]

The Brown Act has been violated, however, if several one-on-one meetings or conferences leads to a discussion, deliberation, or action by a majority. In one case, a violation occurred when a quorum of a city council, by a letter that had been circulated among members outside of a formal meeting, directed staff to take action in an eminent domain proceeding.[15]

A unilateral written communication to the legislative body, such as an informational or advisory memorandum, does not violate the Brown Act.[16] Such a memo, however, may be a public record.[17]

> **The phone call was from a lobbyist. "Say, I need your vote for that project in the south area. How about it?"**
>
> **"Well, I don't know," replied Board Member Aletto. "That's kind of a sticky proposition. You sure you need my vote?"**
>
> **"Well, I've got Bradley and Cohen lined up and another vote leaning. With you I'd be over the top."**
>
> **Moments later, the phone rings again. "Hey, I've been hearing some rumbles on that south area project," said the newspaper reporter. "I'm counting noses. How are you voting on it?"**

Neither the lobbyist nor the reporter has violated the Brown Act, but they are facilitating

a violation. The board member may have violated the Brown Act by hearing about the positions of other board members and indeed coaxing the lobbyist to reveal the other board members' positions by asking "You sure you need my vote?" The prudent course is to avoid such leading conversations and to caution lobbyists, staff, and news media against revealing such positions of others.

> **The mayor sat down across from the city manager. "From now on," he declared, "I want you to provide individual briefings on upcoming agenda items. Some of this material is very technical, and the council members don't want to sound like idiots asking about it in public. Besides that, briefings will speed up the meeting."**

Agency employees or officials may have separate conversations or communications outside of an open and noticed meeting "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."[18] Members should always be vigilant when discussing local agency business with anyone to avoid conversations that could lead to a discussion, deliberation or action taken among the majority of the legislative body.

> **"Thanks for the information," said Council Member Kim. "These zoning changes can be tricky, and now I think I'm better equipped to make the right decision."**
>
> **"Glad to be of assistance," replied the planning director. "I'm sure Council Member Jones is OK with these changes. How are you leaning?"**
>
> **"Well," said Council Member Kim, "I'm leaning toward approval. I know that two of my colleagues definitely favor approval."**

The planning director should not disclose Jones' prospective vote, and Kim should not disclose the prospective votes of two of her colleagues. Under these facts, there likely has been a serial meeting in violation of the Brown Act.

PRACTICE TIP: When briefing legislative body members, staff must exercise care not to disclose other members' views and positions.

Q. The agency's website includes a chat room where agency employees and officials participate anonymously and often discuss issues of local agency business. Members of the legislative body participate regularly. Does this scenario present a potential for violation of the Brown Act?

A. *Yes, because it is a technological device that may serve to allow for a majority of members to discuss, deliberate, or take action on matters of agency business.*

Q. A member of a legislative body contacts two other members on a five-member body relative to scheduling a special meeting. Is this an illegal serial meeting?

A. *No, the Brown Act expressly allows a majority of a body to call a special meeting, though the members should avoid discussing the merits of what is to be taken up at the meeting.*

Particular care should be exercised when staff briefings of legislative body members occur by email because of the ease of using the "reply to all" button that may inadvertently result in a Brown Act violation.

Informal gatherings

Often members are tempted to mix business with pleasure — for example, by holding a post-meeting gathering. Informal gatherings at which local agency business is discussed or transacted violate the law if they are not conducted in conformance with the Brown Act.[19] A luncheon gathering in a crowded dining room violates the Brown Act if the public does not have an opportunity to attend, hear, or participate in the deliberations of members.

> **Thursday at 11:30 a.m., as they did every week, the board of directors of the Dry Gulch Irrigation District trooped into Pop's Donut Shoppe for an hour of talk and fellowship. They sat at the corner window, fronting on Main and Broadway, to show they had nothing to hide. Whenever he could, the managing editor of the weekly newspaper down the street hurried over to join the board.**

A gathering like this would not violate the Brown Act if board members scrupulously avoided talking about irrigation district issues — which might be difficult. This kind of situation should be avoided. The public is unlikely to believe the board members could meet regularly without discussing public business. A newspaper executive's presence in no way lessens the potential for a violation of the Brown Act.

Q. The agency has won a major victory in the Supreme Court on an issue of importance. The presiding officer decides to hold an impromptu press conference in order to make a statement to the print and broadcast media. All the other members show up in order to make statements of their own and be seen by the media. Is this gathering illegal?

A. *Technically there is no exception for this sort of gathering, but as long as members do not state their intentions as to future action to be taken and the press conference is open to the public, it seems harmless.*

Technological conferencing

Except for certain nonsubstantive purposes, such as scheduling a special meeting, a conference call including a majority of the members of a legislative body is an unlawful meeting. But, in an effort to keep up with information age technologies, the Brown Act specifically allows a legislative body to use any type of teleconferencing to meet, receive public comment and testimony, deliberate, or conduct a closed session.[20] While the Brown Act contains specific requirements for conducting a teleconference, the decision to use teleconferencing is entirely discretionary with the body. No person has a right under the Brown Act to have a meeting by teleconference.

"Teleconference" is defined as "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."[21] In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following teleconferencing requirements:[22]

- Teleconferencing may be used for all purposes during any meeting;
- At least a quorum of the legislative body must participate from locations within the local agency's jurisdiction;
- Additional teleconference locations may be made available for the public;
- Each teleconference location must be specifically identified in the notice and agenda of the meeting, including a full address and room number, as may be applicable;
- Agendas must be posted at each teleconference location, even if a hotel room or a residence;
- Each teleconference location, including a hotel room or residence, must be accessible to the public and have technology, such as a speakerphone, to enable the public to participate;
- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location; and
- All votes must be by roll call.

Q. A member on vacation wants to participate in a meeting of the legislative body and vote by cellular phone from her car while driving from Washington, D.C. to New York. May she?

A. *She may not participate or vote because she is not in a noticed and posted teleconference location.*

The use of teleconferencing to conduct a legislative body meeting presents a variety of issues beyond the scope of this guide to discuss in detail. Therefore, before teleconferencing a meeting, legal counsel for the local agency should be consulted.

Location of meetings

The Brown Act generally requires all regular and special meetings of a legislative body, including retreats and workshops, to be held within the boundaries of the territory over which the local agency exercises jurisdiction.[23]

An open and publicized meeting of a legislative body may be held outside of agency boundaries if the purpose of the meeting is one of the following:[24]

- Comply with state or federal law or a court order, or attend a judicial conference or administrative proceeding in which the local agency is a party;
- Inspect real or personal property that cannot be conveniently brought into the local agency's territory, provided the meeting is limited to items relating to that real or personal property;

Q. The agency is considering approving a major retail mall. The developer has built other similar malls, and invites the entire legislative body to visit a mall outside the jurisdiction. May the entire body go?

A. *Yes, the Brown Act permits meetings outside the boundaries of the agency for specified reasons and inspection of property is one such reason. The field trip must be treated as a meeting and the public must be allowed to attend.*

- Participate in multiagency meetings or discussions; however, such meetings must be held within the boundaries of one of the participating agencies, and all of those agencies must give proper notice;
- Meet in the closest meeting facility if the local agency has no meeting facility within its boundaries, or meet at its principal office if that office is located outside the territory over which the agency has jurisdiction;
- Meet with elected or appointed federal or California officials 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;
- Meet 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; or
- Visit the office of its legal counsel for a closed session on pending litigation, when to do so would reduce legal fees or costs.[25]

In addition, the governing board of a school or community college district may hold meetings outside of its boundaries to attend a conference on nonadversarial collective bargaining techniques, interview candidates for school district superintendent, or interview a potential employee from another district.[26] A school board may also interview members of the public residing in another district if the board is considering employing that district's superintendent.

Similarly, meetings of a joint powers authority can occur within the territory of at least one of its member agencies, and a joint powers authority with members throughout the state may meet anywhere in the state.[27]

Finally, if a fire, flood, earthquake, or other emergency makes the usual meeting place unsafe, the presiding officer can designate another meeting place for the duration of the emergency. News media that have requested notice of meetings must be notified of the designation by the most rapid means of communication available.[28]

Endnotes:

1 California Government Code section 54952.2(a)

2 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870

3 California Government Code section 54954(a)

4 California Government Code section 54956

5 California Government Code section 54956.5

6 California Government Code section 54955

7 California Government Code section 54952.2(c)

8 California Government Code section 54952.2(c)(4)

9 California Government Code section 54952.2(c)(6)

10 California Government Code section 54953.1

11 "*The Brown Act,*" California Attorney General (2003), p. 10

12 California Government Code section 54952.2(b)(1)

13 *Stockton Newspaper Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95

14 California Government Code section 54952.2(b)(2)

15 *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518

16 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363

17 California Government Code section 54957.5(a)

18 California Government Code section 54952.2(b)(2)

19 California Government Code section 54952.2; 43 Ops.Cal.Atty.Gen. 36 (1964)

20 California Government Code section 54953(b)(1)

21 California Government Code section 54953(b)(4)

22 California Government Code section 54953

23 California Government Code section 54954(b)

24 California Government Code section 54954(b)(1)-(7)

25 94 Ops.Cal.Atty.Gen. 15 (2011)

26 California Government Code section 54954(c)

27 California Government Code section 54954(d)

28 California Government Code section 54954(e)

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Chapter 4

AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

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AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

Effective notice is essential for an open and public meeting. Whether a meeting is open or how the public may participate in that meeting is academic if nobody knows about the meeting.

Agendas for regular meetings

Every regular meeting of a legislative body of a local agency — including advisory committees, commissions, or boards, as well as standing committees of legislative bodies — must be preceded by a posted agenda that advises the public of the meeting and the matters to be transacted or discussed.

The agenda must be posted at least 72 hours before the regular meeting in a location "freely accessible to members of the public."[1] The courts have not definitively interpreted the "freely accessible" requirement. The California Attorney General has interpreted this provision to require posting in a location accessible to the public 24 hours a day during the 72-hour period, but any of the 72 hours may fall on a weekend.[2] This provision may be satisfied by posting on a touch screen electronic kiosk accessible without charge to the public 24 hours a day during the 72-hour period.[3] While posting an agenda on an agency's Internet website will not, by itself, satisfy the "freely accessible" requirement since there is no universal access to the internet, an agency has a supplemental obligation to post the agenda on its website if: (1) the local agency has a website; and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body, or (b) has members that are compensated, with one or more members that are also members of a governing body.[4]

Q. May the meeting of a governing body go forward if its agenda was either inadvertently not posted on the city's website or if the website was not operational during part or all of the 72-hour period preceding the meeting?

A. *At a minimum, the Brown Act calls for "substantial compliance" with all agenda posting requirements, including posting to the agency website.[5] Should website technical difficulties arise, seek a legal opinion from your agency attorney. The California Attorney General has opined that technical difficulties which cause the website agenda to become inaccessible for a portion of the 72 hours preceding a meeting do not automatically or inevitably lead to a Brown Act violation, provided the agency can demonstrate substantial compliance.[6] This inquiry requires a fact-specific examination of whether the agency or its legislative body made "reasonably effective efforts to notify interested persons of a public meeting" through online posting and other available means.[7] The Attorney General's opinion suggests that this examination would include an evaluation of how long a technical problem persisted, the efforts made to correct the problem or otherwise ensure that the public was informed, and the actual effect the problem had on public*

awareness, among other factors.[8] The City Attorneys' Department has taken the position that obvious website technical difficulties do not require cancellation of a meeting, provided that the agency meets all other Brown Act posting requirements and the agenda is available on the website once the technical difficulties are resolved.

The agenda must state the meeting time and place and 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."[9] Special care should be taken to describe on the agenda each distinct action to be taken by the legislative body, and avoid overbroad descriptions of a "project" if the "project" is actually a set of distinct actions that must each be separately listed on the agenda.[10]

PRACTICE TIP: Putting together a meeting agenda requires careful thought.

Q. The agenda for a regular meeting contains the following items of business:

- Consideration of a report regarding traffic on Eighth Street; and
- Consideration of contract with ABC Consulting.

Are these descriptions adequate?

A. *If the first is, it is barely adequate. A better description would provide the reader with some idea of what the report is about and what is being recommended. The second is not adequate. A better description might read "consideration of a contract with ABC Consulting in the amount of $50,000 for traffic engineering services regarding traffic on Eighth Street."*

Q. The agenda includes an item entitled City Manager's Report, during which time the city manager provides a brief report on notable topics of interest, none of which are listed on the agenda.

Is this permissible?

A. *Yes, so long as it does not result in extended discussion or action by the body.*

A brief general description may not be sufficient for closed session agenda items. The Brown Act provides safe harbor language for the various types of permissible closed sessions. Substantial compliance with the safe harbor language is recommended to protect legislative bodies and elected officials from legal challenges.

Mailed agenda upon written request

The legislative body, or its designee, must mail a copy of the agenda or, if requested, the entire agenda packet, to any person who has filed a written request for such materials. These copies shall be mailed at the time the agenda is posted. If requested, these materials must be made available in appropriate alternative formats to persons with disabilities.

A request for notice is valid for one calendar year and renewal requests must be filed following January 1 of each year. The legislative body may establish a fee to recover the cost of providing the service. Failure of the requesting person to receive the agenda does not constitute grounds for invalidation of actions taken at the meeting.[11]

Notice requirements for special meetings

There is no express agenda requirement for special meetings, but the notice of the special meeting effectively serves as the agenda and limits the business that may be transacted or discussed. Written notice must be sent to each member of the legislative body (unless waived in writing by that member) and to each local newspaper of general circulation, and radio or television station that has requested such notice in writing. This notice must be delivered by personal delivery or any other means that ensures receipt, at least 24 hours before the time of the meeting.

The notice must state the time and place of the meeting, as well as all business to be transacted or discussed. It is recommended that the business to be transacted or discussed be described in the same manner that an item for a regular meeting would be described on the agenda — with a brief general description. As noted above, closed session items should be described in accordance with the Brown Act's safe harbor provisions to protect legislative bodies and elected officials from challenges of noncompliance with notice requirements.

The special meeting notice must also be posted at least 24 hours prior to the special meeting using the same methods as posting an agenda for a regular meeting: (1) at a site that is freely accessible to the public, and (2) on the agency's website if: (1) the local agency has a website; and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body, or (b) has members that are compensated, with one or more members that are also members of a governing body.[12]

Notices and agendas for adjourned and continued meetings and hearings

A regular or special meeting can be adjourned and re-adjourned to a time and place specified in the order of adjournment.[13] If no time is stated, the meeting is continued to the hour for regular meetings. Whoever is present (even if they are less than a quorum) may so adjourn a meeting; if no member of the legislative body is present, the clerk or secretary may adjourn the meeting. If a meeting is adjourned for less than five calendar days, no new agenda need be posted so long as a new item of business is not introduced.[14] A copy of the order of adjournment must be posted within 24 hours after the adjournment, at or near the door of the place where the meeting was held.

A hearing can be continued to a subsequent meeting. The process is the same as for continuing adjourned meetings, except that if the hearing is continued to a time less than 24 hours away, a copy of the order or notice of continuance must be posted immediately following the meeting.[15]

Notice requirements for emergency meetings

The special meeting notice provisions apply to emergency meetings, except for the 24-hour notice.[16] News media that have requested written notice of special meetings must be notified by telephone at least one hour in advance of an emergency meeting, and all telephone numbers provided in that written request must be tried. If telephones are not working, the notice requirements are deemed waived. However, the news media must be notified as soon as possible of the meeting and any action taken.

News media may make a practice of having written requests on file for notification of special or emergency meetings. Absent such a request, a local agency has no legal obligation to notify news media of special or emergency meetings — although notification may be advisable in any event to avoid controversy.

Notice of compensation for simultaneous or serial meetings

A legislative body that has convened a meeting and whose membership constitutes a quorum of another legislative body, may convene a simultaneous or serial meeting of the other legislative body only after a clerk or member of the convened legislative body orally announces: (1) the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the meeting of the other legislative body; and (2) that the compensation or stipend is provided as a result of convening the meeting of that body.[17]

No oral disclosure of the amount of the compensation is required if the entire amount of such compensation is prescribed by statute and no additional compensation has been authorized by the local agency. Further, no disclosure is required with respect to reimbursements for actual and necessary expenses incurred in the performance of the member's official duties, such as for travel, meals, and lodging.

Educational agency meetings

The Education Code contains some special agenda and special meeting provisions.[18] However, they are generally consistent with the Brown Act. An item is probably void if not posted.[19] A school district board must also adopt regulations to make sure the public can place matters affecting the district's business on meeting agendas and to address the board on those items.[20]

Notice requirements for tax or assessment meetings and hearings

The Brown Act prescribes specific procedures for adoption by a city, county, special district, or joint powers authority of any new or increased tax or assessment imposed on businesses.[21] Though written broadly, these Brown Act provisions do not apply to new or increased real property taxes or assessments as those are governed by the California Constitution, Article XIIIC or XIIID, enacted by Proposition 218. At least one public meeting must be held to allow public testimony on the tax or assessment. In addition, there must also be at least 45 days notice of a public hearing at which the legislative body proposes to enact or increase the tax or assessment. Notice of the public meeting and public hearing must be provided at the same time and in the same document. The public notice relating to general taxes must be provided by newspaper publication. The public notice relating to new or increased business assessments must be provided through a mailing to all business owners proposed to be subject to the new or increased assessment. The agency may recover the reasonable costs of the public meetings, hearings, and notice.

The Brown Act exempts certain fees, standby or availability charges, recurring assessments, and new or increased assessments that are subject to the notice and hearing requirements of the Constitution.[22] As a practical matter, the Constitution's notice requirements have preempted this section of the Brown Act.

Non-agenda items

The Brown Act generally prohibits any action or discussion of items not on the posted agenda. However, there are three specific situations in which a legislative body can act on an item not on the agenda:[23]

- When a majority decides there is an "emergency situation" (as defined for emergency meetings);
- When two-thirds of the members present (or all members if less than two-thirds are present) determine there is a need for immediate action and the need to take action "came to the attention of the local agency subsequent to the agenda being posted." This exception requires a degree of urgency. Further, an item cannot be considered under this provision if the legislative body or the staff knew about the need to take immediate action before the agenda was posted. A new need does not arise because staff forgot to put an item on the agenda or because an applicant missed a deadline; or
- When an item appeared on the agenda of, and was continued from, a meeting held not more than five days earlier.

PRACTICE TIP: Subject to very limited exceptions, the Brown Act prohibits any action or discussion of an item not on the posted agenda.

The exceptions are narrow, as indicated by this list. The first two require a specific determination by the legislative body. That determination can be challenged in court and, if unsubstantiated, can lead to invalidation of an action.

> **"I'd like a two-thirds vote of the board, so we can go ahead and authorize commencement of phase two of the East Area Project," said Chair Lopez.**
>
> **"It's not on the agenda. But we learned two days ago that we finished phase one ahead of schedule — believe it or not — and I'd like to keep it that way. Do I hear a motion?"**

The desire to stay ahead of schedule generally would not satisfy "a need for immediate action." Too casual an action could invite a court challenge by a disgruntled resident. The prudent course is to place an item on the agenda for the next meeting and not risk invalidation.

> **"We learned this morning of an opportunity for a state grant," said the chief engineer at the regular board meeting, "but our application has to be submitted in two days. We'd like the board to give us the go ahead tonight, even though it's not on the agenda."**

A legitimate immediate need can be acted upon even though not on the posted agenda by following a two-step process:

- First, make two determinations: 1) that there is an immediate need to take action, and 2) that the need arose after the posting of the agenda. The matter is then placed on the agenda.
- Second, discuss and act on the added agenda item.

Responding to the public

The public can talk about anything within the jurisdiction of the legislative body, but the legislative body generally cannot act on or discuss an item not on the agenda. What happens when a member of the public raises a subject not on the agenda?

While the Brown Act does not allow discussion or action on items not on the agenda, it does allow members of the legislative body, or its staff, to "briefly respond" to comments or questions from members of the public, provide a reference to staff or other resources for factual information, or direct staff to place the issue on a future agenda. In addition, even without a comment from the public, a legislative body member or a staff member may ask for information, request a report back, request to place a matter on the agenda for a subsequent meeting (subject to the body's rules or procedures), ask a question for clarification, make a brief announcement, or briefly report on his or her own activities.[24] However, caution should be used to avoid any discussion or action on such items.

Council Member Jefferson: I would like staff to respond to Resident Joe's complaints during public comment about the repaving project on Elm Street — are there problems with this project?

City Manager Frank: The public works director has prepared a 45-minute power point presentation for you on the status of this project and will give it right now.

Council Member Brown: Take all the time you need; we need to get to the bottom of this. Our residents are unhappy.

It is clear from this dialogue that the Elm Street project was not on the council's agenda, but was raised during the public comment period for items not on the agenda. Council Member A properly asked staff to respond; the city manager should have given at most a brief response. If a lengthy report from the public works director was warranted, the city manager should have stated that it would be placed on the agenda for the next meeting. Otherwise, both the long report and the likely discussion afterward will improperly embroil the council in a matter that is not listed on the agenda.

The right to attend and observe meetings

A number of Brown Act provisions protect the public's right to attend, observe, and participate in meetings.

Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise "fulfill any condition precedent" to attending a meeting. Any attendance list, questionnaire, or similar document posted at or near the entrance to the meeting room or circulated at a meeting must clearly state that its completion is voluntary and that all persons may attend whether or not they fill it out.[25]

No meeting can be held in a facility that prohibits attendance based on race, religion, color, national origin, ethnic group identification, age, sex, sexual orientation, or disability, or that is inaccessible to the disabled. Nor can a meeting be held where the public must make a payment or purchase in order to be present.[26] This does not mean, however, that the public is entitled to free entry to a conference attended by a majority of the legislative body.[27]

While a legislative body may use teleconferencing in connection with a meeting, the public must be given notice of and access to the teleconference location. Members of the public must be able to address the legislative body from the teleconference location.[28]

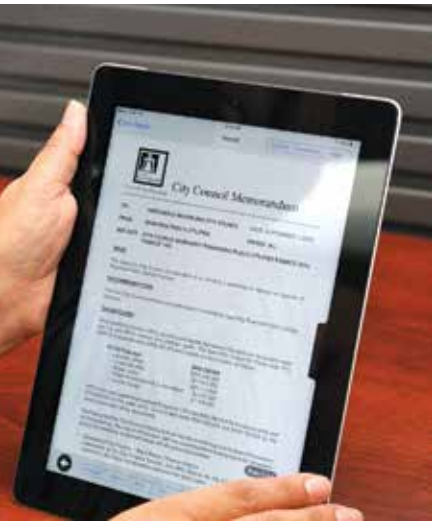
Action by secret ballot, whether preliminary or final, is flatly prohibited.[29]

All actions taken by the legislative body in open session, and the vote of each member thereon, must be disclosed to the public at the time the action is taken.[30]

Q: The agenda calls for election of the legislative body's officers. Members of the legislative body want to cast unsigned written ballots that would be tallied by the clerk, who would announce the results. Is this voting process permissible?

A: *No. The possibility that a public vote might cause hurt feelings among members of the legislative body or might be awkward — or even counterproductive — does not justify a secret ballot.*

The legislative body may remove persons from a meeting who willfully interrupt proceedings.[31] Ejection is justified only when audience members actually disrupt the proceedings.[32] If order cannot be restored after ejecting disruptive persons, the meeting room may be cleared. Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. The legislative body may establish a procedure to re-admit an individual or individuals not responsible for the disturbance.[33]



Records and recordings

The public has the right to review agendas and other writings distributed by any person to a majority of the legislative body in connection with a matter subject to discussion or consideration at a meeting. Except for privileged documents, those materials are public records and must be made available upon request without delay.[34] A fee or deposit as permitted by the California Public Records Act may be charged for a copy of a public record.[35]

Q: In connection with an upcoming hearing on a discretionary use permit, counsel for the legislative body transmits a memorandum to all members of the body outlining the litigation risks in granting or denying the permit. Must this memorandum be included in the packet of agenda materials available to the public?

A: *No. The memorandum is a privileged attorney-client communication.*

Q: In connection with an agenda item calling for the legislative body to approve a contract, staff submits to all members of the body a financial analysis explaining why the terms of the contract favor the local agency. Must this memorandum be included in the packet of agenda materials available to the public?

A. *Yes. The memorandum has been distributed to the majority of the legislative body, relates to the subject matter of a meeting, and is not a privileged communication.*

A legislative body may discuss or act on some matters without considering written materials. But if writings are distributed to a majority of a legislative body in connection with an agenda item, they must also be available to the public. A non-exempt or otherwise privileged writing distributed to a majority of the legislative body less than 72 hours before the meeting must be made available for inspection at the time of distribution at a public office or location designated for that purpose; and the agendas for all meetings of the legislative body must include the address of this office or location.[36] A writing distributed during a meeting must be made public:

- At the meeting if prepared by the local agency or a member of its legislative body; or
- After the meeting if prepared by some other person.[37]

Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency is subject to the California Public Records Act; however, it may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording is to be provided without charge on a video or tape player made available by the local agency.[38] The agency may impose its ordinary charge for copies that is consistent with the California Public Records Act.[39]

In addition, the public is specifically allowed to use audio or video tape recorders or still or motion picture cameras at a meeting to record the proceedings, absent a reasonable finding by the legislative body that noise, illumination, or obstruction of view caused by recorders or cameras would persistently disrupt the proceedings.[40]

Similarly, a legislative body cannot prohibit or restrict the public broadcast of its open and public meetings without making a reasonable finding that the noise, illumination, or obstruction of view would persistently disrupt the proceedings.[41]

The public's place on the agenda

Every agenda for a regular meeting must allow members of the public to speak on any item of interest, so long as the item is within the subject matter jurisdiction of the legislative body. Further, the public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.[42]

Q. Must the legislative body allow members of the public to show videos or make a power point presentation during the public comment part of the agenda, as long as the subject matter is relevant to the agency and is within the established time limit?

A. *Probably, although the agency is under no obligation to provide equipment.*

Moreover, the legislative body cannot prohibit public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body itself. But the Brown Act provides no immunity for defamatory statements.[43]

PRACTICE TIP: Public speakers cannot be compelled to give their name or address as a condition of speaking. The clerk or presiding officer may request speakers to complete a speaker card or identify themselves for the record, but must respect a speaker's desire for anonymity.

Q. May the presiding officer prohibit a member of the audience from publicly criticizing an agency employee by name during public comments?

A. *No, as long as the criticism pertains to job performance.*

Q. During the public comment period of a regular meeting of the legislative body, a resident urges the public to support and vote for a candidate vying for election to the body. May the presiding officer gavel the speaker out of order for engaging in political campaign speech?

A. *There is no case law on this subject. Some would argue that campaign issues are outside the subject matter jurisdiction of the body within the meaning of Section 54954.3(a). Others take the view that the speech must be allowed under paragraph (c) of that section because it is relevant to the governing of the agency and an implicit criticism of the incumbents.*

The legislative body may adopt reasonable regulations, including time limits, on public comments. Such regulations should be enforced fairly and without regard to speakers' viewpoints. The legislative body has discretion to modify its regulations regarding time limits on public comment if necessary. For example, the time limit could be shortened to accommodate a lengthy agenda or lengthened to allow additional time for discussion on a complicated matter.[44]

The public does not need to be given an opportunity to speak on an item that has already been considered by a committee made up exclusively of members of the legislative body at a public meeting, if all interested members of the public had the opportunity to speak on the item before or during its consideration, and if the item has not been substantially changed.[45]

Notices and agendas for special meetings must also give members of the public the opportunity to speak before or during consideration of an item on the agenda but need not allow members of the public an opportunity to speak on other matters within the jurisdiction of the legislative body.[46]

Endnotes:

1 California Government Code section 54954.2(a)(1)

2 78 Ops.Cal.Atty.Gen. 327 (1995)

3 88 Ops.Cal.Atty.Gen. 218 (2005)

4 California Government Code sections 54954.2(a)(1) and 54954.2(d)

5 California Government Code section 54960.1(d)(1)

6 ___ Ops.Cal.Atty.Gen.___, No. 14-1204 (January 19, 2016) 16 Cal. Daily Op. Serv. 937 (Cal.A.G.), 2016 WL 375262

7 *North Pacifica LLC v. California Coastal Commission* (2008) 166 Cal.App.4th 1416, 1432

8 ___ Ops.Cal.Atty.Gen.___, No. 14-1204 (January 19, 2016) 16 Cal. Daily Op. Serv. 937 (Cal.A.G.), 2016 WL 375262, Slip Op. at p. 8

9 California Government Code section 54954.2(a)(1)

10 *San Joaquin Raptor Rescue v. County of Merced* (2013) 216 Cal.App.4th 1167 (legislative body's approval of CEQA action (mitigated negative declaration) without specifically listing it on the agenda violates Brown Act, even if the agenda generally describes the development project that is the subject of the CEQA analysis.)

11 California Government Code section 54954.1

12 California Government Code sections 54956(a) and (c)

13 California Government Code section 54955

14 California Government Code section 54954.2(b)(3)

15 California Government Code section 54955.1

16 California Government Code section 54956.5

17 California Government Code section 54952.3

18 Education Code sections 35144, 35145 and 72129

19 *Carlson v. Paradise Unified School District* (1971) 18 Cal.App.3d 196

20 California Education Code section 35145.5

21 California Government Code section 54954.6

22 See Cal.Const.Art.XIIIC, XIIID and California Government Code section 54954.6(h)

23 California Government Code section 54954.2(b)

24 California Government Code section 54954.2(a)(2)

25 California Government Code section 54953.3

26 California Government Code section 54961(a); California Government Code section 11135(a)

27 California Government Code section 54952.2(c)(2)

28 California Government Code section 54953(b)

29 California Government Code section 54953(c)

30 California Government Code section 54953(c)(2)

31 California Government Code section 54957.9.

32 *Norse v. City of Santa Cruz* (9th Cir. 2010) 629 F.3d 966 (silent and momentary Nazi salute directed towards mayor is not a disruption); *Acosta v. City of Costa Mesa* (9th Cir. 2013) 718 F.3d 800 (city council may not prohibit "insolent" remarks by members of the public absent actual disruption).

33 California Government Code section 54957.9

34 California Government Code section 54957.5

35 California Government Code section 54957.5(d)

36 California Government Code section 54957.5(b)

37 California Government Code section 54957.5(c)

38 California Government Code section 54953.5(b)

39 California Government Code section 54957.5(d)

40 California Government Code section 54953.5(a)

41 California Government Code section 54953.6

42 California Government Code section 54954.3(a)

43 California Government Code section 54954.3(c)

44 California Government Code section 54954.3(b); Chaffee v. San Francisco Public Library Com. (2005) 134 Cal.App.4th 109; 75 Ops.Cal.Atty.Gen. 89 (1992)

45 California Government Code section 54954.3(a)

46 California Government Code section 54954.3(a)

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at **www.cacities.org/opengovernment**. A current version of the Brown Act may be found at **www.leginfo.ca.gov**.

Chapter 5

CLOSED SESSIONS

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CLOSED SESSIONS

A closed session is a meeting of a legislative body conducted in private without the attendance of the public or press. A legislative body is authorized to meet in closed session only to the extent expressly authorized by the Brown Act.[1]

As summarized in Chapter 1 of this Guide, it is clear that the Brown Act must be interpreted liberally in favor of open meetings, and exceptions that limit public access (including the exceptions for closed session meetings) must be narrowly construed.[2] The most common purposes of the closed session provisions in the Brown Act are to avoid revealing confidential information (e.g., prejudicing the city's position in litigation or compromising the privacy interests of employees). Closed sessions should be conducted keeping those narrow purposes in mind. It is not enough that a subject is sensitive, embarrassing, or controversial. Without specific authority in the Brown Act for a closed session, a matter to be considered by a legislative body must be discussed in public. As an example, a board of police commissioners cannot meet in closed session to provide general policy guidance to a police chief, even though some matters are sensitive and the commission considers their disclosure contrary to the public interest.[3]

In this chapter, the grounds for convening a closed session are called "exceptions" because they are exceptions to the general rule that meetings must be conducted openly. In some circumstances, none of the closed session exceptions apply to an issue or information the legislative body wishes to discuss privately. In these cases, it is not proper to convene a closed session, even to protect confidential information. For example, although the Brown Act does authorize closed sessions related to specified types of contracts (e.g., specified provisions of real property agreements, employee labor agreements, and litigation settlement agreements),[4] the Brown Act does not authorize closed sessions for other contract negotiations.

PRACTICE TIP: Some problems over closed sessions arise because secrecy itself breeds distrust. The Brown Act does not require closed sessions and legislative bodies may do well to resist the tendency to call a closed session simply because it may be permitted. A better practice is to go into closed session only when necessary.

Agendas and reports

Closed session items must be briefly described on the posted agenda and the description must state the specific statutory exemption.[5] An item that appears on the open meeting portion of the agenda may not be taken into closed session until it has been properly agendized as a closed session item or unless it is properly added as a closed session item by a two-thirds vote of the body after making the appropriate urgency findings.[6]

The Brown Act supplies a series of fill in the blank sample agenda descriptions for various types of authorized closed sessions, which provide a "safe harbor" from legal attacks. These sample

agenda descriptions cover license and permit determinations, real property negotiations, existing or anticipated litigation, liability claims, threats to security, public employee appointments, evaluations and discipline, labor negotiations, multi-jurisdictional law enforcement cases, hospital boards of directors, medical quality assurance committees, joint powers agencies, and audits by the California State Auditor's Office.[7]

If the legislative body intends to convene in closed session, it must include the section of the Brown Act authorizing the closed session in advance on the agenda and it must make a public announcement prior to the closed session discussion. In most cases, the announcement may simply be a reference to the agenda item.[8]

Following a closed session, the legislative body must provide an oral or written report on certain actions taken and the vote of every elected member present. The timing and content of the report varies according to the reason for the closed session and the action taken.[9] The announcements may be made at the site of the closed session, so long as the public is allowed to be present to hear them.

If there is a standing or written request for documentation, any copies of contracts, settlement agreements, or other documents finally approved or adopted in closed session must be provided to the requestor(s) after the closed session, if final approval of such documents does not rest with any other party to the contract or settlement. If substantive amendments to a contract or settlement agreement approved by all parties requires retyping, such documents may be held until retyping is completed during normal business hours, but the substance of the changes must be summarized for any person inquiring about them.[10]

The Brown Act does not require minutes, including minutes of closed sessions. However, a legislative body may adopt an ordinance or resolution to authorize a confidential "minute book" be kept to record actions taken at closed sessions.[11] If one is kept, it must be made available to members of the legislative body, provided that the member asking to review minutes of a particular meeting was not disqualified from attending the meeting due to a conflict of interest.[12] A court may order the disclosure of minute books for the court's review if a lawsuit makes sufficient claims of an open meeting violation.

PRACTICE TIP: Pay close attention to closed session agenda descriptions. Using the wrong label can lead to invalidation of an action taken in closed session if not substantially compliant.

Litigation

There is an attorney/client relationship, and legal counsel may use it to protect the confidentiality of privileged written and oral communications to members of the legislative body — outside of meetings. But protection of the attorney/client privilege cannot by itself be the reason for a closed session.[13]

The Brown Act expressly authorizes closed sessions to discuss what is considered pending litigation. The rules that apply to holding a litigation closed session involve complex, technical definitions and procedures. The essential thing to know is that a closed session can be held by the body to confer with, or receive advice from, its legal counsel when open discussion would prejudice the position of the local agency in litigation in which the agency is, or could become, a party.[14] The litigation exception under the Brown Act is narrowly construed and does not permit activities beyond a legislative body's conferring with its own legal counsel and required support staff.[15] For example, it is not permissible to hold a closed session in which settlement negotiations take place between a legislative body, a representative of an adverse party, and a mediator.[16]

The California Attorney General has opined that if the agency's attorney is not a participant, a litigation closed session cannot be held.[17] In any event, local agency officials should always consult the agency's attorney before placing this type of closed session on the agenda in order to be certain that it is being done properly.

Before holding a closed session under the pending litigation exception, the legislative body must publicly state the basis for the closed session by identifying one of the following three types of matters: existing litigation, anticipated exposure to litigation, or anticipated initiation of litigation.[18]

Existing litigation

Q. May the legislative body agree to settle a lawsuit in a properly-noticed closed session, without placing the settlement agreement on an open session agenda for public approval?

A. *Yes, but the settlement agreement is a public document and must be disclosed on request. Furthermore, a settlement agreement cannot commit the agency to matters that are required to have public hearings.*

Existing litigation includes any adjudicatory proceedings before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. The clearest situation in which a closed session is authorized is when the local agency meets with its legal counsel to discuss a pending matter that has been filed in a court or with an administrative agency and names the local agency as a party. The legislative body may meet under these circumstances to receive updates on the case from attorneys, participate in developing strategy as the case develops, or consider alternatives for resolution of the case. Generally, an agreement to settle litigation may be approved in closed session. However, an agreement to settle litigation cannot be approved in closed session if it commits the city to take an action that is required to have a public hearing.[19]

Anticipated exposure to litigation against the local agency

Closed sessions are authorized for legal counsel to inform the legislative body of a significant exposure to litigation against the local agency, but only if based on "existing facts and circumstances" as defined by the Brown Act.[20] The legislative body may also meet under this exception to determine whether a closed session is authorized based on information provided by legal counsel or staff. In general, the "existing facts and circumstances" must be publicly disclosed unless they are privileged written communications or not yet known to a potential plaintiff.

Anticipated initiation of litigation by the local agency

A closed session may be held under the exception for the anticipated initiation of litigation when the legislative body seeks legal advice on whether to protect the agency's rights and interests by initiating litigation.

Certain actions must be reported in open session at the same meeting following the closed

session. Other actions, as where final approval rests with another party or the court, may be announced when they become final and upon inquiry of any person.[21] Each agency attorney should be aware of and make the disclosures that are required by the particular circumstances.

Real estate negotiations

A legislative body may meet in closed session with its negotiator to discuss the purchase, sale, exchange, or lease of real property by or for the local agency. A "lease" includes a lease renewal or renegotiation. The purpose is to grant authority to the legislative body's negotiator on price and terms of payment.[22] Caution should be exercised to limit discussion to price and terms of payment without straying to other related issues such as site design, architecture, or other aspects of the project for which the transaction is contemplated.[23]

Q. May other terms of a real estate transaction, aside from price and terms of payment, be addressed in closed session?

A. *No. However, there are differing opinions over the scope of the phrase "price and terms of payment" in connection with real estate closed sessions. Many agency attorneys argue that any term that directly affects the economic value of the transaction falls within the ambit of "price and terms of payment." Others take a narrower, more literal view of the phrase.*

The agency's negotiator may be a member of the legislative body itself. Prior to the closed session, or on the agenda, the legislative body must identify its negotiators, the real property that the negotiations may concern[24] and the names of the parties with whom its negotiator may negotiate.[25]

After real estate negotiations are concluded, the approval and substance of the agreement must be publicly reported. If its own approval makes the agreement final, the body must report in open session at the public meeting during which the closed session is held. If final approval rests with another party, the local agency must report the approval and the substance of the agreement upon inquiry by any person, as soon as the agency is informed of it.[26]

"Our population is exploding, and we have to think about new school sites," said Board Member Jefferson.

"Not only that," interjected Board Member Tanaka, "we need to get rid of a couple of our older facilities."

"Well, obviously the place to do that is in a closed session," said Board Member O'Reilly. "Otherwise we're going to set off land speculation. And if we even mention closing a school, parents are going to be in an uproar."

A closed session to discuss potential sites is not authorized by the Brown Act. The exception is limited to meeting with its negotiator over specific sites — which must be identified at an open and public meeting.

Public employment

The Brown Act authorizes 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."[27] The purpose of this exception — commonly referred to as the "personnel exception" — is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow full and candid discussion by the legislative body; thus, it is restricted to discussing individuals, not general personnel policies.[28] The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception.[29] That authority may be delegated to a subsidiary appointed body.[30]

PRACTICE TIP: Discussions of who to appoint to an advisory body and whether or not to censure a fellow member of the legislative body must be held in the open.

An employee must be given at least 24 hours notice of any closed session convened to hear specific complaints or charges against him or her. This occurs when the legislative body is reviewing evidence, which could include live testimony, and adjudicating conflicting testimony offered as evidence. A legislative body may examine (or exclude) witnesses,[31] and the California Attorney General has opined that, when an affected employee and advocate have an official or essential role to play, they may be permitted to participate in the closed session.[32] The employee has the right to have the specific complaints and charges discussed in a public session rather than closed session.[33] If the employee is not given the 24-hour prior notice, any disciplinary action is null and void.[34]

However, an employee is not entitled to notice and a hearing where the purpose of the closed session is to consider a performance evaluation. The Attorney General and the courts have determined that personnel performance evaluations do not constitute complaints and charges, which are more akin to accusations made against a person.[35]

Q. Must 24 hours notice be given to an employee whose negative performance evaluation is to be considered by the legislative body in closed session?

A. *No, the notice is reserved for situations where the body is to hear complaints and charges from witnesses.*

Correct labeling of the closed session on the agenda is critical. A closed session agenda that identified discussion of an employment contract was not sufficient to allow dismissal of an employee.[36] An incorrect agenda description can result in invalidation of an action and much embarrassment.

For purposes of the personnel exception, "employee" specifically includes an officer or an independent contractor who functions as an officer or an employee. Examples of the former include a city manager, district general manager or superintendent. Examples of the latter Include a legal counsel or engineer hired on contract to act as local agency attorney or chief engineer.

Elected officials, appointees to the governing body or subsidiary bodies, and independent contractors other than those discussed above are not employees for purposes of the personnel exception.[37] Action on individuals who are not "employees" must also be public — including discussing and voting on appointees to committees, or debating the merits of independent contractors, or considering a complaint against a member of the legislative body itself.

The personnel exception specifically prohibits discussion or action on proposed compensation in closed session, except for a disciplinary reduction in pay. Among other things, that means there can be no personnel closed sessions on a salary change (other than a disciplinary reduction) between any unrepresented individual and the legislative body. However, a legislative body may address the compensation of an unrepresented individual, such as a city manager, in a closed session as part of a labor negotiation (discussed later in this chapter), yet another example of the importance of using correct agenda descriptions.

PRACTICE TIP: The personnel exception specifically prohibits discussion or action on proposed compensation in closed session except for a disciplinary reduction in pay.

Reclassification of a job must be public, but an employee's ability to fill that job may be considered in closed session.

Any closed session action to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee must be reported at the public meeting during which the closed session is held. That report must identify the title of the position, but not the names of all persons considered for an employment position.[38] However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.[39]

> **"I have some important news to announce," said Mayor Garcia. "We've decided to terminate the contract of the city manager, effective immediately. The council has met in closed session and we've negotiated six months severance pay."**
>
> **"Unfortunately, that has some serious budget consequences, so we've had to delay phase two of the East Area Project."**
>
> *This may be an improper use of the personnel closed session if the council agenda described the item as the city manager's evaluation. In addition, other than labor negotiations, any action on individual compensation must be taken in open session. Caution should be exercised to not discuss in closed session issues, such as budget impacts in this hypothetical, beyond the scope of the posted closed session notice.*

Labor negotiations

The Brown Act allows closed sessions for some aspects of labor negotiations. Different provisions (discussed below) apply to school and community college districts.

A legislative body may meet in closed session to instruct its bargaining representatives, which may be one or more of its members,[40] on employee salaries and fringe benefits for both represented ("union") and non-represented employees. For represented employees, it may also consider working conditions that by law require negotiation. For the purpose of labor negotiation closed sessions, an "employee" includes an officer or an independent contractor who functions as an officer or an employee, but independent contractors who do not serve in the capacity of an officer or employee are not covered by this closed session exception.[41]

These closed sessions may take place before or during negotiations with employee representatives. Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

PRACTICE TIP: Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

During its discussions with representatives on salaries and fringe benefits, the legislative body may also discuss available funds and funding priorities, but only to instruct its representative. The body may also meet in closed session with a conciliator who has intervened in negotiations.[42]

The approval of an agreement concluding labor negotiations with represented employees must be reported after the agreement is final and has been accepted or ratified by the other party. The report must identify the item approved and the other party or parties to the negotiation.[43] The labor closed sessions specifically cannot include final action on proposed compensation of one or more unrepresented employees.

Labor negotiations — school and community college districts

Employee relations for school districts and community college districts are governed by the Rodda Act, where different meeting and special notice provisions apply. The entire board, for example, may negotiate in closed sessions.

Four types of meetings are exempted from compliance with the Rodda Act:

1. A negotiating session with a recognized or certified employee organization;
2. A meeting of a mediator with either side;
3. A hearing or meeting held by a fact finder or arbitrator; and
4. A session between the board and its bargaining agent, or the board alone, to discuss its position regarding employee working conditions and instruct its agent.[44]

Public participation under the Rodda Act also takes another form.[45] All initial proposals of both sides must be presented at public meetings and are public records. The public must be given reasonable time to inform itself and to express its views before the district may adopt its initial proposal. In addition, new topics of negotiations must be made public within 24 hours. Any votes on such a topic must be followed within 24 hours by public disclosure of the vote of each member.[46] The final vote must be in public.

Other Education Code exceptions

The Education Code governs student disciplinary meetings by boards of school districts and community college districts. District boards may hold a closed session to consider the suspension or discipline of a student, if a public hearing would reveal personal, disciplinary, or academic information about the student contrary to state and federal pupil privacy law. The student's parent or guardian may request an open meeting.[47]

Community college districts may also hold closed sessions to discuss some student disciplinary matters, awarding of honorary degrees, or gifts from donors who prefer to remain anonymous.[48] Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.[49]

PRACTICE TIP: Attendance by the entire legislative body before a grand jury would not constitute a closed session meeting under the Brown Act.

Joint Powers Authorities

The legislative body of a joint powers authority may adopt a policy regarding limitations on disclosure of confidential information obtained in closed session, and may meet in closed session to discuss information that is subject to the policy.[50]

License applicants with criminal records

A closed session is permitted when an applicant, who has a criminal record, applies for a license or license renewal and the legislative body wishes to discuss whether the applicant is sufficiently rehabilitated to receive the license. The applicant and the applicant's attorney are authorized to attend the closed session meeting. If the body decides to deny the license, the applicant may withdraw the application. If the applicant does not withdraw, the body must deny the license in public, immediately or at its next meeting. No information from the closed session can be revealed without consent of the applicant, unless the applicant takes action to challenge the denial.[51]

Public security

Legislative bodies may meet in closed session to discuss matters posing a threat to the security of public buildings, essential public services, including water, sewer, gas, or electric service, or to the public's right of access to public services or facilities over which the legislative body has jurisdiction. Closed session meetings for these purposes must be held with designated security or law enforcement officials including the Governor, Attorney General, district attorney, agency attorney, sheriff or chief of police, or their deputies or agency security consultant or security operations manager.[52] Action taken in closed session with respect to such public security issues is not reportable action.

Multijurisdictional law enforcement agency

A joint powers agency formed to provide law enforcement services (involving drugs; gangs; sex crimes; firearms trafficking; felony possession of a firearm; high technology, computer, or identity theft; human trafficking; or vehicle theft) to multiple jurisdictions may hold closed sessions to discuss case records of an on-going criminal investigation, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.[53]

The exception applies to the legislative body of the joint powers agency and to any body advisory to it. The purpose is to prevent impairment of investigations, to protect witnesses and informants, and to permit discussion of effective courses of action.[54]

Hospital peer review and trade secrets

Two specific kinds of closed sessions are allowed for district hospitals and municipal hospitals, under other provisions of law.[55]

1. A meeting to hear reports of hospital medical audit or quality assurance committees, or for related deliberations. However, an applicant or medical staff member whose staff privileges are the direct subject of a hearing may request a public hearing.
2. A meeting to discuss "reports involving trade secrets" — provided no action is taken.

A "trade secret" is defined as information which is not generally known to the public or competitors and which: 1) "derives independent economic value, actual or potential" by virtue of its restricted knowledge; 2) is necessary to initiate a new hospital service or program or facility; and 3) would, if prematurely disclosed, create a substantial probability of depriving the hospital of a substantial economic benefit.

The provision prohibits use of closed sessions to discuss transitions in ownership or management, or the district's dissolution.[56]

Other legislative bases for closed session

Since any closed session meeting of a legislative body must be authorized by the Legislature, it is important to carefully review the Brown Act to determine if there is a provision that authorizes a closed session for a particular subject matter. There are some less frequently encountered topics that are authorized to be discussed by a legislative body in closed session under the Brown Act, including: a response to a confidential final draft audit report from the Bureau of State Audits,[57] consideration of the purchase or sale of particular pension fund investments by a legislative body of a local agency that invests pension funds,[58] hearing a charge or complaint from a member enrolled in a health plan by a legislative body of a local agency that provides Medi-Cal services,[59] discussions by a county board of supervisors that governs a health plan licensed pursuant to the Knox-Keene Health Care Services Plan Act related to trade secrets or contract negotiations concerning rates of payment,[60] and discussions by an insurance pooling joint powers agency related to a claim filed against, or liability of, the agency or a member of the agency.[61]

PRACTICE TIP: Meetings are either open or closed. There is nothing "in between."[62]

Who may attend closed sessions

Meetings of a legislative body are either fully open or fully closed; there is nothing in between. Therefore, local agency officials and employees must pay particular attention to the authorized attendees for the particular type of closed session. As summarized above, the authorized attendees may differ based on the topic of the closed session. Closed sessions may involve only the members of the legislative body and only agency counsel, management and support staff, and consultants necessary for consideration of the matter that is the subject of closed session, with very limited exceptions for adversaries or witnesses with official roles in particular types of hearings (e.g., personnel disciplinary hearings and license hearings). In any case, individuals who do not have an official role in the closed session subject matters must be excluded from closed sessions.[63]

Q. May the lawyer for someone suing the agency attend a closed session in order to explain to the legislative body why it should accept a settlement offer?

A. *No, attendance in closed sessions is reserved exclusively for the agency's advisors.*

The confidentiality of closed session discussions

The Brown Act explicitly prohibits the unauthorized disclosure of confidential information acquired in a closed session by any person present, and offers various remedies to address breaches of confidentiality.[64] It is incumbent upon all those attending lawful closed sessions to protect the confidentiality of those discussions. One court has held that members of a legislative body cannot be compelled to divulge the content of closed session discussions through the discovery process.[65] Only the legislative body acting as a body may agree to divulge confidential closed session information; regarding attorney/client privileged communications, the entire body is the holder of the privilege and only the entire body can decide to waive the privilege.[66]

Before adoption of the Brown Act provision specifically prohibiting disclosure of closed session communications, agency attorneys and the Attorney General long opined that officials have a fiduciary duty to protect the confidentiality of closed session discussions. The Attorney General issued an opinion that it is "improper" for officials to disclose information received during a closed session regarding pending litigation,[67] though the Attorney General has also concluded that a local agency is preempted from adopting an ordinance criminalizing public disclosure of closed session discussions.[68] In any event, in 2002, the Brown Act was amended to prescribe particular remedies for breaches of confidentiality. These remedies include injunctive relief; and, if the breach is a willful disclosure of confidential information, the remedies include disciplinary action against an employee, and referral of a member of the legislative body to the grand jury.[69]

PRACTICE TIP: There is a strong interest in protecting the confidentiality of proper and lawful closed sessions.

The duty of maintaining confidentiality, of course, must give way to the responsibility to disclose improper matters or discussions that may come up in closed sessions. In recognition of this public policy, under the Brown Act, a local agency may not penalize a disclosure of information learned during a closed session if the disclosure: 1) is made in confidence to the district attorney or the grand jury due to a perceived violation of law; 2) is an expression of opinion concerning the propriety or legality of actions taken in closed session, including disclosure of the nature and extent of the illegal action; or 3) is information that is not confidential.[70]

The interplay between these possible sanctions and an official's first amendment rights is complex and beyond the scope of this guide. Suffice it to say that this is a matter of great sensitivity and controversy.

> **"I want the press to know that I voted in closed session against filing the eminent domain action," said Council Member Chang.**
>
> **"Don't settle too soon," reveals Council Member Watson to the property owner, over coffee. "The city's offer coming your way is not our bottom line."**
>
> *The first comment to the press may be appropriate if it is a part of an action taken by the City Council in closed session that must be reported publicly.[71] The second comment to the property owner is not — disclosure of confidential information acquired in closed session is expressly prohibited and harmful to the agency.*

ENDNOTES:

1 California Government Code section 54962

2 California Constitution, Art. 1, section 3

3 61 Ops.Cal.Atty.Gen. 220 (1978); but see California Government Code section 54957.8 (multijurisdictional law enforcement agencies are authorized to meet in closed session to discuss the case records of ongoing criminal investigations, and other related matters).

4 California Government Code section 54957.1

5 California Government Code section 54954.5

6 California Government Code section 54954.2

7 California Government Code section 54954.5

8 California Government Code sections 54956.9 and 54957.7

9 California Government Code section 54957.1(a)

10 California Government Code section 54957.1(b)

11 California Government Code section 54957.2

12 *Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050; 2 Cal.Code Regs. section 18707

13 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363

14 California Government Code section 54956.9; *Shapiro v. Board of Directors of Center City Development Corp.* (2005) 134 Cal.App.4th 170 (agency must be a party to the litigation).

15 82 Ops.Cal.Atty.Gen. 29 (1999)

16 *Page v. Miracosta Community College District* (2009) 180 Cal.App.4th 471

17 "*The Brown Act,*" California Attorney General (2003), p. 40

18 California Government Code section 54956.9(g)

19 *Trancas Property Owners Association v. City of Malibu* (2006) 138 Cal.App.4th 172

20 Government Code section 54956.9(e)

21 California Government Code section 54957.1

22 California Government Code section 54956.8

23 *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904; see also 93 Ops.Cal.Atty.Gen. 51 (2010) (redevelopment agency may not convene a closed session to discuss rehabilitation loan for a property already subleased to a loan recipient, even if the loan Incorporates some of the sublease terms and includes an operating covenant governing the property); 94 Ops.Cal.Atty.Gen. 82 (2011) (real estate closed session may address form, manner and timing of consideration and other items that cannot be disclosed without revealing price and terms).

24 73 Ops.Cal.Atty.Gen. 1 (1990)

25 California Government Code sections 54956.8 and 54954.5(b)

26 California Government Code section 54957.1(a)(1)

27 California Government Code section 54957(b)

28 63 Ops.Cal.Atty.Gen. 153 (1980); but see *Duvall v. Board of Trustees* (2000) 93 Cal.App.4th 902 (board may discuss personnel evaluation criteria, process and other preliminary matters in closed session but only if related to the evaluation of a particular employee).

29 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 85 Ops.Cal.Atty.Gen. 77 (2002)

30 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 80 Ops.Cal.Atty. Gen. 308 (1997). Interviews of candidates to fill a vacant staff position conducted by a temporary committee appointed by the governing body may be done in closed session.

31 California Government Code section 54957(b)(3)

32 88 Ops.Cal.Atty.Gen. 16 (2005)

33 *Morrison v. Housing Authority of the City of Los Angeles* (2003) 107 Cal.App.4th 860

34 California Government Code section 54957(b); but see *Bollinger v. San Diego Civil Service Commission* (1999) 71 Cal.App.4th 568 (notice not required for closed session deliberations regarding complaints or charges, when there was a public evidentiary hearing prior to closed session).

35 78 Ops.Cal.Atty.Gen. 218 (1995); *Bell v. Vista Unified School District* (2000) 82 Cal.App.4th 672; *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876; *Fischer v. Los Angeles Unified School District* (1999) 70 Cal.App.4th 87

36 *Moreno v. City of King* (2005) 127 Cal.App.4th 17

37 California Government Code section 54957

38 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165

39 California Government Code section 54957.1(a)(5)

40 California Government Code section 54957.6

41 California Government Code section 54957.6(b); see also 98 Ops.Cal.Atty.Gen. 41 (2015) (a project labor agreement between a community college district and workers hired by contractors or subcontractors is not a proper subject of closed session for labor negotiations because the workers are not "employees" of the district).

42 California Government Code section 54957.6; and 51 Ops.Cal.Atty.Gen. 201 (1968)

43 California Government Code section 54957.1(a)(6)

44 California Government Code section 3549.1

45 California Government Code section 3540

46 California Government Code section 3547

47 California Education Code section 48918; but see *Rim of the World Unified School District v. Superior Court* (2003) 104 Cal.App.4th 1393 (Section 48918 preempted by the Federal Family Educational Right and Privacy Act in regard to expulsion proceedings).

48 California Education Code section 72122

49 California Education Code section 60617

50 California Government Code section 54956.96

51 California Government Code section 54956.7

52 California Government Code section 54957

53 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354

54 California Government Code section 54957.8

55 California Government Code section 54962

56 California Health and Safety Code section 32106

57 California Government Code section 54956.75

58 California Government Code section 54956.81

59 California Government Code section 54956.86

60 California Government Code section 54956.87

61 California Government Code section 54956.95

62 46 Ops.Cal.Atty.Gen. 34 (1965)

63 82 Ops.Cal.Atty.Gen. 29 (1999)

64 Government Code section 54963

65 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 327; see also California Government Code section 54963.

66 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363

67 80 Ops.Cal.Atty.Gen. 231 (1997)

68 76 Ops.Cal.Atty.Gen. 289 (1993)

69 California Government Code section 54963

70 California Government Code section 54963

71 California Government Code section 54957.1

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Chapter 6

REMEDIES

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REMEDIES

Certain violations of the Brown Act are designated as misdemeanors, although by far the most commonly used enforcement provisions are those that authorize civil actions to invalidate specified actions taken in violation of the Brown Act and to stop or prevent future violations. Still, despite all the safeguards and remedies to enforce them, it is ultimately impossible for the public to monitor every aspect of public officials' interactions. Compliance ultimately results from regular training and a good measure of self-regulation on the part of public officials. This chapter discusses the remedies available to the public when that self-regulation is ineffective.

Invalidation

Any interested person, including the district attorney, may seek to invalidate certain actions of a legislative body on the ground that they violate the Brown Act.[1] Violations of the Brown Act, however, cannot be invalidated if they involve the following types of actions:

- Those taken in substantial compliance with the law. No Brown Act violation is found when the given notice substantially complies with the Brown Act, even when the notice erroneously cites to the wrong Brown Act section, but adequately advises the public that the Board will meet with legal counsel to discuss potential litigation in closed session;[2]
- Those involving the sale or issuance of notes, bonds or other indebtedness, or any related contracts or agreements;
- Those creating a contractual obligation, including a contract awarded by competitive bid for other than compensation for professional services, upon which a party has in good faith relied to its detriment;
- Those connected with the collection of any tax; or
- Those in which the complaining party had actual notice at least 72 hours prior to the regular meeting or 24 hours prior to the special meeting, as the case may be, at which the action is taken.

Before filing a court action seeking invalidation, a person who believes that a violation has occurred must send a written "cure or correct" demand to the legislative body. This demand must clearly describe the challenged action and the nature of the claimed violation. This demand must be sent within 90 days of the alleged violation or 30 days if the action was taken in open session but in violation of Section 54954.2, which requires (subject to specific exceptions) that only properly agendized items are acted on by the governing body during a meeting.[3] The legislative body then has up to 30 days to cure and correct its action. If it does not act, any lawsuit must be filed within the next 15 days. The purpose of this requirement is to offer the body an opportunity to consider whether a violation has occurred and to weigh its options before litigation is filed.

Although just about anyone has standing to bring an action for invalidation,[4] the challenger must show prejudice as a result of the alleged violation.[5] An action to invalidate fails to state a cause of action against the agency if the body deliberated but did not take an action.[6]

Applicability to Past Actions

Any interested person, including the district attorney, may file a civil action to determine whether past actions of a legislative body occurring on or after January 1, 2013 constitute violations of the Brown Act and are subject to a mandamus, injunction, or declaratory relief action.[7] Before filing an action, the interested person must, within nine months of the alleged violation of the Brown Act, submit a "cease and desist" letter to the legislative body, clearly describing the past action and the nature of the alleged violation.[8] The legislative body has 30 days after receipt of the letter to provide an unconditional commitment to cease and desist from the past action.[9] If the body fails to take any action within the 30-day period or takes an action other than an unconditional commitment, a lawsuit may be filed within 60 days.[10]

The legislative body's unconditional commitment must be approved at a regular or special meeting as a separate item of business and not on the consent calendar.[11] The unconditional commitment must be substantially in the form set forth in the Brown Act.[12] No legal action may thereafter be commenced regarding the past action.[13] However, an action of the legislative body in violation of its unconditional commitment constitutes an independent violation of the Brown Act and a legal action consequently may be commenced without following the procedural requirements for challenging past actions.[14]

The legislative body may rescind its prior unconditional commitment by a majority vote of its membership at a regular meeting as a separate item of business not on the consent calendar. At least 30 days written notice of the intended rescission must be given to each person to whom the unconditional commitment was made and to the district attorney. Upon rescission, any interested person may commence a legal action regarding the past actions without following the procedural requirements for challenging past actions.[15]

PRACTICE TIP: A lawsuit to invalidate must be preceded by a demand to cure and correct the challenged action in order to give the legislative body an opportunity to consider its options. The Brown Act does not specify how to cure or correct a violation; the best method is to rescind the action being complained of and start over, or reaffirm the action if the local agency relied on the action and rescinding the action would prejudice the local agency.

Civil action to prevent future violations

The district attorney or any interested person can file a civil action asking the court to:

- Stop or prevent violations or threatened violations of the Brown Act by members of the legislative body of a local agency;
- Determine the applicability of the Brown Act to actions or threatened future action of the legislative body;
- Determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid under state or federal law; or
- Compel the legislative body to tape record its closed sessions.

It is not necessary for a challenger to prove a past pattern or practice of violations by the local agency in order to obtain injunctive relief. A court may presume when issuing an injunction that a single violation will continue in the future where the public agency refuses to admit to the alleged violation or to renounce or curtail the practice.[16] Note, however, that a court may not compel elected officials to disclose their recollections of what transpired in a closed session.[17]

Upon finding a violation of the Brown Act pertaining to closed sessions, a court may compel the legislative body to tape record its future closed sessions. In a subsequent lawsuit to enforce the Brown Act alleging a violation occurring in closed session, a court may upon motion of the plaintiff review the tapes if there is good cause to think the Brown Act has been violated, and make public the relevant portion of the closed session recording.

Costs and attorney's fees

Someone who successfully invalidates an action taken in violation of the Brown Act or who successfully enforces one of the Brown Act's civil remedies may seek court costs and reasonable attorney's fees. Courts have held that attorney's fees must be awarded to a successful plaintiff unless special circumstances exist that would make a fee award against the public agency unjust.[18] When evaluating how to respond to assertions that the Brown Act has been violated, elected officials and their lawyers should assume that attorney's fees will be awarded against the agency if a violation of the Act is proven.

An attorney's fee award may only be directed against the local agency and not the individual members of the legislative body. If the local agency prevails, it may be awarded court costs and attorney's fees if the court finds the lawsuit was clearly frivolous and lacking in merit.[19]

PRACTICE TIP: Attorney's fees will likely be awarded if a violation of the Brown Act is proven.

Criminal complaints

A violation of the Brown Act by a member of the legislative body who acts with the improper intent described below is punishable as a misdemeanor.[20]

A criminal violation has two components. The first is that there must be an overt act — a member of a legislative body must attend a meeting at which action is taken in violation of the Brown Act.[21]

"Action taken" is not only an actual vote, but also a collective decision, commitment or promise by a majority of the legislative body to make a positive or negative decision.[22] If the meeting involves mere deliberation without the taking of action, there can be no misdemeanor penalty.

A violation occurs for a tentative as well as final decision.[23] In fact, criminal liability is triggered by a member's participation in a meeting in violation of the Brown Act — not whether that member has voted with the majority or minority, or has voted at all.

The second component of a criminal violation is that action is taken with the intent of a member "to deprive the public of information to which the member knows or has reason to know the public is entitled" by the Brown Act.[24]

As with other misdemeanors, the filing of a complaint is up to the district attorney. Although criminal prosecutions of the Brown Act are uncommon, district attorneys in some counties aggressively monitor public agencies' adherence to the requirements of the law.

Some attorneys and district attorneys take the position that a Brown Act violation may be pursued criminally under Government Code section 1222.[25] There is no case law to support this view; if anything, the existence of an express criminal remedy within the Brown Act would suggest otherwise.[26]

Voluntary resolution

Arguments over Brown Act issues often become emotional on all sides. Newspapers trumpet relatively minor violations, unhappy residents fume over an action, and legislative bodies clam up about information better discussed in public. Hard lines are drawn and rational discussion breaks down. The district attorney or even the grand jury occasionally becomes involved. Publicity surrounding alleged violations of the Brown Act can result in a loss of confidence by constituents in the legislative body. There are times when it may be preferable to consider re-noticing and rehearing, rather than litigating, an item of significant public interest, particularly when there is any doubt about whether the open meeting requirements were satisfied.

At bottom, agencies that regularly train their officials and pay close attention to the requirements of the Brown Act will have little reason to worry about enforcement.

ENDNOTES:

1 California Government Code section 54960.1. Invalidation is limited to actions that violate the following sections of the Brown Act: section 54953 (the basic open meeting provision); sections 54954.2 and 54954.5 (notice and agenda requirements for regular meetings and closed sessions); 54954.6 (tax hearings); 54956 (special meetings); and 54596.5 (emergency situations). Violations of sections not listed above cannot give rise to invalidation actions, but are subject to the other remedies listed in section 54960.1.

2 *Castaic Lake Water Agency v. Newhall County Water District* (2015) 238 Cal.App.4th 1196, 1198

3 California Government Code section 54960.1 (b) and (c)(1)

4 *McKee v. Orange Unified School District* (2003) 110 Cal. App.4th 1310, 1318-1319

5 *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 556, 561

6 *Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1116-17, 1118

7 Government Code Section 54960.2(a); Senate Bill No. 1003, Section 4 (2011-2012 Session)

8 Government Code Sections 54960.2(a)(1), (2)

9 Government Code Section 54960.2(b)

10 Government Code Section 54960.2(a)(4)

11 Government Code Section 54960.2(c)(2)

12 Government Code Section 54960.2(c)(1)

13 Government Code Section 54960.2(c)(3)

14 Government Code Section 54960.2(d)

15 Government Code Section 54960.2(e)

16 *California Alliance for Utility Safety and Education (CAUSE) v. City of San Diego* (1997) 56 Cal.App.4th 1024; *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518, 524; *Accord Shapiro v. San Diego City Council* (2002) 96 Cal. App. 4th 904, 916 & fn.6

17 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 334-36

18 *Los Angeles Times Communications, LLC v. Los Angeles County Board of Supervisors* (2003) 112 Cal. App.4th 1313, 1327-29 and cases cited therein

19 California Government Code section 54960.5

20 California Government Code section 54959. A misdemeanor is punishable by a fine of up to $1,000 or up to six months in county jail, or both. California Penal Code section 19. Employees of the agency who participate in violations of the Brown Act cannot be punished criminally under section 54959. However, at least one district attorney instituted criminal action against employees based on the theory that they criminally conspired with the members of the legislative body to commit a crime under section 54949.

21 California Government Code section 54959

22 California Government Code section 54952.6

23 61 Ops.Cal.Atty.Gen.283 (1978)

24 California Government Code section 54959

25 California Government Code section 1222 provides that "[e]very wilful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor."

26 The principle of statutory construction known as *expressio unius est exclusio alterius* supports the view that section 54959 is the exclusive basis for criminal liability under the Brown Act.

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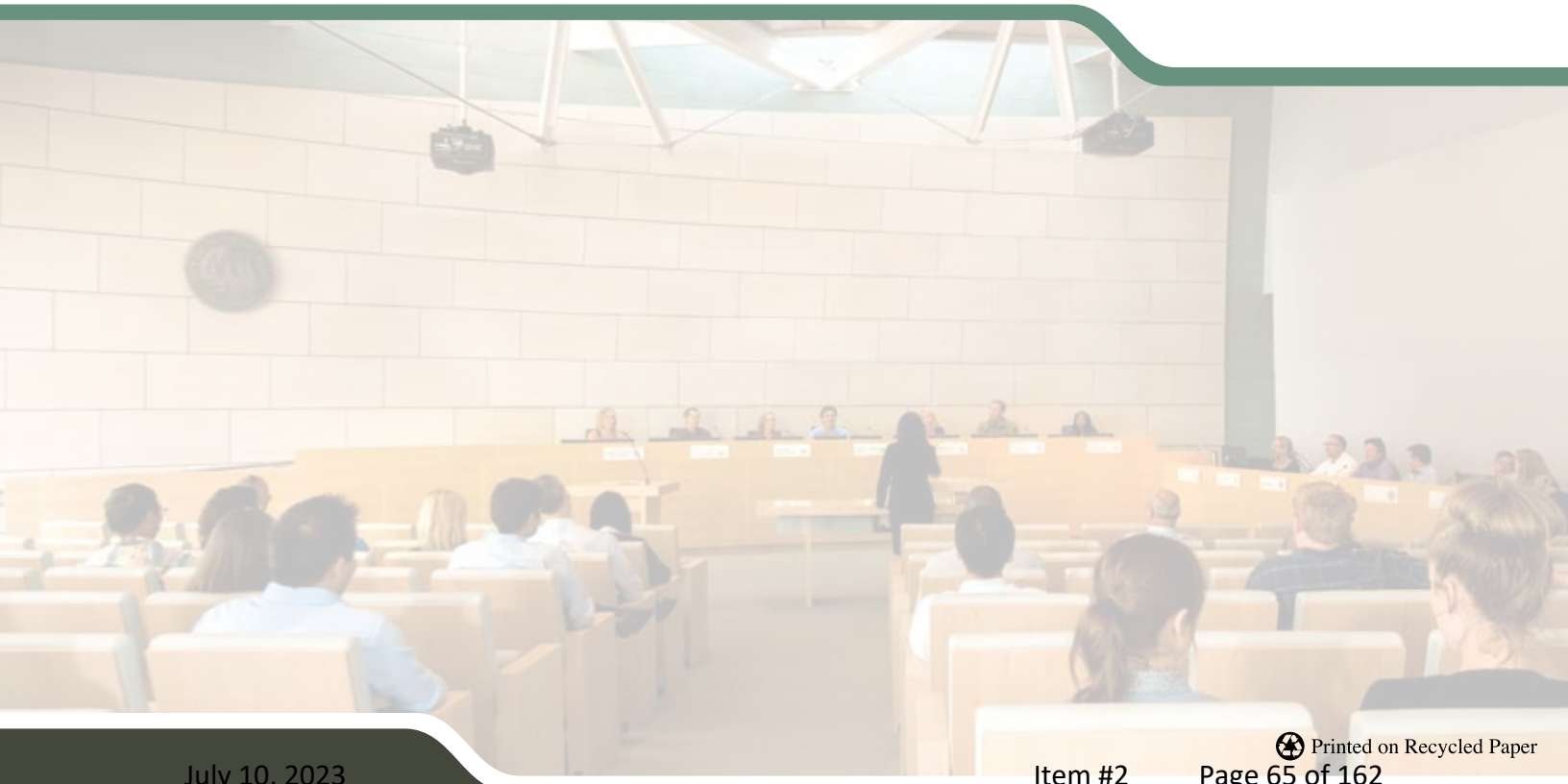

The People's Business

A GUIDE TO THE CALIFORNIA PUBLIC RECORDS ACT

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LEAGUE OF CALIFORNIA CITIES

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Chapter 1

Introduction and Overview

Origins of the Public Records Act

The California Public Records Act (the PRA) was enacted in 1968 to: (1) safeguard the accountability of government to the public; (2) promote maximum disclosure of the conduct of governmental operations; and (3) explicitly acknowledge the principle that secrecy is antithetical to a democratic system of "government of the people, by the people and for the people."[1] The PRA was enacted against a background of legislative impatience with secrecy in government and was modeled on the federal Freedom of Information Act (FOIA) enacted a year earlier.[2] When the PRA was enacted, the Legislature had been attempting to formulate a workable means of minimizing secrecy in government. The resulting legislation replaced a confusing mass of statutes and court decisions relating to disclosure of government records.[3] The PRA was the culmination of a 15-year effort by the Legislature to create a comprehensive general public records law.

2023 Revisions to the Public Records Act

In 2021, the legislature enacted the CPRA Recodification Act (AB 473). This Act, effective Jan. 1, 2023, renumbered and reorganized the PRA in a new Division 614 of the Government Code, beginning at section 7920.005. Nothing in AB 473 was "intended to substantially change the law relating to inspection of public records."[4] The changes were intended to be "entirely nonsubstantive in effect. Every provision of this division and every other provision of [AB 473], shall be interpreted consistent with the nonsubstantive intent of the act."[5]

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1 Gov. Code, § 7920.000 *et. seq.* (formerly Gov. Code, § 6250 *et seq.);* Stats 1968, Ch. 1473; *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651–652; 52 Ops.Cal.Atty.Gen 136, 143; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 771–772.

2 *San Gabriel Tribune v. Superior Court, supra,* 143 Cal.App.3d at p. 772; 5 U.S.C. §552 *et seq.*, 81 Stat. 54; *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 447; *CBS, Inc. v. Block, supra, 42 Cal.3d at p. 651.* The basic purpose of the FOIA is to expose agency action to the light of public scrutiny. *U.S. Dept. of Justice v. Reporters Com. for Freedom of Press* (1989) 489 US 749, 774.

3 *San Gabriel Tribune v. Superior Court, supra,* 143 Cal.App.3d at p. 772; *American Civil Liberties Union Federation v. Deukmejian, supra,* 32 Cal.3d at p. 447.

4 Gov. Code, § 7920.100.

5 *Ibid.*

Case law interpreting the prior version of the PRA applies to new provisions that restate and continue the previously existing provisions.[6] AB 473 is "not intended to, and does not, reflect any assessment of any judicial decision interpreting any provision affected by [AB 473]."[7]

Fundamental Right of Access to Government Information

The PRA is an indispensable component of California's commitment to open government. The PRA expressly provides that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."[8] The purpose is to give the public access to information that enables them to monitor the functioning of their government.[9] The concept that access to information is a fundamental right is not new to United States jurisprudence. Two hundred years ago James Madison observed "[k]nowledge will forever govern ignorance and a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it is but a prologue to a farce or tragedy or perhaps both."[10]

The PRA provides for two different rights of access. One is a right to inspect public records: "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."[11] The other is a right to prompt availability of copies of public records:

> 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.[12]

Agency records policies and practices must satisfy both types of public records access — by permitting inspection and by providing copies of public records — that the PRA guarantees.

Exemptions from Disclosure — Protecting the Public's Fundamental Right of Privacy and Need for Efficient and Effective Government

The PRA's fundamental precept is that governmental records shall be disclosed to the public, upon request, unless there is a legal basis not to do so.[13] The right of access to public records under the PRA is not unlimited; it does not extend to records that are exempt from disclosure. Express legal authority is required to justify denial of access to public records.

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6 Gov. Code, § 7920.110, subd. (a).

7 Gov. Code, § 7920.110, subd. (c).

8 Gov. Code, § 7921.000 (formerly Gov. Code, § 6250).

9 *CBS, Inc. v. Block, supra,* 42 Cal.3d at p. 651; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1350.

10 *San Gabriel Tribune v. Superior Court, supra,* 143 Cal.App.3d at p. 772, citing Shaffer et al., *A Look at the California Records Act and Its Exemptions* (1974) 4 Golden Gate L Rev 203, 212.

11 Gov. Code, § 7922.525, subd. (a) (formerly Gov. Code, § 6253, subd. (a)).

12 Gov. Code, § 7922.530, subd. (a) (formerly Gov. Code, § 6253, subd. (b)).

13 *Ibid.*

PRACTICE TIP:

There is no general exemption authorizing non-disclosure of government records on the basis the disclosure could be inconvenient or even potentially embarrassing to a local agency or its officials. Disclosure of such records is one of the primary purposes of the PRA.

The PRA itself currently contains numerous exemptions from disclosure.[14] Despite the Legislature's goal of accumulating all of the exemptions from disclosure in one place, there are also numerous laws outside the PRA that create exemptions from disclosure. The PRA lists other laws that exempt particular types of government records from disclosure.[15]

The exemptions from disclosure contained in the PRA and other laws reflect two recurring interests. Many exemptions are intended to protect privacy rights.[16] Many other exemptions are based on the recognition that, in addition to the need for the public to know what its government is doing, there is a need for the government to perform its assigned functions in a reasonably efficient and effective manner, and to operate on a reasonably level playing field in dealing with private interests.[17]

Achieving Balance

The Legislature in enacting the PRA struck a balance among competing, yet fundamental interests: government transparency, privacy rights, and government effectiveness. The legislative findings declare access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in the state and the Legislature is "mindful of the right of individuals to privacy."[18] "In the spirit of this declaration, judicial decisions interpreting the [PRA] seek to balance the public right to access to information, the government's need, or lack of need, to preserve confidentiality, and the individual's right to privacy."[19]

Approximately half of the current exemptions from disclosure contained in the PRA appear intended primarily to protect privacy interests.[20] A significant number of the exemptions appear intended primarily to support effective

14 Gov. Code, § 7921.000 *et. seq.* (formerly Gov. Code, § 6250 *et seq.*). There are currently over 75 exemptions.

15 Gov. Code, § 7930.000 *et. seq.* (formerly Gov. Code, § 6275 *et seq.).*

16 See, e.g., "Personnel Records," p. 52.

17 See, e.g., "Attorney Client Communications and Attorney Work Product," p. 31.

18 Gov. Code, § 7920.000 (formerly Gov. Code, § 6250); Cal Const., art. I, § 3(b)(3).

19 *American Civil Liberties Union Foundation v. Deukmejian, supra,* 32 Cal.3d at p. 447.

20 See e.g., Gov. Code, §§ 7926.300 (formerly 6253.2); 7924.100-7924.110 (formerly 6253.5); 7924.005 (formerly 6253.6); 7927.700 (formerly 6254, subd. (c)); 7925.000 (formerly 6254, subd. (i)); 7927.100 (formerly 6254, subd. (j)); 7925.005 (formerly 6254, subd. (n)); 7924.505 (formerly 6254, subd. (o)), 7927.000 (formerly 6254, subd. (r)); 7923.800 (formerly 6254, subd. (u)(1)); 7923.805 (formerly 6254, subds. (u)(2)-(u)(3); 7925.010 (formerly 6254, subd. (x)); 7923.700 (formerly 6254, subd. (z)); 7926.100 (formerly 6254, subd. (ac)); 7929.400 (formerly 6254, subd. (ad)-(ad)(1)); 7929.415 (formerly 6254, subd. (ad)(4)); 7929.420 (formerly 6254, subd. (ad)(5)); 7929.425 (formerly 6254, subd. (ad)(6)); 7927.415 (formerly 6254.1, subd. (a)); 7927.405 (formerly 6254.1 (b)); 7929.600 (formerly 6254.1, subd. (c)); 7924.300-7924.335 (formerly 6254.2); 7928.300 (formerly 6254.3); 7924.000 (formerly 6254.4); 7927.005 (formerly 6254.10); 7924.500 (formerly 6254.11); 7929.610 (formerly 6254.13); 7927.605 (formerly 6254.15); 7927.410 (formerly 6254.16); 7923.755 (formerly 6254.17); 7926.400-7926.430 (formerly 6254.18); 7927.400 (formerly 6254.20); 7928.200-7928.230 (formerly 6254.21); 7922.200 (formerly 6254.29); 7927.105 (formerly 6267); 7928.005 & 7928.010 (formerly 6268).

governmental operation in the public's interest.[21] A few exemptions appear to focus equally on protecting privacy rights and effective government. Those include: an exemption for law enforcement records; an exemption that incorporates into the PRA exemptions from disclosure in other state and federal laws, including privileges contained in the Evidence Code; and the "public interest" or "catch-all" exemption, where, based on the particular facts, the public interest in not disclosing the record clearly outweighs the public interest in disclosure.[22] Additionally, the deliberative process privilege reflects both the public interests in privacy and government effectiveness by affording a measure of privacy to decision-makers that is intended to aid in the efficiency and effectiveness of government decision-making.[23]

The balance that the PRA strikes among the often-competing interests of government transparency and accountability, privacy rights, and government effectiveness intentionally favors transparency and accountability. The PRA is intended to reserve "islands of privacy upon the broad seas of enforced disclosure."[24] For the past five decades, courts have balanced those competing interests in deciding whether to order disclosure of records.[25] The courts have consistently construed exemptions from disclosure narrowly and agencies' disclosure obligations broadly.[26] Ambiguities in the PRA must be interpreted in a way that maximizes the public's access to information unless the Legislature has expressly provided otherwise.[27]

The PRA requires local agencies, as keepers of the public's records, to balance the public interests in transparency, privacy, and effective government in response to records requests. Certain provisions in the PRA help maintain the balancing scheme established under the PRA and the cases interpreting it by prohibiting state and local agencies from delegating their balancing role and making arrangements with other entities that could limit access to public records. For example, state and local agencies may not allow another party to control the disclosure of information otherwise subject to disclosure under the PRA.[28] Also, state and local agencies may not provide public records subject to disclosure under the PRA to a private entity in a way that prevents a state or local agency from providing the records directly pursuant to the PRA.[29]

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21 The following exemptions contained in the PRA appear primarily intended to support effective government: Gov. Code, §§ 7927.500 (formerly 6254, subd. (a)); 7927.200 (formerly 6254, subd. (b)); 7929.000 (formerly 6254, subd. (d)); 7927.300 (formerly 6254, subd. (e)); 7929.605 (formerly 6254, subd. (g)); 7928.705 (formerly 6254, subd. (h)); 7928.000 (formerly 6254, subd. (l)); 7928.100 (formerly 6254, subd. (m)); 7928.405-7928-410 (formerly 6254, subd. (p)); 7926.220 (formerly 6254, subd. (q)); 7926.000 (formerly 6254, subd. (s)); 7926.210 (formerly 6254, subd. (t)); 7926.225, subds. (a)-(d) (formerly 6254, subds. (v)(1), (v)(1)(A), (v)(1)(B)); 7926.235 (formerly 6254, subd. (w)); 7926.230 (formerly 6254, subd. (y)); 7929.200 (formerly 6254, subd. (aa)); 7929.205 (formerly 6254, subd. (ab)); 7929.405-7929.410 (formerly 6254, subds. (ad)(2) & (ad)(3)); 7927.600 (formerly 6254.6); 7924.510 (formerly 6254.7); 7922.585 (formerly 6254.9); 7926.215 (formerly 6254.14); 7929.210 (formerly 6254.19); 7926.205 (formerly 6254.22); 7929.215 (formerly 6254.23); 7927.205 (formerly 6254.25); 7928.710 (formerly 6254.26); 7922.205 (formerly 6254.27); 7922.210 (formerly 6254.28).

22 Gov. Code, §§ 7923.600-7293.625, 7927.705 (formerly §§ 6254, subds. (f) and (k); Gov. Code, § 7922.000 (formerly Gov. Code, § 6255).

23 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255); *Times Mirror Co. v. Superior Court, supra*, 53 Cal.3d at pp. 1339–1344.

24 *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 653.

25 *Times Mirror Co. v. Superior Court, supra,* 53 Cal.3d at p. 1344; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136, 1144.

26 *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 476; *New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579, 1585; *San Gabriel Tribune v. Superior Court (1983)* 143 Cal.App.3d 762, 772–773.

27 *Sierra Club v. Superior Court of Orange County* (2013) 57 Cal.4th 157, 175–176.

28 Gov. Code, § 7921.005 (formerly Gov. Code, § 6253.3).

29 Gov. Code, § 7921.010 (formerly Gov. Code, § 6270, subd. (a)).

PRACTICE TIP:

Even though contracts or settlement agreements between agencies and private parties may require that the parties give each other notice of requests for the contract or settlement agreement, such agreements cannot purport to permit private parties to dictate whether the agreement is a public record subject to disclosure.

Incorporation of the PRA into the California Constitution

Proposition 59

In November 2004, the voters approved Proposition 59, which amended the California Constitution to include the public's right to access public records: "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."[30] As amended, the California Constitution provides each statute, court rule, and other authority "shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access."[31] The Proposition 59 amendments expressly retained and did not supersede or modify other existing constitutional, statutory, or regulatory provisions, including the rights of privacy, due process, and equal protection, as well as any constitutional, statutory, or common-law exception to the right of access to public records in effect on the amendments' effective date. That includes any statute protecting the confidentiality of law enforcement and prosecution records.[32]

The courts and the California Attorney General have determined that the constitutional provisions added by Proposition 59 maintain the established principles that disclosure obligations under the PRA must be construed broadly, and exemptions construed narrowly.[33] By approving Proposition 59, the voters have incorporated into the California Constitution the PRA policy prioritizing government transparency and accountability, as well as the PRA's careful balancing of the public's right of access to government information with protections for the public interests in privacy and effective government. No case has yet held Proposition 59 substantively altered the balance struck in the PRA between government transparency, privacy protection, and government effectiveness.

Proposition 42

In June 2014, the voters approved Proposition 42, which amended the California Constitution "to ensure public access to the meetings of public bodies and the writings of public officials and agencies."[34] As amended, the Constitution requires local agencies to comply with the PRA, the Ralph M. Brown Act (The Brown Act), any subsequent amendments to either act, any successor act, and any amendments to any successor act that contain findings that the legislation furthers the purposes of public access to public body meetings and public official and agency writings.[35] As amended, the Constitution also no longer requires the state to reimburse local governments for the cost of complying with

30 Cal. Const., art. I, § 3, subd. (b)(1).

31 Cal. Const., art. I, § 3, subd. (b)(2).

32 Cal. Const. art. I, § 3, subds. (b)(3), (b)(4) & (b)(5).

33 *Sierra Club v. Superior Court of Orange County, supra,* 57 Cal.4th at pp. 175–176; *Sutter's Place, v. Superior Court* (2008) 161 Cal.App.4th 1370, 1378–1381; *Los Angeles Unified Sch. Dist. v. Superior Court* (2007) 151 Cal.App.4th 759, 765; *P.O.S.T. v. Superior Court* (2007) 42 Cal.4th 278, 305; *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 750; 89 Ops.Cal.Atty.Gen. 204, 211 (2006); 88 Ops.Cal.Atty.Gen. 16, 23 (2005); 87 Ops.Cal.Atty.Gen. 181, 189 (2004).

34 Cal. Const., art. I, § 3, subd. (b)(7).

35 Cal. Const., art. I, § 3, subd. (b)(7).

legislative mandates in the PRA, the Brown Act, and successor statutes and amendments.[36] Following the enactment of Proposition 42, the Legislature has enacted new local mandates related to public records, including requirements for agency data designated as "open data" that is kept on the Internet and requirements to create and maintain "enterprise system catalogs."[37]

Expanded Access to Local Government Information

The policy of government records transparency mandated by the PRA is a floor, not a ceiling. Most exemptions from disclosure that apply to the PRA are permissive, not mandatory.[38] Local agencies may choose to disclose public records even though they are exempt, although they cannot be required to do so.[39] The PRA provides that "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."[40] A number of local agencies have gone beyond the minimum mandates of the PRA by adopting their own "sunshine ordinances" to afford greater public access to public records. Such "sunshine ordinances," however, do not authorize a locality to enact an ordinance addressing records access that conflicts with the locality's governing charter.[41]

Local agency disclosure of exempt records can promote the government transparency and accountability purposes of the PRA. However, local agencies are also subject to mandatory duties to safeguard some particularly sensitive records.[42] Unauthorized disclosure of such records can subject local agencies and their officials to civil, and in some cases, criminal liability.

> **PRACTICE TIP:**
>
> Local agencies that expand on the minimum transparency prescribed in the PRA, which is something that the PRA encourages, should ensure that they do not violate their duty to safeguard certain records, or undermine the public's interest in effective government.

36 Cal. Const., art. XIIIB, §6, subd. (a)(4). Proposition 42 was a legislatively-referred constitutional amendment in response to public opposition to AB 1464 and SB 1006 approved June, 2012. The 2012 legislation suspended certain PRA and Brown Act provisions and was intended to eliminate the state's obligation to reimburse local governments for the cost of complying with PRA and Brown Act mandates through the 2015 fiscal year. There is no record of local agencies ceasing to comply with the suspended provisions.

37 Gov. Code, §§ 7922.680, 7922.700-7922.725 (formerly Gov. Code, §§ 6253.10, 6270.5).

38 *Black Panther Party v. Kehoe, supra,* 42 Cal.App.3d at p. 656.

39 See Gov. Code, § 7921.505 (formerly Gov. Code, § 6254.5) and "Waiver," p. 28, regarding the effect of disclosing exempt records.

40 Gov. Code, § 7922.505 (formerly Gov. Code, § 6253, subd. (e)).

41 *St. Croix v. Superior Court* (2014) 228 Cal.App.4th 434, 446. ("Because the charter incorporates the [attorney-client] privilege, an ordinance (whether enacted by the City's board of supervisors or by the voters) cannot eliminate it, either by designating as not confidential a class of material that otherwise would be protected by the privilege, or by waiving the privilege as to that category of documents; only a charter amendment can achieve that result.").

42 E.g., individually-identifiable medical information protected under state and federal law (Civ. Code. §§ 56.10(a), 56.05(g); 42 U.S.C. § 1320d-1-d-3); child abuse and neglect records (Pen. Code, § 11167.5); elder abuse and neglect records (Welf. & Inst. Code, §15633); mental health detention records (Welf. & Inst. Code, §§ 5150, 5328).

Equal Access to Government Records

The PRA affords the same right of access to government information to all types of requesters. Every person has a right to inspect any public record, except as otherwise provided in the PRA, including citizens of other states and countries, elected officials, and members of the press.[43] With few exceptions, whenever a local agency discloses an exempt public record to any member of the public, unless the disclosure was inadvertent, all exemptions that apply to that particular record are waived and it becomes subject to disclosure to any and all requesters.[44] Accordingly, the PRA ensures equal access to government information by preventing local agencies form releasing exempt records to some requesters but not to others.

Enforced Access to Public Records

To enforce local agencies' compliance with the PRA's open government mandate, the PRA provides for the award of court costs and attorneys' fees to plaintiffs who successfully seek a court ruling ordering disclosure of withheld public records.[45] The attorney's fees policy enforcing records transparency is liberally applied.[46]

The PRA at the Crux of Democratic Government in California

Ongoing, important developments in PRA-related constitutional, statutory, and decisional law continue to reflect the central role government's handling of information plays in balancing tensions inherent in democratic society: considerations of privacy and government transparency, accountability, and effectiveness. Controversial records law issues in California have included government's use of social media and new law enforcement technologies, and treatment of related records; management and retention of public officials' emails; open data standards for government information; disclosure of attorney bills; and new legal means for preserving or opposing access to government information.[47] Regarding all those issues and others, the PRA has been, and continues to be an indispensable and dynamic arena for simultaneously preserving information transparency, privacy, and effective government, which the California Constitutional and statutory frameworks are intended to guarantee, and on which California citizens continue to insist.

43 Gov. Code, §§ 7922.525, 7920.520, 7921.305 (formerly Gov. Code, §§ 6253, subd. (a); 6252, subd. (c); 6252.5); *Connell v. Superior Court* (1997) 56 Cal.App.4th 601, 610-612. See "Who Can Request Records," p. 17.

44 Gov. Code, § 7921.505 (formerly Gov. Code, § 6254.5). Section 7921.505 does not apply to inadvertent disclosure of exempt documents. *Ardon v. City of Los Angeles* (2016) 62 Cal.4th 1176, 1182–1183; *Newark Unified School Dist. v. Superior Court* (2015) 245 Cal.App.4th 887, 894. See "Waiver," p. 28.

45 Gov. Code, § 7923.115, subds. (a)-(b) (formerly Gov. Code, § 6259, subd. (d)). See "Attorneys Fees and Costs," p. 61.

46 See "Attorneys Fees and Costs," p. 69.

47 *American Civil Liberties Union Foundation of Southern California v. Superior Court* (review granted July 29, 2015, S227106; superseded opinion at 236 Cal. App.4th 673); *Regents of the Univ. of Cal. v. Superior Court* (2013) 222 Cal.App.4th 383, 399; *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608; Gov. Code, §§ 6253.10, 6270.5; *Marken v. Santa Monica-Malibu Unified Sch. Dist.* (2012) 202 Cal.App.4th 1250, 1265; *County of Los Angeles Board of Supervisors v. Superior Court* (review granted July 8, 2015, S226645; superseded opinion at 235 Cal.App.4th 1154).

Chapter 2

The Basics

The PRA "embodies a strong policy in favor of disclosure of public records."[48] As with any interpretation or construction of legislation, the courts will "first look at the words themselves, giving them their usual and ordinary meaning."[49] Definitions found in the PRA establish the statute's structure and scope, and guide local agencies, the public, and the courts in achieving the legislative goal of disclosing local agency records while preserving equally legitimate concerns of privacy and government effectiveness.[50] It is these definitions that form the "basics" of the PRA.

What are Public Records?

The PRA defines "public records" as "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."[51] The term "public records" encompasses more than simply those documents that public officials are required by law to keep as official records. Courts have held that a public record is one that is "necessary or convenient to the discharge of [an] official duty[,]" such as a status memorandum provided to the city manager on a pending project.[52]

Writings

A writing is defined 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 combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored."[53]

48 *Lorig v. Medical Board of Cal.* (2000) 78 Cal.App.4th 462, 467; see "Fundamental Right of Access to Government Information," p. 6.

49 *People v. Lawrence* (2000) 24 Cal.4th 219, 230.

50 See "Exemptions from Disclosure — Protecting the Public's Fundamental Rights of Privacy and Need for Efficient and Effective Government," p.6.

51 Gov. Code, § 7920.530, subd. (a) (formerly Gov. Code, § 6252, subd. (e)).

52 *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 340; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 774.

53 Gov. Code, § 7920.545 (formerly Gov. Code, § 6252, subd. (g)).

The statute unambiguously states that "[p]ublic records" 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."[54] The California Supreme Court relied on this definition to state that a public record has four aspects: "it is (1) a writing, (2) with content related to the conduct of the people's business, which is (3) prepared by, or (4) owned, used, or retained by any state or local agency."[55] Thus, unless the writing is related "to the conduct of the public's business" *and* is "prepared, owned, used or retained by" a local agency, it is not a public record subject to disclosure under the PRA. [56]

Information Relating to the Conduct of Public Business

Public records include "any writing containing information relating to the conduct of the public's business."[57] However, "[c]ommunications that are primarily personal containing no more than incidental mentions of agency business generally will not constitute public records."[58] Therefore, courts have observed that although a writing is in the possession of the local agency, it is not automatically a public record if it does not also relate to the conduct of the public's business.[59] For example, records containing primarily personal information, such as an employee's personal address list or grocery list, are considered outside the scope of the PRA.

Prepared, Owned, Used, or Retained

Writings containing information "related to the conduct of the public's business" must also be "prepared, owned, used or retained by any state or local agency" to be public records subject to the PRA.[60] What is meant by "prepared, owned, used or retained" has been the subject of several court decisions.

Writings need not always be in the physical custody of, or accessible to, a local agency to be considered public records subject to the PRA. The obligation to search for, collect, and disclose the material requested can apply to records in the possession of a local agency's consultants, which are deemed "owned" by the public agency and in its "constructive possession" when the terms of an agreement between the city and the consultant provide for such ownership.[61] Thus, where a local agency has a contractual right to control the subconsultants or their files, the records may be considered to be within their "constructive possession."[62] However, a mere contractual right to access documents held by a contractor is not sufficient to establish constructive possession when the agency does not have the authority to manage or control the documents.[63]

54 Gov. Code, § 7920.530, subd. (a) (formerly Gov. Code, § 6252(e)); *Regents of the University of California v. Superior Court* (2013) 222 Cal.App.4th 383, 399; *Braun v. City of Taft*, *supra*, 154 Cal.App.3d at p. 340; *San Gabriel Tribune v. Superior Court*, *supra*, 143 Cal.App.3d at p.774.

55 *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 617.

56 *Regents of the University of California v. Superior Court, supra*, 222 Cal.App.4th at p. 399.

57 Gov. Code, § 7920.530, subd. (a) (formerly Gov. Code, § 6252, subd. (e)).

58 *City of San Jose v. Superior Court, supra,* 2 Cal.5th at p. 618-619.

59 Gov. Code, § 7920.530, subd. (a) (formerly Gov. Code, § 6252, subd. (e)); *Regents of the University of California v. Superior Court*, *supra*, 222 Cal.App.4th at pp. 403–405; *Braun v. City of Taft*, *supra*, 154 Cal.App.3d at p. 340; *San Gabriel Tribune v. Superior Court, supra*, 143 Cal.App.3d at p. 774.

60 Gov. Code, § 7920.530, subd. (a) (formerly Gov. Code, § 6252, subd. (e)).

61 *Consolidated Irrigation District v. Superior Court* (2013) 205 Cal.App.4th 697, 710; *City of San Jose v. Superior Court, supra*, 2 Cal.5th at p. 623.

62 *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1428; *City of San Jose v. Superior Court, supra*, 2 Cal.5th at p. 623.

63 See *Anderson-Barker v. Superior Court* (2019) 31 Cal.App.5th 528, 541 ("[M]ere access to privately held information is not sufficient to establish possession or control of that information.")

The PRA has also been held to apply to records possessed by *private individuals* who perform official functions for a public agency, but only to the extent that the documents are held by the individual for public functions or historically have been provided to the agency.[64]

Likewise, documents that otherwise meet the definition of public records (including emails and text messages) are considered "retained" by the local agency even when they are actually "retained" on an employee or official's personal device or account.[65]

The California Supreme Court has provided some guidance on how a local agency can discover and manage public records located on their employees' non-governmental devices or accounts. The Court did not endorse or mandate any particular search method, and reaffirmed that the PRA does not prescribe any specific method for searching and that the scope of a local agency's search for public records need only be "calculated to locate responsive documents."[66] When a local agency receives a request for records that may be held in an employee's personal account, the local agency's first step should be to communicate the request not only to the custodian of records but also to any employee or official who may have such information in personal devices or accounts. The Court states that a local agency may then "reasonably rely" on the employees to search their own personal files, accounts, and devices for responsive materials.[67]

The Court's guidance, which includes a caveat that they "do not hold that any particular search method is required or necessarily adequate[,]" includes examples of policies and practices in other state and federal courts and agencies, including:[68]

- Reliance on employees to conduct their own searches and record segregation, so long as the employees have been properly trained on what are public records;
- Where an employee asserts to the local agency that he or she does not have any responsive records on his or her personal device(s) or account(s), he or she may be required by a court (as part of a later court action concerning a records request) to submit an affidavit providing the factual basis for determining whether the record is a public or personal record (e.g., personal notes of meetings and telephone calls protected by deliberative process privilege, versus meeting agendas circulated throughout the entire department.)[69]
- Adoption of policies that will reduce the likelihood of public records being held in an employee's private account, including a requirement that employees only use government accounts, or that they copy or forward all email or text messages to the local agency's official recordkeeping system.[70]

Documents that a local agency previously possessed but does not actually or constructively possess at the time of the request may not be public records subject to disclosure.[71]

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64 *Board of Pilot Comm'rs v. Superior Court* (2013) 218 CA4th 577, 593. But see *Regents of Univ. of Cal. v. Superior Court* (2013) 222 Cal.App.4th 383, 399 (document not prepared, owned, used, or retained by public agency is not public record even though it may contain information relating to conduct of public's business).

65 *City of San Jose v. Superior Court, supra*, 2 Cal.5th at p. 629; *Community Youth Athletic Center v. City of National City, supra,* 220 Cal.App.4th at p. 1428.

66 *City of San Jose v. Superior Court, supra*, 2 Cal.5th at p. 627.

67 *Id.* at p. 628.

68 *Id.* at pp. 627-629.

69 See *Grand Cent. Partnership, Inc. v. Cuomo* (2d. Cir. 1999) 166 F.3d 473, 481 for expanded discussion on the use of affidavit in FOIA litigation.

70 See 44 U.S.C. § 2911(a).

71 See *Am. Small Bus. League v. United States SBA* (2010) 623 F.3d 1052, (analyzed under FOIA).

Regardless of Physical Form or Characteristics

A public record is subject to disclosure under the PRA "regardless of its physical form or characteristics."[72] The PRA is not limited by the traditional notion of "writing." As originally defined in 1968, the legislature did not specifically recognize advancing technology as we consider it today. Amendments beginning in 1970 have added references to "photographs," "magnetic or punch cards," "discs," and "drums,"[73] with the current definition of "writing" adopted by the legislature in 2002.[74] Records subject to the PRA include records in any media, including electronic media, in which government agencies may possess records. This is underscored by the definition of "writings" treated as public records under the PRA, which includes "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."[75] The legislative intent to incorporate future changes in the character of writings has long been recognized by the courts, which have held that the "definition [of writing] 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."[76]

Metadata

Electronic records may include "metadata," or data about data contained in a record that is not visible in the text. For example, metadata may describe how, when, or by whom particular data was collected, and contain information about document authors, other documents, or commentary or notes. No provision of the PRA expressly addresses metadata, and there are no reported court opinions in California considering whether or the extent to which metadata is subject to disclosure. Evolving law in other jurisdictions has held that local agency metadata is a public record subject to disclosure unless an exemption applies.[77] There are no reported California court opinions providing guidance on whether agencies have a duty to disclose metadata when an electronic record contains exempt information that cannot be reasonably segregated without compromising the record's integrity.

> **▶ PRACTICE TIP:**
>
> Agencies that receive requests for metadata or requests for records that include metadata should treat the requests the same way they treat all other requests for electronic information and disclose non-exempt metadata.

Agency-Developed Software

The PRA permits government agencies to develop and commercialize computer software and benefit from copyright protections so that such software is not a "public record" under the PRA. This includes computer mapping systems, computer programs, and computer graphics systems.[78] As a result, public agencies are not required to provide copies

72 Gov. Code, § 7920.530, subd. (a) (formerly Gov. Code, § 6252, subd. (e)).

73 Stats. 1970, c. 575, p. 1151, § 2.

74 Gov. Code, § 7920.545 (formerly Gov. Code, § 6252, subd. (g)); Stats. 2002, c. 1073.

75 Gov. Code, § 7920.545 (formerly Gov. Code, § 6252, subd. (g)).

76 *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 340, citing "Assembly Committee on Statewide Information Policy California Public Records Act of 1968. 1 Appendix to Journal of Assembly 7, Reg. Sess. (1970)."

77 *Lake v. City of Phoenix* (2009) 218 P.3d 1004, 1008; *O'Neill v. City of Shoreline* (2010) 240 P.3d 1149, 1154; *Irwin v. Onondaga County* (2010) 895 N.Y.S.2d 262, 268.

78 Gov. Code, § 7922.585, subds. (a), (b) (formerly Gov. Code, § 6254.9, subds. (a), (b)).

of agency-developed software pursuant to the PRA. The PRA authorizes state and local agencies to sell, lease, or license agency-developed software for commercial or noncommercial use.[79] The exception for agency-developed software does not affect the public record status of information merely because it is stored electronically.[80]

Computer Mapping (GIS) Systems

While computer mapping systems developed by local agencies are not public records subject to disclosure, such systems generally include geographic information system (GIS) data. Many local agencies use GIS programs and databases for a broad range of purposes, including the creation and editing of maps depicting property and facilities of importance to the agency and the public. As with metadata, the PRA does not expressly address GIS information disclosure. However, the California Supreme Court has held that while GIS software is exempt under the PRA, the data in a GIS file format is a public record, and data in a GIS database must be produced.[81]

Specifically Identified Records

The PRA also expressly makes particular types of records subject to the PRA, subject to disclosure, or both. For example, the PRA provides that the following are public records:

- Contracts of state and local agencies that require a private entity to review, audit, or report on any aspect of the agency, to the extent the contract is otherwise subject to disclosure under the PRA;[82]
- Specified pollution information that state or local agencies require applicants to submit, pollution monitoring data from stationary sources, and records of notices and orders to building owners of housing or building law violations;[83]
- Employment contracts between state and local agencies and any public official or employee;[84] and
- Itemized statements of the total expenditures and disbursements of judicial agencies provided for under the State Constitution.[85]

What Agencies are Covered?

The PRA applies to state and local agencies. A state agency is defined as "every state office, officer, department, division, bureau, board and commission or other state body or agency."[86] A local agency includes a county, city (whether general law or chartered), city and county, school district, municipal corporation, special district, community college district, or political subdivision.[87] This encompasses any committees, boards, commissions, or departments

79 Gov. Code, § 7922.585, subd. (b) (formerly Gov. Code, § 6254.9, subd. (a)).

80 Gov. Code, § 7922.585, subd. (d) (formerly Gov. Code, § 6254.9, subd. (d)).

81 *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 170. See also *County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301.

82 Gov. Code, § 7928.700 (formerly Gov. Code, § 6253.31).

83 Gov. Code, § 7924.510 (formerly Gov. Code, § 6254.7). But see *Masonite Corp. v. County of Mendocino Air Quality Management District* (1996) 42 Cal.App.4th 436, 450–453 (regarding trade secret information that may be exempt from disclosure).

84 Gov. Code, § 7928.400 (formerly Gov. Code, § 6254.8). But see *Versaci v. Superior Court* (2005) 127 Cal.App.4th 805, 817 (holding that reference in a public employee's contract to future personal performance goals, to be set and thereafter reviewed as a part of, and in conjunction with, a public employee's performance evaluation does not incorporate such documents into the employee's performance for the purposes of the Act).

85 Gov. Code, § 7928.720 (formerly Gov. Code, § 6261).

86 Gov. Code, § 7920.540, subd. (a) (formerly Gov. Code § 6252, subd. (f)). Excluded from the definition of state agency are those agencies provided for in article IV (except section 20(k)) and article VI of the Cal. Constitution.

87 Gov. Code, § 7920.510 (formerly Gov. Code, § 6252, subd. (a)).

of those entities as well. A local agency also includes "another local public agency."[88] Finally, a local agency includes a private entity, including a nonprofit entity, where that entity: (1) was created by the elected legislative body of a local agency to exercise authority that may be lawfully delegated to a private entity; (2) receives funds from a local agency, and whose governing board includes a member of the local agency's legislative body who is appointed by that legislative body and who is a full voting member of the private entity's governing board; or (3) is the lessee of a hospital, as described in subdivision (d) of Government Code section 54952.[89]

The PRA does not apply to the state Legislature or the judicial branch.[90] The Legislative Open Records Act covers the Legislature.[91] Most court records are disclosable as the courts have historically recognized the public's right of access to public records maintained by the courts under the common law and the First Amendment of the United States Constitution.[92]

Who Can Request Records?

All "persons" have the right to inspect and copy non-exempt public records. A "person" need not be a resident of California or a citizen of the United States to make use of the PRA.[93] "Persons" include corporations, partnerships, limited liability companies, firms, or associations.[94] Often, requesters include persons who have filed claims or lawsuits against the government, who are investigating the possibility of doing so, or who just want to know what their government officials are up to. With certain exceptions, neither the media nor a person who is the subject of a public record has any greater right of access to public records than any other person.[95]

Local agencies and their officials are entitled to access public records on the same basis as any other person.[96] Further, local agency officials might be authorized to access public records of their own agency that are otherwise exempt if such access is permitted by law as part of their official duties.[97] Under such circumstances, however, the local agency shall not discriminate between or among local agency officials as to which writing or portion thereof is to be made available or when it is made available.[98]

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88 *The Cmty. Action Agency of Butte Cty. v. Superior Court* (2022) 79 Cal. App. 5th 221, 237 (adopting a four-factor test to determine whether a nonprofit entity is "another local public agency" under the PRA; the factors are: (1) whether the entity performs a government function, (2) the extent to which the government funds the entity's activities, (3) the extent of government involvement in the entity's activities, and (4) whether the entity was created by the government).

89 Gov. Code, § 7920.510 (formerly Gov. Code, § 6252, subd. (a)) ("[L]ocal agency includes…[a]n entity that is a legislative body of a local agency pursuant to subdivision (c) or (d) of Section 54952 [of the Brown Act]."). See e.g., 85 Ops.Cal.Atty.Gen 55 (2002) (PRA covered private nonprofit corporation formed for the purpose of providing programming for a cable television channel set aside for educational use by a cable operator pursuant to its franchise agreement with a city and subsequently designated by the city to provide the programming services).

90 Gov. Code, §§ 7920.510, 7920.510 (formerly Gov. Code, § 6252, subds. (a), (b); *Michael J. Mack v. State Bar of Cal.* (2001) 92 Cal.App.4th 957, 962–963.

91 Gov. Code, § 9070 *et. seq.*

92 *Overstock.com v. Goldman Sachs Group, Inc.* (2014) 231 Cal.App.4th 471, 483–486; *Pantos v. City and County of San Francisco* (1984) 151 Cal.App.3d 258, 263; *Champion v. Superior Court* (1988) 201 Cal.App.3d 777, 288; *Craemer v. Superior Court* (1968) 265 Cal.App.2d 216, 220.

93 *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762.

94 Gov. Code, § 7920.520 (formerly Gov. Code, § 6252, subd. (c)); *Connell v. Superior Court* (1997) 56 Cal.App.4th 601.

95 Gov. Code, § 7921.305 (formerly Gov. Code, § 6252.5); *Los Angeles Unified School Dist. v. Superior Court* (2007) 151 Cal.App.4th 759; *Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271, 1279.

96 Gov. Code, § 7921.305 (formerly Gov. Code, § 6252.5).

97 *Marylander v. Superior Court* (2002) 81 Cal.App.4th 1119; *Los Angeles Police Dept. v. Superior Court* (1977) 65 Cal.App.3d 661; *Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271. See "Information That Must Be Disclosed," p. 40; "Requests for Journalistic or Scholarly Purposes," p. 42.

98 Gov. Code, § 7921.310 (formerly Gov. Code, § 6252.7).

Chapter 3

Responding to a Public Records Request

Local Agency's Duty to Respond to Public Record Requests

The fundamental purpose of the PRA is to provide access to information about the conduct of the people's business.[99] This right of access to public information imposes a duty on local agencies to respond to PRA requests and does not "permit an agency to delay or obstruct the inspection or copying of public records."[100] Even if the request does not reasonably describe an identifiable record, the requested record does not exist, or the record is exempt from disclosure, the agency must respond.[101]

Types of Requests — Right to Inspect or Copy Public Records

There are two ways to gain access under the PRA to a public record: (1) inspecting the record at the local agency's offices or on the local agency's website; or (2) obtaining a copy from the local agency.[102] The local agency may not dictate to the requester which option must be used, that is the requester's decision. Moreover, a requester does not have to choose between inspection and copying but instead can choose both options. For example, a requester may first inspect a set of records, and then, based on that review, decide which records should be copied.

99 Gov. Code, § 7920.000 (formerly Gov. Code § 6250).

100 Gov. Code, § 7922.500 (formerly Gov. Code, § 6253, subd. (d)).

101 Gov. Code, §§ 7922.525–7922.545 (formerly Gov. Code, § 6253).

102 Gov. Code, §§ 7922.525; 7922.530, subd. (a); 7922.545 (formerly Gov. Code, § 6253, subds. (a), (b), & (f)).

> **PRACTICE TIP:**
>
> If the public records request does not make clear whether the requester wants to inspect or obtain a copy of the record or records being sought, the local agency should seek clarification from the requester without delaying the process of searching for, collecting, and redacting or "whiting out" exempt information in the records.

> **PRACTICE TIP:**
>
> To protect the integrity of the local agency files and preserve the orderly function of the offices, agencies may establish reasonable policies for the inspection and copying of public records.

Right to Inspect Public Records

Public records are open to inspection at all times during the office hours of the local agency and every person has a right to inspect any public record. This right to inspect includes any reasonably segregable portion of a public record after deletion of the portions that are exempted by law.[103] This does not mean that a requester has a right to demand to see a record and immediately gain access to it. The right to inspect is constrained by an implied rule of reason to protect records against theft, mutilation, or accidental damage; prevent interference with the orderly functioning of the office; and generally avoid chaos in record archives.[104] Moreover, the agency's time to respond to an inspection request is governed by the deadlines set forth below, which give the agency a reasonable opportunity to search for, collect, and, if necessary, redact exempt information prior to the records being disclosed in an inspection.[105]

In addition, in lieu of providing inspection access at the local agency's office, a local agency may post the requested public record on its website and direct a member of the public to the website. If a member of the public requests a copy of the record because of the inability to access or reproduce the record from the website, the local agency must provide a copy.[106]

> **PRACTICE TIP:**
>
> Local agencies may want to limit the number of record inspectors present at one time at a records inspection. The local agency may also want to prohibit the use of cell phones to photograph records where the inspection is of architectural or engineering plans with copyright protection.

103 Gov. Code, § 7922.525 (formerly Gov. Code, § 6253, subd. (a)).

104 *Bruce v. Gregory* (1967) 65 Cal.2d 666, 676; *Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754, 761; 64 Ops.Cal.Atty.Gen. 317 (1981).

105 See "Timing of The Response" p. 22.

106 Gov. Code, §§ 7922.530, subd. (a); 7922.545 (formerly Gov. Code, § 6253, subds. (b), (f)).

Right to Copy Public Records

Except with respect to public records exempt from disclosure by express provisions of law, a local agency, upon receipt of a request for a copy of records that reasonably describes an identifiable record or records, must make the records promptly available to any person upon payment of the appropriate fees.[107] If a copy of a record has been requested, the local agency generally must provide an exact copy except where it is "impracticable" to do so.[108] The term "impracticable" does not necessarily mean that compliance with the public records request would be inconvenient or time-consuming to the local agency. Rather, it means that the agency must provide the best or most complete copy of the requested record that is reasonably possible.[109] As with the right to inspect public records, the same rule of reasonableness applies to the right to obtain copies of those records. Thus, the local agency may impose reasonable restrictions on general requests for copies of voluminous classes of documents.[110]

The PRA does not provide for a standing or continuing request for documents that may be generated in the future.[111] However, the Brown Act provides that a person may make a request to receive a mailed copy of the agenda, or all documents constituting the agenda packet for any meeting of the legislative body. This request shall be valid for the calendar year in which it is filed.[112] A person may also make a request to receive local agency notices, such as public work contractor plan room documents,[113] and development impact fee,[114] public hearing,[115] or California Environmental Quality Act notices.[116] The local agency may impose a reasonable fee for these requests.

> **▶ PRACTICE TIP:**
>
> Agencies may consider the use of outside copy services for oversize records or a voluminous record request, provided that the requester consents to it and pays the appropriate fees in advance. Alternatively, local agencies may consider allowing the requester to use his or her own copy service.

Form of the Request

A public records request may be made in writing or orally, in person or by phone.[117] Further, a written request may be made in paper or electronic form and may be mailed, emailed, faxed, or personally delivered. A local agency may ask, but cannot require, that the requester put an oral request in writing. In general, a written request is preferable to an oral request because it provides a record of when the request was made and what was requested, and helps the agency respond in a more timely and thorough manner.

107 See "Fees," p. 27.

108 Gov. Code, § 7922.530, subd. (a) (formerly Gov. Code, § 6253, subd. (b)).

109 *Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754, 759.

110 *Id.* at p. 761; 64 Ops.Cal.Atty.Gen. 317 (1981).

111 Gov. Code, §§ 7920.530; 7920.545; 7922.525 & 7922.530, subd, (b) (formerly Gov. Code, §§ 6252, subds. (e) & (g); and 6253, subds. (a) & (b)).

112 Gov. Code, § 54954.1; see also Gov. Code, § 65092 (standing request for notice of public hearing), Cal. Code Regs., tit. 14, §§ 15072, 15082 and 15087 (standing requests for notice related to environmental documents).

113 Pub. Contract Code, § 20103.7.

114 Gov. Code, § 66016.

115 Gov. Code, § 65092.

116 Pub. Resources Code, § 21092.2.

117 *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1392.

> **▶ PRACTICE TIP:**
>
> Though not legally required, a local agency may find it convenient to use a written form for public records requests, particularly for those instances when a requester "drops in" to an office and asks for one or more records. The local agency cannot require the requester to use a particular form, but having the form, and even having agency staff assist with filling out the form, may help agencies better identify the information sought, follow up with the requester using the contact information provided, and provide more effective assistance to the requester in compliance with the PRA.

Content of the Request

A public records request must reasonably describe an identifiable record or records.[118] It must be focused, specific,[119] and reasonably clear, so that the local agency can decipher what record or records are being sought.[120] A request that is so open-ended that it amounts to asking for all of a department's files is not reasonable. If a request is not clear or is overly broad, the local agency has a duty to assist the requester in reformulating the request to make it clearer or less broad.[121]

A request does not need to precisely identify the record or records being sought. For example, a requester may not know the exact date of a record, its title, or author, but if the request is descriptive enough for the local agency to understand which records fall within its scope, the request is reasonable. Requests may identify writings somewhat generally by their content.[122]

No magic words need to be used to trigger the local agency's obligation to respond to a request for records. The content of the request must simply indicate that a public record is being sought. Occasionally, a requester may incorrectly refer to the federal Freedom of Information Act (FOIA) as the legal basis for the request. This does not excuse the agency from responding if the request seeks public records. A public records request does not need to state its purpose or the use to which the record will be put by the requester.[123] A requester does not have to justify or explain the reason for exercising his or her fundamental right of access.[124]

> **▶ PRACTICE TIP:**
>
> A public records request is different than a question or series of questions posed to local agency officials or employees. The PRA creates no duty to answer written or oral questions submitted by members of the public. But, if an existing and readily available record contains information that would directly answer a question, it is advisable to either answer the question or provide the record in response to the question.

118 Gov. Code, § 7922.530, subd. (a) (formerly Gov. Code, § 6253, subd. (b)).

119 *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 481.

120 *Cal. First Amend. Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 165.

121 See "Assisting the Requester," p. 24.

122 *Cal. First Amend. Coalition v. Superior Court, supra*, 67 Cal.App.4th at p. 166.

123 See Gov. Code, § 7921.300 (formerly Gov. Code, § 6257.5).

124 Gov. Code, § 7921.000 (formerly Gov. Code, § 6250); Cal. Const., art. I, § 3.

A PRA request applies only to records existing at the time of the request.[125] It does not require a local agency to produce records that may be created in the future. Further, a local agency is not required to provide requested information in a format that the local agency does not use.

Timing of the Response

Inspection of Public Records

Although the law precisely defines the time for responding to a public records request for copies of records, it is less precise in defining the deadline for disclosing records. Because the PRA does not state how soon a requester seeking to inspect records must be provided access to them, it is generally assumed that the standard of promptness set forth for copies of records[126] applies to inspection. This assumption is bolstered by the provision in the PRA that states, "[n]othing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records,"[127] which again signals the importance of promptly disclosing records to the requester.

Neither the 10-day response period for responding to a request for a copy of records, nor the additional 14-day extension, may be used to delay or obstruct the inspection of public records.[128] For example, requests for commonly disclosed records that are held in a manner that allows for prompt disclosure should not be withheld because of the statutory response period.

Copies of Public Records

Time is critical in responding to a request for copies of public records. A local agency must respond promptly, but no later than 10 calendar days from receipt of the request, to notify the requester whether records will be disclosed.[129] If the request is received after business hours or on a weekend or holiday, the next business day may be considered the date of receipt. The 10-day response period starts with the first calendar day after the date of receipt.[130] If the tenth day falls on a weekend or holiday, the next business day is considered the deadline for responding to the request.[131]

> **▶ PRACTICE TIP:**
>
> To ensure compliance with the 10-day deadline, it is wise for local agencies to develop a system for identifying and tracking public records requests. For example, a local agency with large departments may find it useful to have a public records request coordinator within each department. It is also very helpful to develop and implement a policy for handling public records requests in order to ensure the agency's compliance with the law.

125 Gov. Code, § 7922.535 (formerly Gov. Code, § 6253, subd. (c)).

126 Gov. Code, § 7922.530, subd. (a) (formerly Gov. Code, § 6253, subd. (b)) ["…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…"]; 88 Ops. Cal. Atty. Gen. 153 (2005); 89 Ops. Cal. Atty. Gen. 39 (2006).

127 Gov. Code, § 7922.500 (formerly Gov. Code, § 6253, subd. (d)).

128 Gov. Code, § 7922.500 (formerly Gov. Code, § 6253, subd. (d)). See also "Extending the Response Times for Copies of Public Records," p. 23.

129 Gov. Code, § 7922.535, subd. (a) (formerly Gov. Code, § 6253, subd. (c)).

130 Civ. Code, § 10.

131 Civ. Code, § 11.

> **▶ PRACTICE TIP:**
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> Watch for shorter statutory time periods for disclosure of particular public records. For example, Statements of Economic Interest (FPPC Form 700) and other campaign statements and filings required by the Political Reform Act of 1974 (Govt Code §§ 81000 et seq) are required to be made available to the public as soon as practicable, and in no event later than the second business day following receipt of the request.[132]

Extending the Response Times for Copies of Public Records

A local agency may extend the 10-day response period for copies of public records for up to 14 additional calendar days because of the need:

- To search for and collect the requested records from field facilities or other establishments separate from the office processing the request;
- To search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request;
- To consult with another agency having substantial interest in the request (such as a state agency), or among two or more components of the local agency (such as two city departments) with substantial interest in the request; or
- In the case of electronic records, to compile data, write programming language or a computer program, or to construct a computer report to extract data.[133]

No other reasons justify an extension of time to respond to a request for copies of public records. For example, a local agency may not extend the time on the basis that it has other pressing business or that the employee most knowledgeable about the records sought is on vacation or is otherwise unavailable.

If a local agency exercises its right to extend the response time beyond the 10-day period, it must do so in writing, stating the reason or reasons for the extension, and the anticipated date of the response within the 14-day extension period.[134] The agency does not need the consent of the requester to extend the time for response.

> **▶ PRACTICE TIP:**
>
> If a local agency is having difficulty responding to a public records request within the 10-day response period and there does not appear to be grounds to extend the response period for an additional 14 days, the agency may obtain an extension by consent of the requester. Often a requester will cooperate with the agency on such matters as the timing of the response, particularly if the requester believes the agency is acting reasonably and conscientiously in processing the request. It is also advisable to document in writing any extension agreed to by the requester.

132 Gov. Code, § 81008.

133 Gov. Code, § 7922.535 (formerly Gov. Code, § 6253, subds. (c)(1)-(4)).

134 Gov. Code, § 7922.535 (formerly Gov. Code, § 6253, subd. (c)).

Timing of Disclosure

The time limit for responding to a public records request is not necessarily the same as the time within which the records must be disclosed to the requester. As a practical matter, records often are disclosed at the same time the local agency responds to the request. But in some cases, that time frame for disclosure is not feasible because of the volume of records encompassed by the request.

> **▶ PRACTICE TIP:**
>
> When faced with a voluminous public records request, a local agency has numerous options — for example, asking the requester to narrow the request, asking the requester to consent to a later deadline for responding to the request, and providing responsive records (whether redacted or not) on a "rolling" basis, rather than in one complete package. It is sometimes possible for the agency and requester to work cooperatively to streamline a public records request, with the result that the requester obtains the records or information the requester truly wants and the burdens on the agency in complying with the request are reduced. If any of these options are used, it is advisable that it is documented in writing.

Assisting the Requester

Local agencies must assist requesters who are having difficulty making a focused and effective request.[135] To the extent reasonable under the circumstances, a local agency must:

- Assist the requester in identifying records that are responsive to the request or the purpose of the request, if stated;
- Describe the information technology and physical location in which the record or records exist; and
- Provide suggestions for overcoming any practical basis for denying access to the record or records.[136]

Alternatively, the local agency may satisfy its duty to assist the requester by giving the requester an index of records.[137] Ordinarily, an inquiry into a requester's purpose in seeking access to a public record is inappropriate,[138] but such an inquiry may be proper if it will help assist the requester in making a focused request that reasonably describes an identifiable record or records.[139]

Locating Records

Local agencies must make a reasonable effort to search for and locate requested records, including by asking probing questions of city staff and consultants.[140] No bright-line test exists to determine whether an effort is reasonable. That determination will depend on the facts and circumstances surrounding each request. In general, upon the local agency's receipt of a public records request, those persons or offices that would most likely be in possession of responsive records should be consulted in an effort to locate the records. For a local agency to have a duty to locate

135 Gov. Code, § 7922.600 (formerly Gov. Code, § 6253.1); *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1417.

136 Gov. Code, § 7922.600, subds. (a)(1)-(3) (formerly Gov. Code, § 6253.1, subds. (a)(1)-(3)).

137 Gov. Code, § 7922.600, subd. (b) (formerly Gov. Code, § 6253.1, subd. 1(d)(3)).

138 See Gov. Code, § 7921.300 (formerly Gov. Code, § 6257.5).

139 Gov. Code, § 7922.600, subd. (a) (formerly Gov. Code, § 6253.1, subd. (a)).

140 *Community Youth Athletic Center v. City of National City, supra*, 220 Cal.App.4th at pp. 1417–1418; *Cal. First Amend. Coalition v. Superior Court* (1998) 67 Cal. App.4th 159, 166; *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 616-127, 629.

records, they must qualify as public records.[141] "Thus, unless the writing is related 'to the conduct of the public's business' *and* is 'prepared, owned, used or retained by' a public entity, it is not a public record under the PRA, and its disclosure would not be governed by the PRA. No words in the statute suggest that the public entity has an obligation to obtain documents even though it has not prepared, owned, used or retained them."[142]

> **PRACTICE TIP:**
>
> To ensure compliance with the PRA, and in anticipation of court scrutiny of agency diligence in locating responsive records, agencies may want to consider adopting policies similar to those required by state and federal E-discovery statutes to prevent records destruction while a request is pending.

The right to access public records is not without limits. A local agency is not required to perform a "needle in a haystack" search to locate the record or records sought by the requester.[143] Nor is it compelled to undergo a search that will produce a "huge volume" of material in response to the request.[144] On the other hand, an agency typically will endure some burden — at times, a significant burden — in its records search. Usually that burden alone will be insufficient to justify noncompliance with the request.[145] Nevertheless, if the request imposes a substantial enough burden, an agency may decide to withhold the requested records on the basis that the public interest in nondisclosure clearly outweighs the public interest in disclosure.[146]

Types of Responses

After conducting a reasonable search for requested records, a local agency has only a limited number of possible responses. If the search yielded no responsive records, the agency must inform the requester. If the agency has located a responsive record, it must decide whether to: (1) disclose the record; (2) withhold the record; or (3) disclose the record in redacted form.

> **PRACTICE TIP:**
>
> Care should be taken in deciding whether to disclose, withhold, or redact a record. It is advisable to consult with the local agency's legal counsel before making this decision, particularly when a public records request presents novel or complicated issues or implicates policy concerns or third-party rights.

If a written public records request is denied because the local agency does not have the record or has decided to withhold it, or if the requested record is disclosed in redacted form, the agency's response must be in writing and must identify by name and title each person responsible for the decision.[147]

141 See "What are Public Records?" p. 12.

142 *Regents of the University of California v. Superior Court* (2013) 222 Cal.App.4th 383, 399.

143 *Cal. First Amend. Coalition v. Superior Court, supra,* 67 Cal.App.4th at p. 166.

144 *Ibid.* But see *Getz v. Superior Court of El Dorado County* (2021) 72 Cal.App.5th 637 (holding that a request that required a public agency to review over 40,000 emails from specified email addresses was not overly burdensome because the emails requested were easy to locate).

145 *Ibid.*

146 *American Civil Liberties Union Foundation of North California, Inc. v. Deukmejian* (1982) 32 Cal.3d 440, 452–454; *Becerra v. Superior Court* (2020) 44. Cal. App.5th 897, 929-934. See also *National Lawyers Guild v. City of Hayward* (2020) 9 Cal.5th 488, 507; 64 Ops.Cal.Atty.Gen. 317 (1981).

147 Gov. Code, § 7922.540, subds. (a)-(b) (formerly Gov. Code, §§ 6253, subd. (d), 6255, subd. (b)).

PRACTICE TIP:

A local agency should always document that it is supplying the record to the requester. The fact and sufficiency of the response may become points of dispute with the requester.

PRACTICE TIP:

Although not required, any response that denies in whole, or in part, an oral public records request should be put in writing.

If the record is withheld in its entirety or provided to the requester in redacted form, the local agency must state the legal basis under the PRA for its decision not to comply fully with the request.[148] Statements like "We don't give up those types of records" or "Our policy is to keep such records confidential" will not suffice.

Redacting Records

Some records contain information that must be disclosed, along with information that is exempt from disclosure. A local agency has a duty to provide such a record to the requester in redacted form if the nonexempt information is "reasonably segregable" from that which is exempt,[149] unless the burden of redacting the record becomes too great.[150] What is reasonably segregable will depend on the circumstances. If exempt information is inextricably intertwined with nonexempt information, the record may be withheld in its entirety.[151]

No Duty to Create a Record or a Privilege Log

A local agency has no duty to create a record that does not exist at the time of the request.[152] There is also no duty to reconstruct a record that was lawfully discarded prior to receipt of the request. However, an agency may be liable for attorney fees when a court determines the agency was not sufficiently diligent in locating requested records, even when the requested records no longer exist.[153]

The PRA does not require that a local agency create a "privilege log" or list that identifies the specific records being withheld.[154] The response only needs to identify the legal grounds for nondisclosure. If the agency creates a privilege log for its own use, however, that document may be considered a public record and may be subject to disclosure in response to a later public records request.

148 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255, subd. (a)); Gov. Code, § 7922.540, subd. (c).

149 Gov. Code, § 7922.525 (formerly Gov. Code, § 6253, subd. (a)); *American Civil Liberties Union Foundation* of North California, Inc. *v. Deukmejian*, *supra,* 32 Cal.3d at p. 458.

150 *American Civil Liberties Union Foundation* of North California, Inc. *v. Deukmejian, supra*, 32 Cal.3d at p. 452–454; *Becerra v. Superior Court, supra*, 44. Cal. App.5th at p. 939-934.

151 *Ibid.*

152 Gov. Code, § 7920.530, subd. (a) (formerly Gov. Code, §6252, subd. (e)); *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1075; *City of San Jose v. Superior Court, supra*, 2 Cal.5th at pp. 616–627, 629; *Sander v. Superior Court* (2018) 26 Cal.App.5th 651. See Chapter 6 concerning duties and obligations with respect to electronic records.

153 *Community Youth Athletic Center v. National City*, supra, 220 Cal.App.4th at p. 1447. See "Attorney Fees and Costs," p. 61.

154 *Haynie v. Superior Court, supra*, 26 Cal.4th, at p. 1075.

PRACTICE TIP:

To ensure compliance with the PRA or in anticipation of court scrutiny of the agency's due diligence, the local agency may wish to maintain a separate file for copies of records that have been withheld and those produced (including redacted versions).

Fees

The public records process is in many respects cost-free to the requester. The local agency may only charge a fee for the direct cost of duplicating a record when the requester is seeking a copy,[155] or it may charge a statutory fee, if applicable.[156] A local agency may require payment in advance, before providing the requested copies;[157] however, no payment can be required merely to look at a record where copies are not sought.

Direct cost of duplication is the cost of running the copy machine, and conceivably the expense of the person operating it.[158] "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.[159] For example, if concern for the security of records requires that an agency employee sit with the requester during the inspection, or if a record must be redacted before it can be inspected, the agency may not bill the requester for that expenditure of staff time.

PRACTICE TIP:

The direct cost of duplication charged for a PRA request should be supported by a fee study adopted by a local agency resolution.

Although permitted to charge a fee for duplication costs, a local agency may choose to reduce or waive that fee.[160] For example, the agency might waive the fee in a particular case because the requester is indigent; or it might generally choose to waive fees below a certain dollar threshold because the administrative costs of collecting the fee would exceed the revenue to be collected. An agency may also set a customary copying fee for all requests that is lower than the amount of actual duplication costs.

PRACTICE TIP:

If a local agency selectively waives or reduces the duplication fee, it should apply standards for waiver or reduction with consistency to avoid charges of favoritism or discrimination toward particular requesters.

155 Gov. Code, § 7922.530, subd. (a) (formerly Gov. Code, § 6253, subd. (b)).

156 Gov. Code, § 7922.430, subd. (a) (formerly Gov. Code, § 6253, subd. (b)); 85 Ops.Cal.Atty.Gen. 225 (2002); see, e.g., Gov. Code, § 81008.

157 Gov. Code, § 7922.530, subd. (a) (formerly Gov. Code, § 6253, subd. (b)).

158 *North County Parents Organization v. Dept. of Education* (1994) 23 Cal.App.4th 144, 148.

159 *Ibid.*; *National Lawyers Guild v. City of Hayward* (2020) 9 Cal.5th 488, 492.

160 Gov. Code, § 7922.505 (formerly Gov. Code, § 6253, subd. (e)); *North County Parents Organization v. Dept. of Education, supra*, 23 Cal.App.4th at p. 148.

Duplication costs of electronic records are limited to the direct cost of producing the electronic copy and does not include cost of redaction.[161] For example, a city cannot charge requesters for time city employees spent searching for, reviewing, and editing videos to redact exempt, but otherwise producible, data. However, requesters may be required to bear additional costs of producing a copy of an electronic record, such as programming and computer services costs, if the request requires the production of electronic records that are otherwise only produced at regularly scheduled intervals, or if production of the record would require data compilation, extraction, or programming. Agencies are not required to reconstruct electronic copies of records no longer available to the agency in electronic format.

PRACTICE TIP:

If there is a request for public records pursuant to Government Code section 7922.575 requiring "data compilation, extraction, or programming to produce the record" the local agency should ask the requester to pay the fees in advance, before the "data compilation, extraction, or programming" is actually done.

Waiver

Generally, whenever a local agency discloses an otherwise exempt public record to any member of the public, the disclosure constitutes a waiver of most of the exemptions contained in the PRA for all future requests for the same information. The waiver provision in Government Code section 7921.505 applies to an intentional disclosure of privileged documents, and a local agency's inadvertent release of attorney-client documents does not waive such privilege.[162] There are, however, a number of statutory exceptions to the waiver provisions, including, among others, disclosures made through discovery or other legal proceedings, and disclosures made to another governmental agency that agrees to treat the disclosed material as confidential.

161 *National Lawyers Guild v. City of Hayward* (2020) 9 Cal.5th 488, 492.

162 *Ardon v. City of Los Angeles* (2016) 62 Cal.4th 1176, 1183; *Newark School District v. Superior Court* (2015) 245 Cal.App.4th 887, 897.

Chapter 4

Specific Document Types, Categories, and Exemptions from Disclosure

Overview of Exemptions

This chapter discusses how to address requests for certain specific types and categories of commonly requested records and many of the most frequently raised exemptions from disclosure that may, or in some cases, must be asserted by local agencies.

Transparent and accessible government is the foundational objective of the PRA. This recently constitutionalized right of access to the writings of local agencies and officials was declared by the Legislature in 1968 to be a "fundamental and necessary right."[163] While this right of access is not absolute, it must be construed broadly.[164] The PRA contains over 75 express exemptions, many of which are discussed below, including one for records that are otherwise exempt from disclosure by state or federal statutes,[165] and a balancing test, known as the "public interest" or "catchall" provision. This "catchall" provision allows local agencies to justify withholding any record by demonstrating that on the facts of a particular case, the public interest in nondisclosure clearly outweighs the public interest in disclosure.[166]

When local agencies claim an exemption or prohibition to disclosure of all or a part of a record, they must identify the specific exemption to disclosure in the response.[167] Where a record contains some information that is subject to an

163 See Gov. Code, § 7921.000 (formerly Gov. Code, § 6250).

164 Cal. Const., art. I, § 3(b)(2); *City of San Jose v. Superior Court,* 2 Cal.5th 608, 617.

165 Gov. Code, § 7927.705 (formerly Gov. Code § 6254(k)); *Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 67.

166 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255, subd. (a)); *Long Beach Police Officers Assn. v. City of Long Beach, supra,* 59 Cal.4th at p. 67. See also "Public Interest Exemption," p. 63.

167 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255, subd. (a)); *Long Beach Police Officers Assn. v. City of Long Beach*, *supra*, 59 Cal.4th at p. 67.

exemption and other information that is not, the local agency may redact the information that is exempt (identifying the exemption), but must otherwise still produce the record. Unless a statutory exemption applies, the public is entitled to access or a copy.[168]

> **PRACTICE TIP:**
>
> When evaluating a record to determine whether it falls within an exemption in the PRA, do not overlook exemptions and even prohibitions to disclosure that are contained in other state and federal statutes, including, for example, evidentiary privileges, medical privacy laws, police officer personnel record privileges, official information, information technology or infrastructure security systems, etc. Many of these other statutory exemptions or prohibitions are also discussed below.

Types of Records and Specific Exemptions

Architectural and Official Building Plans

The PRA recognizes exemptions to the disclosure of a record "which is exempted or prohibited [from disclosure] pursuant to federal or state law ...."[169] Under this rule, architectural and official building plans may be exempt from disclosure, because: (1) architectural plans submitted by third parties to local agencies may qualify for federal copyright protections;[170] (2) local agencies may claim a copyright in many of their own records; or (3) state laws address inspection and duplication of building plans by members of the public.[171]

"Architectural work," defined under federal law as the "design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings,"[172] is considered an "original work of authorship,"[173] which has automatic federal copyright protection.[174] Architectural plans may be inspected, but cannot be copied without the permission of the owner.[175]

> **PRACTICE TIP:**
>
> Some requesters will cite the "fair use of copyrighted materials" doctrine as giving them the right to copy architectural plans.[176] The fair use rule is a defense to a copyright infringement action only and not a legal entitlement to obtain copyrighted materials.[177]

168 *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 329.

169 Gov. Code, § 7927.705 (formerly Gov. Code, § 6254, subd. (k)).

170 17 U.S.C. § 17.

171 Health & Saf. Code, § 19851.

172 17 U.S.C. § 101.

173 17 U.S.C. § 102(A)(8).

174 17 U.S.C. §§ 102(A)(8), 106.

175 17 U.S.C. § 106.

176 17 U.S.C. § 107.

177 See *Harper and Row Publishers, Inc. v. Nation Enterprises* (1985) 471 U.S. 539, 561 (discussing "fair use" defense).

The official copy of building plans maintained by a local agency's building department may be inspected, but cannot be copied without the local agency first requesting the written permission of the licensed or registered professional who signed the document and the original or current property owner.[178] A request made by the building department via registered or certified mail for written permission from the professional must give the professional at least 30 days to respond and be accompanied by a statutorily prescribed affidavit signed by the person requesting copies, attesting that the copy of the plans shall only be used for the maintenance, operation, and use of the building, that the drawings are instruments of professional service and are incomplete without the interpretation of the certified, licensed, or registered professional of record, and that a licensed architect who signs and stamps plans, specifications, reports, or documents shall not be responsible for damage caused by subsequent unauthorized changes to or uses of those plans.[179] After receiving this required information, the professional cannot withhold written permission to make copies of the plans.[180] These statutory requirements do not prohibit duplication of reduced copies of plans that have been distributed to local agency decision-making bodies as part of the agenda materials for a public meeting.[181]

The California Attorney General has determined that interim grading documents, including geology, compaction, and soils reports, are public records that are not exempt from disclosure.[182]

Attorney-Client Communications and Attorney Work Product

The PRA specifically exempts from disclosure "records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, the provisions of the Evidence Code relating to privilege."[183] The PRA's exemptions protect attorney-client privileged communications and attorney work product, as well as, more broadly, other work product prepared for use in pending litigation or claims.[184]

> **PRACTICE TIP:**
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> Penal Code section 832.7 contains specific rules relating to the application of attorney-client privilege, and disclosure of attorney bills and retainer agreements relating to peace officer personnel records.[185]

Attorney-Client Privilege

The attorney-client privilege protects from disclosure the entirety of confidential communications between attorney and client, as well as among the attorneys within a firm or in-house legal department representing such client, including factual and other information, not in itself privileged outside of attorney-client communications.[186] The fundamental purpose of the attorney-client privilege is preservation of the confidential relationship between attorney and client. It is not necessary to demonstrate that prejudice would result from disclosure of attorney-client

178 Health & Saf. Code, § 19851.

179 *Ibid.*

180 *Ibid.*

181 Gov. Code, § 54957.5.

182 89 Ops.Cal.Atty.Gen. 39 (2006).

183 Gov. Code, § 7927.705 (formerly Gov. Code, § 6254, subd. (k)).

184 *Fairley v. Superior Court, supra*, 66 Cal.App.4th 1414, 1420–1422. See also "Official Information Privilege," p. 48.

185 See "Peace Officer Personnel Records," p. 53.

186 *Costco Wholesale Corporation v. Superior Court* (2009) 47 Cal.4th 725, 733; *Fireman's Fund Insurance Company v. Superior Court* (2011) 196 Cal.App.4th 1263, 1272–1275; *Clark v. Superior Court* (2011) 196 Cal.App.4th 37, 49–52.

communications to prevent such disclosure.[187] When the party claiming the privilege shows the dominant purpose of the relationship between the parties to the communication was one of attorney and client, the communication is protected by the privilege.[188] Unlike the exemption for pending litigation, attorney-client privileged information is still protected from disclosure even after litigation is concluded.[189] But note, the attorney-client privilege will likely not protect communication between a public employee and his or her personal attorney if that communication occurs using a public entity's computer system and the public entity has a computer policy that indicates the computers are intended for the public entity's business and are subject to monitoring by the employer.[190]

The attorney plaintiff in a wrongful termination suit and the defendant insurer may reveal privileged third-party attorney-client communications to their own attorneys to the extent necessary for the litigation, but may not publicly disclose such communications.[191]

Attorney Work Product

Any writing that reflects an attorney's impressions, conclusions, opinions, legal research, or theories is not discoverable under any circumstances and is thus exempt from disclosure under the PRA. There is also a qualified privilege against disclosure of materials (e.g., witness statements, other investigative materials) developed by an attorney in preparing a case for trial as thoroughly as possible, with a degree of privacy necessary to uncover and investigate both favorable and unfavorable aspects of a case.[192]

Common Interest Doctrine

The common interest doctrine may also protect communications with third parties from disclosure where the communication is protected by the attorney-client privilege or attorney-work-product doctrine, and maintaining the confidentiality of the communication is necessary to accomplish the purpose for which legal advice was sought. The common interest doctrine is not an independent privilege; rather, it is a nonwaiver doctrine that may be used by plaintiffs or defendants alike.[193] For the common interest doctrine to attach, the parties to the shared communication must have a reasonable expectation that the information disclosed will remain confidential.[194] Further, the parties must have a common interest in a matter of joint concern. In other words, they must have a common interest in securing legal advice related to the same matter, and the communication must be made to advance their shared interest in securing legal advice on that common matter.[195]

187 *Costco Wholesale Corporation v. Superior Court, supra*, 47 Cal.4th at p. 740-741.

188 City of Petaluma v. Superior Court (2016) 248 Cal.App.4th 1023, 1032; *Clark v. Superior Court, supra*, 196 Cal.App.4th at p. 51.

189 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 371–373. See "Pending Litigation or Claims," p. 49.

190 *Holmes v. Petrovich Development Co. LLC* (2011) 191 Cal.App.4th 1047, 1071–1072.

191 *Chubb & Son v. Superior Court* (2014) 228 Cal.App.4th 1094, 1106–1109.

192 Code Civ. Proc., § 2018.030, subds. (a) & (b); Gov. Code, § 7927.705 (formerly Gov. Code, § 6254, subd. (k)).

193 *OXY Resources LLC v. Superior Court* (2004) 115 Cal.App.4th 874, 889.

194 *Id.* at p. 891.

195 Compare *Citizens for Ceres v. Superior Court* (2013) 217 Cal.App.4th 889, 914–922 (common interest doctrine inapplicable to communications between developer and city prior to approval of application because, pre-project approval, parties lacked a common interest) with *California Oak Foundation v. County of Tehama* (2009) 174 Cal.App.4th 1217, 1222–1223 (sharing of privileged documents prepared by county's outside law firm regarding CEQA compliance with project applicant was within common interest doctrine).

Attorney Bills and Retainer Agreements

Attorney billing invoices reflecting work in active and ongoing litigation are exempt from disclosure under the attorney-client privilege or attorney-work-product doctrine.[196] Once a matter is concluded, portions of attorney invoices reflecting fee totals must be disclosed unless such totals reveal anything about the legal consultation, such as insight into litigation strategy, the substance of the legal consultation, or clues about legal strategy.[197]

Retainer agreements between a local agency and its attorneys may constitute confidential communications that fall within the attorney-client privilege.[198] A local agency's governing body may waive the privilege and elect to produce the agreements.[199]

> **PRACTICE TIP:**
>
> Some agencies simplify redaction of attorney bills and production of non-exempt bill information in response to requests by requiring that non-exempt portions of attorney bills, such as the name of the matter, the invoice amount, and date, be contained in separate documents from privileged bill text.

CEQA Proceedings

Increasingly, potential litigants have been submitting public records requests as a prelude to or during preparation of the administrative record for challenges to the adequacy of an agency's California Environmental Quality Act (CEQA) process or certification of CEQA documents. While there are no specific PRA provisions directly addressing CEQA proceedings, these requests can present multiple challenges as they may seek voluminous amounts of records, such as email communications between staff and consultants, or confidential and privileged documents.

> **PRACTICE TIP:**
>
> A request to prepare an administrative record for a CEQA challenge does not excuse or justify ignoring or delaying responses to a CEQA-related PRA request. A failure to properly or fully respond to the PRA request can lead to claims of violations of the PRA and a demand for attorneys' fees being included in a CEQA lawsuit. Local agencies should, therefore, exercise the same due diligence when responding to CEQA-related PRA requests as they do with any other type of PRA request. As with any litigation or potential litigation, local agencies should also consider invoking internal litigation holds and evidence preservation practices early on in a contentious CEQA process.[200]

Two particularly challenging issues that arise with CEQA-related PRA requests are whether and to what extent a subcontractor's files are public records subject to disclosure, and whether the deliberative process privilege or public interest exemption apply to the requested documents.

196 *Los Angeles County Bd. of Supervisors v. Superior Court* (2016) 2 Cal.5th 282, 297; *County of Los Angeles Bd. of Supervisors v. Superior Court* (2017) 12 Cal. App.5th 1264, 1273-1274.

197 *County of Los Angeles Bd. of Supervisors v. Superior Court, supra*, 12 Cal.App.5th at pp. 1274-1275. See "Pending Litigation or Claims," p. 49.

198 Bus. & Prof. Code, § 6149 (a written fee contract shall be deemed to be a confidential communication within the meaning of section 6068(e) of the Business & Professions Code and section 952 of the Evidence Code); Evid. Code, § 952 ("Confidential communication between client and lawyer"); Evid. Code, § 954 (attorney-client privilege).

199 Evid. Code, § 912. See also Gov. Code, § 7921.505 (formerly Gov. Code, § 6254.5) and "Waiver," p. 28.

200 See *Golden Door Properties, LLC, et al. v. Superior Court* (2020) 53 Cal.App.5th 733.

In determining whether a subcontractor's files are public records in the actual or constructive possession of the local agency, the court will look to the consultant's contract to determine the extent to which, if any, the local agency had control over the selection of subcontractors, and how they performed services required by the primary consultant.[201]

> **PRACTICE TIP:**
>
> Examine your contracts with consultants and clearly articulate who owns their work product, and that of their subcontractors.

Requests for materials that implicate the deliberative process privilege or public interest exemption are commonly made in CEQA-related PRA requests. While it may seem obvious that local agency staff and their consultants desire and in fact need to engage in candid dialogue about a project and the approaches to be taken, when invoking the deliberative process privilege to protect such communications from disclosure the local agency must clearly articulate why the privilege applies by more than a simple statement that it helps the process.[202] Likewise, when invoking the public interest exemption to protect documents from disclosure, local agencies must do more than simply state the conclusion that the public's interest in nondisclosure is clearly outweighed by the public interest in disclosure.[203]

> **PRACTICE TIP:**
>
> When evaluating whether the deliberative process privilege applies to documents covered by a PRA request during a pre-litigation CEQA process, keep in mind the close correlation between the drafts exemption, discussed below, and the deliberative process privilege.

Code Enforcement Records

Local agencies may pursue code enforcement through administrative or criminal proceedings, or a combination of both. Records of code enforcement cases for which criminal sanctions are sought may be subject to the same disclosure rules as police and other law enforcement records, including the rules for investigatory records and files, as long as there is a concrete and definite prospect of criminal enforcement.[204] Records of code enforcement cases being prosecuted administratively do not qualify as law enforcement records.[205] However, some administrative code enforcement information, such as names and contact information of complainants, may be exempt from disclosure under the official information privilege, the identity of informant privilege, or the public interest exemption.[206]

Deliberative Process Privilege

The deliberative process privilege is derived from the public interest exemption, which provides that a local agency may withhold a public record if it can demonstrate that "on the facts of a particular case the public interest served

201 *Consolidated Irrigation District v. Superior Court* (2012) 205 Cal.App.4th 697, 710–712.

202 *See* "Deliberative Process Privilege" p. 34.

203 *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 307. See also, "Public Interest Exemption," p. 63.

204 Gov. Code, §§ 7923.600–7923.625 (formerly Gov. Code, § 6254, subd. (f)); *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1068–1069; *State of California ex rel. Division of Industrial Safety v. Superior Court* (1974) 43 Cal.App.3d 778, 783–784. See "Law Enforcement Records," p. 38.

205 *Haynie v. Superior Court, supra,* 26 Cal.4th 1061; *State of California ex rel. Division of Industrial Safety v. Superior Court, supra*, 43 Cal.App.3d at pp. 783–784.

206 City of *San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008. See "Official Information Privilege," p. 48, "Identity of Informants," p. 37, and "Public Interest Exemption," p. 63.

by not making the record public clearly outweighs the public interest served by disclosure of the record."[207] The deliberative process privilege was intended to address concerns that frank discussion of legal or policy matters might be inhibited if subject to public scrutiny, and to support the concept that access to a broad array of opinions and the freedom to seek all points of view, to exchange ideas, and to discuss policies in confidence are essential to effective governance in a representative democracy. Therefore, California courts invoke the privilege to protect communications to decisionmakers before a decision is made.[208]

In evaluating whether the deliberative process privilege applies, the court will still perform the balancing test prescribed by the public interest exemption.[209] In doing so, courts focus "less on the nature of the records sought and more on the effect of the records' release."[210] Therefore, the key question in every deliberative process privilege 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."[211] "Accordingly, the ... courts have uniformly drawn a distinction between predecisional communications, which are privileged [citations]; and communications made after the decision and designed to explain it, which are not."[212] Protecting the predecisional deliberative process gives the decision-maker "the freedom 'to think out loud,' which enables him [or her] to test ideas and debate policy and personalities uninhibited by the danger that his [or her] tentative but rejected thoughts will become subjects of public discussion. Usually, the information is sought with respect to past decisions; the need is even stronger if the demand comes while policy is still being developed."[213]

Courts acknowledge that even a purely factual document would be exempt from public scrutiny if it is "actually ... related to the process by which policies are formulated" or "inextricably intertwined" with "policy-making processes."[214] For example, the California Supreme Court applied the deliberative process privilege in determining that the Governor's appointment calendars and schedules were exempt from disclosure under the PRA even though the information in the appointment calendars and schedules was based on fact.[215] The Court reasoned that such disclosure could inhibit private meetings and chill the flow of information to the executive office.[216]

Drafts

The PRA exempts from disclosure "[p]reliminary 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."[217] The "drafts" exemption provides a measure of privacy for writings concerning pending local agency action. The exemption was adapted from the FOIA, which exempts from

207 *Times Mirror Company v. Superior Court* (1991) 53 Cal.3d 1325, 1338; Gov. Code, § 7922.000 (formerly Gov. Code, § 6255, subd. (a)); Evid. Code §1040. See also, *Labor and Workforce Development Agency v. Superior Court* (2018) 19 Cal.App.5th 12.

208 *Ibid.*; 5 U.S.C. § 552(b)(5). In some cases, pre-decisional communications may also be subject to the official information privilege found in Evidence Code section 1040. See "Official Information Privilege," p. 48.

209 *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 172.

210 *Times Mirror Company v. Superior Court, supra*, 53 Cal.3d at pp. 1338, 1342.

211 *Id.* at p. 1342, citing *Dudman Communications v. Dept. of Air Force* (D.C.Cir.1987) 815 F.2d 1565, 1568.

212 *NLRB v. Sears, Roebuck & Co.* (1975) 421 U.S. 132, 151–152. See also *Times Mirror v. Superior Court (State of California)* (1991) 53 Cal.3d 1325, 1341.

213 *Times Mirror Company v. Superior Court, supra*, 53 Cal.3d at p.1341, citing Cox, Executive Privilege (1974) 122 U Pa L Rev 1383, 1410.

214 *Jordan v. United States Dept. of Justice* (D.C.Cir.1978) 591 F.2d 753, 774; *Ryan v. Department of Justice* (D.C.Cir.1980) 617 F.2d 781, 790; *Soucie v. David* (D.C.Cir.1971) 448 F.2d 1067, 1078.

215 *Times Mirror Company v. Superior Court, supra*, 53 Cal.3d at p. 1338.

216 *Ibid.*

217 Gov. Code, § 7927.500 (formerly Gov. Code, § 6254, subd. (a)).

disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency."[218] The FOIA "memorandums" exemption is based on the policy of protecting the decision- making processes of government agencies, and in particular the frank discussion of legal or policy matters that might be inhibited if subjected to public scrutiny.[219]

The "drafts" exemption in the PRA has essentially the same purpose as the "memorandums" exemption in the FOIA. The key question under the FOIA test is whether the disclosure of materials would expose a local agency's decision-making process in such a way as to discourage candid discussion within the local agency and thereby undermine the local agency's ability to perform its functions.[220] To qualify for the "drafts" exemption the record must be a preliminary draft, note, or memorandum; that is not retained by the local agency in the ordinary course of business; and the public interest in withholding the record must clearly outweigh the public interest in disclosure.[221]

The courts have observed that preliminary materials that are not customarily discarded or that have not in fact been discarded pursuant to policy or custom must be disclosed.[222] Records that are normally retained do not qualify for the exemption. This is in keeping with the purpose of the FOIA "memorandums" exemption of prohibiting the "secret law" that would result from confidential memos retained by local agencies to guide their decision-making.

PRACTICE TIP:

By adopting written policies or developing consistent practices of discarding preliminary deliberative writings, local agencies may facilitate candid internal policy debate. Consider including in such policies when a document should be considered to be "discarded," which might prevent the need to search through bins of documents segregated and approved for destruction under the policies, yet awaiting appropriate shredding and disposal. Such policies and practices may exempt from disclosure even preliminary drafts that have not yet been discarded, so long as the drafts are not maintained by the local agency in the ordinary course of business, and the public interest in nondisclosure clearly outweighs the public interest in disclosure.

Elections

Voter Registration Information

Voter registration information, including the home street address, telephone number, email address, precinct number, or other number specified by the Secretary of State for voter registration purposes is confidential and cannot be disclosed except as specified in section 2194 of the Elections Code.[223] Similarly, the signature of the voter shown on the voter registration card is confidential and may not be disclosed to any person, except as provided in the Elections Code.[224] Voter registration information may be provided to any candidate for federal, state, or local office; to any committee for or against an initiative or referendum measure for which legal publication is made; and to any person

218 5 U.S.C. § 552, subd. (b)(5).

219 *Times Mirror Co. v. Superior Court, supra*, 53 Cal.3d 1325, 1339–1340.

220 *Id.* at p. 1342.

221 *Citizens for a Better Environment v. Department of Food and Agriculture* (1985) 171 Cal.App.3d 704, 711–712; Gov. Code, § 7927.500 (formerly Gov. Code, § 6254, subd. (a)).

222 *Citizens for a Better Environment v. Department of Food and Agriculture*, *supra,* 171 Cal.App.3d at p. 714.

223 Gov. Code, § 7924.000, subd. (a)(1) (formerly Gov. Code, § 6254.4, subd. (a)).

224 Gov. Code, § 7924.000, subd. (c) (formerly Gov. Code, § 6254.4, subd. (d)).

for election, scholarly, journalistic, or political purposes, or for governmental purposes, as determined by the Secretary of State.[225]

A California Driver's License, California ID card, or other unique identifier used by the State of California for purposes of voter identification shown on the affidavit of voter registration of a registered voter or added to voter registration records to comply with the requirements of the federal Help America Vote Act of 2002, is confidential and may not be disclosed to any person.[226]

When a person's vote is challenged, the voter's home address or signature may be released to the challenger, elections officials, and other persons as necessary to make, defend against, or adjudicate a challenge.[227]

A person may view the signature of a voter to determine whether the signature matches a signature on an affidavit of registration or a petition. The signature cannot be copied, reproduced, or photographed in any way.[228]

Information or data compiled by local agency officers or employees revealing the identity of persons who have requested bilingual ballots or ballot pamphlets is not a disclosable public record and may not be provided to any person other than those local agency officers or employees who are responsible for receiving and processing those requests.[229]

Initiative, Recall, and Referendum Petitions

Nomination documents and signatures filed in lieu of filing fee petitions may be inspected, but not copied or distributed.[230] Similarly, any petition to which a voter has affixed his or her signature for a statewide, county, city, or district initiative, referendum, recall, or matters submitted under the Elections Code, is not a disclosable public record and is not open to inspection except by the local agency officers or employees whose duty it is to receive, examine, or preserve the petitions.[231] This prohibition extends to all memoranda prepared by county and city elections officials in the examination of the petitions indicating which voters have signed particular petitions.[232]

If a petition is found to be insufficient, the proponents and their representatives may inspect the memoranda of insufficiency to determine which signatures were disqualified and the reasons for the disqualification.[233]

Identity of Informants

A local agency also has a privilege to refuse to disclose and to prevent another from disclosing the identity of a person who has furnished information in confidence to a law enforcement officer or representative of a local agency charged with administration or enforcement of the law alleged to be violated.[234] This privilege applies where the information purports to disclose a violation of a federal, state, or another public entity's law, and where the public's interest in

225 Elec. Code, § 2194.

226 Elec. Code, § 2194, subd. (b).

227 Elec. Code, § 2194, subd. (c)(1).

228 Elec. Code, § 2194, subd. (c)(2).

229 Gov. Code, § 7924.005 (formerly Gov. Code, § 6253.6).

230 Elec. Code, § 17100.

231 Elec. Code, §§ 17200, 17400.

232 Gov. Code, § 7924.110, subd. (a)(5) (formerly Gov. Code, § 6253.5, subd. (a)).

233 Gov. Code, § 7924.110, subd. (b)(2) (formerly Gov. Code, § 6253.5, subd. (a)).

234 Evid. Code, § 1041.

protecting an informant's identity outweighs the necessity for disclosure.[235] This privilege extends to disclosure of the contents of the informant's communication if the disclosure would tend to disclose the identity of the informant.[236]

Information Technology Systems Security Records

An information security record is exempt from disclosure if, on the facts of a particular case, disclosure would reveal vulnerabilities to attack, or would otherwise increase the potential for an attack on a local agency's information technology system.[237]

Disclosure of records stored within a local agency's information technology system that are not otherwise exempt under the law do not fall within this exemption.[238]

Law Enforcement Records

Overview

As an exemption to the general rule of disclosure under the PRA, law enforcement records are generally exempt from disclosure to the public.[239] That is, in most instances, the actual investigation files and records are themselves exempt from disclosure, but the PRA does require local agencies to disclose certain information derived from those files and records.[240] For example, the names of officers involved in a police shooting are subject to disclosure, unless disclosure would endanger an officer's safety (e.g., if there is a specific threat to an officer or an officer is working undercover).[241]

The type of information that must be disclosed differs depending on whether it relates to, for example, calls to the police department for assistance, the identity of an arrestee, information relating to a traffic accident, or certain types of crimes, including car theft, burglary, or arson. The identities of victims of certain types of crimes, including minors and victims of sexual assault, are required to be withheld if requested by the victim or the victim's guardian, if the victim is a minor.[242] Those portions of any file that reflect the analysis and conclusions of the investigating officers may also be withheld.[243] Certain information that may be required to be released may be withheld where the disclosure would endanger a witness or interfere with the successful completion of the investigation. These exemptions extend indefinitely, even after the investigation is closed.[244]

Release practices vary by local agency. Some local agencies provide a written summary of information being disclosed, some release only specific information upon request, while others release reports with certain matters redacted. Other local agencies release reports upon request with no redactions except as mandated by statute. Some local agencies also release 911 tapes and booking photos, although this is not required under the PRA.[245]

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235 Evid. Code, § 1041; *People v. Navarro* (2006) 138 Cal.App.4th 146, 164.

236 *People v. Hobbs* (1994) 7 Cal.4th 948, 961–962.

237 Gov. Code, § 7929.210, subd. (a) (formerly Gov. Code, § 6254.19).

238 Gov. Code, § 7929.210, subd. (b) (formerly Gov. Code, § 6254.19). See also Gov. Code, § 7929.200 (formerly Gov. Code, § 6254, subd. (aa)).

239 Gov. Code, § 7923.600, subd. (a) (formerly Gov. Code § 6254, subd. (f)); *Williams v. Superior Court* (1993) 5 Cal.4th 337, 348.

240 *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1068; 65 Ops.Cal.Atty.Gen. 563 (1982).

241 *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59, 63–68.

242 Gov. Code, § 7923.615, subd. (b) (formerly § 6254, subd. (f)(2)).

243 *Rackauckas v. Superior Court* (2002) 104 Cal.App.4th 169, 174.

244 *Rivero v. Superior Court* (1997) 54 Cal.App.4th 1048, 1052; *Williams v. Superior Court* (1993) 5 Cal.4th 337, 361–362; *Office of the Inspector General v. Superior Court* (2010) 189 Cal.App.4th 695 (Office of the Attorney General has discretion to determine which investigatory records are subject to disclosure in connection with its investigations, and investigatory records in that context may include some documents that were not prepared as part of, but became subsequently relevant to, the investigation).

245 *Haynie v. Superior Court, supra*, 26 Cal.4th 1061 (911 tapes); 86 Ops.Cal.Atty.Gen. 132 (2003) (booking photos).

PRACTICE TIP:

If it is your local agency's policy to release police reports upon request, it is helpful to establish an internal process to control the release of the identity of minors or victims of certain types of crimes, or to ensure that releasing the report would not endanger the safety of a person involved in an investigation or endanger the completion of the investigation.

Recent changes to the PRA have made video or audio recordings that relate to "critical incidents" available to the public within specified timeframes.[246] A video or audio recording relates to a critical incident if it depicts an incident involving (1) the discharge of a firearm at a person by a peace officer or custodial officer or (2) an incident in which the use of force by a peace officer or custodial officers against a person resulted in death or in great bodily injury. [247]

Recent changes to the Penal Code have also made records related to certain types of police incidents and police misconduct available to the public, notwithstanding the law enforcement record exemption in the PRA.[248]

PRACTICE TIP:

The term "great bodily injury" is not defined by the recent amendments to the Government Code or the Penal Code referenced above. The Penal Code does contain a definition of great bodily injury (GBI) in the context of an enhancement statute for felonies not having bodily harm as an element. Penal Code section 12022.7 defines GBI as "a significant or substantial physical injury." Case law interpreting this section may be helpful in determining what constitutes GBI, and therefore what records are subject to release, depending on the particular facts of an injury.

State law also requires police agencies to report annually to the California Department of Justice use of force incidents that caused serious bodily injury to a civilian, among other incidents. This report may be a helpful tool in determining which incidents are subject to release for purposes of the Public Records Act.

Exempt Records

The PRA generally exempts most law enforcement records from disclosure, including, among others:

- Complaints to or investigations conducted by a local or state police agency;
- Records of intelligence information or security procedures of a local or state police agency;
- Any investigatory or security files compiled by any other local or state police agency;
- Customer lists provided to a local police agency by an alarm or security company; and
- Any investigatory or security files compiled by any state or local agency for correctional, law enforcement, or licensing purposes.[249]

246 Gov. Code, § 7923.625 (formerly § 6254, subd. (f)(4)).

247 Gov. Code, § 7923.625, subd. (e) (formerly § 6254, subd. (f)(4)(C)).

248 See "Peace Officer Personnel Records," p. 53.

249 Gov. Code, § 7923.600 subd. (a) (formerly § 6254, subd. (f)); *Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271, 1276 (coroner and autopsy reports).

> **▶ PRACTICE TIP:**
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> Many departments that choose not to release entire reports develop a form that can be filled out with the requisite public information.

The burden of proof is on the agency asserting the exemption and the exemptions should be narrowly construed.[250]

In addition to the above categories, and notwithstanding the changes to the PRA and Penal Code making additional police records available to the public, the public interest catchall exemption may still apply to police 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.[251]

Information that Must be Disclosed

Under the Public Records Act, there are four general categories of information contained in law enforcement investigatory files that must be disclosed: information which must be disclosed to victims, their authorized representatives and insurance carriers, information relating to arrestees, information relating to complaints or requests for assistance, and audio or video recordings that relate to critical incidents.

Disclosure to Victims, Authorized Representatives, and Insurance Carriers

Except where disclosure would endanger the successful completion of an investigation or a related investigation, or endanger the safety of a witness, certain information relating to specific listed crimes must be disclosed upon request to:

- A victim;
- The victim's authorized representative;
- An insurance carrier against which a claim has been or might be made; or
- Any person suffering bodily injury, or property damage or loss.

The type of crimes listed in this subsection to which this requirement applies include arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime defined by statute.[252]

The type of information that must be disclosed under this section (except where it endangers safety of witnesses or the investigation itself) includes:

- Name and address of persons involved in or witnesses to incident (other than confidential informants);
- Description of property involved;
- Date, time, and location of incident;
- All diagrams;
- Statements of parties to incident; and
- Statements of all witnesses (other than confidential informants).[253]

250 *Ventura County Deputy Sheriffs' Assn. v. County of Ventura* (2021) 61 Cal.App.5th 585, 592.

251 Becerra *v. Superior Court* (2020) 44 Cal.App.5th 897, 923-929. See "Public Interest Exception," p. 63 for a discussion of this balancing test.

252 Gov. Code, § 7923.605, subd. (a) (formerly § 6254, subd. (f)).

253 Gov. Code, § 7923.605, subd. (a) (formerly § 6254, subd. (f)); *Buckheit v. Dennis* (ND Cal. 2012) 2012 U.S. Dist. LEXIS 49062 (noting that Government Code section 6254, subd. (f) requires disclosure of certain information to a victim. Suspects are not entitled to that same information).

Local agencies may not require a victim or a victim's authorized representative to show proof of the victim's legal presence in the United States to obtain the information required to be disclosed to victims.[254] However, if a local agency does require identification for a victim or authorized representative to obtain information disclosable to victims, the local agency must, at a minimum, accept a current driver's license or identification card issued by any state in the United States, a current passport issued by the United States or a foreign government with which the United States has a diplomatic relationship, or a current Matricula Consular card.[255]

The Vehicle Code addresses the release of traffic accident information. A law enforcement agency to whom an accident was reported is required to disclose the entire contents of a traffic accident report to persons who have a "proper interest" in the information, including, but not limited to, the driver(s) involved in the accident, or the authorized representative, guardian, or conservator of the driver(s) involved; the parent of a minor driver; any named injured person; the owners of vehicles or property damaged by the accident; persons who may incur liability as a result of the accident; and any attorney who declares under penalty of perjury that he or she represents any of the persons described above.[256] The local enforcement agency may recover the actual cost of providing the information.

Information Regarding Arrestees

The PRA mandates that the following information be released pertaining to every individual arrested by the local law enforcement agency, except where releasing the information would endanger the safety of persons involved in an investigation or endanger the successful completion of the investigation or a related investigation:

- Full name and occupation of the arrestee;
- Physical description including date of birth, color of eyes and hair, sex, height, and weight;
- Time, date, and location of arrest;
- Time and date of booking;
- Factual circumstances surrounding arrest;
- Amount of bail set;
- Time and manner of release or location where arrestee is being held; and
- All charges the arrestee is being held on, including outstanding warrants and parole or probation holds.[257]

As previously stated, a PRA request applies only to records existing at the time of the request.[258] It does not require a local agency to produce records that may be created in the future. Further, a local agency is not required to provide requested information in a format that the local agency does not use.

> **▶ PRACTICE TIP:**
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> Most police departments have some form of a daily desk or press log that contains all or most of this information.

254 Gov. Code, § 7923.655 subd. (a) (formerly § 6254.30).

255 Gov. Code, § 7923.655 subd. (b) (formerly § 6254.30).

256 Veh. Code, § 20012.

257 Gov. Code, § 7923.610 subd. (a)-(i) (formerly § 6254, subd. (f)(1)).

258 Gov. Code, § 7922.535 subd. (a) (formerly § 6253, subd. (c)).

Local agencies are only required to disclose arrestee information pertaining to "contemporaneous" police activity.[259] The legislature has not defined the term "contemporaneous" in the context of arrest logs, but the purpose of the disclosure requirement is "*only* to prevent secret arrests and provide basic law enforcement information to the press."[260] For example, a request for 11 or 12 month old arrest information would not serve the purpose of preventing clandestine police activity, therefore those records are exempt from disclosure.[261]

Complaints or Requests for Assistance

The Penal Code provides that except as otherwise required by the criminal discovery provisions, no law enforcement officer or employee of a law enforcement agency may disclose to any arrested person, or to any person who may be a defendant in a criminal action, the address or telephone number of any person who is a victim of or witness to the alleged offense.[262]

Subject to the restrictions imposed by the Penal Code, the following information must be disclosed relative to complaints or requests for assistance received by the law enforcement agency:

- 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;[263]
- To the extent the crime, alleged or committed, or any other incident is recorded, the time, date, and location of occurrence, and the time and date of the report;[264]
- The factual circumstances surrounding crime/incident;[265]
- A general description of injuries, property, or weapons involved;[266] and
- The names and ages of victims, except the names of victims of certain listed crimes[267] may be withheld upon request of the victim or parent of a minor victim.[268]

Requests for Journalistic or Scholarly Purposes

Where a request states, under penalty of perjury, that (1) it is made for a scholarly, journalistic, political, or governmental purpose, or for an investigative purpose by a licensed private investigator, and (2) it will not be used directly or indirectly, or furnished to another, to sell a product or service, the PRA requires the disclosure of the name and address of every individual arrested by the local agency and the current address of the victim of a crime, except for specified crimes.[269]

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259 Kinney *v. Superior Court* (2022) 77 Cal.App.5th 168.

260 *Id.* at pp. 180-181

261 *Id.* at p. 181

262 Pen. Code, § 841.5, subd. (a).

263 Gov. Code, § 7923.615, subd. (a)(2)(A) (formerly Gov. Code, § 6254, subd. (f)(2)).

264 Gov. Code, § 7923.615, subd. (a)(2)(B) (formerly Gov. Code, § 6254, subd. (f)(2)).

265 Gov. Code, § 7923.615, subd. (a)(2)(D) (formerly Gov. Code, § 6254, subd. (f)(2)).

266 Gov. Code, § 7923.615, subd. (a)(2)(E) (formerly Gov. Code, § 6254, subd. (f)(2)).

267 These listed crimes include various Penal Code sections which relate to topics such as sexual abuse, child abuse, hate crimes, and stalking.

268 Gov. Code, § 7923.615, subd. (a)(2)(C), (b) (formerly § 6254, subd. (f)(2)).

269 Gov. Code, § 7923.620 (formerly § 6254, subd. (f)); Pen. Code, § 841.5; *Los Angeles Police Dept. v. United Reporting Pub. Corp.* (1999) 528 U.S. 32.

Video or Audio Recordings that Relate to Critical Incidents

Beginning on July 1, 2019, video or audio that relates to critical incidents may only be withheld under certain circumstances and timeframes.[270]

A video or audio recording relates to a critical incident if it depicts any of the following incidents: (1) an incident involving the discharge of a firearm at a person by a peace officer or custodial officer; or (2) an incident in which the use of force by a peace officer or custodial officer against a person resulted in death or in great bodily injury.[271]

Disclosure of such video or audio may be delayed for up to 45 days, during an active criminal or administrative investigation into the incident, if the agency determines that disclosure would substantially interfere with the investigation.[272] After 45 days, and up to one year after the incident, disclosure may continue to be delayed if the agency can demonstrate that disclosure would substantially interfere with the investigation. After one year from the date of the incident, the agency may continue to delay disclosure only if the agency demonstrates by clear and convincing evidence that disclosure would substantially interfere with the investigation.[273]

If an agency delays disclosure pursuant to this clause, the agency shall promptly provide in writing to the requester the specific basis for the agency's determination that the interest in preventing interference with an active investigation outweighs the public interest in disclosure and provide the estimated date for the disclosure. The agency shall reassess withholding and notify the requester every 30 days. A recording withheld by the agency shall be disclosed promptly when the specific basis for withholding is resolved.[274]

Video or audio may be redacted if the agency determines that a reasonable expectation of privacy outweighs the public interest in disclosure. However, the redactions should be limited to protect those privacy interests and shall not interfere with the viewer's ability to fully, completely, and accurately comprehend the events captured in the recording and the recording shall not otherwise be edited or altered.[275] If protecting the privacy interest is not possible through redaction, and the privacy interest outweighs the public interest in disclosure, the agency may withhold the video or audio from the public.[276] However, the video or audio shall be disclosed promptly, upon request, to the subject of the recording or their representative as described in the statute.[277]

Staff time incurred in searching for, reviewing, and redacting video or audio is not chargeable to the PRA requester.[278]

Coroner Photographs or Video

No copies, reproductions, or facsimiles of a photograph, negative, print, or video recording of a deceased person taken by or for the coroner (including by local law enforcement personnel) at the scene of death, or in the course of a postmortem examination or autopsy, may be disseminated except as provided by statute.[279]

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270 Gov. Code, § 7923.625 (formerly § 6254, subd. (f)(4)).

271 Gov. Code, § 7923.625, subd. (e) (formerly § 6254, subd. (f)(4)(C)).

272 Gov. Code, § 7923.625, subd. (a)(1) (formerly § 6254, subd. (f)(4)(A)(i)).

273 Gov. Code, § 7923.625, subd. (a)(2) (formerly § 6254, subd. (f)(4)(A)(ii)).

274 Gov. Code, § 7923.625, subd. (a)(2) (formerly § 6254, subd. (f)(4)(A)(ii)).

275 Gov. Code, § 7923.625, subd. (b)(1) (formerly § 6254, subd. (f)(4)(B)(i))

276 Gov. Code, § 7923.625, subd. (b)(2) (formerly § 6254, subd. (f)(4)(B)(ii)).

277 Gov. Code, § 7923.625, subd. (b)(2)(A-C) (formerly § 6254, subd. (f)(4)(B)(ii)(I-III)).

278 *National Lawyers Guild v. City of Hayward* (2020) 9 Cal. 5th 488.

279 Code Civ. Proc., § 129.

Automated License Plate Readers Data

Automated License Plate Reader (ALPR) scan data is not considered "records of investigations" because the scans are not the result of any targeted inquiry into any particular crime or crimes.[280] As such, this data is not subject to the law enforcement records exemption.

Mental Health Detention Information

All information and records obtained in the course of providing services to a mentally disordered individual who is gravely disabled or a danger to others or him or herself, and who is detained and taken into custody by a peace officer, are confidential and may only be disclosed to enumerated recipients and for the purposes specified in state law.[281] Willful, knowing release of confidential mental health detention information can create liability for civil damages.[282]

> ▶ **PRACTICE TIP:**
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> All information obtained in the course of a mental health detention (often referred to as a "5150 detention") is confidential, including information in complaint or incident reports that would otherwise be subject to disclosure under the PRA.

Elder Abuse Records

Reports of suspected abuse or neglect of an elder or dependent adult, and information contained in such reports, are confidential and may only be disclosed as permitted by state law.[283] The prohibition against unauthorized disclosure applies regardless of whether a report of suspected elder abuse or neglect is from someone who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not for compensation (a mandated reporter), or from someone else.[284] Unauthorized disclosure of suspected elder abuse or neglect information is a misdemeanor.[285]

Juvenile Records

Records or information gathered by law enforcement agencies relating to the detention of, or taking of, a minor into custody or temporary custody are confidential and subject to release only in certain circumstances and by certain specified persons and entities.[286] Juvenile court case files are subject to inspection only by specific listed persons and are governed by both statute and state court rules.[287]

280 *American Civil Liberties Union Foundation v. Superior Court* (2017) 3 Cal. 5th 1032.

281 Welf. & Inst. Code, §§ 5150, 5328.

282 Welf. & Inst. Code, § 5330.

283 Welf. & Inst. Code, § 15633.

284 Welf. & Inst. Code, § 15633.

285 Welf. & Inst. Code, §15633.

286 Welf. & Inst. Code, §§ 827, 828; see Welf & Inst. Code, § 827.9 (applies to Los Angeles County only). See also *T.N.G. v. Superior Court* (1971) 4 Cal.3d 767 (release of information regarding minor who has been temporarily detained and released without any further proceedings.)

287 Welf. & Inst. Code, § 827.

▶ PRACTICE TIP:

Some local courts have their own rules regarding inspection and they may differ from county to county and may change from time to time. Care should be taken to periodically review the rules as the presiding judge of each juvenile court makes their own rules.

Different provisions apply to dissemination of information gathered by a law enforcement agency relating to the taking of a minor into custody where it is provided to another law enforcement agency, including a school district police or security department, or other agency or person who has a legitimate need for information for purposes of official disposition of a case.[288] In addition, a law enforcement agency must release the name of and descriptive information relating to any juvenile who has escaped from a secure detention facility.[289]

Child Abuse Reports

Reports of suspected child abuse or neglect, including reports from those who are "mandated reporters," such as teachers and public school employees and officials, physicians, children's organizations, and community care facilities, and child abuse and neglect investigative reports that result in a summary report being filed with the Department of Justice, are confidential and may only be disclosed to the persons and agencies listed in state law.[290] Unauthorized disclosure of confidential child abuse or neglect information is a misdemeanor.[291]

Library Patron Use Records

All patron use records of any library that is supported in whole or in part by public funds are confidential and may not be disclosed except to persons acting within the scope of their duties within library administration, upon written authorization from the person whose records are sought, or by court order.[292] The term "patron use records" includes written or electronic records that identify the patron, the patron's borrowing information, or use of library resources, including database search records and any other personally identifiable information requests or inquiries.[293] This exemption does not extend to statistical reports of patron use or records of fines collected by the library.[294]

Library Circulation Records

Library circulation records that are kept to identify the borrowers, and library and museum materials presented solely for reference or exhibition purposes, are exempt from disclosure.[295] Further, all registration and circulation records of any library that is (in whole or in part) supported by public funds are confidential.[296] The confidentiality of library circulation records does not extend to records of fines imposed on borrowers.[297]

288 Welf & Inst. Code, § 828, subd. (a); Cal. Rules of Court, rule 5.552(b).

289 Welf & Inst. Code, § 828, subd. (b).

290 Pen. Code, §§ 11165.6, 11165.7, 11167.5, 11169.

291 Pen. Code, § 11167.5, subd. (a).

292 Gov. Code, § 7927.105 (formerly Gov. Code, § 6267).

293 Gov. Code, § 7927.105 (formerly Gov. Code, § 6267).

294 Gov. Code, § 7927.105 (formerly Gov. Code, § 6267).

295 Gov. Code, § 7927.100, subd. (a) (formerly Gov. Code, §6254, subd. (j)).

296 Gov. Code, § 7927.105, subd. (c) (formerly Gov. Code, § 6254, subd. (j)).

297 Gov. Code, § 7927.100, subd. (b) (formerly Gov. Code, § 6254, subd. (j)).

Licensee Financial Information

When a local agency requires that applicants for licenses, certificates, or permits submit personal financial data, that information is exempt from disclosure.[298] One frequent example of this is the submittal of sales or income information under a business license tax requirement. However, this exemption is construed narrowly and does not apply to financial information filed by an existing licensee or franchisee to justify a rate increase, because the franchisee is not merely applying for a license but is contractually assuming a city function which requires monitoring and regular review.[299]

Medical Records

California's Constitution protects a person's right to privacy in his or her medical records.[300] Therefore, the PRA exempts from disclosure "personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy."[301] In addition, the PRA exempts from disclosure "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law,"[302] including, but not limited to, those described in the Confidentiality of Medical Information Act,[303] physician/patient privilege,[304] the Health Data and Advisory Council Consolidation Act,[305] and the Health Insurance Portability and Accountability Act. [306]

> **▶ PRACTICE TIP:**
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> Both Gov. Code sections 7927.700 and 7927.705 probably apply to records protected under the physician/patient privilege, the Confidentiality of Medical Information Act, the Health Data and Advisory Council Consolidation Act, and the Health Insurance Portability and Accountability Act. In addition, individually identifiable health information is probably also exempt from disclosure under the "public interest" exemption in Government Code section 7922.000.

Health Data and Advisory Council Consolidation Act

Any organization that operates, conducts, owns, or maintains a health facility, hospital, or freestanding ambulatory surgery clinic must file reports with the state that include detailed patient health and financial information.[307] Patient medical record numbers, and any other data elements of these reports that could be used to determine the identity of an individual patient are exempt from disclosure.[308]

298 Gov. Code, § 7925.005 (formerly Gov. Code, § 6254, subd. (n)).

299 *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 779–780.

300 Cal. Const., art. I, § 1; *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 41.

301 Gov. Code, § 7927.700 (formerly Gov. Code, § 6254, subd. (c)).

302 Gov. Code, § 7927.705 (formerly Gov. Code, § 6254, subd. (k)).

303 Civ. Code, §§ 56 *et seq.*

304 Evid. Code, §§ 990 *et. seq.*

305 Health & Saf. Code, §§ 128675 *et seq.*

306 42 U.S.C. § 1320d.

307 Health & Saf. Code, §§ 128735, 128736, 128737.

308 Health & Saf. Code, § 128745, subd. (c)(6).

Physician/Patient Privilege

Patients may refuse to disclose, and prevent others from disclosing, confidential communications between themselves and their physicians.[309] The privilege extends to confidential patient/physician communication that is disclosed to third parties where reasonably necessary to accomplish the purpose for which the physician was consulted.[310]

> **▶ PRACTICE TIP:**
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> Patient medical information provided to local agency emergency medical personnel to assist in providing emergency medical care may be subject to the physician/patient privilege if providing the privileged information is reasonably necessary to accomplish the purpose for which the physician was, or will be, consulted, including emergency room physicians.

Confidentiality of Medical Information Act

Subject to certain exceptions, health care providers, health care service plan providers, and contractors are prohibited from disclosing a patient's individually identifiable medical information without first obtaining authorization.[311] Employers must establish appropriate procedures to ensure the confidentiality and appropriate use of individually identifiable medical information.[312] Local agencies that are not providers of health care, health care service plans, or contractors as defined in state law may possess individually identifiable medical information protected under state law that originated with providers of health care, health care service plans, or contractors.[313]

Health Insurance Portability and Accountability Act

Congress enacted the Health Insurance Portability and Accountability Act (HIPAA) in 1996 to improve portability and continuity of health insurance coverage and to combat waste, fraud, and abuse in health insurance and health care delivery through the development of a health information system and establishment of standards and requirements for the electronic transmission of certain health information.[314] The U.S. Department of Health and Human Services Secretary (HHS) has issued privacy regulations governing use and disclosure of individually identifiable health information by "covered entities" — essentially health plans, health care clearinghouses, and any health care provider who transmits health information in electronic form in connection with transactions for which the Secretary of HHS has adopted standards under HIPAA.[315] Persons[316] who knowingly and in violation of federal law use or cause to be used a unique health identifier, obtain individually identifiable health information relating to an individual, or disclose

309 Evid. Code, § 994.

310 Evid. Code, § 992.

311 Civ. Code, §§ 56.10, subd. (a); 56.05, subd. (g). "Provider of health care" as defined means persons licensed under Business & Professions Code section 500 *et seq*, or Health & Safety Code section1797 and following, and clinics, health dispensaries, or health facilities licensed under Health and Safety Code section1200 *and following*. "Health care service plan" as defined means entities regulated under Health & Safety Code section 1340 and following. "Contractor" as defined means medical groups, independent practice associations, pharmaceutical benefits managers, and medical service organizations that are not providers of health care or health care service plans.

312 Civ. Code, § 56.20.

313 Civ. Code, § 56.05, subd. (g).

314 Health Insurance Portability and Accountability Act of 1996, Pub L No. 104-191, § 261 (Aug. 24, 1996) 110 Stat 1936; 42 U.S.C. 1320d.

315 42 U.S.C. § 1320d-1– d-3, Health and Human Services Summary of the Privacy Rule, May, 2003. The final privacy regulations were issued in December, 2000 and amended in August, 2002. The definitions of "health information" and "individually identifiable health information" in the privacy regulations are in 45 C.F.R. 160.103. The general rules governing use and disclosure of protected health information are in 45 C.F.R. 164.502.

316 Persons (including an employee or other individual) shall be considered to have obtained or disclosed individually identifiable health information in violation of this part if the information is maintained by a covered entity (as defined in the HIPAA privacy regulation described in section 1320d-9(b)(3)) and the individual obtained or disclosed such information without authorization. 42 U.S.C. § 1320d-6 (a).

individually identifiable health information to another person are subject to substantial fines and imprisonment of not more than one year, or both, and to increased fines and imprisonment for violations under false pretenses or with the intent to use individually identifiable health information for commercial advantage, personal gain, or malicious harm.[317] Federal law also permits the Health and Human Services Secretary to impose civil penalties[318]

Workers' Compensation Benefits

Records pertaining to the workers' compensation benefits for an individually identified employee are exempt from disclosure as "personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of privacy."[319] The PRA further prohibits the disclosure of records otherwise exempt or prohibited from disclosure pursuant to federal and state law.[320] State law prohibits a person or public or private entity who is not a party to a claim for workers' compensation benefits from obtaining individually identifiable information obtained or maintained by the Division of Workers' Compensation on that claim.[321]

Certain information may be subject to disclosure once an application for adjudication has been filed.[322] If the request relates to pre-employment screening, the administrative director must notify the person about whom the information is requested and include a warning about discrimination against persons who have filed claims for workers' compensation benefits. Further, a residential address cannot be disclosed, except to law enforcement agencies, the district attorney, other governmental agencies, or for journalistic purposes. Individually identifiable information is not subject to subpoena in a civil proceeding without notice and a hearing at which the court is required to balance the respective interests — privacy and public disclosure. Individually identifiable information may be used for certain types of statistical research by specifically listed persons and entities.[323]

Official Information Privilege

A local agency may refuse to disclose official information.[324] "Official information" is statutorily defined as "information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed to the public prior to the time the claim of privilege is made."[325] However, the courts have somewhat expanded on the statutory definition by determining that certain types of information, such as police investigative files and medical information, are "by [their] nature confidential and widely treated as such" and thus protected from disclosure by the privilege.[326] Therefore, "official information" includes information that is protected by a state or federal statutory

317 42 U.S.C. § 1320d-6.Federal law defines "individually identifiable health information" as any information collected from an individual that is created or received by a health care provider, health plan, employer or health care clearing house, that relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual, and that identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

318 42 U.S.C. § 1320d-5.

319 Gov. Code, § 7927.700 (formerly Gov. Code, § 6254, subd. (c)).

320 Gov. Code, § 7927.705 (formerly Gov. Code, § 6254, subd. (k)).

321 Lab. Code, § 138.7, subd. (a). This state statute defines "individually identifiable information" to mean "any data concerning an injury or claim that is linked to a uniquely identifiable employee, employer, claims administrator, or any other person or entity."

322 Lab. Code, §§ 5501.5, 138.7.

323 Lab Code, §138.7.

324 Evid. Code, § 1040.

325 Evid. Code, § 1040, subd. (a).

326 *Department of Motor Vehicles v. Superior Court* (2002) 100 Cal.App.4th 363, 373–374.

privilege or information, the disclosure of which is against the public interest, because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice.[327]

The local agency has the right to assert the official information privilege both to refuse to disclose and to prevent another from disclosing official information.[328]

Where the disclosure is prohibited by state or federal statute, the privilege is absolute, unless there is an exception.[329] In all other respects, it is conditional and requires a judge to weigh the necessity for preserving the confidentiality of information against the necessity for disclosure in the interest of justice.[330] This is similar to the weighing process provided for in the PRA — allowing nondisclosure when the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure.[331] As part of the weighing process a court will look at the consequences to the public, including the effect of the disclosure on the integrity of public processes and procedures.[332] This is typically done through *in camera* judicial review.[333]

There are a number of cases interpreting this statute.[334] While many of the cases interpreting this privilege involve law enforcement records, other cases arise out of licensing and accreditation-type activities. The courts address these types of cases on an individualized basis and further legal research should be done within the context of particular facts.

> **▶ PRACTICE TIP:**
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> Although there is no case law directly on point, this privilege, along with the informant privilege, may be asserted to protect the identities of code enforcement complainants and whistleblowers.

Pending Litigation or Claims

The PRA exempts from disclosure records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to the California Government Claims Act, until the pending litigation or claim has been finally adjudicated or otherwise settled.[335] Although the phrase "pertaining to" pending litigation or claims might seem broad, the courts nevertheless have construed the exemption narrowly, consistent with the underlying policy of the PRA to promote access to public records. Therefore, the claim itself is not exempt from disclosure — the exemption applies only to documents specifically prepared by, or at the direction of, the local agency for use in existing or anticipated litigation.[336]

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327 *White v. Superior Court* (2002) 102 Cal.App.4th.Supp. 1, 6.

328 Evid. Code, § 1040, subd. (b).

329 See Evid. Code § 1040, subd. (c) (notwithstanding any other law, the Employment Development Department shall disclose to law enforcement agencies, in accordance with subdivision (i) of Section 1095 of the Unemployment Insurance Code, information in its possession relating to any person if an arrest warrant has been issued for the person for commission of a felony).

330 See also exception in Evid. Code § 1040, subd. (c).

331 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255).

332 *Shepherd v. Superior Court* (1976) 17 Cal.3d 107, 126.

333 The term "*in camera*" refers to a review of the document in the judge's chambers outside the presence of the requesting party.

334 *Department of Motor Vehicles v. Superior Court, supra*, 100 Cal.App.4th 363; *California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal. App.4th 810; *County of Orange v. Superior Court* (2000) 79 Cal.App.4th 759.

335 Gov. Code, § 7927.200 (formerly Gov. Code, § 6254, subd. (b)).

336 *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414, 1420–1421; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1420.

It may sometimes be difficult to determine whether a particular record was prepared specifically for use in litigation or for other purposes related to the underlying incident. For example, an incident report may be prepared either in anticipation of defending a potential claim, or simply for risk management purposes. In order for the exemption to apply, the local agency would have to prove that the dominant purpose of the record was to be used in defense of litigation.[337]

Attorney billing invoices reflecting work in active and ongoing litigation are exempt from disclosure under the attorney-client privilege or attorney work product doctrine.[338] The Supreme Court reasoned that the content of such invoices is so closely related to attorney-client communications that its disclosure may reveal legal strategy or consultation. Once a matter is concluded, however, portions of attorney invoices reflecting fee totals (not billing entries or portions of invoices that describe the work performed for a client) must be disclosed unless such totals reveal anything about the legal consultation such as insight into litigation strategy, the substance of the legal consultation, or clues about legal strategy.[339] This is a factual analysis that weighs various factors.

It is important to remember that even members of the public that have filed a claim against or sued a local agency are entitled to use the PRA to obtain documents that may be relevant to the claim or litigation. The mere fact that the person might also be able to obtain the documents in discovery is not a ground for rejecting the request under the PRA.[340]

The pending litigation exemption does not prevent members of the public from obtaining records submitted to the local agency pertaining to existing or anticipated litigation, such as a claim for monetary damages filed prior to a lawsuit, because the records were not prepared by the local agency.[341] Moreover, while medical records are subject to a constitutional right of privacy, and generally exempt from production under the PRA and other statutes,[342] an individual may be deemed to have waived the right to confidentiality by submitting medical records to the public entity in order to obtain a settlement.[343]

Once the claim or litigation is no longer "pending," records previously shielded from disclosure by the exemption must be produced, unless covered by another exemption. For example, the public may obtain copies of depositions from closed cases,[344] and documents concerning the settlement of a claim that are not shielded from disclosure by other exemptions.[345] Exemptions that may be used to withhold documents from disclosure after the claim or litigation is no longer pending include the exemptions for law enforcement investigative reports, medical records, and attorney-client privileged records and attorney work product.[346] Particular records or information relevant to settlement of a closed claim or case may also be subject to nondisclosure under the public interest exemption to the extent the local agency can show the public interest in nondisclosure clearly outweighs the public interest in disclosure.[347]

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337 *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414, 1420; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1419.

338 *Los Angeles County Bd. of Supervisors v. Superior Court* (2016) 2 Cal.5th 282, 297; *County of Los Angeles Bd. of Supervisors v. Superior Court* (2017) 12 Cal. App.5th 1264, 1273-1274.

339 *County of Los Angeles Bd. of Supervisors v. Superior Court, supra*, 12 Cal.App.5th at pp. 1274-1275. See "Attorney Bills and Retainer Agreements," p. 33.

340 *Wilder v. Superior Court* (1998) 66 Cal.App.4th 77.

341 *Poway Unified Sch Dist. v. Superior Court* (1998) 62 Cal.App.4th 1496, 1502–1505.

342 See "Medical Records," p. 46.

343 *Poway Unified Sch Dist. v. Superior Court* (1998) 62 Cal.App.4th 1496, 1505.

344 *City of Los Angeles v. Superior Court* (1996) 41 Cal.App.4th 1083, 1089.

345 *Register Div. of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 901.

346 See, e.g., *D.I. Chadbourne, Inc. v. Superior Court* (1964) 60 Cal.2d 723; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411.

347 See Gov. Code, §7922.000 (formerly Gov. Code, § 6255).

▶ PRACTICE TIP:

In responding to a request for documents concerning settlement of a particular matter, it is critical to pay close attention to potential application of other exemptions under the PRA. Additionally, if the settlement is approved by the legislative body during a closed session, release of the settlement documents are governed by the Brown Act. It is recommended that you seek the advice of your local agency counsel.

There is considerable overlap between the pending litigation exemption and both the attorney-client privilege[348] and attorney-work-product doctrine.[349] However, the exemption for pending litigation is not limited solely to documents that fall within either the attorney-client privilege or attorney-work-product doctrine.[350] Moreover, while the exemption for pending litigation expires once the litigation is no longer pending, the attorney-client privilege and attorney-work-product doctrine continue indefinitely.[351]

Personal Contact Information

Court decisions have ruled that individuals have a substantial privacy interest in their personal contact information. However, a fact-specific analysis must be conducted to determine whether the public interest exemption protects this information from disclosure, i.e., whether the public interest in nondisclosure clearly outweighs the public interest in disclosure.[352] Application of this balancing test has yielded varying results, depending on the circumstances of the case.

For example, courts have allowed nondisclosure of the names, addresses, and telephone numbers of airport noise complainants.[353] In that instance, the anticipated chilling effect on future citizen complaints weighed heavily in the court's decision. On the other hand, the courts have ordered disclosure of information contained in applications for licenses to carry firearms, except for information that indicates when or where the applicant is vulnerable to attack or that concern the applicant's medical or psychological history or that of members of his or her family.[354] Courts have also ordered disclosure of the names and addresses of residential water customers who exceeded their water allocation under a rationing ordinance,[355] and the names of donors to a university affiliated foundation, even though those donors had requested anonymity.[356]

▶ PRACTICE TIP:

In situations where personal contact information clearly cannot be kept confidential, inform the affected members of the public that their personal contact information is subject to disclosure under the PRA.

348 Evid. Code, § 950 *et seq*; *Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725.

349 Code Civ. Proc., § 2018.030.

350 *City of Los Angeles v. Superior Court, supra*, 41 Cal.App.4th 1083, 1087.

351 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 373 (attorney-client privilege); *Fellows v. Superior Court* (1980) 108 Cal.App.3d 55, 61–63 (work-product doctrine); *Costco Wholesale Corp. v. Superior Court*, *supra*, 47 Cal.4th 725. *But see Los Angeles County Board of Supervisors v. Superior Court* (2016) 2 Cal.5th 282 (holding that the attorney-client privilege protects the confidentiality of invoices for work in pending and active legal matters, but that the privilege may not encompass invoices for legal matters that concluded long ago).

352 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255, subd. (a)).

353 *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1012.

354 Gov. Code, § 7923.800 (formerly Gov. Code, § 6254, subd. (u)(1)).

355 *New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579, 1581-1582.

356 *California State Univ. v. Superior Court* (2001) 90 Cal.App.4th 810, 816.

Posting Personal Contact Information of Elected/Appointed Officials on the Internet

The PRA prohibits a state or local agency from posting on the Internet the home address or telephone number of any elected or appointed officials without first obtaining their written permission.[357] The prohibition against posting home addresses and telephone numbers of elected or appointed officials on the Internet does not apply to a comprehensive database of property-related information maintained by a state or local agency that may incidentally contain such information, where the officials are not identifiable as such from the data, and the database is only transmitted over a limited-access network, such as an intranet, extranet, or virtual private network, but not the Internet.[358]

The PRA also prohibits someone from knowingly posting on the Internet the home address or telephone number of any elected or appointed official, or the official's "residing spouse" or child, and either threatening or intending to cause imminent great bodily harm.[359] Similarly, the PRA prohibits soliciting, selling, or trading on the Internet the home address or telephone number of any elected or appointed official with the intent of causing imminent great bodily harm to the official or a person residing at the official's home address.[360]

In addition, the PRA prohibits a person, business, or association from publicly posting or displaying on the Internet the home address or telephone number of any elected or appointed official where the official has made a written demand to the person, business, or association not to disclose his or her address or phone number.[361]

Personnel Records

The PRA exempts from disclosure "[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy."[362] In addition, the public interest exemption may protect certain personnel records from disclosure.[363] In determining whether to allow access to personnel files, the courts have determined that the tests under each exemption are essentially the same: the extent of the local agency employee's privacy interest in certain information and the harm from its unwarranted disclosure is weighed against the public interest in disclosure. The public interest in disclosure will be considered in the context of the extent to which the disclosure of the information will shed light on the local agency's performance of its duties.[364]

Decisions from the California Supreme Court have determined that local agency employees do not have a reasonable expectation of privacy in their name, salary information, and dates of employment. This interpretation also applies to police officers absent unique, individual circumstances.[365]

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357 See Gov. Code, § 7920.500 (formerly Gov. Code, § 6254.21, subd. (f)) (containing a non-exhaustive list of individuals who qualify as "elected or appointed official[s]").

358 91 Ops.Cal.Atty.Gen. 19 (2008).

359 Gov. Code, § 7928.210 (formerly Gov. Code, § 6254.21, subd. (b)).

360 Gov. Code, § 7928.230 (formerly Gov. Code, § 6254.21, subd. (d)).

361 See Gov. Code, §§ 7928.215-7928.225 (formerly Gov. Code, § 6254.21, subd. (c)).

362 Gov. Code, § 7920.520 (formerly Gov. Code, § 6254, subd. (c)).

363 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255(a)); *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 755. See also, *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272.

364 *International Fed'n of Prof. & Tech. Eng'rs, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 335; *Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 300; *Caldecott v. Superior Court* (2015) 243 Cal.App.4th 212, 231; *BRV, Inc. v. Superior Court, supra*, 143 Cal.App.4th 742, 755; *American Fed'n of State, County & Mun. Employees (AFSCME), Local 1650 v. Regents of Univ. of Cal.* (1978) 80 Cal.App.3d 913, 914–916.

365 *International Fed'n of Prof. & Tech. Eng'rs, Local 21, AFL-CIO v. Superior Court, supra*, 42 Cal.4th 319, 327; *Commission on Peace Officer Standards & Training v. Superior Court, supra*, 42 Cal.4th 278, 289–293.

In situations involving allegations of non-law enforcement local agency employee misconduct, courts have considered the following factors in determining whether disclosure of employment investigation reports or related records would constitute an unwarranted invasion of personal privacy:

- Are the allegations of misconduct against a high-ranking public official or a local agency employee in a position of public trust and responsibility (e.g., teachers, public safety employees, employees who work with children)?
- Are the allegations of misconduct of a substantial nature or trivial?
- Were findings of misconduct sustained or was discipline imposed?

Courts have upheld the public interest against disclosure of "trivial or groundless" charges.[366] In contrast, when "the charges are found true, or discipline is imposed," the public interest likely favors disclosure.[367] In addition, "where there is reasonable cause to believe the complaint to be well founded, the right of public access to related public records exists."[368] However, even if the local agency employee is exonerated of wrongdoing, disclosure may be warranted if the allegations of misconduct involve a high-ranking public official or local agency employee in a position of public trust and responsibility, given the public's interest in understanding why the employee was exonerated and how the local agency employer treated the accusations.[369]

With respect to personnel investigation reports, although the PRA's personnel exemption may not exempt such a report from disclosure, the attorney-client privilege or attorney-work-product doctrine may apply.[370] Further, discrete portions of the personnel report may still be exempt from disclosure and redacted, such as medical information contained in a report or the names of third-party witnesses.[371]

The courts have permitted persons who believe their rights may be infringed by a local agency decision to disclose records to bring a "reverse PRA action" to seek an order preventing disclosure of the records.[372]

Peace Officer Personnel Records

With certain exceptions under Penal Code section 832.7, peace officer personnel records, including internal affairs investigation reports regarding alleged misconduct, are both confidential and privileged.[373] Records outside of these certain exemptions fall within the category of records, "the disclosure of which is exempted or prohibited pursuant to federal or state law ...."[374] Records of an independent investigation into a complaint of alleged harassment by an elected county sheriff, including the complaint and the report, are not protected peace officer personnel records

366 *AFSCME, Local 1650 v. Regents of Univ. of Cal.* (1978) 80 Cal.App.3d 913, 918.

367 *Ibid.*

368 *Ibid.*

369 *Caldecott v. Superior Court* (2015) 243 Cal.App.4th 212, 223–224; *Marken v. Santa Monica-Malibu Unified Sch. Dist.* (2012) 202 Cal.App.4th 1250, 1275–1276; *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 759; *Bakersfield City Sch. Dist. v. Superior Court* (2004) 118 Cal.App.4th 1041, 1045–1047; *AFSCME, Local 1650 v. Regents of University of California* (1978) 80 Cal.App.3d 913, 918.

370 See "Attorney-client Communications and Attorney Work Product," page 31; *City of Petaluma v. Superior Court* (2016) 248 Cal.App.4th 1023, 1035–1036. But see *BRV, Inc. v. Superior Court, supra*, 143 Cal.App.4th 742, where on the facts of that case, an investigation report that arguably was privileged was ordered disclosed.

371 *BRV, Inc. v. Superior Court, supra*, 143 Cal.App.4th 742, 759 (permitting redaction of names, home addresses, phone numbers, and job titles "of all persons mentioned in the report other than [the subject of the report] or elected members" of the school board); *Marken v. Santa Monica-Malibu Unified Sch. Dist., supra*, 202 Cal.App.4th 1250, 1276 (permitting redaction of the identity of the complainant and other witnesses, as well as other personal information in the investigation report).

372 *Marken v. Santa Monica-Malibu Unified Sch. Dist., supra*, 202 Cal.App.4th 1250, 1264–1271. See also "Reverse PRA Litigation," p. 67.

373 Pen. Code § 832.7(a). See also *Towner v. County of Ventura* (2021) 63 Cal.App.5th 761. For definition of "Personnel Records" see Pen. Code, § 832.8.

374 Gov. Code, § 7927.705 (formerly Gov. Code, § 6254, subd. (k)); Pen. Code, §§ 832.7–832.8; *International Fed'n of Prof.& Tech.Eng'rs, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 341; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1431.

under Section 6254(k) of the PRA, or Sections 832.7 and 832.8 of the Penal Code, or protected citizen complaint records under Section 832.5 of the Penal Code, because an elected sheriff is not an employee of the county, but rather accountable directly to the county voters.[375]

Except as discussed below, the discovery and disclosure of the personnel records of peace officers are governed exclusively by statutory provisions contained in the Evidence Code and Penal Code. Peace officer personnel records and records of citizen complaints "…or information obtained from these records…" are confidential and "shall not" be disclosed in any criminal or civil proceeding except by discovery pursuant to statutorily prescribed procedures.[376] The appropriate procedure for obtaining information in the protected peace officer personnel files is to file a motion commonly known as a "*Pitchess*" motion, which by statute entails a two-part process involving first a determination by the court regarding good cause and materiality of the information sought and a subsequent confidential review by the court of the files, where warranted.[377]

Notwithstanding the general confidentiality of peace officer personnel records or the law enforcement records exemption under the PRA, agencies must release all records, including investigative reports, related to certain incidents or allegations.[378] These include:

- Records relating to the reports, investigations, or findings regarding an incident involving the discharge of a firearm at a person by an officer.[379]
- Records relating to the reports, investigations, or findings regarding an incident involving the use of force against a person by an officer that resulted in death or great bodily injury.[380]
- Records relating to a sustained finding that an officer used unreasonable or excessive force.[381]
- Records relating to a sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.[382]
- Records relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that an officer engaged in sexual assault involving a member of the public.[383]
- Records relating to a sustained finding of dishonesty by an officer related to the reporting, investigation, or prosecution of a crime, or directly related to the reporting or investigation of misconduct by another officer.[384]
- Records relating to a sustained finding that an officer engaged in conduct involving prejudice or discrimination against a person based on a protected status, as listed in the statute.[385]

375 *Essick v. County of Sonoma* (2022) 80 Cal.App.5th 562.

376 Pen. Code, § 832.7; Evid. Code, §§ 1043, 1046.

377 See, e.g., *People v. Mooc* (2001) 26 Cal.4th 1216; *People v. Thompson* (2006) 141 Cal.App.4th 1312; *City of San Jose v. Superior Court* (1998) 67 Cal.App.4th 1135.

378 Pen. Code § 832.7 subd. (b)(3).

379 Pen. Code, § 832.7, subd. (b)(1)(A)(i).

380 Pen. Code, § 832.7, subd. (b)(1)(A)(ii).

381 Pen. Code, § 832.7, subd. (b)(1)(A)(iii).

382 Pen. Code, § 832.7, subd. (b)(1)(A)(iv).

383 Pen. Code, § 832.7, subd. (b)(1)(B)(i).

384 Pen. Code, § 832.7, subd. (b)(1)(C).

385 Pen. Code, § 832.7, subd. (b)(1)(D).

- Records relating to a sustained finding that an officer made an unlawful arrest or conducted an unlawful search.[386]

For purposes of disclosure, a finding is "sustained" if there has been a final determination that the actions of the peace officer or custodial officer violated law or department policy following an investigation and opportunity for an administrative appeal pursuant to Sections 3304 and 3304.5 of the Government Code.[387]

While some of the exceptions to the general confidentiality provisions were enacted effective January 1, 2019, the statute applies retroactively, even to those incidents that occurred prior to 2019. [388]

An agency is required to disclose non-confidential police records retained by the agency, regardless of whether the agency prepared, owned, or used the records.[389]

In general, records subject to disclosure under Penal Code section 832.7 subdivision (b) shall be provided at the earliest possible time and no later than 45 days from the date of a request for their disclosure.[390] However, disclosure may be delayed based on specified circumstances, where there is an active criminal or administrative investigation. [391] Unless the agency determines that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer or someone else, the time to provide the records can only be extended to 60 days.[392] If disclosure would reasonably be expected to interfere with criminal enforcement, the disclosure can be delayed up to 60 days, the agency must provide a written determination that includes the basis for its determination and the estimated date of disclosure.[393] This written determination must be renewed every 180 days.[394] Under no circumstances can disclosure be delayed for more than 18 months. [395]

In addition, there are other procedural and substantive requirements regarding records that are subject to disclosure under Penal Code section 832.7(b), as follows:

- If the incident is subject to disclosure, records relating to an incomplete investigation must be disclosed if a peace officer resigned during the investigation.[396]
- Records from separate or prior investigations shall not be released unless they are independently subject to disclosure.[397]
- For investigations or incidents that involve multiple officers, care should be given to follow the statutory requirements for portions that may be released and those that must remain confidential.[398]

386 Pen. Code, § 832.7, subd. (b)(1)(C).

387 Pen. Code, § 832.8, subd. (b). See also *Collondrez v. City of Rio Vista* (2021) 61 Cal.App.5th 1039 (Officer had an opportunity for administrative appeal but settled and withdrew the appeal; the disciplinary decision was subject to disclosure as a final determination with a sustained finding).

388 *Ventura County Deputy Sheriffs' Assn. v. County of Ventura* (2021) 61 Cal.App.5th 585.

389 *Becerra v. Superior Court* (2020) 44 Cal.App.5th 897.

390 Pen. Code, § 832.7, subd. (b)(11).

391 Pen. Code, § 832.7, subd. (b)(8).

392 *Ibid.*

393 *Ibid.*

394 *Ibid.*

395 *Ibid.*

396 Pen. Code, § 832.7, subd. (b)(3).

397 Pen. Code, §832.7, subd. (b)(4).

398 Pen. Code, §832.7, subd. (b)(5).

- Redactions are limited to certain listed purposes only.[399] For example, the identity of whistleblowers, complainants, victims, and witnesses are required to remain confidential.[400]
- The local agency may charge only the direct cost of duplication for the production of these records and may not charge for searching or redacting records.[401]
- Attorney-client privilege will not prohibit the disclosure of factual information provided by the local agency to its attorney, or factual information discovered in any investigation conducted by, or on behalf of, the local agency's attorney. Additionally, the privilege will not cover attorney billing records unless the records relate to a legal consultation between the local agency and its attorney in active and ongoing litigation.[402]
- Prior to hiring a lateral police officer, the hiring agency must review any investigations of misconduct maintained by the officer's current or prior employer.[403]

Although the PRA is not a retention statute, Penal Code section 832.7 requires that records with no sustained finding of misconduct be retained for at least five years and records related to sustained misconduct must be retained for a minimum of 15 years.

Confidential peace officer personnel files are not protected from disclosure when the district attorney, attorney general, or grand jury are investigating the conduct of the officers.[404] The other notable exception arises where an officer publishes factual information concerning a disciplinary action that is known by the officer to be false. If the information is published in the media, the employing agency may disclose factual information about the discipline to refute the employee's false statements.[405]

Peace officer "personnel records" include personal data, medical history, appraisals, and discipline; complaints and investigations relating to events perceived by the officer or relating to the manner in which his or her duties were performed; and any other information the disclosure of which would constitute an unwarranted invasion of privacy.[406] The names, salary information, and employment dates and departments of peace officers have been determined to be disclosable records absent unique circumstances.[407] Additionally, official service photographs of peace officers are subject to disclosure and are not exempt or privileged as personnel records unless disclosure would pose an unreasonable risk of harm to the peace officer.[408] The names of officers involved in a police shooting are subject to disclosure, unless disclosure would endanger an officer's safety (*e.g.*, if there is a specific threat to an officer or an

399 Pen. Code, § 832.7, (b)(6)-(7).

400 Pen. Code, § 832.7, subd. (b)(6).

401 Pen. Code, § 832.7, subd. (b)(10).

402 Pen. Code, § 832.7, subd. (b)(12).

403 Pen. Code, § 832.12, subd. (b).

404 Pen. Code, § 832.7, subd. (a); but see *Towner v. County of Ventura* (2021) 63 Cal.App.5th 761 (District Attorney must maintain confidentiality of the nonpublic files absent compliance with statutorily required judicial review.)

405 Pen. Code, § 832.7, subd. (d).

406 Pen. Code, § 832.8.

407 *International Fed'n of Prof. & Tech. Eng'rs, Local 21, AFL-CIO v. Superior Court, supra*, 42 Cal.4th 319, 327; *Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 289–293.

408 *Ibarra v. Superior Court* (2013) 217 Cal.App.4th 695, 700–705.

officer is working undercover).[409] Video captured by a dashboard camera is not a personnel record protected from disclosure.[410]

While the Penal and Evidence Code privileges are not per se applicable in federal court, federal common law does recognize a qualified privilege for "official information" and considers government personnel files to be "official information."[411] Moreover, independent reports regarding officer-involved shootings are not exempt from disclosure, though portions of the report culled from personnel information or officers' statements made in the course of an internal affairs investigation of the shooting are protected and may be redacted from the report.[412] Such a qualified privilege in federal court results in a very similar weighing of the potential benefits of disclosure against potential disadvantages.[413]

Employment Contracts, Employee Salaries, & Pension Benefits

Every employment contract between a local agency and any public official or local agency employee is a public record which is not subject to either the personnel exemption or the public interest exemption.[414] Thus, for example, one court has held that two letters in a city firefighter's personnel file were part of his employment contract and could not be withheld under either the local agency employee's right to privacy in his personnel file or the public interest exemption.[415]

With or without an employment contract, the names and salaries (including performance bonuses and overtime) of local agency employees, including peace officers, are subject to disclosure under the PRA.[416] Public employees do not have a reasonable expectation that their salaries will remain a private matter. In addition, there is a strong public interest in knowing how the government spends its money. Therefore, absent unusual circumstances, the names and salaries of local agency employees are not subject to either the personnel exemption or the public interest exemption.[417]

In addition, the courts have held that local agencies are required to disclose the identities of pensioners and the amount of pension benefits received by such pensioners, reasoning that the public interest in disclosure of the names of pensioners and data concerning the amounts of their pension benefits outweighs any privacy interests the pensioners may have in such information.[418] On the other hand, the courts have found that personal information provided to a retirement system by a member or on a member's behalf, such as a member's personal email address, home address, telephone number, social security number, birthday, age at retirement, benefits election, and health

409 *Long Beach Police Officers Ass'n v. City of Long Beach* (2014) 59 Cal.4th 59, 75; 91 Ops.Cal.Atty.Gen. 11 (2008) (the names of peace officers involved in critical incidents, such as ones involving lethal force, are not categorically exempt from disclosure, however, the balancing test may be applied under the specific factual circumstances of each case to weigh the public interests at stake).

410 *City of Eureka v. Superior Court* (2016) 1 Cal.App.5th 755, 763–765. See also "Law Enforcement Records," p. 38.

411 *Sanchez v. City of Santa Ana* (9th Cir. 1990) 936 F.2d 1027, 1033–1034, cert denied (1991) 502 U.S. 957; *Miller v. Pancucci* (C.D.Cal. 1992) 141 F.R.D. 292, 299–300.

412 *Pasadena Peace Officers Ass'n v. Superior Court* (2015) 240 Cal.App.4th 268, 288–290. See also "Law Enforcement Records," p. 38.

413 Evid. Code, § 1043 *et seq.; Guerra v. Bd. of Trustees* (9th Cir. 1977) 567 F.2d 352; *Kerr v. United States Dist. Court for Northern Dist.* (9th Cir. 1975) 511 F.2d 192, aff'd, (1976) 426 U.S. 394; *Garrett v. City and County of San Francisco* (9th Cir. 1987) 818 F.2d 1515.

414 Gov. Code, § 7928.400 (formerly Gov. Code, § 6254.8); Gov. Code, § 53262, subd. (b).

415 *Braun v. City of Taft* (1984) 154 Cal.App.3d 332.

416 *International Fed'n of Prof. & Tech. Eng'rs, Local 21, AFL-CIO v. Superior Court, supra*, 42 Cal.4th 3 at p. 327.

417 *Commission on Peace Officer Standards & Training v. Superior Court, supra*, 42 Cal.4th 278, 299, 303.

418 *Sacramento County Employees' Retirement System v. Superior Court* (2011) 195 Cal.App.4th 440, 472.

reports concerning the member, to be exempt from disclosure under the PRA.[419] With regard to the California Public Employees' Retirement System (CalPERS), the identities of and amount of benefits received by CalPERS pensioners are subject to public disclosure.[420]

> ▶ **PRACTICE TIP:**
>
> If a member of the public requests information regarding CalPERS from a local agency, make sure to check the terms of any agreement that may exist between the agency and CalPERS for confidentiality requirements.

Contractor Payroll Records

State law establishes requirements for maintaining and disclosing certified payroll records for workers employed on public works projects subject to payment of prevailing wages.[421] State law requires contractors to make certified copies of payroll records available to employees and their representatives, representatives of the awarding body, the Department of Industrial Relations, and the public.[422] Requests are to be made through the awarding agency or the Department of Industrial Relations, and the requesting party is required to reimburse the cost of preparation to the contractor, subcontractors, and the agency through which the request is made prior to being provided the records.[423] Contractors are required to file certified copies of the requested records with the requesting entity within ten days after receipt of a written request.[424]

However, state law also limits access to contractor payroll records. Employee names, addresses, and social security numbers must be redacted from certified payroll records provided to the public or any local agency by the awarding body or the Department of Industrial Relations.[425] Only the social security numbers are to be redacted from certified payroll records provided to joint labor-management committees established pursuant to the federal Labor Management Cooperation Act of 1978.[426] The name and address of the contractor or subcontractor may not be redacted.[427]

The Department of Industrial Relations Director has adopted regulations governing release of certified payroll records and applicable fees.[428] The regulations: (1) require that requests for certified payroll records be in writing and contain certain specified information regarding the awarding body, the contract, and the contractor; (2) require awarding

419 *Sonoma County Employees' Retirement Ass'n v. Superior Court* (2011) 198 Cal.App.4th 986, 1004.

420 Gov. Code, § 20230. See also *SDCERS v. Superior Court* (2011) 196 Cal.App.4th 1228, 1238–1239, citing with approval 25 Ops.Cal.Atty.Gen. 90 (1955), which exempts from disclosure employee election of benefits. For peace officer election of benefits see Pen. Code, §§ 832.7 - 832.8 and *International Fed'n of Prof.& Tech.Eng'rs, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 343.

421 Lab. Code, § 1776.

422 Lab. Code, § 1776, subd. (b).

423 Lab. Code, § 1776, subd. (c).

424 Contractors and subcontractors that fail to do so may be subject to a penalty of $25 per worker for each calendar day until compliance is achieved. Lab. Code, §1776, subds. (d) & (g).

425 Lab. Code, § 1776, subd. (e); *Trustees of Southern Cal. IBEW-NECA Pension Plan v. Los Angeles Unified School District* (2010) 187 Cal.App.4th 621.

426 Lab. Code, § 1776, subd. (e).

427 Lab. Code, § 1776, subd. (e).

428 Lab. Code, § 1776, subd. (i); see Lab. Code, § 16400 *et seq.*

agency acknowledgement of requests; (3) specify required contents of awarding agency requests to contractors for payroll records; and (4) set fees to be paid in advance by persons seeking payroll records.[429]

Test Questions and Other Examination Data

The PRA exempts from disclosure test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided in the portions of the Education Code that relate to standardized tests.[430] Thus, for example, a local agency is not required to disclose the test questions it uses for its employment examinations. State law provides that standardized test subjects may, within 90 days after the release of test results to the test subject, have limited access to test questions and answers upon request to the test sponsor.[431] This limited access may be either through an in-person examination or by release of certain information to the test subject.[432] The Education Code also requires that test sponsors prepare and submit certain reports regarding standardized tests and test results to the California Postsecondary Education Commission.[433] All such reports and information submitted to the Commission are public records subject to disclosure under the PRA.[434]

Public Contracting Documents

Contracts with local agencies are generally disclosable public records, and the public has an interest in knowing whether public resources are being spent for the benefit of the community as a whole or the benefit of only a limited few.[435] When the bids or proposals leading up to the contract become disclosable depends largely upon the type of contract.

Local agencies may award certain types of contracts (for example, contracts for the construction of public works, and for the procurement of goods and non-professional services) to the lowest responsive, responsible bidder through a competitive bidding process.[436] Local agencies usually receive bids for these contracts under seal and then publicly open the bids at a designated time and place. These bids are public records and disclosable as soon as they are opened.

Other local agency contracts (for example, for acquisition of professional services or disposition of property) may be awarded to the successful proposer who is identified through a competitive proposal process. As part of this process, local agencies solicit proposals, evaluate them, and then negotiate with the "winning" proposer. While the public has a strong interest in scrutinizing the process leading to the selection of the winning proposer, a local agency's interest in keeping these proposals confidential frequently outweighs the public's interest in disclosure until negotiations with the winning proposer are complete.[437] Disclosing the details of all the competing proposals can interfere with the local agency's selection process and impair its ability to secure the best possible deal on its constituents' behalf.

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429 8 C.C.R. §§ 16400, 16402.

430 Gov. Code, § 7929.605 (formerly Gov. Code, § 6254, subd. (g)).

431 Ed. Code, § 99157, subd. (a); *Brutsch v. City of Los Angeles* (1982) 3 Cal.App.4th 354.

432 Ed. Code, §§ 99157, subds. (a) & (b).

433 Ed. Code, §§ 99153, 99154.

434 Ed. Code, § 99162.

435 *Cal. State Univ., Fresno Ass'n., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 833.

436 Pub. Contract Code, § 22038.

437 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255); *Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, 1077.

Some local agencies pre-qualify prospective bidders through a request for qualifications process. The pre-qualification packages submitted, including questionnaire answers and financial statements, are exempt from disclosure.[438] Nevertheless, documents containing the names of contractors applying for pre-qualification status are public records and must be disclosed.[439] In addition, the contents of pre-qualification packages may be disclosed to third parties during the verification process, in an investigation of substantial allegations or at an appeal hearing.

> **▶ PRACTICE TIP:**
>
> Local agencies should clearly advise bidders and proposers in their Requests for Bids and Requests for Proposals what bid and proposal documents will be disclosable public records and when they will be disclosable to the public.

Real Estate Appraisals and Engineering Evaluations

The PRA requires the disclosure of the contents of real estate appraisals, or engineering or feasibility estimates, and evaluations made for or by a local agency relative to the acquisition of property, or to prospective public supply and construction contracts, but only when all of the property has been acquired or when agreement on all terms of the contract have been obtained.[440] By its plain terms, this exemption only applies while the acquisition or prospective contract is pending. Once all the property is acquired or agreement on all terms of the contract have been obtained, the exemption will not apply. In addition, this exemption is not intended to supersede the law of eminent domain.[441] Thus, for example, this exemption would not apply to appraisals of owner-occupied residential property of four units or less, where disclosure of such appraisals is required by the Eminent Domain Law or related laws such as the California Relocation Assistance Act.[442]

> **▶ PRACTICE TIP:**
>
> If the exemption for real estate appraisals and engineering evaluations does not clearly apply, consider whether the facts of the situation justify withholding the record under Government Code section 7922.000.

Recipients of Public Assistance

The PRA does not require disclosure of certain types of information related to those who are receiving public assistance. For example, disclosure of information regarding food stamp recipients is prohibited.[443] Subject to certain exceptions, disclosure of certain confidential information pertaining to applicants for or recipients of public social services for any purpose unconnected with the administration of the welfare department also is prohibited.[444]

438 Pub. Contract Code, §§ 10165, 10506.6, 10763, 20101, 20111.5, 20209.7, 20209.26, 20651.5.

439 Pub. Contract Code, § 20101, subd. (a).

440 Gov. Code, § 7928.705. (formerly Gov. Code, § 6254, subd. (h)).

441 Gov. Code, § 7928.705. (formerly Gov. Code, § 6254, subd. (h)).

442 Gov. Code, § 7267.2, subd. (c).

443 Welf. & Inst. Code, § 18909.

444 Welf. & Inst. Code, § 10850. See also *Jonon v. Superior Court* (1979) 93 Cal.App.3d 683, 690 (rejecting claim that all information received by a welfare agency was privileged).

Leases and lists or rosters of tenants of the Housing Authority are confidential and must not be open to inspection by the public, but must be supplied to the respective governing body on request.[445] A Housing Authority has a duty to make available public documents and records of the Authority for inspection, except any applications for eligibility and occupancy which are submitted by prospective or current tenants of the Authority.[446]

The PRA exempts from disclosure records of 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.[447]

Taxpayer Information

Where information that is required from any taxpayer in connection with the collection of local taxes is received in confidence and where the disclosure of that information would result in unfair competitive disadvantage to the person supplying the information, the information is exempt from disclosure.[448] Sales and use tax records may be used only for administration of the tax laws. Unauthorized disclosure or use of confidential information contained in these records can give rise to criminal liability.[449]

> **▶ PRACTICE TIP:**
>
> Make sure to check your local agency's codes and ordinances with respect to local taxes when determining what information submitted by the taxpayer is confidential.

Trade Secrets and Other Proprietary Information

As part of the award and administration of public contracts, businesses will often give local agencies information that the businesses would normally consider to be proprietary. There are three exemptions that businesses often use to attempt to protect this proprietary information — the official information privilege, the trade secret privilege, and the public interest exemption.[450]

However, California's strong public policy in favor of disclosure of public records precludes local agencies from protecting most business information. Both the official information privilege and the public interest exemption require that the public interest in nondisclosure outweigh the public interest in disclosure. While these provisions were designed to protect legitimate privacy interests, California courts have consistently held that when individuals or businesses voluntarily enter into the public sphere, they diminish their privacy interests.[451] Courts have further found that the public interest in disclosure overrides alleged privacy interests. For example, a court ordered a university to release the names of anonymous contributors who received license agreements for luxury suites at the school's sports arena. Another court ordered a local agency to release a waste disposal contractor's private financial statements used by the local agency to approve a rate increase.[452]

445 Health & Saf. Code, § 34283.

446 Health & Saf. Code, § 34332, subd. (c).

447 Gov. Code, § 7927.415 (formerly Gov. Code, § 6254.1).

448 Gov. Code, § 7925.000 (formerly Gov. Code, § 6254, subd. (i)); see also Rev. & Tax. Code, § 7056.

449 Rev. & Tax. Code, §§ 7056, 7056.5.

450 See, e.g., *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762.

451 *Cal. State Univ., Fresno Ass'n., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 834; *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 347; *San Gabriel Tribune v. Superior Court, supra*, 143 Cal.App.3d 762, 781.

452 *Cal. State Univ., Fresno Ass'n., Inc. v. Superior Court, supra*, 90 Cal.App.4th 810; *San Gabriel Tribune v. Superior Court, supra*, 143 Cal.App.3d 762.

The trade secret privilege is for information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[453]

However, even when records contain trade secrets, local agencies must determine whether disclosing the information is in the public interest. When businesses give local agencies proprietary information, courts will examine whether disclosure of that information serves the public interest.[454]

The PRA contains several exemptions that address specific types of information that are in the nature of trade secrets, including pesticide safety and efficacy information,[455] air pollution data,[456] and corporate siting information (financial records or proprietary information provided to government agencies in connection with retaining, locating, or expanding a facility within California).[457]

Other exemptions cover types of information that could include but are not limited to trade secrets — for example, certain information on plant production, utility systems development data, and market or crop reports.[458]

> ▶ **PRACTICE TIP:**
>
> Issues concerning trade secrets and proprietary information tend to be complex and fact specific. Consider seeking the advice of your local agency counsel in determining whether records requested are exempt from disclosure.

Utility Customer Information

Personal information expressly protected from disclosure under the PRA includes names, credit histories, usage data, home addresses, and telephone numbers of local agencies' utility customers.[459] This exception is not absolute, and customers' names, utility usage data, and home addresses may be disclosable under certain scenarios. For example, disclosure is required when requested by a customer's agent or authorized family member,[460] or an officer or employee of another governmental agency when necessary for performance of official duties,[461] by court order or request of a law enforcement agency relative to an ongoing investigation,[462] when the local agency determines the

453 Civ. Code, § 3426.1, subd. (d). This trade secret definition is set forth in the Uniform Trade Secrets Act ("UTSA"). However, Civil Code section 3426.7, subd. (c) states that any determination as to whether disclosure of a record under the Act constitutes a misappropriation of a trade secret shall be made pursuant to the law in effect before the operative date of the UTSA. At that time, California used the Restatement definition of a trade secret, which was lengthy. See *Uribe v. Howie* (1971) 19 Cal.App.3d 194. Accordingly, it is not clear that the trade secret definition that applies generally under the UTSA is the trade secret definition that applies in the context of a public records request.

454 *Uribe v. Howie, supra*, 19 Cal.App.3d at p. 213.

455 Gov. Code, § 7924.305 (formerly Gov. Code, § 6254.2).

456 Gov. Code, § 7924.510 (formerly Gov. Code, § 6254.7).

457 Gov. Code, § 7927.605 (formerly Gov. Code, § 6254.15).

458 Gov. Code, § 7924.305, subd. (d) (formerly Gov. Code, § 6254, subd. (e)).

459 Gov. Code, § 7927.410 (formerly Gov. Code, § 6254.16.

460 Gov. Code, § 7927.410, subd. (a) (formerly Gov. Code, § 6554.16, subd. (a)).

461 Gov. Code, § 7927.410, subd. (b) (formerly Gov. Code, § 6254.16, subd. (b)).

462 Gov. Code, § 7927.410, subd. (c) (formerly Gov. Code, § 6254.16, subd. (c)).

customer used utility services in violation of utility policies,[463] or if the local agency determines the public interest in disclosure clearly outweighs the public interest in nondisclosure.[464]

Utility customers who are local agency elected or appointed officials with authority to determine their agency's utilities usage policies have lesser protection of their personal information because their names and usage data are disclosable upon request.[465]

Public Interest Exemption

The PRA establishes a "public interest" or "catchall" exemption that permits local agencies to withhold a record if the agency can demonstrate that, on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.[466] Weighing the public interest in nondisclosure and the public interest in disclosure under the public interest exemption is often described as a balancing test.[467] The PRA does not specifically identify the public interests that might be served by not making the record public under the public interest exemption, but the nature of those interests may be inferred from specific exemptions contained in the PRA. The scope of the public interest exemption is not limited to specific categories of information or established exemptions or privileges. Each request for records must be considered on the facts of the particular case in light of the competing public interests.[468]

The records and situations to which the public interest exemption may apply are open-ended and, when it applies, the public interest exemption alone is sufficient to justify nondisclosure of local agency records. The courts have relied exclusively on the public interest exemption to uphold nondisclosure of:

- Local agency records containing names, addresses, and phone numbers of airport noise complainants;
- Proposals to lease airport land prior to conclusion of lease negotiations;
- Information kept in a public defender's database about police officers; and
- Individual teacher test scores, identified by name, designed to measure each teacher's effect on student performance on standardized tests.[469]

The public interest exemption is versatile and flexible, in keeping with its purpose of addressing circumstances not foreseen by the Legislature. For example, in one case, the court held local agencies could properly consider the burden of segregating exempt from nonexempt records when applying the balancing test under the public interest exemption.[470] In that case, the court held that the substantial burden of redacting exempt information from law enforcement intelligence records outweighed the marginal and speculative benefit of disclosing the remaining nonexempt information. In another case, the court applied the balancing test to the time of disclosure to hold that

463 Gov. Code, § 7927.410, subd. (d) (formerly Gov. Code, § 6254.16, subd. (d)).

464 Gov. Code, § 7927.410, subd. (f) (formerly Gov. Code, § 6254.16, subd. (f)).

465 Gov. Code, § 7927.410, subd. (e) (formerly Gov. Code, § 6264.16, subd. (e)).

466 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255); *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1337–1339.

467 *CBS Broadcasting, Inc. v. Superior Court* (2001) 91 Cal.App.4th 892, 908.

468 *Times Mirror Co. v. Superior Court, supra*, 53 Cal.3d at p. 1338.

469 *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008; *Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065; *Coronado Police Officers Assn. v. Carroll* (2003) 106 Cal.App.4th 1001; *Los Angeles Unified School District v. Superior Court* (2014) 228 Cal.App.4th 222.

470 *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440.

public disclosure of competing proposals for leasing city airport property could properly await conclusion of the negotiation process.[471]

The requirement that the public interest in nondisclosure must "clearly outweigh" the public interest in disclosure for records to qualify as exempt under the public interest exemption is important and emphasized by the courts. Justifying nondisclosure under the public interest exemption demands a clear overbalance on the side of confidentiality.[472] Close calls usually do not qualify for an exemption. There are a number of examples of cases where a clear overbalance was not present to support nondisclosure under the public interest exemption. The courts have held that the following are all subject to disclosure under the public interest exemption balancing test:

- The identities of individuals granted criminal conviction exemptions to work in licensed day care facilities and the facilities employing them;
- Records relating to unpaid state warrants;
- Court records of a settlement between the insurer for a school district and a minor sexual assault victim;
- Applications for concealed weapons permits;
- Letters appointing then rescinding an appointment to a local agency position;
- The identities and license agreements of purchasers of luxury suites in a university arena; and
- GIS base map information.[473]

The public interest exemption balancing test weighs only public interests — the public interest in disclosure and the public interest in nondisclosure. Agency interests or requester interests that are not also public interests are not considered.[474] For example, the courts have held that the public's interest in information regarding peace officers retained in a database by the public defender in the representation of its clients is slight, and the private interests of the requesters (the police officers listed in the database) were not to be considered in determining whether the database was exempt from disclosure.[475]

471 *Michaelis, Montanari & Johnson v. Superior Court, supra*, 38 Cal.4th 1065.

472 *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 657.

473 *CBS Broadcasting Inc., v. Superior Court* (2001) 91 Cal.App.4th 892; *Connell v. Superior Court* (1997) 56 Cal.App.4th 601; *Copley Press, Inc., v. Superior Court* (1998) 63 Cal.App.4th 367; *CBS, Inc. v. Block* (1986) 42 Cal.App.3d 646; *Braun v. City of Taft* (1984) 154 Cal.App.3d 332; *California State University, Fresno Assn. v. Superior Court* (2001) 90 Cal.App.4th 810; *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157; *County of Santa Clara v. Superior Court* (2009) 170 Cal. App.4th 1301. See also "Computer Mapping (GIS) Systems," p. 74.

474 *Coronado Police Officers Assn. v. Carroll* (2003) 106 Cal.App.4th 1001, 1015–1016.

475 *Ibid.*

Chapter 5

Judicial Review and Remedies

Overview

The PRA establishes an expedited judicial process to resolve disputes over the public's right to inspect or receive copies of public records.[476] In contrast to other governmental transparency laws, such as the Brown Act,[477] the PRA establishes no criminal penalties for a local agency's noncompliance. Rather, the PRA is enforced primarily through an expedited civil judicial process in which any person may ask a judge to enforce their right to inspect or to receive a copy of any public record or class of public records.[478] Whether the PRA provides the exclusive judicial remedy for resolving a claim that a local agency has unlawfully refused to disclose a particular record or class of records remains unresolved.[479] This chapter discusses the special rules that apply to lawsuits brought to enforce the PRA.

The Trial Court Process

Under the PRA, any person may file a civil action for injunctive or declaratory relief, or writ of mandate, to enforce their right to inspect or receive a copy of any public record or class of public records.[480] Local agencies are "persons" under the PRA and may maintain an action to compel disclosure of records from another public entity.[481] While the PRA clearly provides specific relief when a local agency denies access or copies of public records, it does not preclude a taxpayer lawsuit seeking declaratory or injunctive relief to challenge the legality of a local agency's policies or practices

476 Gov. Code, §§ 7923.000, 7923.005 (formerly Gov. Code, § 6258); Gov. Code, §§ 7923.100, 7923.105, 7923.110, 7923.115, 7923.500 (formerly Gov. Code, § 6259).

477 Gov. Code, §§ 54950 *et. seq.*

478 Gov. Code, §§ 7923.000, 7923.005 (formerly Gov. Code, § 6258).

479 *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59, 66 fn. 2; *County of Santa Clara v. Superior Court* (2009) 171 Cal. App. 4th 119, 128, 130 (taxpayer lawsuit may be brough to challenge legality of entity's policies or practices for responding to public records requests generally).

480 Gov. Code, § 7923.000 (formerly Gov. Code, § 6258).

481 *Los Angeles Unified Sch. Dist. v. Superior Court* (2007) 151 Cal.App.4th 759, 771.

for responding to public records requests generally.[482] As a condition to obtaining an injunction, the party seeking injunctive relief may be required to post an undertaking in an amount determined by the court.[483]

A local agency may not commence an action for declaratory relief to determine its obligation to disclose records under the PRA.[484] The rationale for this rule is that allowing a local agency to seek declaratory relief to determine whether it must disclose records would require the person requesting documents to defend civil actions they did not commence and discourage them from requesting records.[485] That would frustrate the purpose of furthering the fundamental right of every person in the state to have prompt access to information in the possession of local agencies. However, agencies may seek injunctive relief to preclude review and dissemination of, and to recover, inadvertently released exempt records, including attorney-client and work-product privileged records.[486]

An action under the PRA may be filed in any court of competent jurisdiction, which typically is the superior court in the county where the records or some part of them are maintained.[487]

Timing

The PRA does not contain a specific time period in which the action or responsive pleadings must be filed. Therefore, any action must be filed in a manner consistent with traditional actions for injunctive or declaratory relief, or writ of mandate, and is subject to any limitations periods or equitable concepts, such as laches, applicable to those actions. In a typical action under the PRA, the parties will file written arguments with the court to explain why the records should be disclosed or can be withheld. The court will also hold a hearing to give the parties an opportunity to argue the case. The judge in each case will establish the deadlines for briefing the issues and for hearings with the object of securing a decision at the earliest possible time.[488]

Discovery

The PRA is considered a "special proceeding of a civil nature[,]" and as such, the Civil Discovery Act applies to actions brought under the PRA.[489] Any discovery sought must still, however, be relevant to the subject matter of the pending action and the trial court has the discretion to restrict discovery to that which is likely to aid in the resolution of the particular issues presented in the proceeding.

A local agency that receives a request for records that would traditionally be sought through a formal discovery mechanism must handle the request in a manner consistent with the PRA rather than pursuant to discovery statutes.[490] However, under the California Environmental Quality Act, a litigant may not use the PRA to avoid the statutory duty to pay for preparation of the administrative record.[491]

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482 *County of Santa Clara v. Superior Court* (2009) 171 Cal.App.4th 119, 130.

483 Code Civ. Proc. §529(a). See *Stevenson v. City of Sacramento* (2020) 55 Cal.App.5th 545 (Public Records Act litigants seeking an injunction are not exempt from requirement to post undertaking and that requirement is not an unlawful prior restraint under the First Amendment).

484 *Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 426.

485 *Id. at p. 423.*

486 *Ardon v. City of Los Angeles* (2016) 62 Cal.4th 1176; *Newark Unified Sch. Dist. v. Superior Court* (2016) 245 Cal.App.4th 887.

487 Gov. Code, § 7923.100 (formerly Gov. Code, § 6259, subd. (a)).

488 Gov. Code, § 7923.005 (formerly Gov. Code, § 6258).

489 *City of Los Angeles v. Superior Court* (2017) 9 Cal.App.5th 272.

490 *Bertoli v. City of Sebastopol* (2015) 233 Cal. App. 4th 353, 370–371.

491 *St. Vincent's v. City of San Rafael* (2008) 161 Cal.App.4th 989, 1019, fn.9.

Burden of Proof

In general, a plaintiff bears the burden of proving the plaintiff made a request for reasonably identifiable public records to a local agency and the agency improperly withheld or failed to conduct a reasonable search for the requested records.[492] A local agency may assert, as affirmative defenses, and bears the burden of proving that: (i) a request was unclear and the agency provided adequate assistance to the requestor to identify records but was still unable to identify any records; (ii) the withholding was justified under the PRA;[493] or (iii) the local agency undertook a reasonable search for records but was unable to locate the requested records.[494]

In Camera Review

The judge must decide the case based on an *in camera* review of the record or records — that is, in the judge's chambers and out of the presence and hearing of others — (if such review is permitted by the rules of evidence),[495] the papers filed by the parties, any oral argument, and additional evidence as the court may allow.[496] However, a judge cannot compel *in camera* disclosure of records claimed to be protected from disclosure by the attorney-client privilege for the purpose of determining whether the privilege applies.[497]

Decision and Order

If the court determines, based upon a verified petition, that certain public records are being improperly withheld, the court will order the officer or person withholding the records to disclose the public record or show cause why he or she should not do so.[498] If the court determines the local agency representative was justified in refusing to disclose the record, the court shall return the record to the local agency representative without disclosing its content, together with an order supporting the decision refusing disclosure.[499] The court may also order some of the records to be disclosed while upholding the decision to withhold other records. In addition, the court may order portions of the records be redacted and compel disclosure of the remaining portions.

Reverse PRA Litigation

While there is no specific statutory authority for such an action, a person who believes their rights would be infringed by a local agency decision to disclose documents may bring a "reverse PRA action" to seek an order enjoining disclosure.[500] A records requester may join in a reverse PRA action as a real party or an intervener.[501]

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492 *Fredericks v. Superior Court* (2015) 233 Cal. App. 4th 209, 227 ["[A] person who seeks public records must present a reasonably focused and specific request, so that the public agency will have an opportunity to promptly identify and locate such records and to determine whether any exemption to disclosure applies"], disapproved on other grounds at *Natl. Lawyers Guild v. City of Hayward* (2020) 9 Cal. 5th 488, 508 fn. 9 (disapproving Fredericks to the extent it suggested an agency can recover redaction costs); *American Civil Liberties Union of N. Cal. v. Superior Court* (2011) 202 Cal. App. 4th 55, 85 ['Government agencies are, of course, entitled to a presumption that they have reasonably and in good faith complied with the obligation to disclose responsive information."]

493 See, *e.g., Los Angeles Unified School Dist. v. Superior Court, supra*, 151 Cal.App.4th at p. 767.

494 *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1420.

495 Evid. Code, § 915.

496 Gov. Code, § 7923.105 (formerly Gov. Code, § 6259, subd. (a)).

497 *Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 737.

498 Gov. Code, § 7923.100 (formerly Gov. Code, § 6259, subd. (a)).

499 Gov. Code, § 7923.110 (formerly Gov. Code, § 6259, subd. (b)).

500 *Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250, 1264, 1267.

501 *Id.* at p. 1269.

> **▶ PRACTICE TIP:**
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> A local agency that receives a request for records that are or could be statutorily exempt from disclosure (under the PRA or otherwise) might consider notifying affected parties prior to disclosing the records. For example, "affected parties" would be individuals or organizations for whom disclosure could constitute an unwarranted intrusion of privacy if the requested documents contain potentially confidential information, such as trade secrets or confidential information of employees, contractors, or other third-party stakeholders. The notification prior to disclosing the records would allow the third parties to file a reverse PRA action to enjoin the local agency from disclosing the records.

A party bringing a reverse PRA action to prevent disclosure may be subject to paying the requestor's attorney fees under the private attorney general statute if the requestor prevails.[502] An agency, however, is not subject to paying the requestor's attorney fees in a reverse PRA action.[503]

Appellate Review

Petition for Review

The PRA establishes an expedited judicial review process. A trial court's order is not considered to be a final judgment subject to the traditional and often lengthy appeal process. In place of a traditional appeal, such orders are subject to immediate review through the filing of a petition to the appellate court for the issuance of an extraordinary writ.[504]

Because the trial court's decision is not a final judgment for which there is an absolute right of appeal, the appellate court may decline to review the case without a hearing or without issuance of a detailed written opinion.[505] However, the intent of substituting writ review for the traditional appeal process is to provide for expedited appellate review, not an abbreviated review. Therefore, an appellate court may not deny an apparently meritorious writ petition that has been timely presented and is procedurally sufficient merely because the petition presents no important issue of law or because it considers the case less worthy of its attention.[506] This manner of providing for appellate review through an extraordinary writ procedure rather than a traditional appeal has been held to be constitutional.[507]

Timing

A party seeking review of a trial court's order must file a petition for review with the appellate court within 20 days after being served with 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.[508] If the written notice of entry of the order is served by mail, the period within which to file the petition is increased by five days.[509]

502 *City of Los Angeles v. Metropolitan Water Dist.* (2019) 42 Cal.App.5th 290 (awarding attorney fees to newspaper that had requested records and intervened in case); *Pasadena Police Officers Ass'n v. City of Pasadena* (2018) 22 Cal.App.5th 147, 160 (same).

503 *National Conference of Black Mayors v. Chico Community Publ'g, Inc.* (2018) 25 Cal.App.5th 570.

504 Gov. Code, § 7923.500, subd. (a) (formerly Gov. Code, § 6259, subd. (c)). But see *Mincal Consumer Law Group v. Carlsbad Police Department* (2013) 214 Cal. App.4th 259, 265 (under limited circumstances, an appellate court may exercise its discretion to treat an appeal from a non-appealable order as a petition for writ relief).

505 Cal. Rule of Court, Rule 8.487(a)(4). See generally *Omaha Indem. Co. v. Sup. Ct. (Greinke)* (1989) 209 Cal.App.3d 1266, 1271-74 (summary denial without written opinion); *Lewis v. Sup. Ct. (Green)* (1999) 19 Cal.4th 1232, 1260 (summary denial without hearing).

506 *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 113–114.

507 *Id.* at p. 115.

508 Gov. Code, § 7923.500, subd. (b) (formerly Gov. Code, § 6259, subd. (c)).

509 Gov. Code, § 7923.500, subd. (c) (formerly Gov. Code, § 6259, subd. (c)).

Once a court of appeal accepts a petition for review, the appellate process proceeds in much the same fashion as a traditional appeal. Unless the parties stipulate otherwise, the appellate court will establish a briefing schedule and may set the matter for oral arguments once briefing is complete.

Requesting a Stay

If a party wishes to prevent the disclosure of records pending appellate review of the trial court's decision, then that party must seek a stay of the trial court's order or judgment.[510] In cases when the trial court's order requires disclosure of records prior to the time when a petition for review must be filed, the party seeking a stay may apply to the trial court for a stay of the order or judgment. Where there is sufficient time for a party to file a petition for review prior to the date for disclosure, that party may seek a stay from the appellate court. The trial and appellate courts may only grant a stay when the party seeking the stay demonstrates that: (1) the party will sustain irreparable damage because of the disclosure; and (2) it is probable the party will succeed on the merits of the case on appeal.[511]

Scope and Standard of Review

On appeal, the appellate court will conduct an independent review of the trial court's ruling, upholding the factual findings made by the trial court if they are based on substantial evidence.[512]

The decision of the appellate court, whether to deny review or on the merits of the case, is subject to discretionary review by the California Supreme Court through a petition for review.

Appeal of Other Decisions under the PRA

While the trial court's decision regarding disclosure of records is not subject to the traditional appeal process, other decisions of the trial court related to a lawsuit under the PRA are subject to appeal. Thus, a trial court's decision to grant or deny a motion for attorneys' fees and costs under the PRA is subject to appeal and is not subject to the extraordinary writ process.[513] Similarly, an award of sanctions in a public records case is subject to appeal rather than a petition for an extraordinary writ.[514]

Attorneys' Fees and Costs

Attorneys' fees may be awarded to a prevailing party in an action under the PRA. If the plaintiff prevails in the litigation, the judge must award court costs and reasonable attorneys' fees to the plaintiff.[515] A member of the public may be entitled to an award of attorneys' fees and costs even when he or she is not the named "plaintiff" in a lawsuit under the PRA, if the party is the functional equivalent of a plaintiff.[516] Records requesters that participate in a reverse-PRA lawsuit are not entitled to an award of attorneys' fees for successfully opposing such litigation.[517] Successful local agency defendants may obtain an award of attorneys' fees and court costs against an unsuccessful plaintiff only when the court finds the plaintiff's case was clearly frivolous.[518] Unless a plaintiff's case is "utterly devoid of merit or taken for

510 Gov. Code, § 7923.500, subd. (d) (formerly Gov. Code, § 6259, subd. (c)).

511 Gov. Code, § 7923.500, subd. (d) (formerly Gov. Code, § 6259, subd. (c)).

512 *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1336.

513 *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1388.

514 *Butt v. City of Richmond* (1996) 44 Cal.App.4th 925, 929.

515 Gov. Code, § 7923.115, subd. (a) (formerly Gov. Code, § 6259, subd. (d)); *Garcia v. Governing Board of Bellflower Unified School District* (2013) 220 Cal.App.4th 1058, 1065; *Los Angeles Times v. Alameda Corridor Transportation Authority, supra,* 88 Cal.App.4th at p. 1385.

516 *Fontana Police Dep't. v. Villegas-Banuelos* (1999) 74 Cal.App.4th 1249, 1253.

517 *Marken v. Santa Monica-Malibu Unified School Dist., supra,* 202 Cal.App.4th at p. 1268.

518 Gov. Code, § 7923.115, subd. (b) (formerly Gov. Code, §6259, subd. (d)).

improper motive," a court is unlikely to find a plaintiff's case frivolous and award attorneys' fees to an agency.[519] Only one reported case has upheld an award of attorneys' fees to a local agency based on a frivolous request.[520]

Eligibility to Recover Attorneys' Fees

In determining whether a plaintiff has prevailed, courts have applied several variations of analysis similar to that used under the private attorney general laws, *i.e.*, whether the party has succeeded on any issue in the litigation and achieved some of the public benefits sought in the lawsuit. Some courts, however, have determined a plaintiff may still be a prevailing party entitled to attorneys' fees under the PRA even without a favorable ruling or other court action.[521] Trial courts have discretion to deny fees when a plaintiff obtains a result so minimal or insignificant as to justify a finding that the plaintiff did not prevail, which may occur when the requester obtains only partial relief.[522]

Generally, if a local agency makes a timely, diligent effort to respond to a vague document request, a plaintiff will not be awarded attorneys' fees as the prevailing party, even in litigation resulting in issuance of a writ.[523] However, where the court determines a local agency was not sufficiently diligent in locating all requested records and issues declaratory relief, stating there has in fact been a violation of the PRA, even if the records sought no longer exist and cannot be produced, the court may still award attorneys' fees on the basis of the statutory policies underlying the PRA.[524]

The trial court has significant discretion when determining the appropriate amount of attorneys' fees to award.[525] Any award of costs and fees must be paid by the agency, and must not become a personal liability of the agency employees or officials who decide not to disclose requested records.[526]

519 *Crews v. Willows Unified School Dist. et al.* (2013) 217 Cal.App.4th 1368.

520 *Butt v. City of Richmond, supra,* 44 Cal.App.4th at p. 932.

521 *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 482–483; *Belth v. Garamendi* (1991) 232 Cal.App.3d 896, 901–902.

522 *Riskin v. Downtown L.A. Prop. Owners Ass'n* (2022) 76 Cal.App.5th 438, 441, 446-449.

523 *Motorola Commc'n & Elecs., Inc. v. Dep't of Gen. Servs.* (1997) 55 Cal.App.4th 1340, 1350–51.

524 *Community Youth Athletic Center v. City of National City, supra,* 220 Cal.App.4th at p. 1446.

525 *Bernardi v. County of Monterey* (2008) 167 Cal.App.4th 1379, 1394.

526 Gov. Code, § 7923.115, subd. (a) (formerly Gov. Code, § 6259, subd. (d)).

Chapter 6

Records Management

In addition to the PRA, other California laws support and complement California's commitment to open government and the right of access to public records. These laws include, among others, open meeting laws under the Ralph M. Brown Act, records retention requirements, and California and federal laws prohibiting the spoliation of public records that might be relevant in litigation involving the local agency. Proper records management policies and practices facilitate efficient and effective compliance with these laws.

Public Meeting Records

Under the Brown Act,[527] any person may request a copy of a local agency meeting agenda and agenda packet by mail.[528] If a local agency has an Internet website, the legislative body or its designee must email a copy of, or a website link to, the agenda or agenda packet if a person requests delivery by email.[529] If requested, the agenda materials must be made available in appropriate alternative formats to persons with disabilities.[530] If a local agency receives a written request to send agenda materials by mail, the materials must be mailed when the agenda is either posted or distributed to a majority of the agency's legislative body, whichever occurs first.[531] Requests for mailed copies of agenda materials are valid for the calendar year in which they are filed, but must be renewed after January 1 of each subsequent year.[532] Local agency legislative bodies may establish a fee for mailing agenda materials.[533] The fee may not exceed the cost of providing the service.[534] Failure of a requester to receive agenda materials is not a basis for invalidating actions taken at the meeting for which agenda materials were not received.[535]

527 Gov. Code, § 54950.5 *et. seq.* See *Open and Public: A Guide to the Ralph M. Brown Act, available at* www.calcities.org/BrownActGuide.

528 Gov. Code, § 54954.1.

529 *Ibid.*

530 *Ibid.*

531 *Ibid.; see Sierra Watch v. Placer County* (2021) 69 Cal.App.5th 1.

532 Gov. Code, § 54954.1.

533 *Ibid.*

534 *Ibid.*

535 *Ibid.*

Writings that are distributed to all or a majority of all members of a legislative body in connection with a matter subject to discussion or consideration at a public meeting of the local agency are public records subject to disclosure, unless specifically exempted by the PRA, and must be made available upon request without delay.[536] When non-exempt writings are distributed during a public meeting, in addition to making them available for public inspection at the meeting (if prepared by the local agency or a member of its legislative body) or after the meeting (if prepared by another person), they must be made available in appropriate alternative formats upon request by a person with a disability.[537] The local agency may charge a fee for a copy of the records; however, no surcharge may be imposed on persons with disabilities.[538] When records relating to agenda items are distributed to a majority of all members of a legislative body less than 72 hours prior to the meeting, the records must be made available for public inspection in a designated location at the same time they are distributed.[539] The address of the designated location shall be listed in the meeting agenda.[540] The local agency may also post the information on its website in a place and manner which makes it clear the records relate to an agenda item for an upcoming meeting.[541]

Maintaining Electronic Records

"Public records," as defined by the PRA, 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."[542] The PRA does not require a local agency to keep records in an electronic format. But, if a local agency has an existing, non-exempt public record in an electronic format, the PRA does require the agency make those records available in any electronic format in which it holds the records when requested.[543] The PRA also requires the local agency to provide a copy of such records in any alternative electronic format requested, if the alternative format is one the agency uses for itself or for provision to other agencies.[544] The PRA does not require a local agency to release a public record in the electronic form in which it is held if the release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.[545] Likewise, the PRA does not permit public access to records held electronically, if access is otherwise restricted by statute.[546]

536 Gov. Code, § 54957.5, subd. (a).

537 Gov. Code, § 54957.5, subd. (c).

538 Gov. Code, § 54957.5, subd. (d). *See* Chapter 3.

539 Gov. Code, § 54957.5, subds. (b)(1), (b)(2).

540 Gov. Code, § 54957.5, subd. (b)(2).

541 Gov. Code, § 54957.5, subd. (b)(2).

542 Gov. Code, § 7920.530 (formerly Gov. Code, § 6252, subd. (e)).

543 Gov. Code, § 7922.570, subd. (b)(1) (formerly Gov. Code, § 6253.9, subd. (a)(1)).

544 Gov. Code, § 7922.570, subd. (b)(2) (formerly Gov. Code, § 6253.9, subd. (a)(2)).

545 Gov. Code, §7922.580, subd. (c) (formerly Gov. Code, § 6253.9, subd. (f)).

546 Gov. Code, § 7922.580, subd. (d) (formerly Gov. Code, § 6253.9, subd. (g)).

▶ PRACTICE TIP:

Local agencies should consider adopting electronic records policies governing such issues as: what electronic records (e.g., emails, texts, and social media) and what attributes of the electronically stored information and communications are considered "retained in the ordinary course of business" for purposes of the PRA; whether personal electronic devices (such as computers, tablets, cell phones) and personal email accounts may be used to store or send electronic communications concerning the local agency, or whether the agency's devices must be used; and privacy expectations. Local agencies should consult with information technology officials to understand what information is being stored electronically and the technological limits of their systems for the retention and production of electronic records.

Duplication costs of electronic records are limited to the direct cost of producing the electronic copy.[547] However, requesters may be required to bear additional costs of producing a copy of an electronic record, such as programming and computer services costs, if the request requires the production of electronic records that are otherwise only produced at regularly scheduled intervals, or production of the record would require data compilation, extraction, or programming.[548] Agencies are not required to reconstruct electronic copies of records no longer available to the agency in electronic format.[549]

Metadata

Electronic records may include "metadata," or data about data contained in a record that is not visible in the text. For example, metadata may describe how, when, or by whom particular data was collected, and contain information about document authors, other documents, or commentary or notes. Although no provision of the PRA expressly addresses metadata, and there are no reported court opinions in California considering whether or to what extent metadata is subject to disclosure, other jurisdictions have held that metadata is a public record subject to disclosure, unless an exemption applies.[550] There are no reported California court opinions providing guidance on whether agencies have a duty to disclose metadata when an electronic record contains exempt information that cannot be reasonably segregated without compromising the record's integrity.

Computer Software

The PRA permits government agencies to develop and commercialize computer software and to benefit from copyright protections for agency-developed software. Computer software developed by state or local agencies, including computer mapping systems, computer programs, and computer graphics systems, is not a public record subject to disclosure.[551] As a result, public agencies are not required to provide copies of agency-developed software pursuant to the PRA. The PRA authorizes state and local agencies to sell, lease, or license agency-developed software for

547 Gov. Code, § 7922.575, subd. (a) (formerly Gov. Code, § 6253.9, subd. (a)(2)).

548 Gov. Code. § 7922.575, subd. (b) (formerly Gov. Code, § 6253.9, subd. (b)).

549 Gov. Code, § 7922.580, subd. (a) (formerly Gov. Code, § 6253.9, subd. (c)).

550 *Lake v. City of Phoenix*, (Ariz. 2009) 218 P.3d 1004, 1008; *O'Neill v. City of Shoreline* (Wash. 2010) 240 P.3d 1149, 1152–1154; *Irwin v. Onondaga County* (N.Y. 2010) 895 N.Y.S.2d 262, 265.

551 Gov. Code, § 7922.585, subds. (a), (b) (formerly Gov. Code, § 6254.9, subds. (a), (b)).

commercial or noncommercial use.[552] The exception for agency-developed software does not affect the exempt status of records merely because it is stored electronically.[553]

Computer Mapping (GIS) Systems

While computer mapping systems developed by local agencies are not public records subject to disclosure, such systems generally include geographic information system (GIS) data. Many local agencies use GIS programs and databases for a broad range of purposes, including the creation and editing of maps depicting property and facilities of importance to the local agency and the public. As with metadata, the PRA does not expressly address GIS information disclosure. However, the California Supreme Court has held, that while GIS software is exempt under the PRA, the data in a GIS file format is a public record, and data in a GIS database must be produced.[554]

Public Contracting Records

State and local agencies subject to the Public Contract Code that receive bids for construction of a public work or improvement, must, upon request from a contractor plan room service, provide an electronic copy of a project's contract documents at no charge to the contractor plan room.[555] The Public Contract Code does not define the term "contractor plan room," but the term commonly refers to a clearinghouse that contractors can use to identify potential bidding opportunities and obtain bid documents. The term may also refer to an online resource for a contractor to share plans and information with subcontractors.

Electronic Discovery

The importance of maintaining a written document retention policy is evident by revisions to the Federal Rules of Civil Procedure, and California's Civil Discovery Act and procedures, relative to electronic discovery.[556] Those provisions and discovery procedures require parties in litigation to address the production and preservation of electronic records. Those rule changes may require a local agency to alter its routine management or storage of electronic information, and illustrate the importance of having and following formal document retention policies.

Once a local agency knows or receives notice that information is relevant to litigation (e.g., a litigation hold notice or a document preservation notice), it has a duty to preserve that information for discovery. In some cases, the local agency may have to suspend the routine operation of its information systems (through a litigation hold) to preserve information relevant to the litigation and avoid the potential imposition of sanctions.

552 Gov. Code, § 7922.585, subd. (b) (formerly Gov. Code, § 6254.9, subd. (a)).

553 Gov. Code, § 7922.585, subd. (d) (formerly Gov. Code, § 6254.9, subd. (d)).

554 *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 170 See also *County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301, 1323–1336.

555 Pub. Contract Code, §§ 10111.2, 20103.7.

556 Fed. Rules Civ. Proc., rule 26, 28 U.S.C.; Cal. Rules of Court, rule 3.724(8); Code Civ. Proc. §§ 2016.020, 2031.020–2031.320.

Record Retention and Destruction Laws

The PRA is not a records retention statute. The PRA does not prescribe what type of information a public agency may gather or keep, or provide a method for correcting records.[557] Its sole function is to provide access to public records.[558] Other provisions of state law govern retention of public records.[559]

Local agencies generally must retain public records for a minimum of two years.[560] However, some records may be destroyed sooner. For example, duplicate records that are less than two years old may be destroyed if no longer required.[561] Similarly, the retention period for "recordings of telephone and radio communications" is 100 days[562] and "routine video monitoring" need only be retained for one year, and may be destroyed or erased after 90 days if another record, such as written minutes, is kept of the recorded event. "Routine video monitoring" is defined as "video recording by a video or electronic imaging system designed to record the regular and ongoing operations of a [local agency] …, including mobile in-car video systems, jail observation and monitoring systems, and building security recording systems."[563] The Attorney General has opined that recordings by security cameras on public buses and other transit vehicles constitute "routine video monitoring."[564] Whether additional recording technology used for law and parking enforcement such as body cameras and Vehicle License Plate Recognition ("VLPR") systems also constitute routine video monitoring is an open question and may depend upon its use. While the technology is very similar to in-car video systems, recordings targeting specific activity may not be "routine." The retention statutes do not provide a specific retention period for e-mails, texts, or forms of social media.

By contrast, state law does not permit destruction of records affecting title to or liens on real property, court records, records required to be kept by statute, and the minutes, ordinances, or resolutions of the legislative body or city board or commission.[565] In addition, employers are required to maintain personnel records for at least three years after an employee's termination, subject to certain exceptions, including peace officer personnel records, pre-employment records, and where an applicable collective bargaining agreement provides otherwise.[566] Complaints and any reports or findings relating to those complaints must be retained for no less than five years for records where there was not a sustained finding of misconduct and for not less than 15 years where there was a sustained finding of misconduct.[567]

To ensure compliance with these laws, most local agencies adopt records retention schedules as a key element of a records management system.

557 *Los Angeles Police Dept. v. Superior Court* (1977) 65 Cal.App.3d 661, 668.

558 *Ibid.*

559 For example, an agency cannot destroy records that qualify for inclusion in an administrative record in a writ proceeding. *Golden Door Properties, LLC v. Superior Court* (2020) 53 Cal.App.5th 733.

560 Gov. Code, § 34090, subd. (d).

561 Gov. Code, § 34090.7.

562 Gov. Code, § 34090.6.

563 Gov. Code, §§ 34090.6, 34090.7.

564 85 Ops.Cal.Atty.Gen. 256, 258 (2002).

565 Gov. Code, § 34090, subds. (a), (b), (c) & (e).

566 Lab. Code, § 1198.5, subd. (c)(1).

567 Pen. Code, § 832.5.

Records Covered by the Records Retention Laws

There is no definition of "public records" or "records" in the records retention provisions governing local agencies.[568] The Attorney General has opined that the definition of "public records" for purposes of the records retention statutes is "a thing which constitutes an objective lasting indication of a writing, event or other information, which is in the custody of a public officer and is kept either (1) because a law requires it to be kept; or (2) because it is necessary or convenient to the discharge of the public officer's duties and was made or retained for the purpose of preserving its informational content for future reference."[569] Under that definition, local agency officials retain some discretion concerning what agency records must be kept pursuant to state records retention laws. Similarly, the PRA allows for local agency discretion concerning what preliminary drafts, notes, or interagency or intra-agency memoranda are retained in the ordinary course of business.[570]

▶ PRACTICE TIP:

Though there is no definition of "records" for purposes of the retention requirements applicable to local agencies, the retention requirements and the disclosure requirements of the PRA should complement each other. Local agencies should exercise caution in deviating too far from the definition of "public records" in the PRA in interpreting what records should be retained under the records retention statutes.

568 64 Ops.Cal.Atty.Gen. 317, 323 (1981).

569 *Id.* at p. 324.

570 Gov. Code, § 7927.500 (formerly Gov. Code, § 6254, subd. (a). See "Drafts," p. 35.

Frequently Requested Information and Records

This table is intended as a general guide on the applicable law and is not intended to provide legal advice. The facts and circumstances of each request should be carefully considered in light of the applicable law. A local agency's legal counsel should always be consulted when legal issues arise.

INFORMATION/RECORDS REQUESTED	MUST THE INFORMATION/ RECORD GENERALLY BE DISCLOSED?	APPLICABLE AUTHORITY
AGENDA MATERIALS DISTRIBUTED TO A LEGISLATIVE BODY RELATING TO AN OPEN SESSION ITEM	Yes	Gov. Code, § 54957.5. For additional information, see p. 71 of *"The People's Business: A Guide to the California Public Records Act," "the Guide."*
AUDIT CONTRACTS	Yes	Gov. Code, § 7928.700 (formerly Gov. Code, § 6253.31).
AUDITOR RECORDS	Yes, with certain exceptions	Gov. Code, § 36525(b).
AUTOMATED TRAFFIC ENFORCEMENT SYSTEM (RED LIGHT CAMERA) RECORDS	No	Veh. Code, § 21455.5(f)(1).
AUTOPSY REPORTS	No	Gov. Code, § 7923.600 (formerly Gov. Code, § 6254(f)); *Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271.
CALENDARS OF ELECTED OFFICIALS	Perhaps not, but note that there is no published appellate court decision on this issue post- Prop. 59.[1]	See *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d. 1325 and *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469 for a discussion of the deliberative process privilege. For additional information, see p. 34 of the Guide.
CLAIMS FOR DAMAGES	Yes	*Poway Unified School District v. Superior Court* (1998) 62 Cal. App.4th 1496.
CORONER PHOTOS OR VIDEOS	No	Civ. Proc. Code, § 129.
DOG LICENSE INFORMATION	Unclear	See conflict between Health & Safety Code, § 121690(h) which states that license information is confidential, and Food and Agr. Code, § 30803(b) stating license tag applications shall remain open for public inspection.
ELECTION PETITIONS (INITIATIVE, REFERENDUM AND RECALL PETITIONS)	No, except to proponents if petition found to be insufficient	Gov. Code, § 7924.100-7924.110 (formerly Gov. Code, § 6253.5); Elec. Code, §§ 17200, 17400, and 18650; Evid. Code, § 1050. For additional information, see p. 37 of the Guide.
EMAILS AND TEXT MESSAGES OF LOCAL AGENCY STAFF AND/OR OFFICIALS	Yes	Emails and text messages relating to local agency business on local agency and/or personal accounts and devices are public records. Gov. Code, § 7920.530 (formerly Gov. Code § 6252(e)); *City of San Jose v. Superior Court* (2017) 2 Cal. 5th 608. For additional information, see pp. 12-14 of the Guide.
EMPLOYMENT AGREEMENTS/CONTRACTS	Yes	Gov. Code, § 7928.400 (formerly Gov. Code, § 6254.8). Gov. Code, § 53262(b). For additional information, see p. 57 of the Guide.
EXPENSE REIMBURSEMENT REPORT FORMS	Yes	Gov. Code, § 53232.3(e).
FORM 700 (STATEMENT OF ECONOMIC INTERESTS) AND CAMPAIGN STATEMENTS	Yes[2]	Gov. Code, § 81008.

INFORMATION/RECORDS REQUESTED	MUST THE INFORMATION/ RECORD GENERALLY BE DISCLOSED?	APPLICABLE AUTHORITY
GEOGRAPHIC INFORMATION SYSTEM (GIS) MAPPING SOFTWARE AND DATA	No as to proprietary software. Yes as to GIS base map information.	Gov. Code, § 7922.585 (formerly Gov. Code, § 6254.9); 88 Ops. Cal.Atty.Gen. 153 (2005); *see Sierra Club v. Superior Court* (2013) 57 Cal.4th 157 for data as a public record; see also *County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301 for GIS basemap as public record; for additional information, see p. 16 of the Guide.
GRADING DOCUMENTS INCLUDING GEOLOGY REPORTS, COMPACTION REPORTS, AND SOILS REPORTS SUBMITTED IN CONJUNCTION WITH AN APPLICATION FOR A BUILDING PERMIT	Yes	89 Ops.Cal.Atty.Gen. 39 (2006); but see Gov. Code, § 7927.300 (formerly Gov. Code, § 6254(e)). For additional information, see p. 30 of the Guide.
JUVENILE COURT RECORDS	No	*T.N.G. v. Superior Court* (1971) 4 Cal.3d. 767; Welf. & Inst. Code, §§ 827 and 828. For additional information, see p. 44 of the Guide.
LEGAL BILLING STATEMENTS	Generally, yes, as to amount billed and/or after litigation has ended. No, if pending or active litigation and the billing entries are closely related to the attorney-client communication. For example, substantive billing detail which reflects an attorney's impressions, conclusions, opinions or legal research or strategy.	Gov. Code, § 7927.705 (formerly Gov. Code, § 6254(k)); Evid. Code, § 950, et seq.; *County of Los Angeles Board of Supervisors v. Superior Court* (2016) 2 Cal.5th 282; *Smith v. Laguna Sun Villas Community Assoc.* (2000) 79 Cal.App.4th 639; *United States v. Amlani,* 169 F.3d 1189 (9th Cir. 1999}. But see Gov. Code, § 7927.200 (formerly Gov. Code, § 6254(b)) as to the disclosure of billing amounts reflecting legal strategy in pending litigation. *County of Los Angeles v. Superior Court* (2012) 211 Cal.App.4th 57 (Pending litigation exemption does not protect legal bills reflecting the hours worked, the identity of the person performing the work, and the amount charged from disclosure; only work product or privileged descriptions of work may be redacted). For additional information, see p. 33 of the Guide.
LIBRARY PATRON USE RECORDS	No	Gov. Code, §§ 7927.100, 7927.105 (formerly Gov. Code, §§ 6254(j), 6267). For additional information, see p. 40 of the Guide.
MEDICAL RECORDS	No	Gov. Code, § 7927.700 (formerly Gov. Code, § 6254(c)). For additional information, see p. 46 of the Guide.
MENTAL HEALTH DETENTIONS (5150 REPORTS)	No	Welf. & Inst. Code, § 5328. For additional information, see p. 44 of the Guide.
MINUTES OF CLOSED SESSIONS	No	Gov. Code, § 54957.2(a). For additional information, see p. 43 of *Open and Public: A Guide to the Ralph M. Brown Act*, available at www.calcities.org/BrownActGuide.
NOTICES/ORDERS TO PROPERTY OWNER RE: HOUSING/BUILDING CODE VIOLATIONS	Yes	Gov. Code, § 7924.700 (formerly Gov. Code, § 6254.7(c)). For additional information, see p. 1 of the Guide.
OFFICIAL BUILDING PLANS (ARCHITECTURAL DRAWINGS AND PLANS)	Inspection only. Copies provided under certain circumstances.	Health & Saf. Code, § 19851; see also 17 U.S.C. §§ 101 and 102. For additional information, see p. 30 of the Guide.
PERSONAL FINANCIAL RECORDS	No	Gov. Code, §§ 7470, 7471, 7473; see also Gov. Code, § 7925.005 (formerly Gov. Code, § 6254(n)). For additional information, see p. 46 of the Guide.
PERSONNEL		For additional information, see p. 52 of the Guide.
• **Employee inspection of own personnel file**	Yes, with exceptions.	For additional information, see pp. 29-31 of the Guide. Lab. Code, § 1198.5; Gov. Code, § 36501.5. For peace officers, see Gov. Code, § 3306.5. For firefighters, see Gov. Code, § 3256.5.

INFORMATION/RECORDS REQUESTED	MUST THE INFORMATION/ RECORD GENERALLY BE DISCLOSED?	APPLICABLE AUTHORITY
• **Investigatory reports**	It depends.	*City of Petaluma v. Superior Court* (2016) 248 Cal.App.4th 1023; *Marken v. Santa Monica-Malibu Unified Sch. Dist.* (2012) 202 Cal. App.4th 1250; *Sanchez v. County of San Bernardino* (2009) 176 Cal. App.4th 516; *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742.
• **Name and pension amounts of public agency retirees**	Yes. However, personal or individual records, including medical information, remain exempt from disclosure.	*Sacramento County Employees Retirement System v. Superior Court* (2011) 195 Cal.App.4th 440; *San Diego County Employees Retirement Association v. Superior Court* (2011) 196 Cal.App.4th 1228; *Sonoma County Employees Retirement Assn. v. Superior Court* (2011) 198 Cal.App.4th 986.
• **Names and salaries (including performance bonuses and overtime) of public employees, including peace officers**	Yes, absent unique, individual circumstances. However, other personal information such as social security numbers, home telephone numbers and home addresses are generally exempt from disclosure per Gov. Code, § 6254(c).	*International Federation of Professional and Technical Engineers, Local 21, AFL-CIO, et al. v. Superior Court* (2007) 42 Cal.4th 319; *Commission on Peace Officers Standards and Training v. Superior Court* (2007) 42 Cal.4th 278.
• **Officer's personnel file, including internal affairs investigation reports**	No, except for specified allegations and/or findings.	With certain exceptions, peace officer personnel records, including internal affairs reports regarding alleged misconduct, are confidential. Pen. Code, §§ 832.7 and 832.8; Evid. Code, §§ 1043-1045; *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411. For additional information, see p. 53 of the Guide.
• **Test Questions, scoring keys, and other examination data.**	No	Gov. Code, § 7929.605 (formerly Gov. Code, § 6254(g)).
POLICE/LAW ENFORCEMENT		For additional information, see p. 38 of the Guide.
• **Arrest Information**	Yes	Gov. Code, § 7923.610 (formerly Gov. Code, § 6254(f)(1)); *Kinney v. Superior Court* (2022) 77 Cal.App.5th 168; *County of Los Angeles v. Superior Court (Kusar)* (1993) 18 Cal.App.4th 588.
• **Charging documents and court filings of the DA**	Yes	*Weaver v. Superior Court* (2014) 224 Cal.App.4th 746.
• **Child abuse reports**	No	Pen. Code, §11167.5.
• **Citizen complaint policy**	Yes	Pen. Code, § 832.5(a)(1).
• **Citizen complaints**	No	Pen. Code, § 832.5.
• **Citizen complaints – annual summary report to the Attorney General**	Yes	Pen. Code, § 832.5.
• **Citizen complainant information – names addresses and telephone numbers**	No	*City of San Jose v. San Jose Mercury News* (1999) 74 Cal.App.4th 1008. For additional information see p. 42 of the Guide.

INFORMATION/RECORDS REQUESTED	MUST THE INFORMATION/ RECORD GENERALLY BE DISCLOSED?	APPLICABLE AUTHORITY
• **Concealed weapon permits and applications**	Yes, except for information that indicates when or where the applicant is vulnerable to attack and medical/psychological history	Gov. Code, § 7923.800 (formerly Gov. Code, § 6254(u)(1)); *CBS, Inc. v. Block* (1986) 42 Cal.3d 646.
• **Contact information – names, addresses and phone numbers of crime victims or witnesses**	No	Gov. Code, § 7923.615 (formerly Gov. Code, § 6254(f)(2)). For additional information, see p. 42 of the Guide.
• **Criminal history**	No	Pen. Code, § 13300 et seq.; Pen. Code, § 11106 et seq.
• **Criminal investigative reports including booking photos, audio recordings, dispatch tapes, 911 tapes and in-car video**	No	Gov. Code, §§ 7923.600-7923.625 (formerly Gov. Code, § 6254(f)); *Haynie v. Superior Court* (2001) 26 Cal.4th 1061.
• **Crime reports**	Yes	Gov. Code, §§ 7923.600-7923.625, 7922.000 (formerly 6254(f), 6255).
• **Crime reports, including witness statements**	Yes, but only to crime victims and their representatives	Gov. Code, §§ 7923.600-7923.625 (formerly Gov. Code, § 6254(f)). Gov. Code, § 13951.
Police/Law Enforcement, CONTINUED		
• **Elder abuse reports**	No	Welf. and Inst. Code, §15633
• **Gang intelligence information**	No	Gov. Code, §§ 7923.600-7923.625 (formerly Gov. Code, § 6254(f)); 79 Ops.Cal.Atty Gen. 206 (1996).
• **In custody death reports to AG**	Yes	Gov. Code, § 12525
• **Juvenile court records**	No	*T.N.G. v. Superior Court* (1971) 4 Cal.3d 767; Welf. & Inst. Code, §§ 827 and 828. For additional information, see p. 44 of the Guide.
• **List of concealed weapon permit holders**	Yes	Gov. Code, § 7923.800 (formerly Gov. Code, § 6254(u)(1)); *CBS, Inc. v. Block* (1986) 42 Cal.3d 646.
• **Mental health detention(5150) reports**	No	Welf. & Inst. Code, § 5328. For additional information, see p. 44 of the Guide.
• **Names of officers involved in critical incidents**	Yes, absent unique, individual circumstances	*Pasadena Peace Officers Ass'n v Superior Court* (2015) 240 Cal. App.4th 268*; Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59; *Commission on Peace Officer Standards and Training v. Superior Court* (2007) 42 Cal.4th 278; *New York Times v. Superior Court* (1997) 52 Cal.App.4th 97; 91 Ops. Cal.Atty.Gen. 11 (2008).
• **Official service photographs of peace officers**	Yes, unless disclosure would pose an unreasonable risk of harm to the officer	*Ibarra v. Superior Court* (2013) 217 Cal.App.4th 695.
• **Peace officer's name, employing agency and employment dates**	Yes, absent unique, individual circumstances	*Commission on Peace Officer Standards and Training v. Superior Court* (2007) 42 Cal.4th 278.
• **Traffic accident reports**	Yes, but only to certain parties	Veh. Code, §§ 16005, 20012 [only disclose to those needing the information, such as insurance companies, and the individuals involved].

INFORMATION/RECORDS REQUESTED	MUST THE INFORMATION/ RECORD GENERALLY BE DISCLOSED?	APPLICABLE AUTHORITY
PUBLIC CONTRACTS		
• **Bid Proposals, RFP proposals**	Yes, except competitive proposals may be withheld until negotiations are complete to avoid prejudicing the public	*Michaelis v. Superior Court* (2006) 38 Cal. 4th 1065; but see Gov. Code, § 7922.000 (formerly Gov. Code, § 6255) and Evid. Code, § 1060. For additional information, see p. 59 of the Guide.
• **Certified payroll records**	Yes, but records must be redacted to protect employee names, addresses, and social security number from disclosure	Labor Code, § 1776.
• **Financial information submitted for bids**	Yes, except some corporate financial information may be protected	Gov. Code, §§ 7927.500, 7928.705, 7927.705, 7927.605, and 7922.000 (formerly Gov. Code, §§ 6254(a), (h), and (k), 6254.15, and 6255); *Schnabel v. Superior Court of Orange County* (1993) 5 Cal.4th 704, 718. For additional information, see p. 60 of the Guide.
• **Trade secrets**	No	Evid. Code, § 1060; Civ. Code, § 3426, et seq. For additional information, see p. 61 of the Guide.
PURCHASE PRICE OF REAL PROPERTY	Yes, after the agency acquires the property	Gov. Code, § 7275.
REAL ESTATE		For additional information, see p. 60 of the Guide.
• **Property information (such as selling assessed value, square footage, number of rooms)**	Yes	88 Ops.Cal.Atty.Gen. 153 (2005).
• **Appraisals and offers to purchase**	Yes, but only after conclusion of the property acquisition	Gov. Code, § 7928.705 (formerly Gov. Code, § 6254(h)). Note that Gov. Code, § 7267.2 requires release of more information to the property owner while the acquisition is pending.
REPORT OF ARREST NOT RESULTING IN CONVICTION	No, except as to peace officers or peace officer applicants	Lab. Code, § 432.7.
SETTLEMENT AGREEMENTS	Yes	*Register Division of Freedom Newspapers v. County of Orange* (1984) 158 Cal.App.3d 893. For additional information, see p. 49 of the Guide.
SOCIAL SECURITY NUMBERS	No	Gov. Code § 7922.200 (formerly Gov. Code § 6254.29).
SPEAKER CARDS	Yes	Gov. Code, § 7922.000 (formerly Gov. Code, § 6255).
TAX RETURN INFORMATION	No	Gov. Code, § 7927.705 (formerly Gov. Code, § 6254(k)); Internal Revenue Code, § 6103.
TAXPAYER INFORMATION RECEIVED IN CONNECTION WITH COLLECTION OF LOCAL TAXES	No	Gov. Code, § 7925.000 (formerly Gov. Code, § 6254(i)). For additional information, see p. 61 of the Guide.
TEACHER TEST SCORES, IDENTIFIED BY NAME, SHOWING TEACHERS' EFFECT ON STUDENTS' STANDARDIZED TEST PERFORMANCE	No	Gov. Code, § 7922.000 (formerly Gov. Code, § 6255); *Los Angeles Unified School Dist. v. Superior Court* (2014) 228 Cal.App.4th 222.

INFORMATION/RECORDS REQUESTED	MUST THE INFORMATION/ RECORD GENERALLY BE DISCLOSED?	APPLICABLE AUTHORITY
TELEPHONE RECORDS OF ELECTED OFFICIALS	Yes, as to expense totals. No, as to phone numbers called.	See *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469.
UTILITY USAGE DATA	No, with certain exceptions.	Gov. Code, § 7927.410 (formerly Gov. Code, § 6254.16). For additional information, see p. 62 of the Guide.
VOTER INFORMATION	No	Gov. Code, § 7924.000 (formerly Gov. Code, § 6254.4). For additional information, see p. 36 of the Guide.
VOTER INFORMATION	No	Gov. Code, § 6254.4. For additional information, see p. 36 of the Guide.

1 *The analysis with respect to elected officials may not necessarily apply to executive officers such as City Managers or Chief Administrative Officers, and there is no case law directly addressing this issue.*

2 *It should be noted that these statements must be made available for inspection and copying not later than the second business day following the day on which the request was received.*

Revised August 2022

DISPOSITION OF FORMER LAW

Note. This table shows the proposed disposition of the following provisions of the California Public Records Act (Gov't Code §§ 6250- 6276.48), as that law will exist on January 1, 2020. Unless otherwise indicated, all statutory references are to the Government Code.

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
6250-6276.48	7920.000-7930.215
6250	7921.000
6251	7920.000
6252(a)	7920.510
6252(b)	7920.515
6252(c)	7920.520
6252(d)	7920.525(a)
6252(e)	7920.530
6252(f)	7920.540
6252(g)	7920.545
6252.5	7921.305
6252.6	7927.420
6252.7	7921.310
6253(a)	7922.525
6253(a) 1st sent	7922.525(a)
6253(a) 2d sent	7922.525(b)
6253(b)	7922.530(a)
6253(c)	7922.535
6253(c) 1st, 4th sent	7922.535(a)
6253(c) 2d, 3d sent	7922.535(b)
6253(c) 5th sent	7922.535(c)
6253(d) 1st sent	7922.500
6253(d)(1)	7922.530(b)
6253(d)(2)	7922.530(c)
6253(d)(3)	7922.540(b)
6253(e)	7922.505
6253(f) 1st sent	7922.545(a)
6253(f) 2d sent	7922.545(b)
6253.1(a)-(c)	7922.600
6253.1(d)	7922.605
6253.2	7926.300
6253.21	7927.305
6253.3	7921.005
6253.31	7928.700
6253.4(a) 1st ¶	7922.630
6253.4(a) 2d ¶	7922.635
6253.4(b)	7922.640
6253.5	7924.100-7924.110
6253.5(a) 1st sent	7924.110(a)-(b)
6253.5(a) 2d sent	7924.110(c)
6253.5(b)	7924.110(d)
6253.5(c)	7924.100
6253.5(d)	7924.105
6253.6	7924.005
6253.8(a)-(e)	7924.900
6253.8(f)	not cont'd

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
6253.9	7922.570-7922.580
6253.9 intro cl 1st part	7922.570(a)
6253.9 intro cl 2d part	7922.570(b)
6253.9(a)(1)	7922.570(b)
6253.9(a)(2) 1st sent	7922.570(b)
6253.9(a)(2) 2d sent	7922.575(a)
6253.9(b)	7922.575(b)
6253.9(c)	7922.580(a)
6253.9(d)	7922.570(c)
6253.9(e)	7922.580(b)
6253.9(f)	7922.580(c)
6253.9(g)	7922.580(d)
6253.10	7922.680
6254(a)	7927.500
6254(b)	7927.200
6254(c)	7927.700
6254(d)	7929.000
6254(e)	7927.300
6254(f)	7923.600-7923.625
6254(f) 1st sent	7923.600(a)
6254(f) 2d sent	7923.605(a)
6254(f) 3d sent	7923.605(b)
6254(f) 2d ¶	7923.600(b)
6254(f) 3d ¶	7923.610, 7923.615(a), 7923.620(a)
6254(f)(1)	7923.610
6254(f)(2)(A) 1st sent	7923.615(a)
6254(f)(2)(A) 2d, 3d sent	7923.615(b)
6254(f)(2)(B)	7923.615(c)
6254(f)(3) 1st, 2d sent	7923.620(a)
6254(f)(3) 3d sent	7923.620(b)
6254(f)(3) 4th sent	7923.620(c)
6254(f)(4)	7923.625
6254(g)	7929.605
6254(h)	7928.705
6254(i)	7925.000
6254(j)	7927.100
6254(k)	7927.705
6254 (l)	7928.000
6254(m)	7928.100
6254(n)	7925.005
6254(o)	7924.505
6254(p)(1)	7928.405
6254(p)(2)	7928.410
6254(q)(1)	7926.220(a)
6254(q)(2)	7926.220(b)
6254(q)(3)	7926.220(c)
6254(q)(4)	7926.220(d)
6254(r)	7927.000
6254(s)	7926.000
6254(t)	7926.210
6254(u)(1)	7923.800
6254(u)(2)-(3)	7923.805
6254(v)(1)	7926.225(a)

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
6254(v)(2)	7926.225(b)
6254(v)(3)	7926.225(c)
6254(v)(4)	7926.225(d)
6254(w)	7926.235
6254(w)(1)	7926.235(a)
6254(w)(2)	7926.235(b)
6254(w)(3)	7926.235(c)
6254(x)	7925.010
6254(y)(1)	7926.230(a)
6254(y)(2)	7926.230(b)
6254(y)(3)	7926.230(c)
6254(y)(4)	7926.230(d)
6254(y)(5)	7926.230(e)
6254(z)	7923.700
6254(aa)	7929.200
6254(ab)	7929.205
6254(ab) 1st sent	7929.205(b)
6254(ab) 2d sent	7929.205(a)
6254(ab) 3d sent	7929.205(c)
6254(ac)	7926.100
6254(ad)	7929.400-7929.430
6254(ad)(1)	7929.400
6254(ad)(2)	7929.405
6254(ad)(3)	7929.410
6254(ad)(4)	7929.415
6254(ad)(5)	7929.420
6254(ad)(6)	7929.425
6254(ad)(7)	7929.430
6254 next-to-last ¶	7921.500
6254 last ¶ (unlabeled)	7926.200
6254.1(a)	7927.415
6254.1(b)	7927.405
6254.1(c)	7929.600
6254.2	7924.300-7924.335
6254.2(a)	7924.300
6254.2(b)	7924.305(a)
6254.2(c)	7924.305(b)
6254.2(d)	7924.305(c)
6254.2(e)	7924.305(d)
6254.2(f)	7924.305(f)
6254.2(g)	7924.335
6254.2(h)	7924.310(a)-(b)
6254.2(i)	7924.315
6254.2(j)	7924.320
6254.2(k)	7924.310(c)
6254.2(l)	7924.330
6254.2(m)	7924.305(e)
6254.2(n)	7924.325
6254.3	7928.300
6254.4	7924.000
6254.4.5	7923.750
6254.5	7921.505
6254.5 1st sent	7921.505(b)

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
6254.5 2d sent	7921.505(a)
6254.5(a)-(i)	7921.505(c)
6254.6	7927.600
6254.7 (except (c))	7924.510
6254.7(a)	7924.510(a)
6254.7(b)	7924.510(b)
6254.7(c)	7924.700
6254.7(d) 1st sent	7924.510(c)
6254.7(d) 2d sent	7924.510(f)
6254.7(e)	7924.510(d)
6254.7(f)	7924.510(e)
6254.8	7928.400
6254.9	7922.585
6254.10	7927.005
6254.11	7924.500
6254.12	7929.005
6254.13	7929.610
6254.14(a)	7926.215
6254.14(a)(1)	7926.215(a)
6254.14(a)(2)	7926.215(b)
6254.14(a)(3)	7926.215(c)
6254.14(a)(4)	7926.215(d)
6254.14(a)(5)	7926.215(e)
6254.14(b)	7926.220(d), 7926.225(d), 7926.230(d)
6254.15	7927.605
6254.16	7927.410
6254.17	7923.755
6254.18	7926.400-7926.430
6254.18(a)	7926.405
6254.18(b)	7926.400
6254.18(b)(1)	7926.400(a)
6254.18(b)(2)	7926.400(b)
6254.18(b)(3)	7926.400(c)
6254.18(b)(4)	7926.400(d)
6254.18(c)	7926.410
6254.18(d)	7926.415
6254.18(d) 1st sent	7926.415(a)
6254.18(d) 2d sent	7926.415(c)
6254.18(d) 3d sent	7926.415(b)
6254.18(e)	7926.420
6254.18(f)	7926.425
6254.18(g)	7926.430
6254.19	7929.210
6254.20	7927.400
6254.21 (except (f))	7928.200-7928.230
6254.21(a)	7928.205
6254.21(b)	7928.210
6254.21(c)	7928.215-7928.225
6254.21(c)(1)	7928.215
6254.21(c)(1)(A)	7928.215(b)
6254.21(c)(1)(B)	7928.215(c)
6254.21(c)(1)(C)	7928.215(d)
6254.21(c)(1)(D)	7928.215(e)

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
6254.21(c)(1)(E)	7928.215(a)
6254.21(c)(2)	7928.225
6254.21(c)(3)	7928.220
6254.21(d)	7928.230
6254.21(e)	7928.200(b)
6254.21(f)	7920.500
6254.21(g)	7928.200(a)
6254.22	7926.205
6254.22 1st sent	7926.205(a)
6254.22 2d sent	7926.205(b)
6254.22 3d & 4th sent	7926.205(c)
6254.23	7929.215
6254.24	7920.535
6254.25	7927.205
6254.26	7928.710
6254.26(a)	7928.710(b)
6254.26(b)	7928.710(c)
6254.26(c)	7928.710(a)
6254.27	7922.205
6254.28	7922.210
6254.29	7922.200
6254.30	7923.655
6254.30 1st sent	7923.655(a)
6254.30 2d sent	7923.655(b)
6254.33	7928.715
6254.35	7929.010
6255(a)	7922.000
6255(b)	7922.540(a)
6257.5	7921.300
6258 1st sent	7923.000
6258 2d sent	7923.005
6259 (except (c) 1st sent intro cl)	7923.100-7923.500
6259(a) 1st sent	7923.100
6259(a) 2d sent	7923.105
6259(b)	7923.110
6259(c) 1st sent intro cl	not cont'd
6259(c) remainder	7923.500
6259(d)	7923.115(a)-(b)
6259(e)	7923.115(c)
6260	7920.200
6261	7928.720
6262	7923.650
6263	7921.700
6264	7921.705
6265	7921.710
6267	7927.105
6268	7928.005, 7928.010
6268(a)	7928.005
6268(b)	7928.010(a)
6268(c)	7928.010(b)
6268.5	7928.015
6270	7921.010
6270.5	7922.700-7922.725

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
6270.5(a) 1st sent	7922.710(a)
6270.5(a) 2d sent	7922.715(a)
6270.5(a) 3d sent	7922.715(b)
6270.5(a) 4th sent	7922.720(a), (b)
6270.5(b)	7922.725(a)
6270.5(c)(1)	7922.700(a)
6270.5(c)(2)	7922.705
6270.5(c)(3)	7922.700(b)
6270.5(d)	7922.725(b)
6270.5(e)	7922.720(c)
6270.5(f)	7922.710(b)
6270.6	7928.800
6270.7	7926.500
6275-6276.48	7930.000-7930.215
6275	7930.000
6276	7930.005
6276.01	7930.100
6276.02	7930.105
6276.04	7930.110
6276.06	7930.115
6276.08	7930.120
6276.10	7930.125
6276.12	7930.130
6276.14	7930.135
6276.16	7930.140
6276.18	7930.145
6276.22	7930.150
6276.24	7930.155
6276.26	7930.160
6276.28	7930.165
6276.30	7930.170
6276.32	7930.175
6276.34	7930.180
6276.36	7930.185
6276.38	7930.190
6276.40	7930.195
6276.42	7930.200
6276.44	7930.205
6276.46	7930.210
6276.48	7930.215

DERIVATION OF NEW LAW

Note. This table shows the derivation of each proposed provision in this recommendation. Unless otherwise indicated, all statutory references are to the Government Code.

PROPOSED PROVISION(S)	EXISTING PROVISION(S)
7920.000	6251
7920.005	new
7920.100	new
7920.105	new
7920.110	new
7920.115	new
7920.120	new
7920.200	6260
7920.500	6254.21(f)
7920.505	new
7920.510	6252(a)
7920.515	6252(b)
7920.520	6252(c)
7920.525(a)	6252(d)
7920.525(b)	new
7920.530	6252(e)
7920.535	6254.24
7920.540	6252(f)
7920.545	6252(g)
7921.000	6250
7921.005	6253.3
7921.010	6270
7921.300	6257.5
7921.305	6252.5
7921.310	6252.7
7921.500	6254 next-to-last ¶
7921.505	6254.5
7921.505(a)	6254.5 2d sent
7921.505(b)	6254.5 1st sent
7921.505(c)	6254.5(a)-(i)
7921.700	6263
7921.705	6264
7921.710	6265
7922.000	6255(a)
7922.200	6254.29
7922.205	6254.27
7922.210	6254.28
7922.500	6253(d) 1st sent
7922.505	6253(e)
7922.525	6253(a)
7922.525(a)	6253(a) 1st sent
7922.525(b)	6253(a) 2d sent
7922.530(a)	6253(b)
7922.530(b)	6253(d)(1)
7922.530(c)	6253(d)(2)
7922.535	6253(c)
7922.535(a)	6253(c) 1st, 4th sent

PROPOSED PROVISION(S)	EXISTING PROVISION(S)
7922.535(b)	6253(c) 2d, 3d sent
7922.535(c)	6253(c) 5th sent
7922.540(a)	6255(b)
7922.540(b)	6253(d)(3)
7922.540(c)	new
7922.545	6253(f)
7922.545(a)	6253(f) 1st sent
7922.545(b)	6253(f) 2d sent
7922.570-7922.580	6253.9
7922.570(a)	6253.9 intro cl 1st part
7922.570(b)	6253.9 intro cl 2d part, (a)(1), (a)(2) 1st sent
7922.570(c)	6253.9(d)
7922.575(a)	6253.9(a)(2) 2d sent
7922.575(b)	6253.9(b)
7922.580(a)	6253.9(c)
7922.580(b)	6253.9(e)
7922.580(c)	6253.9(f)
7922.580(d)	6253.9(g)
7922.585	6254.9
7922.600	6253.1(a)-(c)
7922.605	6253.1(d)
7922.630	6253.4(a) 1st ¶
7922.635	6253.4(a) 2d ¶
7922.640	6253.4(b)
7922.680	6253.10
7922.700-7922.725	6270.5
7922.700(a)	6270.5(c)(1)
7922.700(b)	6270.5(c)(3)
7922.705	6270.5(c)(2)
7922.710(a)	6270.5(a) 1st sent
7922.710(b)	6270.5(f)
7922.715(a)	6270.5(a) 2d sent
7922.715(b)	6270.5(a) 3d sent
7922.720(a), (b)	6270.5(a) 4th sent
7922.720(c)	6270.5(e)
7922.725(a)	6270.5(b)
7922.725(b)	6270.5(d)
7923.000	6258 1st sent
7923.005	6258 2d sent
7923.100-7923.500	6259 (except (c) 1st sent intro cl)
7923.100	6259(a) 1st sent
7923.105	6259(a) 2d sent
7923.110	6259(b)
7923.115(a)-(b)	6259(d)
7923.115(c)	6259(e)
7923.500	6259(c) (except obsolete intro cl)
7923.600-7923.625	6254(f)
7923.600(a)	6254(f) 1st sent
7923.600(b)	6254(f) 2d ¶
7923.605(a)	6254(f) 2d sent
7923.605(b)	6254(f) 3d sent
7923.610	6254(f) 3d ¶ (re 6254(f)(1)), 6254(f)(1)

PROPOSED PROVISION(S)	EXISTING PROVISION(S)
7923.615(a)	6254(f) 3d ¶ (re 6254(f)(2)), 6254(f)(2(A) 1st sent
7923.615(b)	6254(f)(2(A) 2d, 3d sent
7923.615(c)	6254(f)(2(B)
7923.620(a)	6254(f) 3d ¶ (re 6254(f)(3)), 6254(f)(3) 1st, 2d sent
7923.620(b)	6254(f)(3) 3d sent
7923.620(c)	6254(f)(3) 4th sent
7923.625	6254(f)(4)
7923.630	new
7923.650	6262
7923.655	6254.30
7923.655(a)	6254.30 1st sent
7923.655(b)	6254.30 2d sent
7923.700	6254(z)
7923.750	6254.4.5
7923.755	6254.17
7923.800-7923.805	6254(u)
7923.800	6254(u)(1)
7923.805	6254(u)(2)-(3)
7924.000	6254.4
7924.005	6253.6
7924.100	6253.5(c)
7924.105	6253.5(d)
7924.110(a)-(b)	6253.5(a) 1st sent
7924.110(c)	6253.5(a) 2d sent
7924.110(d)	6253.5(b)
7924.300-7924.335	6254.2
7924.300	6254.2(a)
7924.305(a)	6254.2(b)
7924.305(b)	6254.2(c)
7924.305(c)	6254.2(d)
7924.305(d)	6254.2(e)
7924.305(e)	6254.2(m)
7924.305(f)	6254.2(f)
7924.310(a)-(b)	6254.2(h)
7924.310(c)	6254.2(k)
7924.315	6254.2(i)
7924.320	6254.2(j)
7924.325	6254.2(n)
7924.330	6254.2(l)
7924.335	6254.2(g)
7924.500	6254.11
7924.505	6254(o)
7924.510	6254.7 (except (c))
7924.510(a)	6254.7(a)
7924.510(b)	6254.7(b)
7924.510(c)	6254.7(d) 1st sent
7924.510(d)	6254.7(e)
7924.510(e)	6254.7(f)
7924.510(f)	6254.7(d) 2d sent
7924.700	6254.7(c)
7924.900	6253.8(a)-(e)
7925.000	6254(i)
7925.005	6254(n)

PROPOSED PROVISION(S)	EXISTING PROVISION(S)
7925.010	6254(x)
7926.000	6254(s)
7926.100	6254(ac)
7926.200	6254 last ¶ (unlabeled)
7926.205	6254.22
7926.205(a)	6254.22 1st sent
7926.205(b)	6254.22 2d sent
7926.205(c)	6254.22 3d & 4th sent
7926.210	6254(t)
7926.215	6254.14(a)
7926.215(a)	6254.14(a)(1)
7926.215(b)	6254.14(a)(2)
7926.215(c)	6254.14(a)(3)
7926.215(d)	6254.14(a)(4)
7926.215(e)	6254.14(a)(5)
7926.220(a)	6254(q)(1)
7926.220(b)	6254(q)(2)
7926.220(c)	6254(q)(3)
7926.220(d)	6254(q)(4), 6254.14(b) (re 6254(q))
7926.225(a)	6254(v)(1)
7926.225(b)	6254(v)(2)
7926.225(c)	6254(v)(3)
7926.225(d)	6254(v)(4), 6254.14(b) (re 6254(v))
7926.230(a)	6254(y)(1)
7926.230(b)	6254(y)(2)
7926.230(c)	6254(y)(3)
7926.230(d)	6254(y)(4), 6254.14(b)(re 6254(y))
7926.230(e)	6254(y)(5)
7926.235	6254(w)
7926.235(a)	6254(w)(1)
7926.235(b)	6254(w)(2)
7926.235(c)	6254(w)(3)
7926.300	6253.2
7926.400-7926.430	6254.18
7926.400	6254.18(b)
7926.400(a)	6254.18(b)(1)
7926.400(b)	6254.18(b)(2)
7926.400(c)	6254.18(b)(3)
7926.400(d)	6254.18(b)(4)
7926.405	6254.18(a)
7926.410	6254.18(c)
7926.415	6254.18(d)
7926.415(a)	6254.18(d) 1st sent
7926.415(b)	6254.18(d) 3d sent
7926.415(c)	6254.18(d) 2d sent
7926.420	6254.18(e)
7926.425	6254.18(f)
7926.430	6254.18(g)
7926.500	6270.7
7927.000	6254(r)

PROPOSED PROVISION(S)	EXISTING PROVISION(S)
7927.005	6254.10
7927.100	6254(j)
7927.105	6267
7927.200	6254(b)
7927.205	6254.25
7927.300	6254(e)
7927.305	6253.21
7927.400	6254.20
7927.405	6254.1(b)
7927.410	6254.16
7927.415	6254.1(a)
7927.420	6252.6
7927.500	6254(a)
7927.600	6254.6
7927.605	6254.15
7927.700	6254(c)
7927.705	6254(k)
7928.000	6254 (l)
7928.005-7928.010	6268
7928.005	6268(a)
7928.010(a)	6268(b)
7928.010(b)	6268(c)
7928.015	6268.5
7928.100	6254(m)
7928.200-7928.230	6254.21 (except (f))
7928.200(a)	6254.21(g)
7928.200(b)	6254.21(e)
7928.205	6254.21(a)
7928.210	6254.21(b)
7928.215-7928.225	6254.21(c)
7928.215	6254.21(c)(1)
7928.215(a)	6254.21(c)(1)(E)
7928.215(b)	6254.21(c)(1)(A)
7928.215(c)	6254.21(c)(1)(B)
7928.215(d)	6254.21(c)(1)(C)
7928.215(e)	6254.21(c)(1)(D)
7928.220	6254.21(c)(3)
7928.225	6254.21(c)(2)
7928.230	6254.21(d)
7928.300	6254.3
7928.400	6254.8
7928.405	6254(p)(1)
7928.410	6254(p)(2)
7928.700	6253.31
7928.705	6254(h)
7928.710(a)	6254.26(c)
7928.710(b)	6254.26(a)
7928.710(c)	6254.26(b)
7928.715	6254.33
7928.720	6261
7928.800	6270.6
7929.000	6254(d)
7929.005	6254.12

PROPOSED PROVISION(S)	EXISTING PROVISION(S)
7929.010	6254.35
7929.200	6254(aa)
7929.205	6254(ab)
7929.205(a)	6254(ab) 2d sent
7929.205(b)	6254(ab) 1st sent
7929.205(c)	6254(ab) 3d sent
7929.210	6254.19
7929.215	6254.23
7929.400-7929.430	6254(ad)
7929.400	6254(ad)(1)
7929.405	6254(ad)(2)
7929.410	6254(ad)(3)
7929.415	6254(ad)(4)
7929.420	6254(ad)(5)
7929.425	6254(ad)(6)
7929.430	6254(ad)(7)
7929.600	6254.1(c)
7929.605	6254(g)
7929.610	6254.13
7930.000-7930.215	6275-6276.48
7930.000	6275
7930.005	6276
7930.100	6276.01
7930.105	6276.02
7930.110	6276.04
7930.115	6276.06
7930.120	6276.08
7930.125	6276.10
7930.130	6276.12
7930.135	6276.14
7930.140	6276.16
7930.145	6276.18
7930.150	6276.22
7930.155	6276.24
7930.160	6276.26
7930.165	6276.28
7930.170	6276.30
7930.175	6276.32
7930.180	6276.34
7930.185	6276.36
7930.190	6276.38
7930.195	6276.40
7930.200	6276.42
7930.205	6276.44
7930.210	6276.46
7930.215	6276.48

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Community-Police Engagement Commission

Staff Report

Meeting Date: July 10, 2023

To: Community-Police Engagement Commission

From: Sheila Cobian, Director of Legislative & Constituent Services

Staff Contact: Mickey Williams, Police Chief
Mickey.williams@carlsbadca.gov, 442-339-3130

Subject: Overview of the Carlsbad Police Department

District: All

Recommended Action

Receive an overview of the Carlsbad Police Department and provide feedback to staff for future Commission presentation topics.

Executive Summary

Staff will provide presentation and request feedback for future presentation topics.

Fiscal Analysis

This action has no fiscal impact.

Environmental Evaluation

This action does not require environmental review because it does not constitute a project within the meaning of the California Environmental Quality Act under California Public Resources Code Section 21065 in that it has no potential to cause either a direct physical change or a reasonably foreseeable indirect physical change in the environment.

Exhibits

None.

Community-Police Engagement Commission

Staff Report

Meeting Date: July 10, 2023

To: Community-Police Engagement Commission

From: Sheila Cobian, Director of Legislative & Constituent Services

Staff Contact: Chris Shilling, Homeless Services Manager
chris.shilling@carlsbadca.gov, 442-339-2284

Jessica Klein, Senior Program Manager
jessica.klein@carlsbadca.gov, 442-339-5973

Subject: Homelessness Action Plan Presentation

District: All

Recommended Action

Receive a presentation regarding the City's Homelessness Action Plan.

Executive Summary

Staff will provide presentation regarding the Homelessness Action Plan.

Fiscal Analysis

This action has no fiscal impact.

Environmental Evaluation

This action does not require environmental review because it does not constitute a project within the meaning of the California Environmental Quality Act under California Public Resources Code Section 21065 in that it has no potential to cause either a direct physical change or a reasonably foreseeable indirect physical change in the environment.

Exhibits

1. February 2023 Homelessness Action Plan
2. FY 2022-23 Semi-Annual Homelessness Action Plan Progress Report

HOMELESSNESS ACTION PLAN

FEBRUARY 2023

City of Carlsbad

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Executive summary

Homelessness is an issue affecting nearly every community throughout the United States. The Carlsbad City Council has identified addressing homelessness as a top priority. As a result, the City of Carlsbad has dedicated the resources to be a regional leader in planning, coordinating and implementing strategies to address homelessness. While coordinating and leading homelessness efforts within Carlsbad, the city also recognizes that efforts to end homelessness require the collaboration of solution-focused partners including the local Continuum of Care, County of San Diego, other North County cities, local nonprofits and faith-based organizations. The city leverages these partnerships and seeks to strategically deploy resources to address any gaps within the existing homeless service system.

Geographically Carlsbad is in the North County Region of San Diego County. North County represents the largest sub-region in San Diego with a diverse geography. Carlsbad is located directly along the coastline, making it part of the North Coastal area. The North Coastal area contains some of the most expensive housing in the county located within the cities of Carlsbad, Solana Beach, Del Mar, Encinitas and Oceanside. Additionally, the 2022 annual Point in Time Count identified that about 16%, or at least 1,442 people, of the San Diego region's homeless population on any given night is in North County.

The City of Carlsbad originally developed a Homeless Response Plan in 2017. This plan was designed to "serve as a foundation to develop a more comprehensive, longer term strategic plan to continue to shape the city's efforts to address the impacts of homelessness on the residents, the larger community and the city itself." In carrying out the original plan, the city made significant progress on the originally outlined objectives and expanded the plan to include a City Council adopted goal and a work plan in 2021. The city has since established and staffed a Homeless & Housing Services Department and has made consistent progress in implementing programs and projects aimed at addressing and reducing homelessness. The city is no longer just responding to the prevalence of homelessness, it is taking proactive action to reduce the impacts of homelessness on the community. As a result, the title of the plan has been changed from the Homeless Response Plan to the Homelessness Action Plan. This title better reflects the city's efforts in taking direct action to address the issue of homelessness.

The City of Carlsbad has a number of policies and plans already in place that touch issues related to homelessness (like the Housing Element of the General Plan and a Consolidated Plan that establishes priorities for federal funding). Each plan establishes priorities and programs toward its specific objectives. The updated Homelessness Action Plan is intended to consolidate the city's policy statements regarding homelessness. The Homelessness Action Plan does not replace those policy documents but synthesizes them into one cohesive guiding plan. The Homelessness Action Plan will be the city's foundational document of homelessness strategies and actions. All future plans or policy documents with homelessness components will strategically align with this plan.

Homelessness is a complex issue that requires the resources, expertise and cooperation of many different entities. The city's efforts will be concentrated within three key areas it can influence. These areas comprise "what" the city will focus on.

KEY AREAS OF FOCUS

Shelter and housing

Outreach and access to services

Public safety

The plan also identifies key strategies which are "how" the city will make impacts within the main areas of focus. The four strategies are:

Strategy #1
Develop and maintain the city's capacity to prevent and reduce homelessness and its impacts on the community.

Strategy #2
Coordinate, collaborate and support local efforts and organizations working to address homelessness in Carlsbad.

Strategy #3
Retain, protect and increase the supply of housing and other affordable living options in Carlsbad.

Strategy #4
Be active in external policy issues to influence strategies and impacts to the city and region.

This Homelessness Action Plan has been developed to update the homelessness goal (approved by the City Council on Oct. 11, 2022), areas of focus, strategies and measurable objectives/benchmarks related to homelessness. It is intended to provide consistent focus on key strategies and initiatives to build the momentum needed to achieve results. However, the city operates in a dynamic environment and must consider unanticipated needs, changing community priorities and emergencies, all of which could require a different direction or allocation of resources. As such, the city will update its plan periodically, to respond to changing conditions. City staff anticipate this plan incorporates needs and actions for approximately five years.

City Council homelessness goal

Enhance the quality of life for everyone in Carlsbad by adopting and implementing an updated Homeless Response Plan that addresses the complex needs of individuals experiencing or at risk of experiencing homelessness in a compassionate and effective manner and reduces the impacts of homelessness on the community.

Plan purpose

The Homelessness Action Plan establishes and consolidates key strategies and initiatives in response to the city's goal related to homelessness. The City of Carlsbad has a number of policies and plans already in place that touch issues related to homelessness. Each plan establishes priorities and programs toward their specific objectives. This Homelessness Action Plan is intended to consolidate the city's policy statements regarding homelessness. The Homelessness Action Plan does not replace those policy documents but attempts to synthesize them into one cohesive guiding plan. The Homelessness Action Plan will be the city's foundational document of homelessness strategies and actions. All future plans or policy documents with homelessness components will strategically align with this plan.

The plan identifies the city's role in coordinating the homelessness efforts for the city as well as the measurements the city will use to track progress towards reaching the City Council's homelessness goal. Like the city's Strategic Plan, the Homelessness Action Plan is intended to:

Focus

Narrow the strategies for resources to be focused, increasing results.

Momentum

Provide clear and consistent policy direction to city staff, enabling the momentum needed to achieve major goals important to Carlsbad

Alignment

Create better alignment between City Council policy direction and the operational realities of day-to-day city operations.

Connection

Connect city efforts to the fulfillment of the City Council's goal.

Accountability

Identify key indicators of success.

Plan structure

The long-term plan includes high-level policy direction and strategies. Existing services that assist with achieving the overall goal are identified, if necessary, toward continued service commitment. Specific resource needs will be presented each year and included in the city's annual budget. Identifying all services in one consolidated funding plan allows city staff to more easily identify gaps, duplication or alternate funding resources. Staff will conduct a comprehensive evaluation of future service needs as part of an annual report to the City Council.

Strategies

Key strategies for how the city will make impacts within the main areas of focus.

Initiatives

Initiatives that support each strategy.

Background

In 2017 the City of Carlsbad created its first Homeless Response Plan to address the growing prevalence of individuals experiencing homelessness. Residents and other community members, including business owners, asked the city to address this challenging issue and associated impacts. Based on input from a working group consisting of staff from Police, Fire, Library, Parks & Recreation, Public Works and the City Attorney's Office, the City of Carlsbad created its first plan. Since then, the city has taken a number of proactive steps in addressing homelessness and its impact on the community.

2017
Homeless Response Plan adopted.

Homeless Outreach Team created within Police Department.

2018
City contracts with Interfaith Community Services to provide licensed clinicians to conduct street-based homeless outreach and case management.

2019
City hires first Homeless Program Manager.

2020
MAY
City contracts with Community Resource Center to provide case management and housing stability resources for individuals experiencing or at-risk of homelessness.

SEPTEMBER
North County Homeless Working Group is founded by Carlsbad's Homeless Program Manager. The group includes representation from all eight North County cities, the Regional Task Force on Homelessness and the County of San Diego.

2021

MARCH

City Council establishes Fiscal Year 2021-22 goal to "Reduce the homeless unsheltered population, among those who want help, by 50% within five years, with quarterly reports until we decrease the unsheltered population or five years." Directs staff to develop a work plan.

MAY

City Council adopts the final work plan and work plan objective costs. Part of the work plan establishes the city's Housing & Homeless Services Department to oversee implementation of the Homeless Response Plan.

JULY

City hires first Director of Housing & Homeless Services.

SEPTEMBER

City Council adopts a quality of life ordinance package and approves an updated work plan, which includes a short-term motel voucher program.

DECEMBER

Housing & Homeless Services Department presents first quarterly report to the City Council.

2022

MARCH

City Council directs staff to update the city homelessness goal and the Homeless Response Plan.

JULY

City contracts with Community Resource Center to provide an Employment & Benefits Specialist, with Catholic Charities to provide clinician services at the La Posada de Guadalupe shelter, and with OrgCode Consulting to provide training and technical assistance to Catholic Charities for their work at the La Posada de Guadalupe shelter.

OCTOBER

City Council approves the updated city homelessness goal as part of the Five-Year Strategic Plan.

Scope of the local issue

The San Diego region has consistently ranked among the top regions in the nation with the highest numbers of people experiencing homelessness. According to the 2022 Point in Time Count there were a minimum of 8,427 people experiencing homelessness on a single night in February 2022, with almost half living unsheltered. The region did not conduct an unsheltered Point in Time Count in 2021 due to the COVID-19 pandemic. The count has found that about 16% (or at least 1,442 people) of the San Diego region's homeless population on any given night is in North County with cities such as Carlsbad, Escondido, Oceanside, Vista, Encinitas and unincorporated areas such as Fallbrook experiencing large populations of unsheltered homelessness.

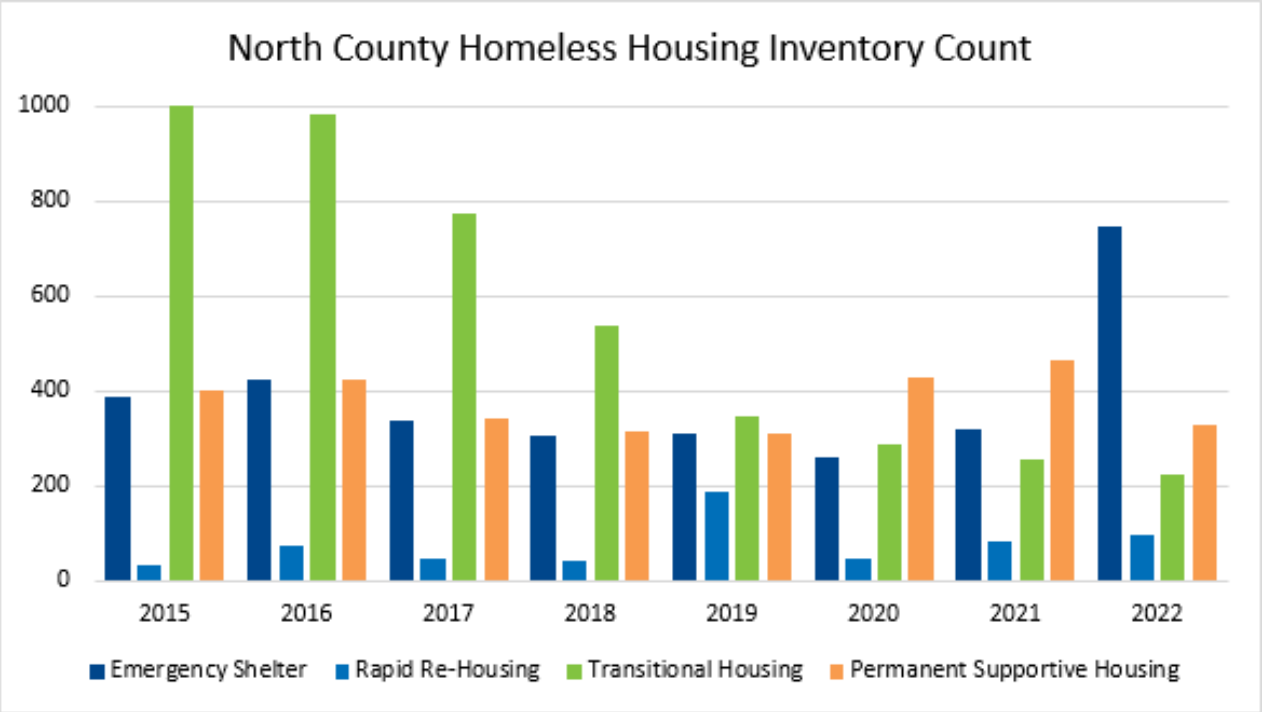
The 2022 Point in Time Count identified 43 sheltered and 75 unsheltered for a total of 118 individuals experiencing homelessness in Carlsbad. This represents a 20% decrease from the 2020 count. The North Coastal area had a total of 745 individuals experiencing homelessness, which represented a 20% increase. Additional demographic data from the Point in Time Count is included in Appendix A.

Point in Time Count data	2020	2022	Change
Carlsbad sheltered	54	43	-20%
Carlsbad unsheltered	94	75	-20%
Carlsbad total	**148**	**118**	**-20%**
North County Coastal total	621	745	+20%

While the Point in Time Count represents a one-night snapshot, the Carlsbad homeless quarterly report data has identified that, over a 12-month period, 749 unduplicated individuals experiencing homelessness were encountered by homeless services programs funded by the city.

The 2022 Housing Inventory Count shows limited shelter and housing options within North County to meet the needs of the North County homeless population. There are only 167 shelter beds in North County. Of these, 26 beds are only available in the winter through a church shelter network. This leaves only 141 year-round beds for 1,442 people experiencing homelessness in North County, with 50 of these beds restricted to single males.

Since 2015 there has not been a significant increase in the number of permanent homeless dedicated interventions in North County. The total number of emergency shelter beds (except for a spike from 2021-2022 due to temporary COVID-19-related motel vouchers) rapid re-housing and permanent supportive housing has remained relatively flat, while the North County has seen a significant decline in transitional housing beds.



While the transitional housing resources have decreased throughout the region in recent years, the North County region has not seen any significant increase in other resources (such as emergency shelter, rapid re-housing, permanent supportive housing), likely contributing to the increase in visible street homelessness throughout the region.

Part of a shared framework

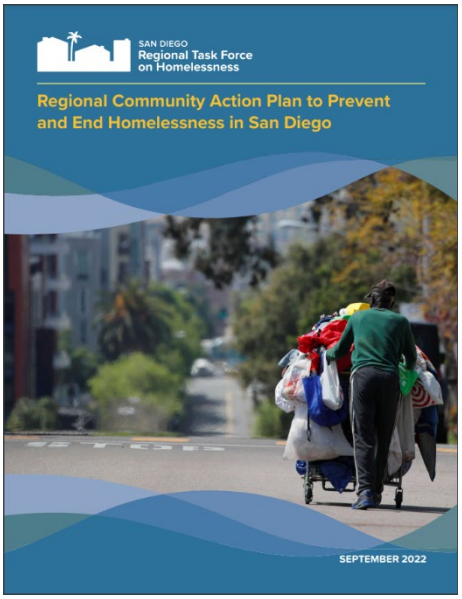
Addressing the homelessness issue requires regional cooperation and contributions from a variety of stakeholders, including homeless services providers, faith-based organizations, law enforcement, healthcare partners, the education sector, philanthropy, business partners, cities and the County of San Diego. Many cities and stakeholders across the region have been working to develop solutions to the growing number of people experiencing homelessness in our communities. As a result, different entities throughout the county have developed homelessness plans, policies and standards in recent years. The City of Carlsbad has taken these documents and the shared framework of addressing homelessness into consideration in the development of this Homelessness Action Plan.

Regional response plans

The Regional Task Force on Homelessness is a countywide regional body designated by the U.S. Department of Housing and Urban Development to be the San Diego Continuum of Care. The Continuum of Care is tasked with bringing together stakeholders with a common goal to end homelessness and develop and implement strategies and funding plans to achieve this goal. The regional plans identify core principles that guide actions and decision making in the region. While not a direct requirement for the City of Carlsbad to mirror the Continuum of Care, these principles and policies impact homelessness collaboration, partnerships and funding allocations throughout the region. City staff contribute regularly in regional conversations to represent local needs and collaborate for greater impact.

Regional Community Action Plan to Prevent and End Homelessness in San Diego

The Regional Task Force on Homelessness has developed a Regional Community Action Plan to Prevent and End Homelessness in San Diego that is intended to align stakeholders around a shared vision, common principles, clear goals and priorities and core strategies that will move the region forward. This regional plan informs and guides regional policy, funding and action, identifies shared measures to evaluate performance and identifies where additional infrastructure is needed to implement plan goals. The plan was released in October 2022.



Coordinated Community Plan to End Youth Homelessness

In 2018, the San Diego Continuum of Care was awarded the largest HUD Youth Homelessness Demonstration Program grant in the country. This two-year funding spurred the creation of the region's Coordinated Community Plan to End Youth Homelessness which identified the goal of ending youth homelessness by 2024.

San Diego Continuum of Care Board Action Plan: Addressing Homelessness Among Black San Diegans

The Action Plan: Addressing Homelessness Among Black San Diegans, released in September 2022, was developed by the Ad Hoc Committee on Addressing Homelessness Among Black San Diegans. It provides detailed recommendations to reduce and eliminate disparities in the homeless services system.

Continuum of Care policy guidelines on unsheltered homelessness

In January 2020 the San Diego Continuum of Care Advisory Board adopted a set of Policy Guidelines for Regional Response for Addressing Unsheltered Homelessness and Encampments Throughout San Diego County that outline policy expectations to meet the needs of people experiencing unsheltered homelessness based on national best practices. The policy includes ending activities that criminalize homelessness, promoting the use of non-law enforcement personnel to engage people on the street and taking a clearance with support framework for encampments that requires coordination across all partners for successful resolution. The Regional Task Force on Homelessness developed the policy in consultation with community partners and HUD technical assistance staff.

Building on the unsheltered policy, the Regional Task Force on Homelessness identified best-practices for the provision of street outreach services. In the Fall of 2020, the Continuum of Care Advisory Board adopted an enhanced set of Street Outreach Standards that outline service expectations for street outreach workers across the region. The standards focus on ensuring a housing focused, trauma-informed and relationship-based engagement. Many public funders, including the City of Carlsbad and the County of San Diego, include the standards in their contract requirements for providing street outreach services.

Standards, learning collaborative and training

The San Diego Continuum of Care sets standards for the provision of homeless services. The Community Standards outline minimum expectations for providing quality housing and services and are based on proven best practices. The Continuum of Care also supports the system with adhering to and practicing the standards. Additionally, in the last few years, the Regional Task Force on Homelessness has taken a lead role with creating focused learning collaboratives and contracting with national experts to provide training in diversion, street outreach and rapid re-housing.

North County Homeless Action Plan

In 2020 a group of North County mayors* and other key stakeholders adopted a North County Homeless Action Plan that identified the following goals:

1. Reduce unsheltered street homelessness 50% by January 2022

2. Increase short-term housing options needed for people experiencing homelessness today

3. Increase long-term housing options to end homelessness for people experiencing homelessness or who are in shelter today

**Includes the cities of: Carlsbad, Del Mar, Encinitas, Escondido, Oceanside, San Marcos, Solana Beach and Vista*

Local response plans

Within the county, a number of cities have developed action plans to identify local efforts to address homelessness. Other local cities including Encinitas, Escondido, Vista, Oceanside, La Mesa and San Diego have also developed community action plans in the last four years. The common themes for municipal responses address increasing temporary and permanent housing, reducing impacts on the community, collaborating with community providers to coordinate services and leveraging resources.

Plan	Year	Goals
City of Encinitas Homeless Action Plan	2021	• Increase the capacity of the city and the community to end homelessness in Encinitas through the development of a collaborative community driven approach. • Decrease the number of individuals experiencing homelessness through demand-driven, person-based homeless response and supportive housing services system. • Increase the availability of temporary and permanent housing.
City of Escondido Strategy for Addressing Homelessness and Transiency	2021	• To eliminate the negative impact of homelessness and transiency on our community.

Plan	Year	Goals
City of La Mesa Homeless Action Plan	2021	• Enhance the city's public communication and coordination related to the homeless. • Improve the city's ability to prevent homelessness, provide direct outreach to the homeless population, address public safety, and respond to nonemergency calls for service. • Expand the city's ability to connect homeless residents to transitional and permanent housing opportunities • Identify viable one-time and ongoing grant funding opportunities.
City of Vista Strategic Plan to Address Homelessness	2020	• Prevent homelessness • Improve quality of life • Reduce homelessness
City of San Diego Community Action Plan on Homelessness	2019	• Decrease unsheltered homelessness by 50%. • Finish the job of ending veteran homelessness. • Prevent and end youth homelessness as outlined in the San Diego County Coordinated Community Plan to End Youth Homelessness.
City of Oceanside Comprehensive Homeless Strategy	2019	• Oceanside's Comprehensive Homeless Strategy serves as a report on the current status of homelessness in the city, its impact on efforts underway, and provides a framework for integrated and coordinated approaches to help the homeless situation. The city cannot respond to this county and statewide crisis on its own. Many homeless individuals suffer from substance abuse and/or mental health issues which far exceed a city's ability to respond. Clearly, the County of San Diego which is tasked with "community health" responsibilities, needs to take on an even greater role in Oceanside and North County to make meaningful progress. The state, county, city and the nonprofit community need to work in concert to make meaningful progress.

City of Carlsbad policies and plans

In addition to the regional framework of addressing homelessness, there are a number of city policies and plans already in place which identify actions or resources impacting homelessness. These policies and plans are threaded into this Homelessness Action Plan. The strategies in this plan are intended to include and complement existing plans. Instead of repeating policy statements or actions from each of these plans, city staff will implement companion policies and programs identified in the plans included below:

COMPANION PLANS

City of Carlsbad Strategic Plan
Age Friendly Carlsbad 5-Year Plan
Carlsbad Housing Agency Annual Plan
Water Quality Improvement Plan
Community Development Block Grant Consolidated Plan
Housing Element of the General Plan
Jurisdictional Runoff Management Plan
Sustainable Materials Management Plan
Permanent Local Housing Allocation Plan


CITY OF CARLSBAD
CALIFORNIA

Community input

In the development of this Homelessness Action Plan city staff have made significant efforts to receive feedback from many sources. This feedback was used to identify shared themes which helped shape the direction of strategies, initiatives and actions.

Feedback from residents

The City of Carlsbad Communication & Engagement Department worked with Dialogue Partners, a firm specializing in public participation and community engagement, to design and implement a public involvement strategy to engage City of Carlsbad community members and gather their input. Feedback opportunities included four virtual community meetings (one for each council district) and an online engagement survey which was open from May 27 to June 13, 2021. A total of 218 people participated in the virtual meetings and 427 people completed the online engagement survey.

What we heard

There was consensus that homelessness had increased over the last five years. People were concerned about the impacts to the community such as encampments, abandoned trash, people outwardly disturbing the peace of the public and individuals sleeping in public spaces such as parks during hours when children are trying to use the park. There was a concern about criminal activity and general perception of safety. There seemed to be a common theme that homelessness is a complex issue, and that Carlsbad was not responsible nor in a position to reduce homelessness on its own. There also seemed to be consensus that the city should take a stance and act now to do what it can to reduce homelessness and the impacts to the community. There was a wide array of opinions, however, about how to approach reducing homelessness.

Feedback from people with lived experience

The City of Carlsbad Housing & Homeless Services and Communication & Engagement departments held two focus groups to solicit input from people with lived experience. In order to develop a plan that responds to identified needs, it is important to acknowledge that people closest to the problem are often closest to the solution.

What we heard

The feedback groups shed light on many aspects of the homeless response with key takeaways around programs that are missing and populations that aren't being adequately served. There were many gaps highlighted around people with disabilities not being able to access needed services. Accommodations are not always accessible, sought or upheld for the unhoused population. In addition, there are barriers and inequitable access for people exiting the prison system, women and for people of color.

A number of new programs were proposed including a storage locker system for people's possessions so they can go to work or access services and have a safe place to store personal items, a day labor clean-up program that is connected to a motel voucher, increased options for permanent housing like shared housing and roommate matching or storage sheds to live in temporarily.

Feedback from service providers

The City of Carlsbad Housing & Homeless Services staff held a focus group with local service providers to solicit their input on strengths, weaknesses and gaps related to homeless services within the city.

What we heard

There are many unavailable and underfunded resources that are necessary for people trying to exit homelessness. The service providers identified these items as immediate needs: Motel vouchers, bus passes, gas cards, money for car repairs, adequate access to showers and laundry, storage and mail service. The shelter needs articulated included: Safe parking where cars can be left through the day and oversized vehicles are permitted, shelter for women and families and non-congregate shelter. The additional barriers to accessing housing identified were: Affordable rental rooms or units, lack of credit or rental history, lack of income to afford rent, units not allowing pets and lack of assets or proof of ability to pay rent.

Systemwide the service providers identified these as the top concerns: Lack of continuity of care through the system of providers, lack of mental health support to stabilize in housing and lack of detox, rehab and crisis stabilization beds.

The service providers identified these as their priorities for reducing homelessness: Development of single room occupancy units, incentives for landlords willing to rent to people experiencing homelessness, long term support for those entering housing, long term assisted living options for vulnerable and extremely low-income seniors, affordable long term RV parking and available affordable housing options.

Feedback from city staff

The City of Carlsbad Housing & Homeless Services staff held a series of three meetings with internal departments including the City Attorney's Office, Communication & Engagement, Community Development, Fire, Housing & Homeless Services, Legislative Affairs, Library & Cultural Arts, Parks & Recreation, Police and Public Works.

What we heard

There was consensus that homelessness is a complex issue and concern over how much impact a city can have. There seemed to be concern about how to help individuals with mental health or substance abuse issues, as most city employees are not trained on how to work with that population. Staff encouraged more training on homelessness topics, resources awareness and how to interact with people experiencing homelessness. The Library and Fire departments identified specific initiatives to better serve individuals experiencing homelessness. The internal city staff team helped identify their department's role for clearer delineation and understanding. These roles are included in Appendix B and will deliver a more coordinated approach across city departments.


CARLSBAD

Previous City Council guidance

Since the original Homeless Response Plan was created in 2017, the City Council has provided input on priorities for responding to the growing issue of homelessness. As a result, the following priorities have been incorporated into the plan:

- Fully fund staff and implement the city's homelessness plan
- Create specific and measurable targets and timelines for reducing homelessness
- Prevent and end homelessness among youth and veterans
- Increase social services/social workers through partnership with the County of San Diego
- Work with entities within our city (and region) to increase transitions to permanent supportive housing
- Advocate for legislative changes needed to effectively address homelessness
- Prevent homelessness by supporting those at risk of becoming homeless/losing their housing
- Work through a regional group to develop a regional action plan that includes integrated services within/among cities
- Develop an encampment cleanup policy to minimize visible encampments
- Focus on trauma informed care
- Focus on aggressive individuals to address their needs (substance abuse, mental health, other)
- Explore expansion of the La Posada de Guadalupe Shelter
- Complete financial analysis to identify opportunities for quickest results
- Identify city and regional goals
- Emphasize affordable housing


POLICE
POLICE
POLICE
HOMELESS OUTREACH

Current inventory of resources in Carlsbad

Homelessness impacts all aspects of a community, so it truly takes a collaborative effort to solve it.

SUPPORTING CITY DEPARTMENTS

- City Attorney's Office
- City Manager's Office
- Communication & Engagement
- Community Development
- Fire
- Library & Cultural Arts
- Parks & Recreation
- Police
- Public Works

LEVERAGED OR LOCAL RESOURCES

- City General Fund
- Community Development Block Grant
- Housing Choice Voucher
- Housing Trust Fund
- Permanent Local Housing Allocation

Regional collaboration

The city maintains formal partnerships with many organizations as well as coordinates and collaborates with many regional stakeholders in the community to reduce homelessness. This is not an exhaustive list, as there are many volunteers, groups and organizations supporting efforts to reduce homelessness.

Generally, the City of Carlsbad does not directly provide social services. There are social services that benefit the city which the City of Carlsbad contributes funding to support or contracts with non-profit organizations to provide. There are also services provided within the city by social service agencies, nonprofit organizations and religious organizations which are not funded by the city. It is important that the city understands what resources are available to better identify duplication or gaps in services.

The following resources are not funded by the city but are important parts of the service continuum for people experiencing homelessness. These resources are extremely limited and not sufficient to meet the community need. As a result, the city will advocate for their expansion throughout the region as appropriate.

Health services

Basic needs support (food, hygiene, clothing)

Substance abuse treatment

Benefits

Mental health services

The chart below identifies services financially supported by the City of Carlsbad. Consolidating these services in the work program allows city staff to more easily identify gaps, duplication or alternate funding resources. The annual work plan will continue to identify existing services to best determine the most appropriate funding source.

Program	Organization	City resources *(most recent Fiscal Year 2021-22)*	Source of city resources
Outreach			
Homeless outreach & case management	Interfaith Community Services	$315,000	General Fund
Shelter			
La Posada de Guadalupe	Catholic Charities Diocese of San Diego	$194,000*	Community Development Block Grant, General Fund
Bridge to housing shelter network	Alliance for Regional Solutions	$25,000	Housing Trust Fund

Program	Organization	City resources *(most recent Fiscal Year 2021-22)*	Source of city resources
Shelter			
Women's Resource Center Domestic Violence Shelter	WRC (formerly Women's Resource Center)	$10,000	CDBG
Limited-term motel voucher program	City of Carlsbad	$100,000*	General Fund
Access & employment			
Employment & Benefits Specialist	Community Resource Center	$140,000*	General Fund
Carlsbad Hiring Center	Interfaith Community Services	$204,217	General Fund
Pet shelter			
Pet shelter program	San Diego Humane Society	$29,825*	General Fund
Housing assistance			
Housing navigation	City of Carlsbad	$72,000	Housing Trust Fund, General Fund
Emergency rental & utility assistance	Interfaith Community Services	$25,000	CDBG
Emergency rental & utility assistance	Community Resource Center	$20,000	CDBG
Rapid rehousing	Community Resource Center	$350,000*	General Fund
Rental assistance	Brother Benno's	$10,073	CDBG
City service infrastructure			
Homeless Outreach Team	City of Carlsbad Police Department	$1,929,790	General Fund
Homeless services	City of Carlsbad Housing & Homeless Services	$714,317	General Fund
Encampment and abandoned trash clean up	Urban Corps	$100,000	General Fund
Portable restrooms	Rocket Johns	$25,000	General Fund
TOTAL CITY RESOURCES		**$4,264,222**	

***Items funded in previous years, but not on an ongoing basis. The City Council would need to approve funding during the fiscal year 2023-24 budget and subsequent years for these activities to continue.**

How the City of Carlsbad can help (Key areas of focus)

The causes of individual homelessness are complex. While not a new problem, recent conditions have increased the homelessness crisis. The high costs of housing and inflation, compared to a lack of increases in wages and public assistance may contribute to more people with vulnerabilities and barriers falling into homelessness.

Based on feedback gathered from the multiple stakeholder groups, data evaluation, review of best practices and lessons learned from the existing work plan implementation, city staff have identified key areas of impact the city can focus on to achieve the City Council's goal over the next 5 years. The City of Carlsbad is limited in many responses to root causes of homelessness. While the city does not have the role of assisting with many issues such as education, healthcare or income assistance, the following are areas of impact where the City of Carlsbad can contribute. These are also the focus of the strategies and initiatives identified in this plan.

Shelter and housing

High home prices, high rental costs and low vacancy rates have fueled a local housing crisis. San Diego currently ranks as the 5th most expensive rental market in the country. Additionally, research shows that communities where people spend more than 32% of their income on rent can expect a more rapid increase in homelessness. In Carlsbad, 48% of households spend more than 30% of their income on rent with 24% spending more than 50% of their income on rent. Due to the realities of housing affordability and unsheltered homelessness in the region, there is overwhelming consensus that more shelter and housing options are needed in North County.

CITY OPTIONS

Increase and diversify immediate shelter/ housing availability

There are not enough options for women or families with children and individuals with significant mental health or substance abuse issues. There is a limited supply of permanent supportive housing and affordable housing in the region given the need. Many properties have long waiting lists. Even affordable rents at the low-income level are over $1,400 per month for a 1-bedroom unit. Expanding housing types and programs can be used as tools to increase access to housing.

Increase housing focused low-barrier shelter

There is not enough year-round shelter to meet the need of the unsheltered population. Shelter can play an important role in the process of moving people experiencing homelessness off the streets and into housing. The city is working with Catholic Charities Diocese of San Diego to potentially expand the La Posada de Guadalupe shelter to serve more people, including women and families.

Implement zoning and land use programs identified in the Housing Element

To meet the housing demand for the region, the State requires regions to plan for new housing units, known as the Regional Housing Needs Assessment. The most recent Regional Housing Needs Assessment prepared by the San Diego Association of Governments identifies 171,658 new housing units are needed over the next 9 years (2021-2029) to meet the need. For the City of Carlsbad this is a total of 3,873 units, with 784 being low-income, and 1,311 being very low-income units. There are several zoning and land use programs in the Housing Element that can expand shelter and housing availability for people in need.

Reduce barriers to shelter and housing

For people trying to secure housing there are many barriers based on income, identification, security deposits, criminal history and limited recent rental history. Landlord engagement strategies can be used to access the existing housing stock more effectively for people exiting homelessness. Shallow subsidies, landlord incentives, security deposit assistance and rent guarantees can be used as tools to increase access to housing.

Outreach and access to services

The City of Carlsbad does not directly provide social services as a core service. The city contracts for social workers to provide outreach and case management services to support people in moving out of homelessness. The city also contracts for rapid re-housing services, employment and benefit services and clinician services at the La Posada Shelter.

CITY OPTIONS

Housing focused street outreach/case management

Although the County of San Diego and the city have increased the number of non-law enforcement staff providing outreach and case management, there is still a need for more. This is critical to engaging the unsheltered population effectively and moving them into housing. In December 2021, the County of San Diego launched a North County Pilot Project to provide eight social workers throughout the region to conduct outreach and provide case management to people experiencing homelessness. Carlsbad has one full time social worker within the city as a result of this program.

Employment and benefits services

The city funds a contract for an Employment and Benefits Specialist to assist individuals experiencing homelessness with connecting to entitlement benefits and paid employment to increase their income. It can be challenging for people experiencing homelessness to gain paid employment, access Supplemental Security Income/Social Security Disability Insurance and/or access other benefits which they are entitled to receive. However, an increase in income can improve housing options and provide more pathways to exit homelessness. The Employment and Benefits Specialist is connected with employers and trained in the Security Income/Social Security Disability Insurance Outreach, Access and Recovery (SOAR) model, which is a nationally recognized best practice to streamline access to benefits for people experiencing homelessness.

Increase diversion services

Diversion includes a service package where staff connect with a household early in their current homeless situation, engage in a strength-based conversation to understand their housing needs and identify potential housing options. Diversion differs from prevention in that diversion serves households already experiencing homelessness. Effective diversion services can help to reduce homelessness by diverting people away from the homeless service system.

Equity and access

Local feedback from people with lived experience of homelessness as well as regional data analysis by the San Diego Continuum of Care has identified potential equity issues in both rates of homelessness for minorities and the availability and quality of services. As a result, the City of Carlsbad will ensure it implements the Homelessness Action Plan through an equity lens and adjusts when needed to increase or improve equity and access.

Public safety

The City of Carlsbad has a duty to protect the public safety of all residents, housed or unhoused. The city provides a balanced approach to addressing the complex needs of individuals experiencing homelessness in a compassionate and effective manner while addressing the impacts on the community of people living unsheltered. The 2017 Homeless Response Plan identified the need to look at existing ordinances that impact the community and the city's response to homeless-related issues. In 2021, the City Council modified and added to the city's existing quality of life ordinances to regulate conduct such as camping on public and private property, fires and cooking on public property, storage of personal property in public places, aggressive solicitation, trespassing, obstruction of property, disorderly conduct and possessing or consuming open containers of alcohol in public places.

CITY OPTIONS

Law enforcement without criminalizing homelessness

While being homeless itself is not a crime, people experiencing homelessness at times engage in unlawful behavior which requires the response of law enforcement. The Carlsbad Police Department staffs a Homeless Outreach Team that aims to balance the needs of everyone who resides in Carlsbad. This includes providing outreach to individuals experiencing homelessness that need housing, shelter, protection and service referrals. HOT provides compassionate enforcement to make sure that unlawful behavior is addressed. Most people experiencing homelessness have experienced some form of trauma in their lives. A history of trauma impacts a person's behavior and response to services and supports. Trauma informed care is a critical component in compassionate enforcement.

Access to basic health and safety needs

Living unsheltered can contribute to poor health and premature death. Many people experiencing homelessness use the emergency room in the place of preventive or general medical care. The Carlsbad Fire Department is frequently called upon to provide immediate medical assistance to individuals experiencing homelessness or to transport for additional medical treatment. A street medicine component can reduce the burden on emergency services and improve the health of the unsheltered population, increasing long-term housing outcomes. Additionally, coordination with the hospital system can be increased to reduce exits from the hospital system to homelessness and connect people exiting hospitals to case management services.

Encampment and abandoned litter clean up

The City of Carlsbad does not allow overnight camping in public spaces when appropriate alternatives are available and follows regional standards for encampment engagement and clearing. The city contracts for routine and special cleanup efforts of abandoned litter to maintain a clean and safe city. These services will be continued and monitored to ensure ongoing effectiveness.

Key strategies and initiatives

Over the next five years the City of Carlsbad will focus on the following key strategies toward reducing homelessness and its impacts on the community. Each strategy has initiatives and new or continuing actions that will be addressed through annual work plans.

Strategy #1

Develop and maintain the city's capacity to prevent and reduce homelessness and its impacts on the community.

Strategy #2

Coordinate, collaborate and support local efforts and organizations working to address homelessness in Carlsbad.

Strategy #3

Retain, protect and increase the supply of housing and other affordable living options in Carlsbad.

Strategy #4

Be active in external policy issues to influence strategies and impacts to the city and region.

Strategy #1

Develop and maintain the city's capacity to prevent and reduce homelessness and its impacts on the community.

Initiative 1.1	Develop and maintain internal homeless services infrastructure.
Initiative 1.2	Develop and maintain programs to support people finding a home and prevent households from entering homelessness.
Initiative 1.3	Coordinate homelessness response between city departments to maximize effectiveness and efficiency.
Initiative 1.4	Transparently share data to improve decision-making and communication.

Strategy #1*

Develop and maintain the city's capacity to prevent and reduce homelessness and its impacts on the community.

**New initiatives are highlighted in green.*

Initiative 1.1
Develop and maintain internal homeless services infrastructure.

a.	Maintain staff dedicated to homeless services and homeless outreach.
b.	Maintain abandoned trash and encampment clean-up efforts, ensuring coordination and compliance with regional guidance.
c.	Identify one-time and ongoing funding sources.
d.	Continue to evaluate and monitor city services and programs to ensure we identify gaps and meet the needs of the community.

Initiative 1.2
Develop and maintain programs to support people finding a home and prevent households from entering homelessness.

a.	Increase the available case management for people experiencing homelessness and streamline internal referrals to case management.
b.	Maintain rapid rehousing options to improve wait time to more permanent housing.
c.	Increase and support prevention and diversion efforts to decrease the inflow of people into homelessness.
d.	Develop and maintain robust and impactful outreach to persistently identify, engage and assess both the immediate needs and long-term housing needs of unsheltered people experiencing homelessness.
e.	Identify opportunities to add peer support components to programs and multi-disciplinary teams.
f.	Improve coordination and access to employment and benefits for people experiencing homelessness.
g.	Develop a plan to address the increasing number of people and families living in vehicles.

h.	Maintain a limited-stay motel voucher program as a resource to bridge housing.
i.	Design a Carlsbad City Library program to assist residents at the La Posada de Guadalupe homeless shelter with education and literacy opportunities.
j.	Investigate barriers to people accessing shelter or permanent housing and create programs as appropriate to alleviate found barriers.

Initiative 1.3
Coordinate homelessness response between city departments to maximize effectiveness and efficiency.

a.	Streamline processes for city departments to coordinate homelessness response in a more effective manner.
b.	Develop and provide training on homelessness topics, resources and interactions for internal departments that are in contact with people experiencing homelessness.
c.	Develop a proactive HOT route and schedule to monitor sensitive public areas such as water inlets and ensure they are not being impacted by encampments.
d.	Update HIPAA documentation and procedures to allow emergency services to access more appropriate crisis response options.

Initiative 1.4
Transparently share data to improve decision-making and communication.

a.	Survey residents, people experiencing homelessness and service providers to better understand and measure qualitative community experiences.
b.	Compile and publish key data that provides a comprehensive understanding of homelessness in Carlsbad.
c.	Provide updates to the community on progress within the Homeless Response Plan and City Council goal.
d.	Coordinate with the Regional Task Force on Homelessness to better inform planning efforts and maximize volunteer support for the annual Point in Time Count within Carlsbad.
e.	Remain in the Homeless Management Information System (HMIS) Trust Network and utilize HMIS data to inform decisions.
f.	Continue to educate the community on the city's efforts related to homelessness and streamline communication pathways for reporting concerns.

Initiative 1.4
Transparently share data to improve decision-making and communication.

g.	Identify unified and consistent city messaging and responses regarding homelessness

Initiative 1.5
Coordinate the city's funding sources to ensure optimization and maximize effectiveness.

a.	Update CDBG policies and procedures to allow funding allocations in alignment with the Homelessness Action Plan.
b.	Develop a Permanent Local Housing Allocation funding strategy in alignment with the Homelessness Action Plan and eligible uses.
c.	Provide updates to the community on progress within the Homeless Response Plan and City Council goal.
d.	Coordinate with the Regional Task Force on Homelessness to better inform planning efforts and maximize volunteer support for the annual Point in Time Count within Carlsbad.
e.	Continue to educate the community on the city's efforts related to homelessness and streamline communication pathways for reporting concerns.

Strategy #2

Coordinate, collaborate, support and build capacity within local efforts and organizations working to address homelessness in Carlsbad.

Initiative 2.1	Coordinate the efforts of the organizations working with people experiencing homelessness in the City of Carlsbad.
Initiative 2.2	Develop partnerships within the city to support people at risk of and experiencing homelessness.

Strategy #2*

Coordinate, collaborate, support and build capacity within local efforts and organizations working to address homelessness in Carlsbad.

**New initiatives are highlighted in green.*

Initiative 2.1
Coordinate the efforts of the organizations working with people experiencing homelessness in the City of Carlsbad.

a.	Conduct monthly case conferencing meetings that include prioritized case evaluation and trainings on resources and best practices.
b.	Maintain a comprehensive privacy protected By Name List containing real-time data about all people experiencing homelessness in the City of Carlsbad.
c.	Develop a multi-disciplinary team model and process to coordinate the work and roles of different community organizations serving the same clients.
d.	Leverage existing city owned and community spaces to connect with and provide services to people experiencing homelessness.
e.	Evaluate the development of a regional street medicine program in the city or North Coastal area.

Initiative 2.2
Develop partnerships within the city to support people at risk of and experiencing homelessness.

a.	Develop partnerships with faith-based and community groups to collaborate on homelessness efforts to reduce duplication and mitigate community impacts.
b.	Coordinate with community-based organizations to develop a fund that allows for community contributions towards homelessness services.
c.	Partner with outside agencies around victim advocacy to prevent and divert survivors of domestic violence from becoming homeless.
d.	Continue to enhance housing-focused services at La Posada through added staff capacity, technical assistance and training.
e.	Provide support to Catholic Charities with expansion efforts at La Posada.

Initiative 2.2
Develop partnerships within the city to support people at risk of and experiencing homelessness.

f.	Support Catholic Charities to increase the CUP allowed bed count within the existing La Posada buildings.
g.	Develop a plan to coordinate with local hospitals, jails and other interim placements to connect individuals exiting without permanent housing to support and to prevent people from exiting to the streets whenever possible.
h.	Expand access to non-emergency healthcare through more accessible care, including at La Posada, and by creating more connections to referral pathways.

Strategy #3

Retain, protect and increase the supply of housing and other affordable living options in Carlsbad.

Initiative 3.1	Retain existing affordable housing units and increase the housing options available to people experiencing homelessness.
Initiative 3.2	Identify and implement both short- and long-term innovative solutions.

Strategy #3*

Retain, protect and increase the supply of housing and other affordable living options in Carlsbad.

**New initiatives are highlighted in green.*

Initiative 3.1
Retain existing affordable housing units and increase the housing options available to people experiencing homelessness.

a.	Explore options for homelessness preferences in future affordable housing developments.
b.	Evaluate alternate shelter and housing options to address high rent rates and limited housing inventory: Tiny homes, motel or apartment conversion, Single Room Occupancy units, shared housing and adding shelters for women and families.
c.	Secure supportive services for homeless dedicated Housing Choice Vouchers.
d.	Maintain and monitor a list of affordability restriction time periods for affordable housing within the city and take steps to extend affordability for any properties approaching the end of the restriction period.
e.	Explore how any city owned properties can be used for low income or supportive housing before they are designated for other uses as may be appropriate.
f.	Identify opportunities to prioritize beds in mental and behavioral health facilities as may be appropriate and necessary.

Initiative 3.2
Identify and implement both short- and long-term innovative solutions.

a.	Develop, implement, and maintain a landlord engagement program and active partnership with local independent living facilities, sober living homes and other housing options.
b.	Identify innovative projects which are eligible to be funded through the Permanent Local Housing Allocation.
c.	Explore projects that would be eligible for available funding sources.

Strategy #4

Be active in external policy issues to influence strategies and impacts to the city and region.

Initiative 4.1 Maintain an active role in external activities to expand local and regional solutions to homelessness.

Strategy #4

Be active in external policy issues to influence strategies and impacts to the city and region.

Initiative 4.1

Maintain an active role in external activities to expand local and regional solutions to homelessness.

a.	Remain up to date on legislation affecting homelessness, housing laws, policies, strategies and/or funding.
b.	Identify opportunities to influence and support legislation that aligns with Carlsbad's homelessness strategies, efforts and plans.
c.	Participate in regional efforts and initiatives regarding homelessness.
d.	Pursue collaborative approaches, when feasible, that contribute to capacity and/or resources in the region.

Data/tracking progress

As the Homelessness Action Plan is implemented the city will use multiple measurements to evaluate effectiveness, monitor progress and inform decision making. Homelessness is a fluid issue and requires a variety of data indicators to tell the story of homelessness in our community. As a result, the city will continue to report on a variety of data points to inform the City Council and the public about the progress the city is making toward its homelessness goal. City staff anticipates formally reporting out progress semi-annually. Data will be obtained from the following sources:

Point in Time Count

The annual Point in Time Count is one data source to gauge the year-over-year trends and approximate the number of people experiencing homelessness in Carlsbad. Each year, the count is conducted over a four-hour period in the early morning to collect data on homelessness in the region. While it does not give the complete picture on how many people experience homelessness in Carlsbad throughout the year, it does provide a snapshot of the minimum number of homeless persons there are in Carlsbad on a given night. It is one of the tools used nationally to assess progress each year toward the goal of reducing homelessness and is often used for funding decisions.

Homeless Management Information System

The Homeless Management Information System records client-level information on the characteristics and service needs of people experiencing homelessness. It allows for all service providers to share information and accurately track the total number of unduplicated clients who are being served in the City of Carlsbad. The system provides real-time data that show the inflow versus outflow of individuals experiencing homelessness in Carlsbad and can be used to track the outcomes of individuals in the homeless system of care. All city-funded homeless service providers are required to enter data into the Homeless Management Information System and provide the city with monthly data reports.

Housing Inventory Count

The Housing Inventory Count is an annual HUD required inventory of the beds, units and programs designated to serve people experiencing homelessness. The Housing Inventory Count tallies the number of beds and units available on the night designated for the count by program type, and include beds dedicated to serve persons who are homeless as well as persons in Permanent Supportive Housing.

By-Name List

A By-Name List is a comprehensive list of every person in a community experiencing homelessness, updated in real time. By maintaining a By-Name List, communities are able to track the ever-changing size and composition of their homeless population.

Carlsbad Help App

The Carlsbad Help App is an internally developed reporting tool which allows the city track interactions with people experiencing homelessness and send referrals between departments.

Measurable objectives/benchmarks

The following measurable objectives/benchmarks will be used to track program progress. A description of each measurement is included in Appendix C.

Number of people experiencing homelessness

- The inflow and outflow of people accessing homeless service programs
- The number of unduplicated people experiencing homelessness encountered
- The Point in Time Count numbers

Assistance provided to people experiencing homelessness

- The number of people experiencing homelessness that obtained housing
- The number of placements in shelter or other temporary programs
- Newly homeless/returns to homelessness

Availability of affordable housing and shelter

- Shelter capacity
- New affordable units available for extremely low income
- New supportive housing available for people with severe service needs

Impacts of homelessness on the community

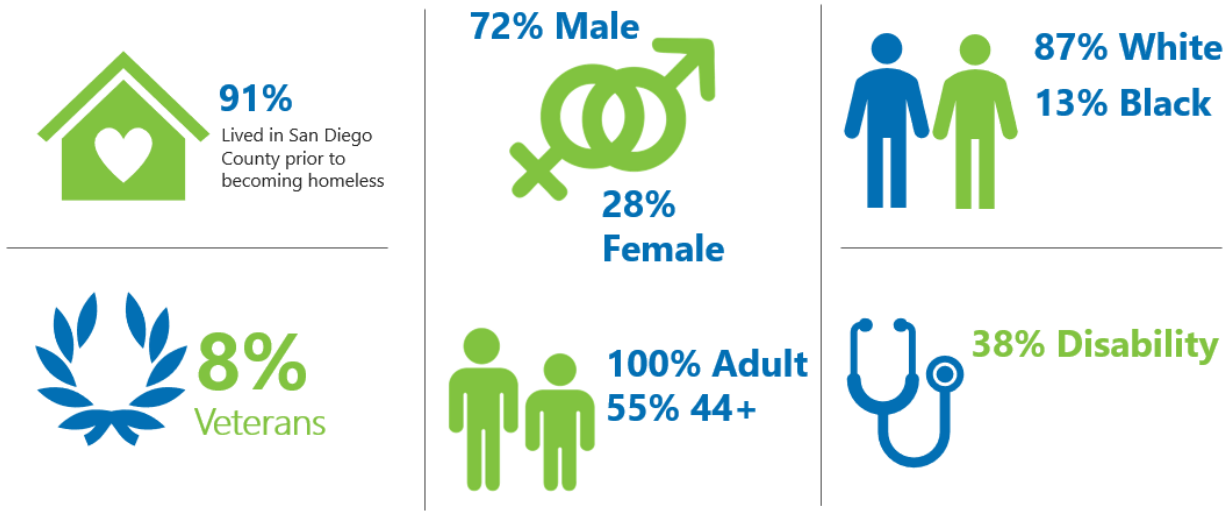
- Calls for service
- Abandoned trash and encampments
- Community opinion survey of residents

APPENDICES

A. POINT IN TIME COUNT DATA
B. COORDINATION WITH CITY DEPARTMENTS
C. BENCHMARK EXPLANATIONS AND DEFINITIONS

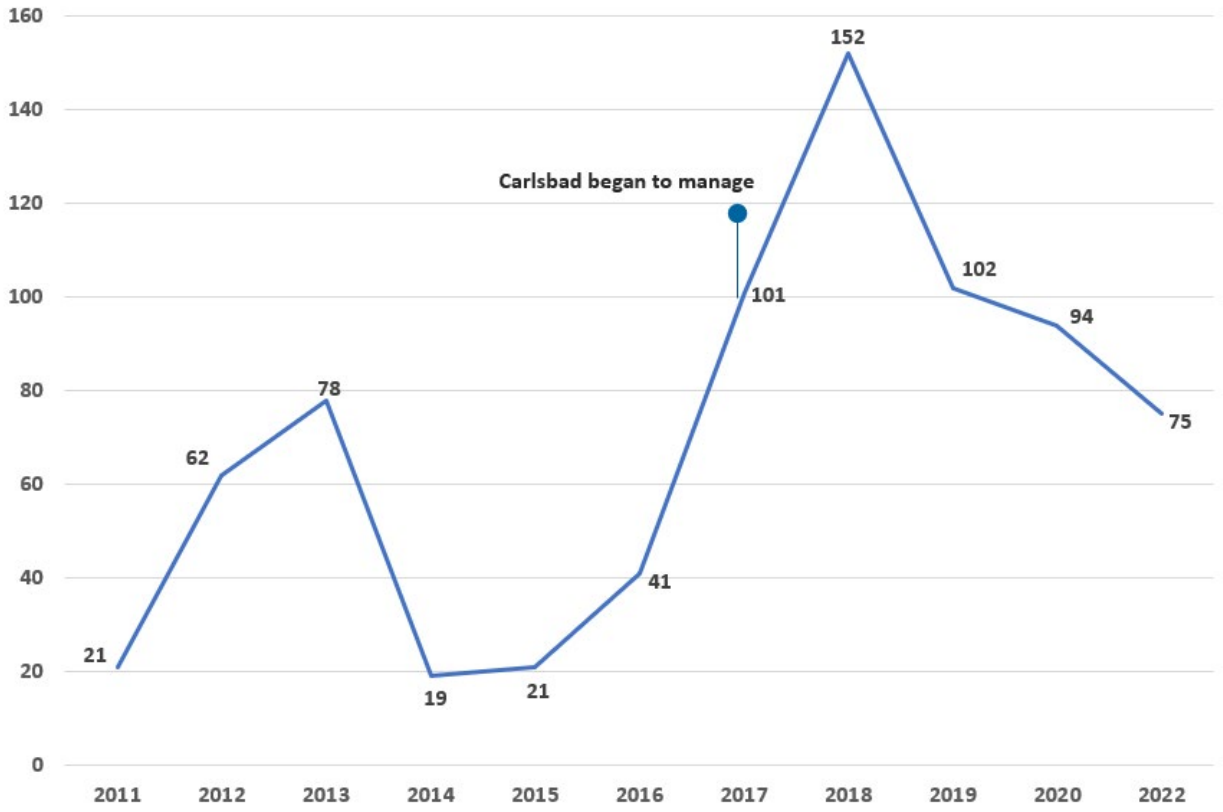
POINT IN TIME COUNT DATA

Carlsbad's Homeless Population*



*Data is from the 2022 Point in Time Count.

Point in Time Count unsheltered data



*The Point in Time Count did not take place in 2021 due to COVID-19 precautions. The City of Carlsbad took over the Point in Time Count from an outside organization starting in 2017.

COORDINATION WITH CITY DEPARTMENTS

The city's Housing & Homeless Services Department will lead the implementation of the Homelessness Action Plan. Part of the success of this plan depends on all city departments understanding their roles in the strategic direction in support of the goal. The following table identifies additional city department roles related to homelessness in our community:

Department	Role
All departments	Communicate regularly with relevant departments to share information and collaborate on homelessness. Maintain alignment within the city on actions and messaging regarding homelessness.
Library & Cultural Arts	Provide community spaces for education, meetings, outreach and similar community involvement. Collect data and share information and insights about the homeless population using library services, such as counting attendance at programs specifically designed for the homeless population and tracking numbers of resources and referrals. Develop programming, share external opportunities and community partnerships that benefit individuals experiencing homelessness. Connect individuals experiencing or at risk of homelessness with helpful resources.
Parks & Recreation	Provide community spaces for education, meetings, outreach and similar community involvement. Coordinate with city departments to leverage funding and programs for people experiencing homelessness. Identify strategies for operational areas being impacted by homelessness to better serve all patrons.
Public Works	Promote public safety and environmental sustainability by maintaining public spaces. Oversee coordination of abandoned trash cleanup and disposal of hazardous materials. Coordinate reporting of efforts to the San Diego Water Board through the Water Quality Improvement Plan Annual Reports.
Fire	Provide emergency medical services to homeless residents. Assist with connecting residents experiencing homelessness to local services and programs. Coordinate with the Police Department, local hospitals, non-profit services, MCRT and PERT clinicians to stay apprised of resources and provide comprehensive care.
Police	Provide a balance of compassionate outreach and enforcement through the Homeless Outreach Team. Provide resources to the homeless community seven days a week while also addressing the general community's complaints and concerns related to quality of life issues and illegal conduct.
City Attorney	Provide legal guidance, advice and insight around homeless related issues. Conduct legal review of homeless related contracts, grants, plans and programs. Assist with drafting and reviewing new policies and ordinances to address and limit, where necessary, homeless impacts on the community. Advise the Homeless Outreach Team and prosecute criminal offenses or pursue other enforcement as appropriate.

Housing & Homeless Services	Develop planning documents and take lead on coordination of the Homelessness Action Plan. Provide administrative oversight, including contracting and compliance, of Housing & Homeless Services funded programs. Regularly coordinate with community service providers and local health and government agencies. Pursue funding opportunities, as appropriate, to support the city in addressing homelessness. Assist other departments with preparing, evaluating, implementing and reporting out on data, policies and programs related to homelessness, such as those in the Housing Element. Oversee and maintain programs which assist with addressing homelessness such as the Community Development Block Grant, Housing Choice Voucher and Affordable Resale programs.
Intergovernmental Affairs	Monitor legislation, recommend bill sponsorship opportunities and work with City Council Legislative Subcommittee for potential advocacy positions based on the city's Legislative Platform. Monitor grant opportunities that can support and further the city's Homelessness Action Plan.
Communication & Engagement	Facilitate two-way communication between the city and the community about city programs and services dedicated to reducing homelessness in Carlsbad. Support the Housing & Homeless Services Department in carrying out public involvement programs to gather community input when appropriate. Coordinate with department staff to develop timely, accurate and easy to understand information about the city's homeless response efforts for distribution through the city's communication channels to increase community awareness and government transparency.
Community Development	Coordinate on land use issues related to housing and homeless services identified in the Homelessness Action Plan and Housing Element. Work with related departments to implement and report out housing goals, programs, grants, data and accomplishments.

BENCHMARK EXPLANATIONS AND DEFINITIONS

City staff will track a number of data points to provide a comprehensive picture of the need, city efforts and impacts related to homelessness. The following is a description of each measurement. City staff will return to the City Council on a semi-annual basis to report on the below metrics.

Number of people experiencing homelessness

- The inflow and outflow of people accessing homeless service programs: Each month the city will use the Homeless Management Information System to determine the number of new people who have been added to the By-Name List by enrolling in a homeless service program (inflow) and the number of people who have exited the By-Name List by exiting a homeless service program (outflow) within the city. These numbers can demonstrate if homelessness is increasing or decreasing over time, monitor where people are coming from or leaving to, and can help to identify the rate of returns to homelessness.
- The number of unduplicated people experiencing homelessness encountered: Every quarter the city will use Homeless Management Information System data to determine the number of unduplicated clients served by all city-funded homeless services programs. This demonstrates how many people homeless services programs engage with each quarter and over the course of a year. This is a cumulative data point and does not reflect how many people experiencing homelessness are in Carlsbad at one time.
- The Point in Time Count Numbers: Each year the city will collaborate with the Regional Task Force on Homelessness to oversee the Point in Time Count within the city. The Point in Time Count number provides an idea of general trends year-over-year and provides an indication of the minimum number of people experiencing homelessness on a given night.

Assistance provided to people experiencing homelessness

- The number of people experiencing homelessness that obtained housing: Homeless Management Information System data will be used to track the number of people who exit homeless service programs to housing destinations. This metric will identify how many people are permanently exiting homelessness each month.
- The number of placements in shelter or other temporary programs: Homeless Management Information System data will be used to track the number of people who enter shelter or other temporary programs. This metric will identify how many people are moving from being unsheltered to sheltered each month.
- Newly homeless/Returns to homelessness: Homeless Management Information System data will be used to determine the number of people who are newly homeless or were previously homeless and exited to a permanent housing destination and have returned to homelessness and accessed homeless services. This metric may provide insight into how many people are homeless for the first time as well as the effectiveness of homeless service programs and how services may need to be strengthened or adjusted.

Availability of affordable housing and shelter

- Shelter capacity: The city will use the Housing Inventory Count and Homeless Management Information System data to track the shelter capacity available to people experiencing homelessness in Carlsbad. An increase in shelter capacity could indicate that more shelter beds have been developed or there has been a decreased need for shelter. Shelter capacity can be an important component to the homeless service system because it provides a stable sheltered place for people experiencing homelessness to stay and work with service providers to identify permanent housing.
- New affordable units available for extremely low-income persons: The city will track the number of units available for extremely low-income persons. An increase in units for extremely low-income persons provides more opportunities for people living in poverty to maintain housing or exit homelessness.
- New supportive housing available for people with severe service needs: The city will use the Housing Inventory Count and Homeless Management Information System data to track the number of supportive housing units available to people experiencing homelessness with severe service needs in Carlsbad. An increase in supportive housing capacity could indicate that more housing units have been developed or there has been a decreased need for supportive housing. Supportive housing is critical to ending homelessness for the people with the most severe service needs in the community.

Impacts of homelessness on the community

- Calls for service: Each quarter the city will use the city-designed Help App to determine the proactive and police dispatched called for service related to homelessness. Calls for service do not necessarily indicate need or progress. The Police Department tracks reactive calls based on complaints as well as proactive calls initiated by officers. A decrease in reactive calls could indicate there are fewer complaints being received. Proactive calls indicate the efforts to conduct outreach and enforcement. A fluctuation in proactive calls could mean there is a change in need or effort. For example, if there are fewer individuals experiencing homelessness there could be fewer proactive activities based on need, but it could also mean that there is less proactive activity based on resources. Calls for service will be tracked for informational purposes and city staff will provide a qualitative description along with likely reasons for the fluctuation in calls for service.
- Abandoned trash and encampments: Each quarter the city will compile data received from the city contractor related to homelessness encampment and abandoned trash cleanups. The city contracts for consistent days of cleanup per month. If the number of days or encampments cleaned up decreases, it could mean that there is a decreased need. A decrease in this measurement would likely be positive.
- Community survey of residents on the impacts: Each year the city will conduct a survey of residents which provides an opportunity for the community to provide feedback on their personal experience regarding the impacts of homelessness. This data helps the city to understand residents' perception, concerns and track progress with reducing community impact over time.

SEMIANNUAL REPORT
Reducing Homelessness

JULY 1 - DEC. 31, 2022

City of Carlsbad

During the first half of FY 2022-23, the City of Carlsbad achieved several important milestones towards its goal of reducing homelessness and its impacts on the community, which are detailed in this report.

City Council Goal

Enhance the quality of life for everyone in Carlsbad by adopting and implementing an updated Homelessness Response Plan that addresses the complex needs of individuals experiencing or at risk of experiencing homelessness in a compassionate and effective manner and reduces the impacts of homelessness on the community.

65

Transitioned to permanent housing

38

Shelter placements

381

Unduplicated contacts

23

Hotel voucher STAYS

Police calls for service

4,405

61

Encampment CLEANUPS

Data by Quarter

The table below shows how data compare between each quarter, along with cumulative data since July 2022. The same individual may have received more than one service and is reflected under each service category that applies to them (for example, the same individual may have received both a hotel voucher and later placed into permanent housing).

	Fiscal Year	Q1	Q2	Q3	Q4	YTD
Households transitioned to permanent housing*	2021-22	23	15	12	12	62
	2022-23	37	28			65
Unduplicated contacts**	2021-22	253	269	309	324	749
	2022-23	247	184			381
Police calls for service***	2021-22	1,542	2,169	2,585	2,701	8,997
	2022-23	2,548	1,857			4,405
Shelter placements	2021-22	28	29	39	14	110
	2022-23	21	17			38
Encampment cleanups	2021-22	10	7	16	17	50
	2022-23	33	28			61
Hotel voucher stays	2021-22	N/A	5	17	15	37
	2022-23	10	13			23
Shopping carts collected	2021-22	N/A	37	48	17	102
	2022-23	31	13			44

* This year's data includes exits from La Posada de Guadalupe emergency shelter that were not available for the previous year's data

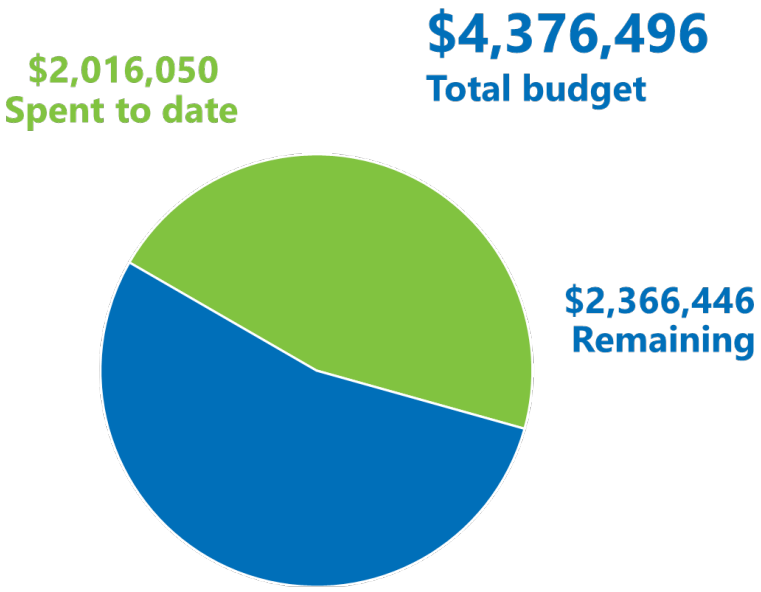
**134 new individuals were contacted during Q2 who were not contacted during Q1. The year-to-date total removes duplicate contacts.

***In FY 2022-23, Carlsbad Police officers went into the field for 4,405 homeless-related calls for service during the first two quarters, of which 2,276 calls were in response to a specific request or complaint and 2,129 were proactive department-initiated calls for service to help carry out city homelessness goals and enforce applicable laws.

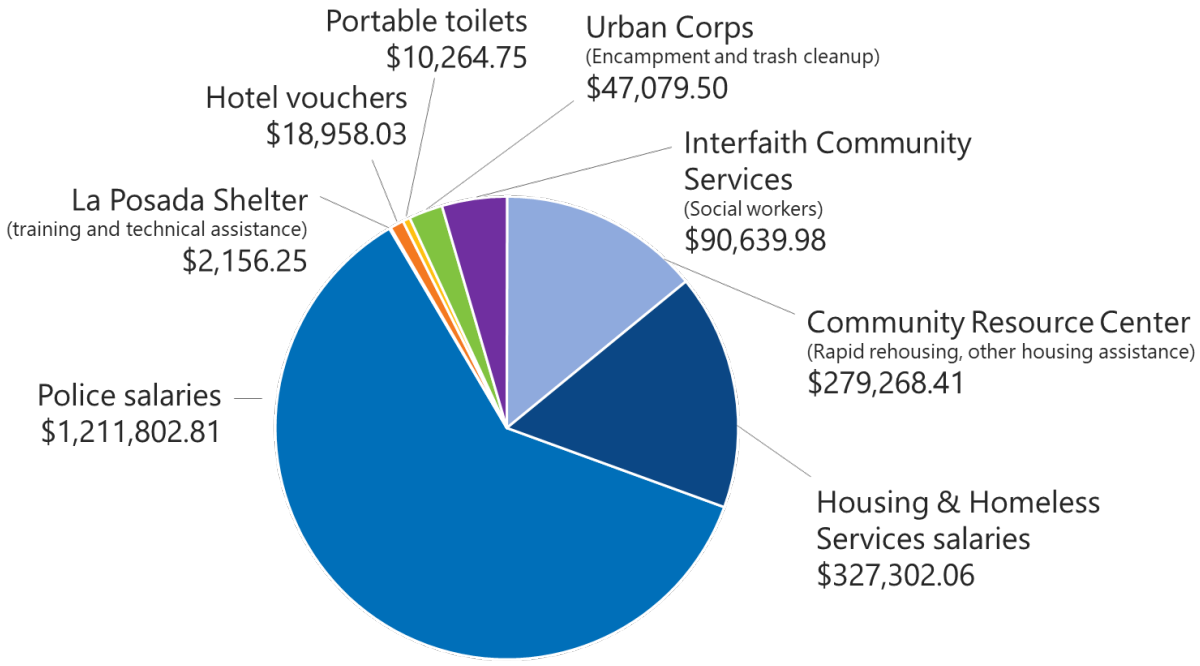
Expenditures

The City Council approved $4,376,496 in general funds to support the homeless goal during fiscal year 2022-23. This number includes carried forward encumbrances from fiscal year 2021-22 and two mid-year allocations.

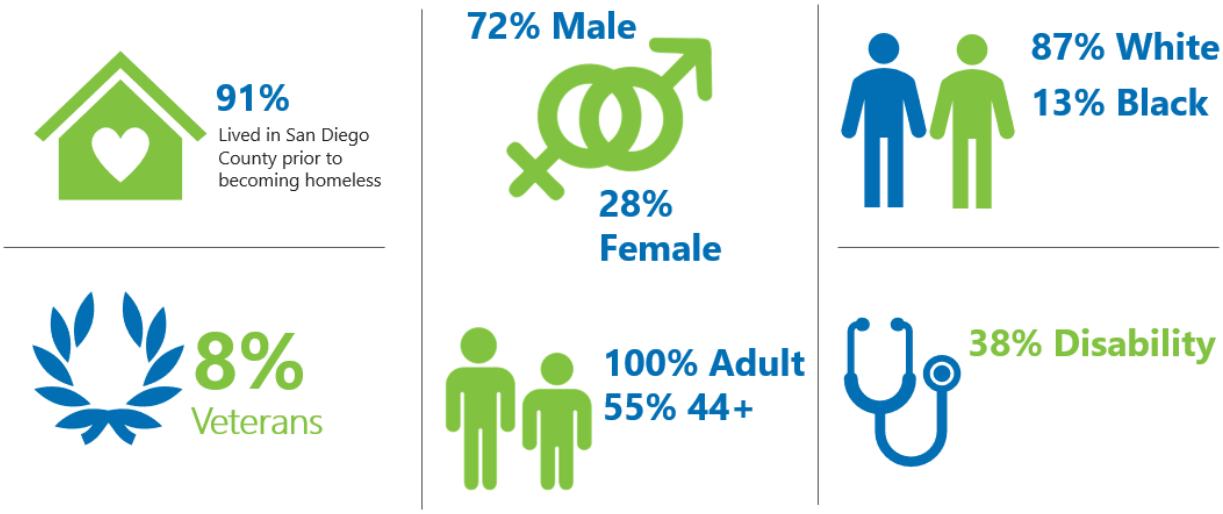
TOTAL BUDGET EXPENDITURES TO DATE



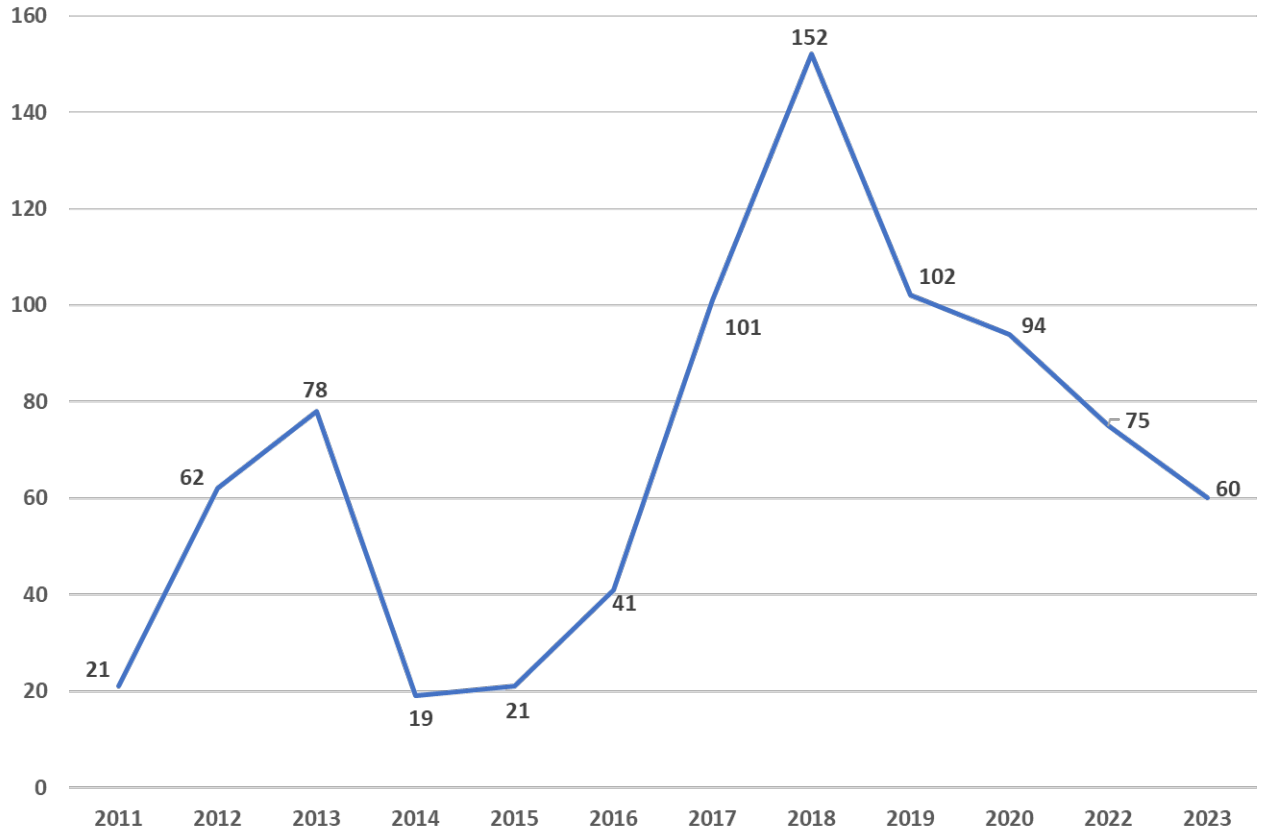
SPENDING BY CATEGORY



Carlsbad's Homeless Population*



Point-in-Time Count Unsheltered data**



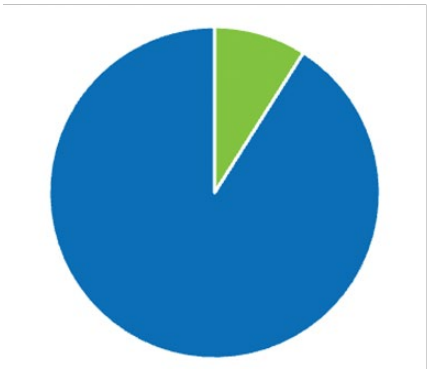
**This demographic data is from the 2022 Point-in-Time Count as this information has not been provided for 2023*
**The Point-in-Time Count did not take place in 2021 due to COVID-19 precautions.*

Public Safety

Homeless-Related Calls for Service

During the first and second quarters of FY 2023-24, Carlsbad Police went into the field for 4,405 homeless-related calls for service, which made up 8.5% of all calls for service between July 1 and Dec. 31, 2022. Of those, 2,276 calls were in response to a specific request or complaint and 2,129 were proactive department-initiated calls for service to help carry out city homelessness goals and enforce applicable law. Changes to the city's municipal code went into effect during November 2021, therefore officers have been more proactive to educate and enforce restrictions such as camping in public, trespassing and drinking in public parks.

PERCENTAGE OF CALLS FOR HOMELESS-RELATED SERVICES



8.5%
Related to homelessness

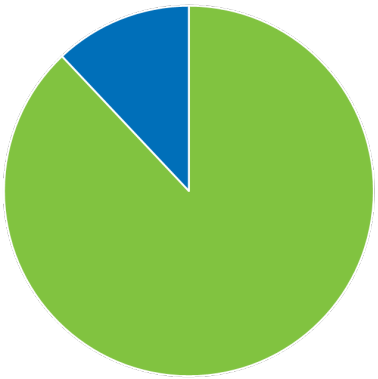
HOMELESS-RELATED STATISTICS BY CATEGORY

**These are the statistics related to the homeless population compared to the general population in Carlsbad. Mental health holds refer to when an individual experiencing a mental health crisis is hospitalized for 72-hour psychiatric care when they are evaluated to be a danger to themselves or others.*

Percentage of all calls for services	Q1	Q2	Q3	Q4
Homeless-related calls for services	10%	7%		
Homeless-related arrests	16%	16%		
Homeless-related citations	5%	5%		
Homeless-related mental health holds	3%	3%		

SERVICES

During the first half of the 2022-23 fiscal year, 88% of homeless persons contacted accepted some form of clinical intervention. This includes case management, assessment, care coordination, crisis intervention, program information, diversion and treatment planning.



88%
Accepted services

The Homeless Outreach Team officers and contract social workers provide a lot of other services in addition to clinical services.

Services accepted	Q1	Q2	Q3	Q4	YTD
Information only	226	45			271
Emergency shelter referral	37	71			108
Mail delivery	8	3			11
Transportation to services	10	7			17
Police transportation	28	9			37
Substance abuse treatment	5	30			35
ID assistance	7	4			11
Permanent or bridge housing referral	1	25			26
Benefits access (medical insurance, CalFresh program, VA benefits, etc.)	9	38			47
Other (appointment coordination, case management, blankets, etc.)	11	104			115
Food assistance	3	9			12
Hospital transport	3	1			4
Referrals to mental & physical health care	5	32			37
Personal needs assistance (clothing, phone, prescriptions, etc.)	5	4			9
Reunification travel assistance	1	8			9
TOTAL	359	390			749

Quality of Life

In late Sept. 2021 the City Council approved amendments to the city's municipal code to address public safety and quality-of-life concerns related to homelessness and public spaces. These new laws became effective Nov. 11, 2021. Changes addressed camping on public, private and open space property; obstruction of property, trespassing and disorderly conduct; and expanded the areas where open containers of alcohol are prohibited.

These amendments, along with other existing laws, provide police officers with adequate enforcement tools to ensure public safety and a decent quality of life for all people in Carlsbad. Police officers will continue to use their discretion to issue warnings and citations and make misdemeanor arrests for violations of the law. City staff will track data to gauge how the team balances the need to build rapport with the homeless community while holding them accountable and enforcing applicable laws.

Limited-Term Stay Motel Voucher Program

From July 1 through December 31, 2022, 23 households were issued a total of 141 nights in a hotel with a total expenditure of $18,958.03. Of the 23 households assisted, 11 were able to move on to other shelter or housing following their hotel stay.

Public Outreach

The city recognizes homelessness is a top concern of the community and understands the importance of outreach and engagement. Below is an overview of some of the outreach efforts implemented from July 1 to Dec. 31, 2022, to help keep the community informed and engaged about the city's efforts to reduce homelessness.

1 community presentation
3 internal focus groups

2 community newsletter updates

The Housing & Homeless Services Department partnered with the Police Department to present on a panel about Carlsbad's homeless services efforts hosted by the Rotary Club of Carlsbad. The Housing & Homeless Services Department also held three internal focus groups with city staff from departments whose duties intersect with homelessness to gather feedback to help create the city's new Homelessness Action Plan.

Staff also responded to hundreds of phone calls and emails from individuals experiencing homelessness, business owners, social service providers and members of the public.

Regional Partnerships

The City of Carlsbad believes in addressing homelessness with compassion and fairness. Here is a current list of services created to help those experiencing homelessness as well as to improve the quality of life of the community collectively.

San Diego Humane Society

The purpose of the San Diego Humane Society contract is to provide individuals experiencing homelessness with a safe place to temporarily board their animals when they are not able to bring them to treatment facilities or services. Staff have found this has been a primary barrier preventing people from accessing services. The contract provides short-term emergency boarding and emergency medical care for approximately 25 animals of persons experiencing homelessness – free of charge – so homeless individuals can access care and resources.

Rocket John Portable Restrooms and Handwashing Stations

The Rocket John contract provides four portable restrooms and handwashing stations and routine cleaning and maintenance in the downtown Village. The city first added these public bathrooms back in 2017 to combat the Hepatitis A Crisis in the homeless community. With COVID-19, the city added more restrooms and handwashing stations to promote health, sanitation and 24/7 access to clean water to individuals living unsheltered. One portable restroom has been removed based on community concern, so three portable restrooms are currently being provided.

Community Resource Center

The city continues to partner with the Community Resource Center to operate its rapid rehousing and employment and benefits contracts. The contracts provide case management, security deposit support, rental assistance, landlord advocacy, financial education, stabilization support, referrals to higher levels of care, benefits enrollment, job readiness support, resume building and employment connection. The Community Resource Center had 130 enrollments in its rapid rehousing and employment and benefit programs in the first half of FY2022-23. The center placed 28 households comprised of 42 individuals in housing during this time.

Interfaith Community Services

Interfaith Community Services is the current outreach and case management contractor for the City of Carlsbad's Homeless Outreach Team. Interfaith Community Services provides two licensed or master's level clinicians and one part-time licensed program manager. They provide coverage throughout the week offering outreach and case management in the field to individuals experiencing homelessness in Carlsbad. The clinicians engage, assess, plan and refer individuals to resources like housing, medical care, public benefits, mental health, substance use treatment and basic needs. During the first half of FY2022-23, Interfaith Community Services and the Homeless Outreach Team engaged with 223 unduplicated clients experiencing homelessness.

Non-City Funded Homeless Outreach

The County of San Diego and People Assisting the Homeless (PATH) each have a dedicated outreach worker in Carlsbad full-time. The outreach worker from PATH is specially trained in working with individuals or households with behavioral health needs. In addition, the county is providing benefits enrollment at Harding Community Center (bi-weekly) and Interfaith Service Center (weekly) to assist people enrolling in MediCal, CalFresh and General Relief programs.

Catholic Charities

The Catholic Charities Diocese of San Diego operates the La Posada de Guadalupe emergency shelter in Carlsbad. The shelter has the capacity to serve 50 single men experiencing homelessness. The city provides funding for staff, operations, training and technical assistance.

Urban Corps

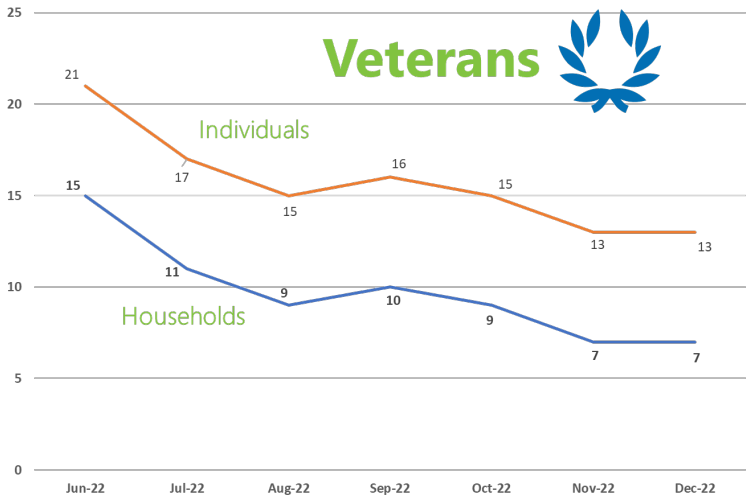
The city contracts with Urban Corps of San Diego for trash abatement, litter and encampment cleanup related to persons experiencing homelessness. Urban Corps works very closely with the city's Public Works Department and the Homeless Outreach Team, and they are responsible for responding and triaging any incoming cleanup requests based on health and safety for homelessness on city property. This contract provides clean-up services 3 days per week, 52 weeks a year, often including encampment clean-ups. When encampment clean-ups are not needed, the team provides regular cleaning services to areas commonly known to have abandoned trash and a high prevalence of homelessness related debris.

Case Collaboration/Case Conferencing

City staff work closely with staff from city funded programs and other partners working in homeless services. Staff facilitate a monthly case conferencing meeting to ensure all outreach efforts are effectively administered and coordinated, so that the most complex cases are prioritized and served. This collaboration also provides training and resource coordination. Trainings and coordination have included: Affordable housing training, mental health resources, senior housing options, CalAim programs, homelessness specific housing resources, San Diego Humane Society programs and Showers of Blessings. Community partners report gratitude for the level of cohesion and collaboration that exists within the agencies working on homelessness issues in Carlsbad.

Veteran Focus

City staff have been working closely with community partners to specifically support our veteran community in accessing resources and finding places to live. During the first half of FY2022-23, veteran homelessness decreased by 53% in our community. The city is partnering with the county to reduce veteran homelessness.



Additional Collaboration

The city collaborates with many stakeholders in the community to reduce homelessness. Homelessness impacts all aspects of a community, so it truly takes a village to solve it.

Success Stories

For each reporting period, staff will include one or more success stories of real people who were connected to community services as a result of the city's homeless response efforts. These are their stories, which they have given the city permission to share. Their names have been changed to protect their confidentiality.

Meet Jim

Male: 55+
Permanently housed: December 2022

Jim was living at the La Posada de Guadalupe shelter in the fall of 2022. The staff at La Posada referred him to the Community Resource Center Rapid Re-housing Program for support in finding a place to live. He was employed by a staffing agency and had the funds to pay his rent. The Community Resource Center helped him get into a senior community by paying for his deposit and some limited term rental assistance. He was then laid off by the staffing agency, and the Community Resource Center was able to help him maintain his housing. He was enrolled with the Community Resource Center's employment and benefits specialist, who helped him set up interviews for a new job with a higher wage. He is now doing well and continues to have support services through the Community Resource Center.

What worked

- **La Posada de Guadalupe** gave Jim a place to stay so he wouldn't be sleeping outside. While he was there, he was able to secure employment through a staffing agency.
- La Posada staff referred him to the Community Resource Center for help finding housing.
- The **Community Resource Center** helped Jim secure a place to live using the rapid re-housing program.
- **The Community Resource Center** continued to support him with its **Employment & Benefits Program** after he lost his job and needed a new one to continue paying his rent.

The Richardson Family

Family of 3 siblings
Reunified with family: November 2022

A family of five, two parents and three adult children, lived out of their vehicle in the Village area. The parents each had a disabling medical condition and the three adult children suffered from mild cognitive disabilities. The family lived off a very minimal fixed income. The family was contacted regularly by the Police Departments Homeless Outreach Team (HOT) and the Interfaith Social Workers. They used services like meals with Feeding All God's Children, showers at Showers of Blessings, and an occasional gas card, but remained hesitant to referrals for housing options. The mother passed away and the father ended up hospitalized long-term which left the siblings to fend for themselves.

HOT continued to contact the children on a regular basis, exploring options for their situation and working to encourage them to accept services that could improve their quality of life. One of the siblings found a job to help sustain the family but was seriously injured after being hit by a car while riding a bicycle to work. The family eventually lost the vehicle they were living in due to mechanical issues.

In November of 2022, the lack of shelter from their vehicle led the siblings to inform HOT about an aunt on the East Coast who they believed might be willing to help them. HOT worked with the Interfaith social worker to explore this option. After confirming the aunt was willing to help, the siblings were temporarily housed in a motel to facilitate family reunification. Travel arrangements were made with the assistance of a local nonprofit social service agency, and all three siblings returned to the East Coast to live with family. Interfaith confirmed their safe arrival.

What worked

- Local resources were able to meet basic needs for the family.
- The **Homeless Outreach Team** continued to interact with the family and offer support.
- When the family decided to pursue a reunification plan, the **Interfaith Community Services** social worker was able to connect them with resources and help the family reunite with a relative.

Overcoming Challenges

Staff have experienced some challenges around the implementation of the City Council's goal to reduce homelessness. Some of these include:

Limited Housing Resources

There is limited emergency shelter, permanent supportive housing, available affordable housing and general housing options in North County and San Diego.

Staff Vacancies

There have been transitions and position vacancies on the Housing & Homeless Services Department, Homeless Outreach Team and social worker team. These vacancies have caused an increase in workload on the team. However, we remain on track with the implementation of the Homelessness Action Plan.

Limited Shelter for Women and Seniors

Outreach workers, police homeless outreach officers and city staff have experienced an influx in single females over the age of 60 experiencing homelessness for the first time. Staff are collaborating to identify accessible shelter and housing options for this population. General communal shelters are not always an option due to extremely limited availability, health risks and mobility needs.

Upcoming Work

City staff have several projects on the horizon:

- The Department of Housing and Homeless Services is continuing to provide support and monitor the progress on the La Posada de Guadalupe shelter expansion.
- Staff are in the process of enhancing the city's rapid-rehousing program using funds from the new HUD CoC grant in partnership with the Community Resource Center.
- With the approval of the City Council's FY 2023-24 operating budget, staff are working to execute agreements for the activities identified in the Homelessness Action Plan Funding Plan.
- A partnership is being developed with the Regional Task Force on Homelessness to increase training opportunities for Carlsbad service providers.
- Staff are collaborating across departments to identify recommended program options related to opioid settlement funding for the City Council's consideration.
- Staff are working diligently across departments to implement a data dashboard for homeless services within the city.

Community-Police Engagement Commission

Staff Report

Meeting Date: July 10, 2023

To: Community-Police Engagement Commission

From: Sheila Cobian, Director of Legislative & Constituent Services

Staff Contact: Sheila Cobian, Director of Legislative & Constituent Services
sheila.cobian@carlsbadca.gov, 442-339-2917

Subject: Approval of the Community-Police Engagement Commission Regular Meeting Schedule

District: All

Recommended Action

Review and adopt a resolution approving the Community-Police Engagement Commission Regular Meeting Schedule as proposed by staff.

Executive Summary/ Discussion

Staff are asking the Commission to approve the 2023/2024 schedule for regular Community-Police Engagement Commission meetings.

Per the Carlsbad Municipal Code, the Community-Police Engagement Commission shall establish a regular time and place of meetings and shall hold not less than one meeting per quarter. Adopting the calendar by resolution meets the requirements of the Brown Act, the state's open meeting law (California Government Code Section 54954), and provides the Commission the opportunity to increase notification to the public of its scheduled regular meetings. Special meetings can still be called as needed by providing 24-hour notice before the time of the special meeting.

All regular meetings will be scheduled to take place at 2 p.m. at the Council Chamber at City Hall at 1200 Carlsbad Village Drive.

Fiscal Analysis

This action has no fiscal impact.

Environmental Evaluation

This action does not require environmental review because it does not constitute a project within the meaning of the California Environmental Quality Act under California Public Resources Code Section 21065 in that it has no potential to cause either a direct physical change or a reasonably foreseeable indirect physical change in the environment.

Exhibits

1. Community-Police Engagement Commission resolution

RESOLUTION NO. _____

A RESOLUTION OF THE COMMUNITY-POLICE ENGAGEMENT COMMISSION OF THE CITY OF CARLSBAD, CALIFORNIA, ADOPTING A REGULAR MEETING SCHEDULE

WHEREAS, the Community-Police Engagement Commission of the City of Carlsbad, California was established on December 13, 2022; and

WHEREAS, Carlsbad Municipal Code Section 2.15.020(G) requires the Commission to meet in accordance with its approved regular meeting schedule.

NOW, THEREFORE, BE IT RESOLVED by the Community-Police Engagement Commission of the City of Carlsbad, California, as follows:

1. That the above recitations are true and correct.
2. That the regular meeting schedule in Attachment A is adopted.

PASSED, APPROVED AND ADOPTED at a Special Meeting of the Community-Police Engagement Commission of the City of Carlsbad on the __ day of _____, 2023, by the following vote, to wit:

AYES:

NAYS:

ABSTAIN:

ABSENT:

_____
Chair

_____
FAVIOLA MEDINA, City Clerk Services Manager

2023

COMMUNITY-POLICE ENGAGEMENT COMMISSION MEETING CALENDAR

January

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2 p.m. Community-Police Engagment Commisison Meetings

City Holiday, City Offices Closed

2024

COMMUNITY-POLICE ENGAGEMENT COMMISSION MEETING CALENDAR

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2 p.m. Community-Police Engagment Commisison Meetings

City Holiday, City Offices Closed