



CALIFORNIA PUBLIC RECORDS ACT ("PRA")

PURPOSE OF THE PRA

Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Government Code § 6250).

"Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency (including school and community college districts) regardless of physical form or characteristics. (Government Code § 6252).

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 provided in the PRA. (Government Code § 6253).

Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law. (Government Code § 6253).

Requests for Public Records

A. INITIAL RESPONSE/DETERMINATION LETTER

- Within 10 days from receipt of a request for public records, a local agency must make an initial determination of whether it has disclosable documents in its possession responsive to the request. It must notify the requesting party as to the records it can provide, and the estimated date the records will be available. (Note: The agency is not required to produce public records within 10 days.) (Government Code § 6253).
- In "unusual circumstances" the time limit for the local agency's initial determination can be extended for up to an additional 14 days. (Government Code § 6253).
- It is always best to set a reasonable timeline for the production of records that accounts for time and staffing necessary to collect and prepare the records (e.g., records stored in off-site location, intervening summer or holiday break, necessity of record redaction, etc.).
- Local agencies are not required to create records in response to PRA requests; however, in some situations, compiling records and creating a summary is reasonable and appropriate.
- The PRA requires that records be produced "promptly." This usually means about 2-3 weeks, taking into account the collection of records, redaction and copying. Due to factors such as volume or complexity, the time needed for production should be evaluated on a case-by-case basis.

B. OBLIGATION TO ASSIST WITH CLARIFICATION

- Local agencies are required to assist requestors to identify responsive records, describe the technology and location of the records and help requestors overcome any basis for denial of the request. (Government Code § 6253.1).
- This only applies to clarifying requests for records (i.e., if the local agency cannot reasonably interpret the request, even after attempts at clarification, it is under no obligation to produce records).
- Often, a good faith discussion with the requestor can help to narrow the scope of the requests and mutually resolve the matter without unnecessary waste of time and resources.
- A local agency's PRA obligations are satisfied if it is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requestor.

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C. RESPONSE LETTER

- The response letter notifies the requestor that the records are available.
- The letter should also identify the number of documents (pages) responsive to the request.
- The letter should set a price for the copying costs. The PRA provides that the records shall be made available upon payment of fees covering direct (actual) costs of duplication. (Note: "Direct costs" do not include the personnel costs related to collecting and duplicating records. Duplication costs should generally not exceed \$.10 per page.)
- Depending on the size and nature of the request, it is typically a good idea to let the requestor know the copying costs in the initial response.
- It is recommended that the records be held at the local agency office and released upon payment of copying costs. (In certain circumstances, it may be easier to waive the copying costs).
- Alternatively, if a request is for voluminous amounts of records, it may be preferable to have the requestor come to the office to inspect and review the records prior to copying.

D. REDACTION

- Whether or not redaction is required depends on the nature of the records and/or information (e.g, privileged and/or legally exempt information, information regarding identifiable student(s), personnel records).
- Redaction is dealt with on a case-by-case basis.

E. EXEMPTIONS

- Certain documents and/or information are exempt from production under the PRA. (Government Code § 6254). Exemptions include:
 - Drafts, notes, intra-agency memoranda not created in the ordinary course of business.
 - Pending litigation.
 - Records protected by attorney/client privilege.
 - Personnel, medical or other similarly private records.
 - Student records.

F. MISCELLANEOUS

- *Delay of Record Production* – If there is a problem in producing the records according to the timeline previously given to a requestor, it is a good idea to notify the requestor that there will be a new timeline for production.
- *Electronic Format* – The threshold obligation is to produce records in their original format, including electronic records. Note, in certain circumstances, the requestor bears the cost of producing a record in its electronic format. (Government Code § 6253.9).
- *PRA requests for employee disciplinary records, investigative reports and/or complaints against public employees* – Consult with legal counsel and treat on a case-by-case basis. Generally, complaints and/or charges of misconduct against a public employee can/must be disclosed if "the complaint is of a substantial nature and there is reasonable cause to believe the complaint or charge of misconduct is well-founded." (See *Bakersfield City School Dist. v. Superior Court* (2004) 118 Cal. App. 4th 1041, 1044; see also *BRV, Inc. v. Superior Court* (2006) 143 Cal. App. 4th 742.)
- *Balancing Test* – It is possible that records may be withheld 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 (e.g., records related to sensitive subject matter).
- *Reverse PRA Lawsuit* – A current/former employee has standing to object to a local agency decision to release records regarding the employee and may do so by filing a petition for writ of mandate. (See *Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal. App. 4th 1250.) Pointer: It is a good practice to notify current/former employees affected by a public records request prior to producing the records.

THIS GUIDE IS A SUMMARY ONLY AND NOT LEGAL ADVICE. WE RECOMMEND THAT YOU CONSULT WITH LEGAL COUNSEL TO DETERMINE HOW THIS MAY APPLY TO YOUR SPECIFIC FACTS AND CIRCUMSTANCES.

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