



California Public Records Act ("CPRA")

PURPOSE OF THE CPRA

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 § 7921.000; Cal. Const., art. I, § 3, (b)(1).)

"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 § 7920.530).

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 CPRA. (Government Code § 7922.525).

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 § 7922.525).

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 § 7922.535).
- 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 § 7922.535).
- The determination letter notifies the requester approximately when the records will be available. (Government Code § 7922.535).
- 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 CPRA requests; however, in some situations, compiling records and creating a summary is reasonable and appropriate.
- The CPRA 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 requesters to identify responsive records, describe the technology and location of the records and help requesters overcome any basis for denial of the request. (Government Code § 7922.600).
- Often, a good faith discussion with the requester 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 CPRA obligations are satisfied if it is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester.

C. 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).
- The response should identify the names and titles of each individual responsible for the decision to redact and/or withhold information and/or documents. (Government Code § 7922.540).
- Redaction is dealt with on a case-by-case basis and should be done in consultation with legal counsel.

D. EXEMPTIONS

- Certain documents and/or information are exempt from production under the CPRA. (Government Code §§ 7927.200, 7927.500, 7927.700, 7929.000).
- Common exemptions include:
 - Student records. (Government Code § 7927.705)
 - Records protected by attorney/client privilege. (Government Code § 7927.705)
 - Certain records related to pending litigation. (Government Code § 7927.200)
 - Personnel, medical or other similarly private records. (Government Code § 7927.700; Cal. Const., art. I § 3(b)(3))

E. MISCELLANEOUS

- Delay of Record Production - If there is a problem in producing the records according to the timeline previously given to a requester, it is a good idea to notify the requester 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 requester bears the cost of producing a record in its electronic format. (Government Code §§ 7922.570 - 7922.580).
- CPRA 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 should 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, 1044-1046; see also *BRV, Inc. v. Superior Court* (2006) 143 Cal. App. 4th 742.)
- Reverse CPRA Lawsuit - A current/former employee has standing to object to a local agency decision to release records containing complaints against an employee and/or allegations of the employee's misconduct 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.
- 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).
- Manageable Volume - Treat on a case-by-case basis. A public agency can raise an objection that a request is overbroad or unduly burdensome, or that documents cannot be located with reasonable effort. (See *City of San Jose v. Superior Court* (2017) 2 Cal. 5th 608, 627.) Pointer: It is good practice to engage in a good faith discussion with the requester to narrow the scope of the request.

THIS IS A 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