

Memorandum 2017-24

California Public Records Act Clean-Up: Proposed Organization

Last year, the Legislature directed the Commission¹ to conduct a clean-up of the California Public Records Act (“CPRA”)² and related provisions:

[T]he Legislature authorizes and requests that the California Law Revision Commission study, report on, and prepare recommended legislation as soon as possible, considering the commission’s preexisting duties and workload demands, concerning the revision of the portions of the California Public Records Act and related provisions, and that this legislation shall accomplish all of the following objectives:

- (1) Reduce the length and complexity of current sections.
- (2) Avoid unnecessary cross-references.
- (3) Neither expand nor contract the scope of existing exemptions to the general rule that records are open to the public pursuant to the current provisions of the Public Records Act.
- (4) To the extent compatible with (3), use terms with common definitions.
- (5) Organize the existing provisions in such a way that similar provisions are located in close proximity to one another.
- (6) Eliminate duplicative provisions.
- (7) Clearly express legislative intent without any change in the substantive provisions³

The Commission commenced the requested study earlier this year, determined that the study was “strictly nonsubstantive” in nature, and made a number of other preliminary decisions.⁴ As its next step, the Commission asked the staff to

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. Gov’t Code §§ 6250-6276.48.

3. See 2016 Cal. Stat. res. ch. 150 (ACR 148 (Chau)).

4. See Minutes (Feb. 2017), pp. 3-4; see also Memorandum 2017-5.

“prepare and present a tentative outline proposing a reorganization of the CPRA.”⁵

Attached for the Commission’s review is the tentative outline it requested. Also attached is the following new communication relating to this study:

Exhibit p.

- Jolie Houston, CPRA Committee of City Attorneys’ Dep’t of League of California Cities (2/14/17) 1

A few issues relating to the tentative outline are discussed below. Afterwards, we discuss the comments from the League of California Cities.

TENTATIVE OUTLINE

The attached outline suggests a possible reorganization of the CPRA and shows generally where each existing provision in the CPRA would be recodified. A number of points warrant discussion.

Location of the CPRA Within the Government Code

The CPRA is currently codified as “Chapter 3.5. Inspection of Public Records” in “Division 7. Miscellaneous” in “Title 1. General” in the Government Code. It is divided into two articles:

- “Article 1. General Provisions,” which contains the heart of the CPRA.
- “Article 2. Other Exemptions from Disclosure,” which contains a catalogue of references to CPRA exemptions located elsewhere in the codes.

To effectively reorganize the CPRA, it would be helpful to be able to divide the material now in “Article 1. General Provisions” into various subcategories, placing similar provisions together. That would further the legislative objective to “[o]rganize the existing provisions in such a way that similar provisions are located in close proximity to one another.”⁶

In the hierarchy of the Government Code, an “Article” is the lowest level heading used to organize code sections. Because an “Article” cannot be further subdivided, it would be difficult to effectively reorganize the CPRA in its current code location.

5. See Minutes (Feb. 2017), p. 4.

6. 2016 Cal. Stat. res. ch. 150 (ACR 148 (Chau)).

Instead, the tentative outline would place the entirety of the CPRA (all of “Chapter 3.5. Inspection of Public Records”) in a new division (“Division 10. Inspection of Public Records”) at the end of “Title 1. General” in the Government Code. This would make it possible to divide that material into “Parts,”⁷ “Chapters,” and “Articles” — enough subcategories to create a user-friendly organizational scheme.

In selecting this approach, the staff noted that the CPRA is currently located near several other chapters that pertain to public records:

- **“Chapter 3. Crimes Relating to Public Records, Documents, and Certificates” (Gov’t Code §§ 6200-6203).** This chapter contains a total of 3 short code sections.
- **“Chapter 3.01. Public Records Protection and Recovery” (Gov’t Code §§ 6204-6204.4).** This chapter contains a total of 5 short code sections.
- **“Chapter 3.1. Address Confidentiality for Victims of Domestic Violence, Sexual Assault, and Stalking” (Gov’t Code §§ 6205-6210).** This chapter consists of 16 code sections, some of which are lengthy and complex. The purpose of the chapter is “to *enable state and local agencies to respond to requests for public records without disclosing the changed name or location of a victim of domestic violence, sexual assault, or stalking, to enable interagency cooperation with the Secretary of State in providing name and address confidentiality for victims of domestic violence, sexual assault, or stalking, and to enable state and local agencies to accept a program participant’s use of an address designated by the Secretary of State as a substitute mailing address.*”⁸
- **“Chapter 3.2. Address Confidentiality for Reproductive Health Care Service Providers, Employees, Volunteers, and Patients” (Gov’t Code §§ 6215-6216).** This chapter consists of 13 code sections, some of which are lengthy and complex. The purpose of the chapter is “to *enable state and local agencies to respond to requests for public records without disclosing the residential location of a reproductive health care services provider, employee, volunteer, or patient, to enable interagency cooperation with the Secretary of State in providing address confidentiality for reproductive health care services providers, employees, volunteers, and patients, and to enable state and local agencies to accept a program participant’s use of an address designated by the Secretary of State as a substitute mailing address.*”⁹ Located next to this chapter is

7. There is precedent for using “Part” as a subheading within the Government Code. See “Division 3.6. Claims and Actions Against Public Entities and Public Employees” (Gov’t Code §§ 810-998.3).

8. Gov’t Code § 6205 (emphasis added).

9. Gov’t Code § 6215(f) (emphasis added).

“Chapter 3.25. Online Privacy for Reproductive Health Services Providers, Employees, Volunteers, and Patients (Gov’t Code §§ 6218-6218.05), which does not contain any provisions specific to public records.

- **“Chapter 3.3. Governmental Linguistics” (Gov’t Code § 6219).** This chapter contains only one short code section.

Moving the CPRA into a new division would separate it from these other chapters that relate to public records.

The Commission could eliminate that downside by relocating the content of Chapters 3, 3.01, 3.1, 3.2, and 3.3 into a new division (“Division 11. Other Laws Relating to Public Records”), which would be adjacent to proposed “Division 10. Inspection of Public Records.” That would significantly complicate its proposal, however, potentially requiring adjustment of numerous cross-references, consideration of material unrelated to *inspection of* public records, resolution of additional issues (e.g., should Chapter 3.25 be relocated as well?), and the like.

Instead, the Commission could:

- (1) Cross-refer to Chapters 3, 3.01, 3.1, 3.2, and 3.3 (or material in those chapters) where appropriate in the Commission’s Comments to code sections in the recodified CPRA.
- (2) Include one or more “signpost provisions” within the recodified CPRA, which would direct readers to the other chapters relating to public records.¹⁰

The staff believes this 2-prong approach would be by far the simplest and would be sufficient to mitigate the downside of relocating the CPRA.

Does the Commission agree with the concept of relocating the CPRA as proposed? If so, would it like to follow the 2-prong approach described above?

2017 Legislation

A number of pending bills relate to the CPRA. The attached outline does not attempt to address them.

Unless the Commission otherwise directs, **the staff will monitor the pending bills and suggest adjustments as necessary after the Legislature takes its Interim Recess and the Governor acts on all bills sent to him.**

10. The Commission could also use signpost provisions to help readers locate statutory material that could fit in more than one place in the CPRA reorganization. For example, the content of Government Code Section 6254.3 (personal information of agency employee) could fit in proposed “Chapter 10. Personal Information” or in proposed “Chapter 14. Public Employee or Official.” The Commission could put the statutory material in one of those chapters and a signpost provision in the other chapter.

Organizational Scheme

The tentative outline attempts to reorganize the CPRA in a clear, logical, user-friendly manner. Commissioners, stakeholders, and other interested persons should carefully review the proposed organizational scheme and consider whether it could be improved.

Comments on this matter would be very helpful. It would be ideal to hear them at or before the upcoming meeting, but they would also be useful afterwards.

COMMENTS FROM THE LEAGUE OF CALIFORNIA CITIES

On behalf of the CPRA Committee (“CPRA Committee”) of the City Attorneys’ Department of the League of California Cities (“the League”), Jolie Houston submitted a letter commenting on this study.¹¹ The League is “an association of 475 California cities united in promoting the general welfare of cities and their citizens”¹² Ms. Houston makes a number of different points.

Nonsubstantive Reform

First, Ms. Houston reports that the CPRA Committee “is concerned that, through no fault of the CLRC, the CPRA revision project might not be entirely non-substantive in nature.”¹³ The CPRA Committee and the League have found that despite “best efforts to ensure that changes are non-substantive, law revision ‘clean-up’ projects inevitably result in some arguably substantive changes.”¹⁴ The CPRA Committee “is concerned that these changes might result in an increase in litigation for public agencies.”¹⁵

Ms. Houston further states that the CPRA Committee “is particularly concerned with how the revision project might affect the application of existing case law and Attorney General opinions.”¹⁶ It therefore requests that the Commission’s proposed CPRA recodification “contain specific legislative intent language that provides that any changes made to the CPRA are not intended to supersede or modify existing case law or attorney general opinions in any way.”¹⁷ The CPRA Committee also expresses concern “about how this revision

11. Exhibit pp. 1-2.

12. Exhibit p. 1.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

project will affect or conflict with Proposition 59, the ‘sunshine amendment’ to the Constitution of California.”¹⁸

The CPRA Committee is right to believe that effectively achieving a purely nonsubstantive reorganization of the CPRA will require great care. However, the Commission has extensive experience in successfully accomplishing this type of reform, which presumably is why the Legislature entrusted it with this project and other such projects (like recodification of the entire Fish and Game Code).

As mentioned in the memorandum introducing this study, the Commission has developed a variety of techniques for ensuring that a recodification effects no substantive change.¹⁹ The Commission has already decided to use those techniques in this study.²⁰

Among those techniques would be the inclusion of provisions similar to the ones that the Commission included in its nonsubstantive recodification of the deadly weapon statutes:

§ 16005. Nonsubstantive reform

16005. Nothing in the Deadly Weapons Recodification Act of 2010 is intended to substantively change the law relating to deadly weapons. The act is intended to be entirely nonsubstantive in effect. Every provision of this part, of Title 2 (commencing with Section 12001) of Part 4, and every other provision of this act, including, without limitation, every cross-reference in every provision of the act, shall be interpreted consistent with the nonsubstantive intent of the act.

Comment. Section 16005 makes clear that the Deadly Weapons Recodification Act of 2010 has no substantive impact. The act is intended solely to make the provisions governing control of deadly weapons more user-friendly. For background, see *Nonsubstantive Reorganization of Deadly Weapon Statutes*, __ Cal. L. Revision Comm’n Reports __ (2009).

§ 16020. Judicial decision interpreting former law

16020. (a) A judicial decision interpreting a previously existing provision is relevant in interpreting any provision of this part, of Title 2 (commencing with Section 12001) of Part 4, or any other provision of the Deadly Weapons Recodification Act of 2010, which restates and continues that previously existing provision.

18. *Id.*

19. For a description of those techniques, see *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm’n Reports 217, 238-40 (2009).

20. Minutes (Feb. 2017), p. 3.

(b) However, in enacting the Deadly Weapons Recodification Act of 2010, the Legislature has not evaluated the correctness of any judicial decision interpreting a provision affected by the act.

(c) The Deadly Weapons Recodification Act of 2010 is not intended to, and does not, reflect any assessment of any judicial decision interpreting any provision affected by the act.

Comment. Subdivision (a) of Section 16020 makes clear that case law construing a predecessor provision is relevant in construing its successor in the Deadly Weapons Recodification Act of 2010.

Subdivisions (b) and (c) make clear that in recodifying former Sections 12000-12809, the Legislature has not taken any position on any case interpreting any of those provisions.

§ 16025. Constitutionality

16025. (a) A judicial decision determining the constitutionality of a previously existing provision is relevant in determining the constitutionality of any provision of this part, of Title 2 (commencing with Section 12001) of Part 4, or any other provision of the Deadly Weapons Recodification Act of 2010, which restates and continues that previously existing provision.

(b) However, in enacting the Deadly Weapons Recodification Act of 2010, the Legislature has not evaluated the constitutionality of any provision affected by the act, or the correctness of any judicial decision determining the constitutionality of any provision affected by the act.

(c) The Deadly Weapons Recodification Act of 2010 is not intended to, and does not, reflect any determination of the constitutionality of any provision affected by the act.

Comment. Subdivision (a) of Section 16025 makes clear that case law determining the constitutionality of a predecessor provision is relevant in determining the constitutionality of its successor in the Deadly Weapons Recodification Act of 2010.

Subdivisions (b) and (c) make clear that in recodifying former Sections 12000-12809, the Legislature has not taken any position on the constitutionality of any of those provisions.

Including provisions like these in the CPRA recodification should go a long way towards alleviating the concerns expressed by the CPRA Committee.

Because the CPRA Committee specifically expresses concern about the potential impact of recodification on the application of Attorney General opinions, however, it might be helpful to add statutory language that specifically refers to Attorney General opinions interpreting the CPRA or determining its constitutionality, not just judicial decisions interpreting the CPRA or determining its constitutionality. **Does the Commission agree in concept?** If so,

the staff will suggest implementing language for the Commission and interested persons to review later in this study.

Breadth of Study

At the February meeting, the Commission decided to begin this study by focusing “only on statutory provisions that are within the CPRA, or that cross-refer to the CPRA.”²¹ The Commission “deferred decision on whether to examine any other statutory provisions, such as those comprising the Richard McKee Transparency Act (Educ. Code §§ 89913-89919).”²²

The CPRA Committee believes that the current approach “is appropriate, and urges the CLRC to continue to *strictly contain* its study to the statutory provisions that are within the CPRA, or that specifically cross-refer to the CPRA.”²³ The committee cautions that combining the Richard McKee Transparency Act with the CPRA “might interject unnecessary confusion into the application of each Act.”²⁴

Article 2 of the CPRA

Article 2 of the CPRA (Gov’t Code §§ 6275-6276.48) is essentially a catalogue of CPRA exemptions that are not located within the CPRA. In the memorandum introducing this study, the staff pointed out that “the Commission will need to decide what to do with Article 2.”²⁵ The staff queried:

Should [the Commission] recommend that the Legislature retain and continue to update the article each legislative session? Should the provisions currently listed in Article 2 but located outside the CPRA be moved into the CPRA, thus separating them from the substantive material that currently surrounds them? Should Article 2 be repealed and replaced with another statutory tool that serves a similar function? Should Article 2 simply be repealed, without replacing it?²⁶

According to the CPRA Committee, “Article 2 of the CPRA is a useful tool for implementing the CPRA and thus serves its intended purpose.”²⁷ The CPRA

21. Minutes (Feb. 2017), p. 3.

22. *Id.*

23. Exhibit p. 2 (emphasis added).

24. *Id.*

25. Memorandum 2017-5, p. 10.

26. *Id.*

27. Exhibit p. 2.

Committee “would *strongly discourage* the CLRC from removing Article 2 or moving the provisions of law cited in Article 2 into the main text of the CPRA.”²⁸

It is helpful to know the CPRA Committee’s perspective on this matter. The attached tentative outline would not do either of the things the committee is concerned about. Rather, the outline would tentatively continue the current content of Article 2 in proposed “Part 6. Other Exemptions From Disclosure” of new “Division 10. Inspection of Public Records.”

It is perhaps still too early to assess whether that is the optimal approach to Article 2. Further input on this point would be useful. It may be wise to **defer decision on the precise treatment of Article 2 until later in this study**, when the Commission and the staff have gained greater familiarity with the CPRA in general and Article 2 in particular.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

28. *Id.* (emphasis added).



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February 14, 2017

VIA EMAIL

Steve Cohen
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% UC Davis School of Law
Davis, CA 95616
Email: scohen@clrc.ca.gov

Re: California Law Revision Commission study of California Public Records Act

Dear Mr. Cohen:

I write on behalf of the California Public Records Act Committee (Committee) of the City Attorneys' Department of the League of California Cities ("League"), an association of 475 California cities united in promoting the general welfare of cities and their citizens, regarding the California Law Revision Commission's (CLRC) study of the California Public Records Act (CPRA). The Committee appreciates the opportunity to comment on Memorandum 2017-5 and we look forward to working with CLRC on this CPRA revision project.

I. Overarching concerns about the revision project.

The Committee is concerned that, through no fault of the CLRC, the CPRA revision project might not be entirely non-substantive in nature. It has been the Committee's and the League's experience that, despite best efforts to ensure that changes are non-substantive, law revision "clean-up" projects inevitably result in some arguably substantive changes. The Committee is concerned that these changes might result in an increase in litigation for public agencies.

The Committee is particularly concerned with how the revision project might affect the application of existing case law and Attorney General opinions. With that in mind, the Committee requests that any future legislation that the CLRC presents to the legislature as a result of this project contain specific legislative intent language that provides that any changes made to the CPRA are not intended to supersede or modify existing case law or attorney general opinions in any way.

The Committee is also concerned about how this revision project will affect or conflict with Proposition 59, the "sunshine amendment" to the Constitution of California.

In light of these concerns, the Committee hopes to have the opportunity to work closely with CLRC in its review of the CPRA and to comment on any potential changes.

II. Responses to specific questions presented in Memorandum 2017-5.

Memorandum 2017-5 posed several specific questions. Although the Committee understands that many of the questions were addressed during CLRC's last meeting, we would like to provide input regarding the following issues presented in Memorandum 2017-5, which we believe remain unresolved.

On pages six and seven, Memorandum 2017-5 states, "the study does not appear to be limited to provisions in the Government Code, but does appear to be limited to public records inspection law, not other aspects of public records law....Unless the Commission otherwise directs, the staff will proceed accordingly in researching which provisions to bring to the Commission's attention." It appears from the minutes of CLRC's last meeting that, "[f]or now, the Commission will focus only on statutory provisions that are within the CPRA, or that cross-refer to the CPRA." Our Committee believes that this approach is appropriate, and urges the CLRC to continue to strictly contain its study to the statutory provisions that are within the CPRA, or that specifically cross-refer to the CPRA.

On page seven, Memorandum 2017-5 inquires whether the Richard McKee Transparency Act should be included within the scope of the study. The Committee recommends that the CLRC not combine the Richard McKee Transparency Act with the general provisions of the PRA. The Committee is concerned that doing so might interject unnecessary confusion into the application of each Act.

Finally, on page ten, Memorandum 2017-5 inquires whether Article 2 (Gov. Code §§ 6275-6276.4A) should be repealed, or repealed and replaced. The Committee would like to specifically note that Article 2 of the CPRA is a useful tool for implementing the CPRA and thus serves its intended purpose. Therefore, the Committee would strongly discourage the CLRC from removing Article 2 or moving the provisions of law cited in Article 2 into the main text of the CPRA.

Conclusion

Thank you for the opportunity to comment on the CLRC study of the CPRA. The Committee looks forward to working closely with CLRC in the future. Please do not hesitate to contact me with any questions or to discuss this matter further.

Sincerely,



Jolie Houston
Chair, California Public Records Act Committee, League of California Cities
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CPRA RECODIFICATION: TENTATIVE OUTLINE

This is a tentative outline for recodification of the CPRA. This outline tentatively proposes to create a new division (Division 10 (commencing with Section 7920.000)) in “Title 1. General” of the Government Code. The new division would be organized along the following lines, with details shown on the pages indicated:

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DIVISION 10. INSPECTION OF PUBLIC RECORDS

PART 1. GENERAL PROVISIONS

CHAPTER 1. PRELIMINARY PROVISIONS

Article 1. Short Title

Material to include:

The substance of Gov't Code § 6251 (short title) and/or a provision modeled on Penal Code § 16000 (Deadly Weapons Recodification Act of 2010)

Article 2. Effect of Recodification

Material to include:

A provision modeled on Penal Code § 16005 (nonsubstantive reform)
A provision modeled on Penal Code § 16010 (continuation of existing law)
A provision modeled on Penal Code § 16020 (judicial decision interpreting former law)
A provision modeled on Penal Code § 16025 (constitutionality)

Article 3. Effect of Chapter

Material to include:

The substance of Gov't Code § 6260 (effect of chapter)

CHAPTER 2. DEFINITIONS

Material to include (with definitions arranged alphabetically):

The substance of Gov't Code § 6252(a) ("local agency")
The substance of Gov't Code § 6252(b) ("member of the public")
The substance of Gov't Code § 6252 (c) ("person")
The substance of Gov't Code § 6252(d) ("public agency")
The substance of Gov't Code § 6252(e) ("public records")
The substance of Gov't Code § 6252(f) ("state agency")
The substance of Gov't Code § 6252(g) ("writing")
The substance of Gov't Code § 6254.24 ("public safety official")

Other material to consider including:

The substance of Gov't Code § 6253(c), 5th sentence (definition of "unusual circumstances" for purposes of § 6253)
The substance of Gov't Code § 6253.5(a) (definition of "petition" for purposes of § 6253.5)

Other material to consider including (cont'd):

The substance of Gov't Code § 6253.5(b) (definition of "proponents of the petition" for purposes of § 6253.5)

The substance of the second sentence of Gov't Code § 6254(f)(2)(B) (definition of "immediate family" for purposes of § 6254(f))

The substance of the second and third sentences of Gov't Code § 6254(ab) (definition of "voluntarily submitted" for purposes of § 6254(ab))

The substance of Gov't Code § 6254(ad)(7)(F) (definition of "fully executed" for purposes of § 6254(ad)(7))

The substance of Gov't Code § 6254.2(f) (definition of "trade secret")

The substance of the second sentence of Gov't Code § 6254.5 (definition of "agency" for purposes of § 6254.5)

The substance of Gov't Code § 6254.4(b) (definition of "home address" for purposes of § 6254.4)

The substance of the second sentence of Gov't Code § 6254.7(d) (definition of "trade secrets" for purposes of § 6254.7)

The substance of Gov't Code § 6254.9 (definition of "computer software" for purposes of § 6254.9)

The substance of Gov't Code § 6254.18(b) (definitions of "contractor," "personal information," "public agency," and "reproductive health services facility" for purposes of § 6254.18)

The substance of Gov't Code § 6254.21(c)(1)(E) (definitions of "publicly post" and "publicly display" for purposes of § 6254.21(c)(1))

The substance of Gov't Code § 6254.21(f) (definition of "elected or appointed official" for purposes of § 6254.21)

The substance of Gov't Code § 6254.26(c) (definitions of "alternative investment," "alternative investment vehicle," "portfolio positions," and "public investment fund" for purposes of § 6254.26)

The substance of the last four paragraphs of Gov't Code § 6267 (definition of "patron use records" for purposes of § 6267)

The substance of Gov't Code § 6270.5(c) (definitions of "enterprise system" and "system of record" for purposes of § 6270.5)

PART 2. DISCLOSURE GENERALLY

CHAPTER 1. RIGHT TO INSPECT PUBLIC RECORDS

Material to include:

- The substance of Gov't Code § 6250 (legislative finding and declaration)
- The substance of the first sentence of Gov't Code § 6253(a) (unless exception applies, public records are open to inspection by any person during agency hours)
- The substance of Gov't Code § 6253.3 (prohibition against control of disclosure by third party)
- The substance of Gov't Code § 6270 (prohibition on providing record to private entity in manner that prevents agency from directly disclosing that record)

CHAPTER 2. GENERAL RULES GOVERNING DISCLOSURE

Article 1. Nondiscrimination

Material to include:

- The substance of Gov't Code § 6252.5 (access by elected member or officer of agency)
- The substance of Gov't Code § 6252.7 (nondiscrimination by local agency in disclosure to members of local legislative body)
- The substance of Gov't Code § 6257.5 (prohibition on limitation of access based on purpose of request)

Article 2. Voluntary Disclosure

Material to include:

- The substance of Gov't Code § 6254, 2d-to-last ¶ (voluntary disclosure by agency)
- The substance of Gov't Code § 6254.5 (waiver of exemption based on disclosure), except possibly the definition of "agency"

Article 3. Truncation of Social Security Numbers and Related Matters

Material to include:

- The substance of Gov't Code § 6254.27 (SSN truncation program)
- The substance of Gov't Code § 6254.28 (truncation of SSN with regard to secured transaction)
- The substance of Gov't Code § 6254.29 (redaction of SSN by local agency)

Article 4. Disclosure to District Attorney and Related Matters

Material to include:

The substance of Gov't Code § 6263 (inspection or copying of record by district attorney)

The substance of Gov't Code § 6264 (judicial action by district attorney)

The substance of Gov't Code § 6265 (effect of disclosure to district attorney)

Other material to consider including:

The substance of Gov't Code § 6262 (disclosure of licensing records to district attorney). Currently propose to place this in "Chapter 1. Crimes, Weapons, and Law Enforcement" of "Part 5. Specific Types of Public Records."

PART 3. INSPECTION PROCEDURES

Material to include (may divide into several chapters and articles):

The substance of Gov't Code § 6253(a), 2d sentence (right to inspect after redaction of exempted material)

The substance of Gov't Code § 6253(b) (disclosure on request and payment of fee)

The substance of the 1st-5th sentences of Gov't Code § 6253(c) (timing of disclosure), except possibly the definition of "unusual circumstances"

The substance of Gov't Code § 6253(d)-(f) (further details regarding inspection procedures)

The substance of Gov't Code § 6253.1 (duties of agency upon request for access to public record)

The substance of Gov't Code § 6253.4 (agency regulations governing access to records)

The substance of Gov't Code § 6253.9 (information in electronic format)

The substance of Gov't Code § 6253.10 (formatting of public record on Internet Resource maintained by local agency)

The substance of Gov't Code § 6255 (required justification and procedure for withholding of record)

The substance of Gov't Code § 6270.5 (catalog of enterprise systems), except possibly the definitions of "enterprise system" and "system of record"

PART 4. ENFORCEMENT OF THE RIGHT TO INSPECT OR RECEIVE A PUBLIC RECORD

Material to include (may divide into several chapters and articles):

The substance of Gov't Code § 6258 (judicial proceeding for enforcement of right to inspect or receive record)

The substance of Gov't Code § 6259 (procedure for petition alleging improper withholding of public record)

PART 5. SPECIFIC TYPES OF PUBLIC RECORDS

 **Note.** The chapters within Part 5 would be arranged alphabetically, as shown below.

CHAPTER 1. CRIMES, WEAPONS, AND LAW ENFORCEMENT

Material to include (may divide into several articles):

The substance of Gov't Code § 6254(f) (law enforcement records), except possibly the definition of "immediate family"

The substance of Gov't Code § 6254(u)(1) (firearm license application indicating vulnerability to attack or revealing medical or psychological history)

The substance of Gov't Code § 6254(u)(2) (address or phone number of prosecutor, public defender, peace officer, judge, court commissioner, or magistrate in application to carry firearm)

The substance of Gov't Code § 6254(u)(3) (address or phone number of prosecutor, public defender, peace officer, judge, court commissioner, or magistrate in license to carry firearm)

The substance of Gov't Code § 6254(z) (records relating to 911 call)

The substance of Gov't Code § 6254.17 (records of California Victim Compensation Board relating to requests for assistance)

The substance of Gov't Code § 6254.30 (demand by law enforcement agency for information from victim as prerequisite to record access)

The substance of Gov't Code § 6262 (disclosure of licensing records to district attorney). Might instead place this material in "Article 4. Disclosure to District Attorney and Related Matters" of "Part 2. Disclosure Generally."

CHAPTER 2. ELECTION MATERIALS AND PETITIONS

Material to include (may divide into several articles):

The substance of Gov't Code § 6253.5 (access to initiative, referendum, and other specified petitions and supporting memoranda), except possibly the definitions of "petition" and "proponents of petition"

The substance of Gov't Code § 6253.6 (information identifying requestors of bilingual ballot or ballot pamphlet)

The substance of Gov't Code § 6254.4 (voter registration information), except possibly the definition of "home address"

CHAPTER 3. ENVIRONMENTAL PROTECTION

Material to include (may divide into several articles):

The substance of Gov't Code § 6253.8 (display of agency's final enforcement orders on website)

The substance of Gov't Code § 6254(o) (applications for financing under California Pollution Control Financing Authority Act)

The substance of Gov't Code § 6254.2 (pesticide information), except possibly the definition of "trade secret"

The substance of Gov't Code § 6254.7 (pollution information), except possibly the definition of "trade secrets"

The substance of Gov't Code § 6254.11 (specified information acquired by air pollution control officer)

CHAPTER 4. FINANCIAL RECORDS

Material to include:

The substance of Gov't Code § 6254(n) (personal financial records required by licensing agency)

The substance of Gov't Code § 6254(x) (financial data relating to service contractor)

CHAPTER 5. HEALTH CARE

Material to include (may divide into several articles):

The substance of *both versions* of Gov't Code § 6253.2 (information relating to providers of in-home supportive services or personal care services)

The substance of Gov't Code § 6254(q) (records relating to selective provider contracts or certain other health care contracts)

The substance of Gov't Code § 6254(s) (report of Joint Commission on Accreditation of Hospitals)

The substance of Gov't Code § 6254(t) (local or municipal hospital records relating to contract with insurer or nonprofit hospital service plan for patient services for alternative rates)

The substance of Gov't Code § 6254(v) (specified records of Managed Risk Medical Insurance Board and State Dep't of Health Care Services relating to high risk programs)

The substance of Gov't Code § 6254(w) (specified records of Managed Risk Medical Insurance Board relating to small employer health insurance)

The substance of Gov't Code § 6254(y) (specified records of Managed Risk Medical Insurance Board and State Department of Health Care Services relating to family health care)

Material to include (cont'd):

The substance of Gov't Code § 6254(ac) (records relating to registration in Advance Health Care Directive Registry)

The substance of the last paragraph of Gov't Code § 6254 (disclosure of relevant financing information by health facility to certified bargaining agent)

The substance of Gov't Code § 6254.14 (information relating to contracts for health care services)

The substance of Gov't Code § 6254.18 (personal information in record relating to reproductive health services facility), except possibly the definitions of "contractor," "personal information," "public agency," and "reproductive health services facility"

The substance of Gov't Code § 6254.22 (specified health plan records)

CHAPTER 6. HISTORICALLY OR CULTURALLY SIGNIFICANT RECORDS

Material to include:

The substance of Gov't Code § 6254(r) (records of Native American sacred, historical, or culturally significant places)

The substance of Gov't Code § 6254.10 (archaeological site information)

CHAPTER 7. LIBRARY RECORDS

Material to include:

The substance of Gov't Code § 6254(j) (library circulation records)

The substance of Gov't Code § 6267 (patron use records of publicly-supported library), except possibly the definition of "patron use records"

CHAPTER 8. LITIGATION RECORDS

Material to include:

The substance of Gov't Code § 6254(b) (records relating to pending litigation)

The substance of Gov't Code § 6254.25 (litigation memoranda)

CHAPTER 9. MISCELLANEOUS DISCLOSURE REQUIREMENTS

Material to include:

The substance of Gov't Code § 6254(e) (confidential information relating to utility systems development, or market or crop reports)

The substance of Gov't Code § 6254.9 (software developed by agency), except possibly the definition of "computer software"

CHAPTER 10. PERSONAL INFORMATION

Material to include:

The substance of Gov't Code § 6252.6 (information relating to deceased minor foster child)

The substance of Gov't Code § 6254.1(a)-(b) (personal information governed by other statutes)

The substance of Gov't Code § 6254.16 (personal information of local agency utility customers)

The substance of Gov't Code § 6254.20 (personal information electronically collected by state agency)

CHAPTER 11. PRELIMINARY DRAFTS AND SIMILAR MATERIALS

Material to include:

The substance of Gov't Code § 6254(a) (preliminary drafts, notes, or memoranda)

CHAPTER 12. PRIVATE INDUSTRY

Material to include:

The substance of Gov't Code § 6254.6 (identity of private industry employer obtained in conjunction with collection of private industry wage data)

The substance of Gov't Code § 6254.15 (records relating to siting of private company)

CHAPTER 13. PRIVATE RECORDS, PRIVILEGED MATERIALS, AND OTHER RECORDS PROTECTED BY LAW FROM DISCLOSURE

Material to include:

The substance of Gov't Code § 6254(c) (personnel records, medical files, and other private records)

The substance of Gov't Code § 6254(k) (privileged materials and other records protected by law)

CHAPTER 14. PUBLIC EMPLOYEE OR OFFICIAL

Material to include (may divide into several articles):

The substance of Gov't Code § 6254(l) (correspondence of or to Governor or Governor's staff)

The substance of Gov't Code § 6254(m) (records of Legislative Counsel)

The substance of Gov't Code § 6254(p) (records reflecting state agency's views on employee relations and related matters)

The substance of Gov't Code § 6254.3 (personal information of agency employee)

The substance of Gov't Code § 6254.8 (agency employment contracts)

The substance of Gov't Code § 6254.21 (online posting or sale of personal information of elected or appointed official), except possibly the definitions of "publicly post," "publicly display," and "elected or appointed official"

The substance of Gov't Code § 6268 (archiving and disclosure of Governor's public records)

The substance of Gov't Code § 6268.5 (appraisal and management of Governor's public records by Secretary of State)

CHAPTER 15. PUBLIC ENTITY SPENDING, FINANCES, AND OVERSIGHT

Material to include:

The substance of Gov't Code § 6253.31 (access to agency contract requiring private entity to review, audit, or report on that agency)

The substance of Gov't Code § 6254(h) (documents relating to acquisition of property by state or local agency)

The substance of Gov't Code § 6254.26 (records relating to alternative investments of public investment funds), except possibly the definitions of "alternative investment," "alternative investment vehicle," "portfolio positions," and "public investment fund"

The substance of Gov't Code § 6254.33 (unique vendor, contractor, or affiliate identifying information)

The substance of Gov't Code § 6261 (itemized statement of agency's total expenditures and disbursement)

CHAPTER 16. REGULATION OF FINANCIAL INSTITUTIONS AND ISSUANCE OF SECURITIES

Material to include:

The substance of Gov't Code § 6254(d) (records of state agency that regulates or supervises financial institutions or issuance of securities)

The substance of Gov't Code § 6254.12 (disciplinary records made available to Department of Business Oversight through computer system)

CHAPTER 17. SECURITY MEASURES AND RELATED MATTERS

Material to include:

The substance of Gov't Code § 6254(aa) (assessment of vulnerability to terrorist attack or other criminal acts)

The substance of Gov't Code § 6254(ab) (critical infrastructure information voluntarily submitted to Office of Emergency Services), except possibly the definition of "voluntarily submitted"

The substance of Gov't Code § 6254.19 (information security record)

The substance of Gov't Code § 6254.23 (risk assessment or infrastructure protection program)

CHAPTER 18. STATE COMPENSATION INSURANCE FUND

Material to include:

The substance of Gov't Code § 6254(ad) (records of State Compensation Insurance Fund), except possibly the definition of "fully executed"

CHAPTER 19. TAX RECORDS

Material to include:

The substance of Gov't Code § 6254(i) (confidential taxpayer information required in collection of local taxes)

CHAPTER 20. TEST MATERIALS, TEST RESULTS, AND RELATED MATTERS

Material to include:

The substance of Gov't Code § 6254(g) (test materials)

The substance of Gov't Code § 6254.1(c) (DMV test in study of physical or mental factors affecting driving ability)

The substance of Gov't Code § 6254.13 (disclosure of Dep't of Education examination questions to legislative or executive branch)

PART 6. OTHER EXEMPTIONS FROM
DISCLOSURE

Material to include:

The substance of “Article 2. Other Exemptions From Disclosure” of “Chapter 3.5. Inspection of Public Records” of “Division 7. Miscellaneous” of “Title 1. General” of the Gov’t Code (i.e., Gov’t Code §§ 6275-6276.48, which is the current CPRA catalog of exemptions from disclosure)

Note. The Commission has not yet resolved how to handle “Article 2. Other Exemptions From Disclosure” (Gov’t Code §§ 6275-6276.48) in recodifying the CPRA. **The Commission welcomes comments on any aspect of this proposed outline, but comments on this point would be especially helpful.**