

Second Supplement to Memorandum 2017-48

California Public Records Act Clean-Up: Revised Tentative Outline

Memorandum 2017-48, prepared in early September, presents a revised tentative outline for the Commission’s consideration.¹ That outline needs to be updated to incorporate legislation enacted in the past year. This memorandum discusses the new legislation. The memorandum also addresses the following new communication received by the Commission:

Exhibit p.

- Jolie Houston, CPRA Committee, League of California Cities
(11/21/17)1

2017 LEGISLATION

Seven bills affecting provisions within the California Public Records Act (“CPRA”) were enacted during the Legislature’s 2017-2018 Regular Session.²

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. Those bills were:

- AB 119 (Committee on Budget), 2017 Cal. Stat. ch. 21, §§ 3, 4, 5 (budget-related legislation amending Gov’t Code § 6254.3 & both versions of Gov’t Code § 6253.2; bill took effect upon enactment on June 27, 2017).
- AB 459 (Chau), 2017 Cal. Stat. ch. 291, § 1 (adding Gov’t Code § 6254.4.5).
- AB 1455 (Bocanegra), 2017 Cal. Stat. ch. 560, § 1 (amending Gov’t Code § 6254).
- AB 1729 (Committee on Elections & Redistricting), 2017 Cal. Stat. ch. 534, § 2 (amending Gov’t Code § 6253.5).
- SB 88 (Committee on Budget & Fiscal Review), 2017 Cal. Stat. ch. 51, §§ 1, 2 (budget-related legislation amending one version of Gov’t Code § 6253.2 & repealing the other version; bill took effect upon enactment on July 10, 2017).
- SB 90 (Committee on Budget & Fiscal Review), 2017 Cal. Stat. ch. 25, §§ 1, 2 (budget-related legislation amending one version of Gov’t Code § 6253.2 & repealing the other version; bill took effect upon enactment on June 27, 2017).
- SB 157 (Wieckowski), 2017 Cal. Stat. ch. 233, § 2 (amending Gov’t Code § 6276.12).

Having examined those bills, the staff recommends only two changes to the revised tentative outline attached to Memorandum 2017-48.

First, Assembly Bill 459 (Chau) added a new provision to the CPRA, which concerns disclosure of an audio or video recording that was created during the commission or investigation of certain sex crimes, domestic violence, or child abuse. The staff suggests including the substance of that new provision (Gov't Code § 6254.4.5) in "Chapter 1. Crimes, Weapons, and Law Enforcement" of "Part 5. Specific Types of Public Records" of proposed new "Division 10. Inspection of Public Records."³ **Does the Commission agree?**

Second, there no longer are two versions of Government Code Section 6253.2. One version was repealed in 2017.⁴ **This development should be reflected in the proposed content of "Chapter 5. Health Care" of "Part 5. Specific Types of Public Records" of proposed new "Division 10. Inspection of Public Records."**⁵ **The staff will make this change unless the Commission otherwise directs.**

Aside from the two changes discussed above, the revised tentative outline already appears to handle the 2017 enactments in a satisfactory manner. **If anyone sees a need for further changes to incorporate the new laws, please share your views with the Commission.**

COMMENTS OF THE CPRA COMMITTEE OF THE LEAGUE OF CALIFORNIA CITIES

In response to the First Supplement to Memorandum 2017-48, Jolie Houston submitted a new letter on behalf of the CPRA Committee of the City Attorneys' Department of the League of California Cities (hereafter, "League CPRA Committee"). The letter addresses a number of different points, as explained below.

Relocation of Statutory Provisions Relating to Retention of Public Records

In August, the Commission decided that its proposed CPRA recodification should not incorporate record retention requirements presently located outside the CPRA. Instead, the Commission decided to refer to those statutory requirements at appropriate places in the recodification.⁶

3. See Memorandum 2017-48, Attachment p. 6.

4. See SB 88 (Committee on Budget & Fiscal Review); see also SB 90 (Committee on Budget & Fiscal Review).

5. See Memorandum 2017-48, Attachment p. 8.

6. Minutes (Aug. 2017), p. 6.

Thereafter, the League CPRA Committee urged the Commission to reconsider that decision. The committee said it would prefer to have the record retention requirements incorporated into the CPRA.⁷

In the First Supplement to Memorandum 2017-48, the staff urges the Commission to reaffirm its previous decision on the point, because relocating the record retention provisions appears to be beyond the scope of the current legislative assignment, and could complicate and delay completion of that assignment. The staff also suggests, however, that the Commission's report for this study "could raise the possibility of having it conduct a separate study on relocating the record retention provisions."⁸

In its new letter, the League CPRA Committee "encourages" such a separate Commission study.⁹ The committee also reiterates that it "prefers to have the record retention requirements incorporated into the CPRA."¹⁰

Government Code Section 6253

Subdivisions (a) and (b) of Government Code Section 6253 provide:

6253. (a) 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. 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.

(b) 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.

At the August meeting, a representative of the California News Publishers Association ("CNPA") said that these subdivisions are to some extent redundant and encouraged the Commission to eliminate redundancies when it recodifies them.

The League CPRA Committee later wrote that subdivisions (a) and (b) are not redundant and should be retained in full.¹¹ In the First Supplement to

7. See First Supplement to Memorandum 2017-48, Exhibit p. 2.

8. *Id.* at 4.

9. Exhibit p. 1.

10. *Id.*

11. See First Supplement to Memorandum 2017-48, Exhibit p. 3.

Memorandum 2017-48, the staff promised to “consider the League’s comments, as well as CNPA’s, when preparing a proposed ... recodification of Section 6253” for the Commission to review.¹²

The League CPRA Committee now expands upon its previous comments, explaining that it “strongly opposes removing either subsection (a) or (b) from Government Code Section 6253.”¹³ The committee further says that “these two subsections set forth the *fundamental purpose* of the CPRA and any modification to these sections would constitute a substantive change to the existing law.”¹⁴

The revised tentative outline proposes to recodify the first sentence of Government Code Section 6253(a) in “Chapter 1. Right to Inspect Public Records” of “Part 2. Disclosure and Exemptions Generally” of new “Division 10. Inspection of Public Records.” Memorandum 2017-60, which is on the agenda for the upcoming meeting, shows precisely how the staff suggests recodifying that sentence.¹⁵

The revised tentative outline proposes to recodify the rest of Section 6253(a)-(b) in “Part 3. Inspection Procedures” of new “Division 10. Inspection of Public Records.” The staff has not yet prepared a draft of “Part 3. Inspection Procedures.” We expect to do so for the Commission’s next meeting. **Once that step is complete, stakeholders and others will be able to review the proposed treatment of Section 6253(a)-(b) in full, and suggest any specific revisions they deem advisable.**

Other Points

In its new letter, the League CPRA Committee also voices support for the following ideas suggested by the staff in memoranda for the upcoming meeting:

- The name of Chapter 10 of Part 5 of proposed new Division 10 should be “Personal Information and Customer Records,” not “Personal Information.”¹⁶
- The substance of Government Code Section 6255 should be placed in “Article 1. Justification for Withholding of Record” of “Chapter 3. General Rules Governing Exemptions from Disclosure” of “Part

12. *Id.* at 5 (boldface omitted).

13. Exhibit p. 1.

14. *Id.* (emphasis in original).

15. See Memorandum 2017-60, Attachment p. 4 (proposed Section 7921.005 & Comment).

16. Exhibit p. 2; see Memorandum 2017-48, pp. 1-2; First Supplement to Memorandum 2017-48, p. 5.

2. Disclosure and Exemptions Generally” of proposed new Division 10.¹⁷

In addition, the League CPRA Committee expresses support for the following Commission decisions:

- The name of Part 4 of proposed new Division 10 should be “Enforcement,” not “Enforcement of the Right to Inspect or Receive a Public Record.”¹⁸
- The Commission should defer decision on how to recodify Article 2 of the CPRA (Gov’t Code §§ 6275-6276.48).¹⁹

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

17. Exhibit p. 2; see Memorandum 2017-48, pp. 4-5; First Supplement to Memorandum 2017-48, pp. 5-6.

18. Exhibit p. 2; see Minutes (Aug. 2017), p. 7; see also First Supplement to Memorandum 2017-48, p. 6.

19. Exhibit p. 2; see Minutes (Aug. 2017), p. 7; see also First Supplement to Memorandum 2017-48, pp. 6-7.



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November 21, 2017

VIA EMAIL

Steve Cohen
California Law Revision Commission
c/o 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”). The Committee acknowledges and appreciates the California Law Revision Commission’s (CLRC) consideration of the Committee’s comments contained in its September 5, 2017, letter.¹ By way of this letter, the Committee is specifically commenting on the First Supplement to Memorandum 2017-48 (“FSM 2017-48”).

Retention of Records

The CLRC’s staff recommended that the Commission reaffirm its previous decision on the retention of public records and possibly relocating those provisions. It was noted that the Commission could raise the possibility of having a separate study on relocating the record retention provisions. The Committee encourages this study and prefers to have the record retention requirements incorporated into the CPRA.²

Government Code Section 6253

The Committee strongly opposes removing either subsection (a) or (b) from Government Code Section 6253. The Committee maintains that these two subsections set forth the *fundamental purpose* of the CPRA and any modification to these sections would constitute a substantive change to the existing law.³

¹ FSM 2017-48 pp. 1-6

² FSM 2017-48 p. 4

³ FSM 2107-48 p. 5

Government Code Section 6254.16

The Committee supports renaming the Chapter as “Chapter 10. Personal Information and Customer Records.” The Committee agrees that using a broader, more inclusive name, would provide greater flexibility for future evolution of the CPRA.⁴

Government Code Section 6255

The Committee supports placement of the provision continuing Section 6255 under “Part 2. Disclosure and Exemptions Generally.

Chapter 3. General Rules Governing Exemptions from Disclosure.

Article 1. Justification for Withholding of a Record.”⁵

Enforcement

The Committee continues to support the use of a more inclusive and flexible title “Enforcement.”

Article 2 of the CPRA

The Committee supports deferring a decision on how to recodify Article 2 of the CPRA and continues to recommend the provision cited in Article 2 should not be moved into the CPRA.

Conclusion

Thank you again for the opportunity to comment on the CLRC Revision Project. The Committee looks forward to working closely with the CLRC in the future. Please do not hesitate to contact me with any questions and/or concerns or to discuss this matter further.

Very truly yours,

BERLINER COHEN



JOLIE HOUSTON

Chair, California Public Records Act Committee,
League of California Cities

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⁴ FSM 2017-48 p. 5

⁵ Memorandum 2017-48 p.4.