

## Memorandum 2017-60

**California Public Records Act Clean-Up:  
Part 2. Disclosure and Exemptions Generally**

---

As directed by the Legislature, the Commission<sup>1</sup> is drafting a proposed recodification of the California Public Records Act (hereafter, "CPRA").<sup>2</sup> A revised tentative outline for the recodification is attached to Memorandum 2017-48, which the Commission will consider at its upcoming meeting.

That outline proposes to place the substance of the CPRA in a new division ("Division 10. Inspection of Public Records") in Title 1 of the Government Code. That division would be divided into six Parts.

Attached to this memorandum is a draft of proposed "Part 2. Disclosure and Exemptions Generally." A few points requiring special attention are discussed below.

Unless otherwise indicated, all statutory references in this memorandum are to the Government Code.

## PROPOSED SECTION 7921.310

Proposed Section 7921.310 would continue existing Section 6252.7 without substantive change. The existing section uses the term "local agency" twice, as shown in italics below:

6252.7. Notwithstanding Section 6252.5 or any other provision of law, when the members of a legislative body of *a local agency* are authorized to access a writing of the body or of the agency as permitted by law in the administration of their duties, *the local agency, as defined in Section 54951*, shall not discriminate between or

---

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](http://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. Government Code Sections 6250-6276.48.

among any of those members as to which writing or portion thereof is made available or when it is made available.<sup>3</sup>

The second reference to a “local agency” expressly incorporates Section 54951’s definition of that term, but the first reference to a “local agency” does not.

That drafting is unusual. Normally, if a statute uses the same term several times and the statute expressly incorporates a definition, that is done the *first* time the term is used.

Further complicating the situation, existing Section 6252(a) (proposed Section 7920.505) defines the term “local agency” for purposes of the *entire* CPRA. That definition *differs* from the one in Section 54951.

Although both definitions consist of a laundry list of entities that are deemed to be a “local agency,” and *most* of the listed entities are the same, only the definition in Section 6252(a) expressly includes certain legislative bodies, specifically “entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.”<sup>4</sup> And only the definition in Section 54951 specifically lists a “town” as a local agency.

Given the strictly nonsubstantive nature of this study, the staff is reluctant to propose any clarification of the references to “local agency” in Section 6254.7, because that might cause concern about the possibility of a substantive change.

---

3. Emphasis added.

4. Subdivisions (c) and (d) of Section 54952 provide as follows:

54952. As used in this chapter, “legislative body” means:...

(c)(1) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:

(A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity.

(B) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

(2) Notwithstanding subparagraph (B) of paragraph (1), no board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that receives funds from a local agency and, as of February 9, 1996, has a member of the legislative body of the local agency as a full voting member of the governing body of that private corporation, limited liability company, or other entity shall be relieved from the public meeting requirements of this chapter by virtue of a change in status of the full voting member to a nonvoting member.

(d) The lessee of any hospital the whole of part of which is first leased pursuant to subdivision (p) of Section 32121 of the Health and Safety Code after January 1, 1994, where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority.

Instead, the staff proposes to **preserve the ambiguity in the recodification.** As shown in the attached draft, that could be done by (1) continuing the existing statutory language verbatim (except to update the statutory cross-reference to Section 6252.5, another CPRA section), and (2) referring to *both* definitions of “local agency” in the corresponding Comment, without indicating which is to be used (i.e., “See ... Section 7920.505 (‘local agency’); but see Section 54951 (‘local agency’).”).

The staff further suggests that the Commission **include the following entry in a list of “Minor Clean-Up Issues for Possible Future Legislative Attention,”<sup>5</sup> which could be appended to the Commission’s final report in this study:**

- Consider whether to clarify the usage of the term “local agency” in Section 6252.7 and its continuation (proposed Section 7921.310).

For purposes of a tentative recommendation, **is the above approach acceptable to the Commission?**

#### PROPOSED SECTION 7921.505

Proposed Section 7921.505 would continue existing Section 6254.5, which presents the drafting issues discussed below.

#### **Placement of Definition**

The second sentence of existing Section 6254.5 defines the term “agency,” but only for purposes of that section:

For purposes of this section, “agency” includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment.

Although this definition currently applies only to Section 6254.5, it seems reasonably likely that the Legislature might want to apply the definition to some other CPRA provisions in the future.

For that reason, the staff suggests placing the definition of “agency” in “Chapter 2. Definitions,” not in the article containing proposed Section 7921.505. The definition would appear as proposed Section 7920.300:

---

5. For an example of such a list, see *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm’n Reports 217, 257-64 (2009).

7920.300. As used in Section 7921.505, “agency” includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment.

**Comment.** Section 7920.300 continues the second sentence of former Section 6254.5 without substantive change.

To alert readers to the definition, the Comment to proposed Section 7921.505 would refer to proposed Section 7920.300.

### **Is that approach acceptable to the Commission?**

### **Possible Minor Clean-Up Issues**

Two aspects of Section 6254.5 present ambiguities that the Commission probably should not attempt to address in this nonsubstantive recodification, but might want to put on a list of “Minor Clean-Up Issues for Possible Future Legislative Attention” in the report it submits to the Legislature and the Governor.

#### *Simplified Description of Waived Exemptions*

The first sentence of Section 6254.5 says: “Notwithstanding any other law, if a state or local agency discloses a public record that is otherwise exempt from this chapter, to a member of the public, this disclosure shall constitute a waiver of *the exemptions specified in Section 6254 or 6254.7, or other similar provisions of law.*”<sup>6</sup> When Section 6254.5 was enacted in 1981, the two provisions cross-referenced in it (Sections 6254 and 6254.7) contained virtually all of the exemptions specified in the CPRA. Since that time however, many more CPRA exemptions have been enacted, some located within the CPRA and some located elsewhere in the codes.

The staff suspects that the Legislature meant to encompass *all* CPRA exemptions when it referred to “the exemptions specified in Section 6254 or 6254.7, or other similar provisions of law.” If that is correct, the first sentence of proposed Section 7921.505 could theoretically be simplified along the following lines:

7921.505. (a) Notwithstanding any other law, if a state or local agency discloses to a member of the public a public record that is otherwise exempt from this division, this disclosure constitutes a

---

6. Emphasis added.

*waiver of the exemptions specified in this division and in other similar provisions of law...<sup>7</sup>*

The staff did not take that approach in drafting proposed Section 7921.505, because it could perhaps lead to concerns about the possibility of a substantive change. Instead, we suggest that the Commission include a list of “Minor Clean-Up Issues for Possible Future Legislative Attention” in its report for this study, and put the following entry on that list:

- Consider whether to simplify the description in the first sentence of Section 6254.5 (proposed Section 7921.505(a)) of which exemptions are waived.

For purposes of a tentative recommendation, **would the Commission like to take those steps?**

*Clarification of Two Exceptions*

Section 6254.5 is subject to various exceptions, including the following:

This section, however, shall not apply to disclosures:

....  
(g) Of records relating to a person who is subject to the jurisdiction of the Department of Business Oversight, if the disclosures are made to the person who is the subject of the records for the purpose of corrective action by that person, or, if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Business Oversight.

....  
(i) Of records relating to a person who is subject to the jurisdiction of the Department of Managed Health Care, if the disclosures are made to the person who is the subject of the records for the purpose of corrective action by that person, or, if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Managed Health Care.

---

7. Emphasis added.

These two provisions seem cumbersome and potentially confusing. The staff considered trying to make them more readily understandable, but we were not certain enough of the proper interpretations to be confident there would be no risk of a substantive change.

It might be better to include the following entry on a list of “Minor Clean-Up Issues for Possible Future Legislative Attention”:

- Consider whether to revise the descriptions in subdivisions (g) and (i) of Section 6254.5 (proposed Section 7921.505(b)(7) & (9)) to make them more readily understandable.

**Is that approach acceptable to the Commission?**

Respectfully submitted,

Steve Cohen  
Staff Counsel

Barbara Gaal  
Chief Deputy Counsel

# Contents

DIVISION 10. INSPECTION OF PUBLIC RECORDS .....	4
PART 2. DISCLOSURE AND EXEMPTIONS GENERALLY .....	4
CHAPTER 1. RIGHT TO INSPECT PUBLIC RECORDS .....	4
§ 7921.000. Legislative findings and declarations .....	4
§ 7921.005. Right to inspect .....	4
§ 7921.010. Control of disclosure of information by another party .....	4
§ 7921.015. Providing public record to private entity .....	4
CHAPTER 2. GENERAL RULES GOVERNING DISCLOSURE .....	5
Article 1. Nondiscrimination .....	5
§ 7921.300. Prohibition on limitation of access based on purpose of request .....	5
§ 7921.305. Access by elected member or officer of agency .....	5
§ 7921.310. Nondiscrimination by local agency in disclosure to members of local legislative body .....	5
Article 2. Voluntary Disclosure .....	7
§ 7921.500. Voluntary disclosure by agency .....	7
§ 7921.505. Waiver of exemption based on disclosure .....	7
CHAPTER 3. GENERAL RULES GOVERNING EXEMPTIONS FROM DISCLOSURE .....	9
Article 1. Justification for Withholding of Record .....	9
§ 7922.000. Justification for withholding of record .....	9
Article 2. Truncation of Social Security Numbers and Related Matters .....	10
§ 7922.200. Redaction of SSN by local agency .....	10
§ 7922.205. Truncation of SSN by county recorder .....	10
§ 7922.210. Truncation of SSN with regard to secured transaction .....	10
DISPOSITION OF EXISTING LAW .....	11
DERIVATION OF NEW LAW .....	11



## DRAFT LEGISLATION

**☞ Staff Note.** This is a work in progress. The material shown below may be changed. For a tentative outline of new Division 10 of Title 1 of the Government Code, see Memorandum 2017-48.

A draft of an official Commission “Comment” follows each proposed code section in the proposed recodification. Such Comments will be included in any final recommendation. The Comments indicate the source of each recodified code section (or provision within the code section) and describe how the recodified code section (or provision) compares with prior law. Courts have routinely held that the Commission’s Comments are evidence of legislative intent with regard to any legislation that implements a Commission recommendation.

There is a “disposition table” at the end of the proposed recodification. It summarizes, in tabular form, the disposition of every provision of the existing code that has been included in this proposed recodification.

There is also a “derivation table” at the end of the proposed recodification. It summarizes, in tabular form, the statutory derivation of every new code provision in this proposed recodification.

Some provisions in this draft are followed by a “Staff Note.” Staff Notes are intended to be temporary and will not be part of the Commission’s final recommendation. They serve to flag issues requiring special attention or treatment. The staff does not plan to discuss each of these matters at the upcoming meeting. Rather, persons should review the draft, identify any issues of concern, and then raise those issues for discussion at the meeting or express their concerns in writing before the meeting, or both.

Some provisions in this draft contain a bracketed reference to one or more existing code sections. As new Division 10 is drafted, these references will be conformed to the new numbering scheme.

In some places, it is necessary to refer to a section that has not yet been drafted. That is done by referring to “Section 792x.xxx.” The Commission will fill in these references as it drafts the proposed recodification.

All of the proposed provisions would be located in the Government Code. All references are to the Government Code unless otherwise indicated.

The Commission welcomes public comment on any issue relating to the content of this draft or any other aspect of its ongoing CPRA Clean-Up study. Comments should be directed to Steve Cohen (scohen@clrc.ca.gov) or Barbara Gaal (bgaal@clrc.ca.gov).

### **Gov’t Code §§ 7920.000-792x.xxx (added). California Public Records Act**

SEC. \_\_\_\_ . Division 10 (commencing with Section 7920.000) is added to the Government Code, to read:

## DIVISION 10. INSPECTION OF PUBLIC RECORDS

...

### PART 2. DISCLOSURE AND EXEMPTIONS GENERALLY

#### CHAPTER 1. RIGHT TO INSPECT PUBLIC RECORDS

##### **§ 7921.000. Legislative findings and declarations**

7921.000. In enacting this division, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

**Comment.** Section 7921.000 continues former Section 6250 without substantive change. See Section 7920.515 ("person").

##### **§ 7921.005. Right to inspect**

7921.005. 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.

**Comment.** Section 7921.005 continues the first sentence of former Section 6253(a) without change.

See Sections 7920.515 ("person"), 7920.525 ("public records").

##### **§ 7921.010. Control of disclosure of information by another party**

7921.010. A state or local agency may not allow another party to control the disclosure of information that is otherwise subject to disclosure pursuant to this division.

**Comment.** Section 7921.010 continues former Section 6253.3 without substantive change. See Sections 7920.505 ("local agency"), 7920.535 ("state agency").

##### **§ 7921.015. Providing public record to private entity**

7921.015. (a) Notwithstanding any other provision of law, no state or local agency shall sell, exchange, furnish, or otherwise provide a public record subject to disclosure pursuant to this division to a private entity in a manner that prevents a state or local agency from providing the record directly pursuant to this division.

(b) Nothing in this section requires a state or local agency to use the State Printer to print public records.

(c) Nothing in this section prevents the destruction of a public record pursuant to law.

(d) This section shall not apply to contracts entered into prior to January 1, 1996, between the County of Santa Clara and a private entity, for the provision of public records subject to disclosure under this division.

**Comment.** Section 7921.015 continues former Section 6270 without substantive change.

See Sections 7920.505 (“local agency”), 7920.525 (“public records”), 7920.535 (“state agency”).

## CHAPTER 2. GENERAL RULES GOVERNING DISCLOSURE

### Article 1. Nondiscrimination

#### § 7921.300. Prohibition on limitation of access based on purpose of request

7921.300. This division does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure.

**Comment.** Section 7921.300 continues former Section 6257.5 without substantive change.

See Section 7920.525 (“public records”).

#### § 7921.305. Access by elected member or officer of agency

7921.305. (a) Notwithstanding the definition of “member of the public” in Section 7920.510, an elected member or officer of any state or local agency is entitled to access to public records of that agency on the same basis as any other person. Nothing in this section shall limit the ability of elected members or officers to access public records permitted by law in the administration of their duties.

(b) This section does not constitute a change in, but is declaratory of, existing law.

**Comment.** Section 7921.305 continues former Section 6252.5 without substantive change.

See Sections 7920.505 (“local agency”), 7920.515 (“person”), 7920.525 (“public records”), 7920.535 (“state agency”).

#### § 7921.310. Nondiscrimination by local agency in disclosure to members of local legislative body

7921.310. Notwithstanding Section 7921.305 or any other provision of law, when the members of a legislative body of a local agency are authorized to access a writing of the body or of the agency as permitted by law in the administration of their duties, the local agency, as defined in Section 54951, shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available.

**Comment.** Section 7921.310 continues former Section 6252.7 without substantive change.

See Section 7920.525 (“writing”). See also Section 7920.505 (“local agency”); but see Section 54951 (“local agency”).

**Staff Note.** Existing Section 6252.7 is an odd provision. In two places, it uses the term “local agency,” as shown in italics below:

6252.7. Notwithstanding Section 6252.5 or any other provision of law, when the

members of a legislative body of a *local agency* are authorized to access a writing of the body or of the agency as permitted by law in the administration of their duties, *the local agency, as defined in Section 54951*, shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available.

The second reference to a “local agency” expressly incorporates Section 54951’s definition of that term, but the first reference does not. That is unusual; normally, if a statute expressly incorporates a definition, that is done where the defined term is first used, not later in the statute (unless it is done every time the term is used).

Further complicating the situation is existing Section 6252(a) (to be continued in proposed Section 7920.505), which defines the term “local agency” for purposes of the *entire* CPRA. Unlike the definition of “local agency” in Section 54951, the definition in Section 6252(a) expressly includes “entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952,” which provide:

54952. As used in this chapter, “legislative body” means:

....

(c)(1) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:

(A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity.

(B) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

(2) Notwithstanding subparagraph (B) of paragraph (1), no board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that receives funds from a local agency and, as of February 9, 1996, has a member of the legislative body of the local agency as a full voting member of the governing body of that private corporation, limited liability company, or other entity shall be relieved from the public meeting requirements of this chapter by virtue of a change in status of the full voting member to a nonvoting member.

(d) The lessee of any hospital the whole of part of which is first leased pursuant to subdivision (p) of Section 32121 of the Health and Safety Code after January 1, 1994, where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority.

Thus, it is less than obvious how to interpret Section 6252.7’s references to “local agency.” To preserve that ambiguity and avoid any risk of a substantive change, the text of proposed Section 7921.310 (shown above) is *identical* to the text of existing Section 6252.7, except we replaced the reference to “Section 6252.5” with a reference to “Section 7921.305” (the provision that would continue the substance of existing Section 6252.5). The accompanying Comment would state that “Section 7921.310 continues former Section 6252.7 *without substantive change*.” (Emphasis added.) The Comment would also refer to *both* definitions of “local agency,” without indicating which to use (“See ... Section 7920.505 (‘local agency’); but see Section 54951 (‘local agency’).”).

This cautious approach seems necessary in the context of this study, which is strictly nonsubstantive in nature. It might be appropriate, however, to (1) include a list of “Minor Clean-Up Issues for Possible Future Legislative Attention” in the Commission’s report, and (2) put the following entry on that list:

- Consider whether to clarify the usage of the term “local agency” in Section 6252.7 and its continuation (proposed Section 7921.310).

**It would be helpful to receive input on that possibility and on Section 6252.7's usage of the term "local agency."**

## Article 2. Voluntary Disclosure

### § 7921.500. Voluntary disclosure by agency

7921.500. Unless disclosure is otherwise prohibited by law, the provisions listed in Section 7920.500 do not prevent any agency from opening its records concerning the administration of the agency to public inspection.

**Comment.** Section 7921.500 continues the next-to-last paragraph of former Section 6254 without substantive change.

See Section 7920.500 ("former Section 6254 provisions").

### § 7921.505. Waiver of exemption based on disclosure

7921.505. (a) Notwithstanding any other law, if a state or local agency discloses to a member of the public a public record that is otherwise exempt from this division, this disclosure constitutes a waiver of the exemptions specified in:

- (1) The provisions listed in Section 7920.500.
- (2) [Section 6254.7].
- (3) Other similar provisions of law.

(b) This section, however, does not apply to any of the following disclosures:

(1) A disclosure made pursuant to the Information Practices Act (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) or a discovery proceeding.

(2) A disclosure made through other legal proceedings or as otherwise required by law.

(3) A disclosure within the scope of disclosure of a statute that limits disclosure of specified writings to certain purposes.

(4) A disclosure not required by law, and prohibited by formal action of an elected legislative body of the local agency that retains the writing.

(5) A disclosure made to a governmental agency that agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes that are consistent with existing law.

(6) A disclosure of records relating to a financial institution or an affiliate thereof, if the disclosure is made to the financial institution or affiliate by a state agency responsible for regulation or supervision of the financial institution or affiliate.

(7) A disclosure of records relating to a person who is subject to the jurisdiction of the Department of Business Oversight, if the disclosure is made to the person who is the subject of the records for the purpose of corrective action by that person, or, if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the

extent necessary to obtain information from that person for the purpose of an investigation by the Department of Business Oversight.

(8) A disclosure made by the Commissioner of Business Oversight under Section 450, 452, 8009, or 18396 of the Financial Code.

(9) A disclosure of records relating to a person who is subject to the jurisdiction of the Department of Managed Health Care, if the disclosure is made to the person who is the subject of the records for the purpose of corrective action by that person, or, if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Managed Health Care.

**Comment.** Subdivision (a) of Section 7921.505 continues the first sentence of former Section 6254.5 without substantive change.

Subdivision (b) continues former Section 6254.5(a)-(i) without substantive change.

See Sections 7920.300 (“agency”), 7920.500 (“former Section 6254 provisions”), 7920.505 (“local agency”), 7920.510 (“member of the public”), 7920.515 (“person”), 7920.525 (“public records”), 7920.535 (“state agency”), 7920.540 (“writing”).

**Staff Notes.** (1) Proposed Section 7921.505 contains a bracketed cross-reference to Section 6254.7. The staff has not yet drafted a provision that would continue the substance of Section 6254.7. After we do so, we will replace the bracketed cross-reference with a cross-reference to the corresponding new provision.

(2) When Section 6254.5 was enacted in 1981, the two provisions cross-referenced in it (Sections 6254 and 6254.7) were immediately adjacent to it and they contained almost all of the exemptions specified in the CPRA. Now there are many more CPRA exemptions, some located within the CPRA and some located elsewhere in the codes.

The staff suspects that the Legislature meant to encompass *all* of the CPRA exemptions when it referred to “the exemptions specified in Section 6254 or 6254.7, or other similar provisions of law.” If so, then proposed Section 7921.505 could perhaps be simplified along the following lines:

7921.505. (a) Notwithstanding any other law, if a state or local agency discloses to a member of the public a public record that is otherwise exempt from this division, this disclosure constitutes a waiver of *the exemptions specified in this division and in other similar provisions of law....*

(Emphasis added.)

We did not draft proposed Section 7921.505 in this manner, because this study is strictly nonsubstantive and the Commission is being extra-careful to minimize any concerns about its proposed recodification. Instead, proposed Section 7921.505 closely tracks the existing statutory language.

It might be appropriate, however, to (1) include a list of “Minor Clean-Up Issues for Possible Future Legislative Attention” in the Commission’s report, and (2) put the following entry on that list:

- Consider whether to simplify the description in the first sentence of Section 6254.5 (proposed Section 7921.505(a)) of which exemptions are waived.

**It would be helpful to receive input on that possibility and on Section 6254.5’s description of which exemptions are waived.**

(3) The second sentence of existing Section 6254.5 defines “agency” for purposes of that section. It says:

For purposes of this section, “agency” includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment.

Currently, this definition is only used in Section 6254.5, which would be continued in proposed Section 7921.505. It seems reasonably likely, however, that in the future the Legislature might want to apply the same definition to one or more other provisions within the CPRA.

For that reason, the staff suggests placing the definition of “agency” in “Chapter 2. Definitions,” instead of in this article. The definition would be proposed Section 7920.300, as follows:

7920.300. As used in Section 7921.505, “agency” includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment.

**Comment.** Section 7920.300 continues the second sentence of former Section 6254.5 without substantive change.

The Comment to proposed Section 7921.505 would refer to Section 7920.300. That would help alert readers to the definition. **Comments on this approach would be helpful.**

(4) The descriptions in subdivisions (g) and (i) of Section 6254.5 (proposed Section 7921.505(b)(7) & (9)) are cumbersome and potentially confusing. The staff considered trying to make them more readily understandable, but we are not certain enough of the proper interpretations to be confident there would be no risk of a substantive change.

It might be appropriate, however, to (1) include a list of “Minor Clean-Up Issues for Possible Future Legislative Attention” in the Commission’s report, and (2) put the following entry on that list:

- Consider whether to revise the descriptions in subdivisions (g) and (i) of Section 6254.5 (proposed Section 7921.505(b)(7) & (9)) to make them more readily understandable.

**It would be helpful to receive input on that possibility and on the proper interpretations of Section 6254.5(g) & (i).**

## CHAPTER 3. GENERAL RULES GOVERNING EXEMPTIONS FROM DISCLOSURE

### Article 1. Justification for Withholding of Record

#### § 7922.000. Justification for withholding of record

7922.000. An agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this division, or that 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.

**Comment.** Section 7922.000 continues former Section 6255(a) without substantive change.

## Article 2. Truncation of Social Security Numbers and Related Matters

### § 7922.200. Redaction of SSN by local agency

7922.200. (a) It is the intent of the Legislature that, in order to protect against the risk of identity theft, a local agency shall redact social security numbers from a record before disclosing the record to the public pursuant to this division.

(b) Nothing in this division shall be construed to require a local agency to disclose a social security number.

(c) This section does not apply to a record maintained by a county recorder.

**Comment.** Section 7922.200 continues former Section 6254.29 without substantive change. See Section 7920.505 (“local agency”).

### § 7922.205. Truncation of SSN by county recorder

7922.205. Nothing in this division shall be construed to require the disclosure by a county recorder of any “official record,” if a “public record” version of that record is available pursuant to Article 3.5 (commencing with Section 27300) of Chapter 6 of Part 3 of Division 2 of Title 3.

**Comment.** Section 7922.205 continues former Section 6254.27 without substantive change.

### § 7922.210. Truncation of SSN with regard to secured transaction

7922.210. Nothing in this division shall be construed to require the disclosure by a filing office of any “official record,” if a “public record” version of that record is available pursuant to Section 9526.5 of the Commercial Code.

**Comment.** Section 7922.210 continues former Section 6254.28 without substantive change.

**Staff Note.** As discussed at pages 16-17 of Memorandum 2017-50, the provision cross-referenced in Section 6254.28 does not refer to either an “official record” or a “public record,” despite the inference to the contrary in Section 6254.28. Instead, that Commercial Code Section 9526.5 refers to and defines an “official filing” and a “public filing”:

9526.5. (a) For purposes of this section, the following terms have the following meanings:

(1) “Official filing” means the permanent archival filing of all instruments, papers, records, and attachments as accepted for filing by a filing office.

(2) “Public filing” means a filing that is an exact copy of an official filing except that any social security number contained in the copied filing is truncated. The public filing shall have the same legal force and effect as the official filing. ...

This slight disconnect in terminology probably stems from Section 6254.27 (proposed Section 7922.205), which concerns disclosure of a record in the possession of a county recorder. The article cross-referenced in that adjacent, very similar section *does* refer to both an “official record” and a “public record.”

**Does the Commission wish to make nonsubstantive revisions to Section 6254.28 to conform to the terminology used in the cross-referenced code section, by (1) replacing the term “official record” with “official filing” and (2) replacing the term “public record” with “public filing”?**

DISPOSITION OF EXISTING LAW

**Staff Note.** This table shows the proposed disposition of provisions in the California Public Records Act (Gov’t Code §§ 6250-6276.48), as the law existed on January 1, 2017. Unless otherwise indicated, all statutory references are to the Government Code.

Existing Provision	Proposed Provision(s)
6250 .....	7921.000
6252.5 .....	7921.305
6252.7 .....	7921.310
6253(a) 1st sent.....	7921.005
6253.3 .....	7921.010
6254 next-to-last ¶ .....	7921.500
6254.5 1st sent .....	7921.505(a)
6254.5(a)-(i).....	7921.505(b)
6254.27 .....	7922.205
6254.28 .....	7922.210
6254.29 .....	7922.200
6255(a).....	7922.000
6257.5 .....	7921.300
6270 .....	7921.015

DERIVATION OF NEW LAW

**Staff Note.** This table shows the derivation of each provision in the proposed CPRA Recodification Act of 2019. Unless otherwise indicated, all statutory references are to the Government Code

Proposed Provision	Existing Provision(s)
7921.000 .....	6250
7921.005 .....	6253(a) 1st sent
7921.010 .....	6253.3
7921.015 .....	6270
7921.300 .....	6257.5
7921.305 .....	6252.5
7921.310 .....	6252.7
7921.500 .....	6254 next-to-last ¶
7921.505(a).....	6254.5 1st sent
7921.505(b).....	6254.5(a)-(i)
7922.000 .....	6255(a)
7922.200 .....	6254.29
7922.205 .....	6254.27
7922.210 .....	6254.28