

Memorandum 2018-9

**California Public Records Act Clean-Up:
Current Version of Tentative Outline**

The Commission¹ is presently studying a proposed recodification of the California Public Records Act (hereafter, "CPRA").²

This memorandum, which is intended to be purely informational, presents a tentative outline of that recodification, incorporating all Commission decisions to date.

Respectfully submitted,

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Staff Counsel

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. Government Code Sections 6250-6276.48.

CPRA RECODIFICATION: TENTATIVE OUTLINE (JANUARY 2018)

This is a tentative outline for recodification of the CPRA, incorporating all Commission decisions on the outline to date. The 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)
- 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 similar to Penal Code § 16020, but pertaining to Attorney General opinions instead of judicial decisions
- A provision modeled on Penal Code § 16025 (constitutionality), but pertaining to both judicial decisions and Attorney General opinions

Article 3. Effect of Division

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 the second sentence of Gov't Code § 6254.5 (definition of "agency" for purposes of § 6254.5)
- A provision defining the term "former Section 6254 provisions," to be modeled on Penal Code §§ 16575 ("former Article 4 of Chapter 1 provisions"), 16580 ("former Chapter 1 provisions"), 16585 ("former Section 12078 provisions")
- 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)

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 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 AND EXEMPTIONS 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 the definition of "agency"

Article 3. 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."

CHAPTER 3. GENERAL RULES GOVERNING EXEMPTIONS FROM
DISCLOSURE

Article 1. Justification for Withholding of Record

Material to include:

The substance of Gov't Code § 6255(a) (justification for withholding of record; often referred to as the CPRA catchall provision)

Article 2. 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)

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(b) (procedure for withholding of record)

Material to include (cont'd):

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

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 § 6254.4.5 (recording depicting victim of specified crime)

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, BUILDING STANDARDS, AND SAFETY REQUIREMENTS

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 AND TAX RECORDS

Material to include:

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

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 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)

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 PUBLIC RECORDS

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 AND CUSTOMER RECORDS

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 (information about 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 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. 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.**