

Memorandum 2018-11

California Public Records Act Clean-Up: Part 3. Inspection Procedures

As directed by the Legislature, the Commission¹ is preparing a proposed recodification of the California Public Records Act (“CPRA”).² This is a strictly nonsubstantive project, intended to make the CPRA more user-friendly.³ The Commission is using its normal, time-tested study process, which involves circulation of a tentative recommendation for comment before finalizing a proposal for submission to the Legislature.⁴

For purposes of a tentative recommendation, the Commission decided to recodify the CPRA in a new division (Division 10) in Title 1 of the Government Code. That division would be split into six parts (Parts 1-6), as detailed in the Commission’s tentative outline.⁵

At the December meeting, the Commission considered staff drafts of Parts 1 and 2. For convenient reference, a cumulative preliminary draft, incorporating the Commission’s decisions to date, is attached to Memorandum 2018-10.

This memorandum presents a staff draft of Part 3. **Commissioners and other interested persons should review the draft and consider whether any revisions are needed.**

A few points requiring special attention are discussed below.

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

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.

4. For a brief description of the Commission’s study process, see http://www.clrc.ca.gov/Menu5_about/process.html.

5. The current version of the tentative outline is attached to Memorandum 2018-9, which was previously distributed for convenient reference in connection with the upcoming meeting.

SUGGESTED CHANGES TO THE CUMULATIVE DRAFT

In preparing the attached draft of Part 3, the staff took a hard look at Section 6253, which provides:

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.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

(f) In addition to maintaining public records for public inspection during the office hours of the public agency, a public agency may comply with subdivision (a) by posting any public record on its Internet Web site and, in response to a request for a public record posted on the Internet Web site, directing a member of the public to the location on the Internet Web site where the public record is posted. However, if after the public agency directs a member of the public to the Internet Web site, the member of the public requesting the public record requests a copy of the public record due to an inability to access or reproduce the public record from the Internet Web site, the public agency shall promptly provide a copy of the public record pursuant to subdivision (b).

We also searched the codes for cross-references to this important provision, and found many of them.⁶

Having reflected on what we found, as well as previous input from the CPRA Committee of the League of California Cities warning that Section 6253(a) and (b) “set forth the *fundamental purpose* of the CPRA and any modification to these [provisions] would constitute a substantive change to the existing law,”⁷ **the staff recommends the following changes to the cumulative draft attached to Memorandum 2018-9:**

- (1) **Proposed new Division 10 should be named “Access to Public Records” instead of “Inspection of Public Records.”** The suggested new name is more appropriate because the CPRA encompasses a right to obtain copies of public records, not just a right to inspect public records.
- (2) **In proposed “Part 2. Disclosure and Exemptions Generally,” Chapter 1 should be named “Right of Access to Public Records” instead of “Right to Inspect Public Records.”** Again, the

6. See Sections 6253.1(c) & (d)(1), 6253.4(b), 6253.5(a), 6253.6, 11125.1(e), 12525, 12525.5(f), 15570.42, 15652, 54957.5(d). See also Health & Safety Code § 1439; Penal Code §§ 13300(j), 13519.4(j)(3)(E), 14167; Pub. Cont. Code § 10335(c); Veh. Code §§ 21362.5, 21455.5(f), 40240(f).

7. Second Supplement to Memorandum 2017-48, Exhibit p. 1 (emphasis in original).

suggested new name is more appropriate because the CPRA encompasses a right to obtain copies of public records, not just a right to inspect public records. In addition, the suggested new name tracks the language in existing Section 6250, which would be continued in proposed Section 7921.000 — i.e., “[T]he Legislature ... finds and declares that *access to information* concerning the conduct of the people’s business is a fundamental and necessary right”⁸

- (3) The first sentence of Section 6253(a) says: “Public records are open to inspection at all times during the offices hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided.” **Instead of recodifying that provision as proposed Section 7921.005 in Chapter 1 of Part 2, it should be moved to Part 3 of proposed new Division 10, where it can be kept in close proximity to the rest of the substance of Section 6253.** That would be helpful in conforming the many cross-references to Section 6253 in the codes. Relocating the sentence in question would also make it possible to keep the two sentences comprising Section 6253(a) adjacent to each other, which could be important because both of those sentences state key rules on inspection of a public record, as opposed to obtaining a copy of a public record.

It is true that the substance of the first sentence of Section 6253(a) (establishing a general right to inspect public records) also fits well in the chapter where it is currently located. Putting it there does not seem crucial, however, because that chapter includes another provision (proposed Section 7921.000), which more broadly expresses a right of “access to information concerning the conduct of the people’s business” The benefits of keeping the entire substance of Section 6253 in close proximity thus seem more compelling than the benefits of the current approach.

- (4) **Conforming changes should be made to reflect the relocation discussed in item #3 above** — i.e., proposed Section 7921.010 should become proposed Section 7921.005; proposed Section 7921.015 should become proposed Section 7921.010.

The attached draft of Part 3 is based on the assumption that these four changes to the cumulative draft will be acceptable to the Commission. **Are the four changes acceptable, as the staff assumed? Is there any reason not to make these changes?**⁹

8. Emphasis added.

9. If the Commission approves the four changes described above, the staff will also make conforming revisions in the tentative outline of new Division 10.

SUGGESTED CHANGE TO THE HEADING OF PART 3

In the current version of the tentative outline for the proposed recodification, Part 3 is entitled “Inspection Procedures.” That title is too narrow, because the CPRA encompasses a right to obtain copies of public records, not just a right to inspect public records.

The staff used a different title in the attached draft: “Part 3. Procedures.” **Is that title acceptable to the Commission? Does anyone have a better suggestion?**¹⁰

STAFF NOTES REGARDING PLACEMENT OF DEFINITIONS

The attached draft includes two Staff Notes that seek comment on the appropriate placement in the proposed recodification of definitional provisions that have limited application in the existing CPRA. The Staff Notes appear following proposed Sections 7922.535 and 7922.700.

The staff will raise those two Staff Notes for discussion at the meeting.

Respectfully submitted,

Steve Cohen
Staff Counsel

10. If the Commission changes the title of Part 3, the staff will incorporate that change in the next draft of the tentative outline.

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DRAFT LEGISLATION

1  **Note.** This is a work in progress. The material shown below may be changed. For a tentative
2 outline of new Division 10 of Title 1 of the Government Code, see CLRC Staff Memorandum
3 2018-9.

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

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

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

15 Some provisions in this draft are followed by a “Staff Note.” These Staff Notes are intended to
16 be temporary and will not be part of the Commission’s final recommendation. In general, the
17 Staff Notes serve to flag issues requiring special attention or treatment.

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

21 In some places, it is necessary to refer to a section that has not yet been drafted. That is done by
22 referring to “Section 79xx.xxx.” The Commission will fill in these references as it drafts the
23 proposed recodification.

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

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

1 **Gov't Code §§ 7920.000-79xx.xxx (added). California Public Records Act**

2 SEC. ____ . Division 10 (commencing with Section 7920.000) is added to the
3 Government Code, to read:

4 **DIVISION 10. ACCESS TO PUBLIC RECORDS**

5 ...

6 **PART 3. PROCEDURES**

7 **CHAPTER 1. REQUEST FOR A PUBLIC RECORD**

8 **Article 1. General Principles**

9 **§ 7922.500. No delay or obstruction**

10 7922.500. Nothing in this division shall be construed to permit an agency to
11 delay or obstruct the inspection or copying of public records.

12 **Comment.** Section 7922.500 continues the first sentence of former Section 6253(d) without
13 substantive change.

14 See Section 7920.525 ("public records").

15 **§ 7922.505. Option to adopt requirements that allow faster, more efficient, or greater access**
16 **than minimum standards**

17 7922.505. Except as otherwise prohibited by law, a state or local agency may
18 adopt requirements for itself that allow for faster, more efficient, or greater access
19 to records than prescribed by the minimum standards set forth in this division.

20 **Comment.** Section 7922.505 continues former Section 6253(e) without substantive change.

21 See Sections 7920.505 ("local agency"), 7920.535 ("state agency").

22 **Article 2. Procedural Requirements Generally**

23 **§ 7922.525. Inspection of public record**

24 7922.525. (a) Public records are open to inspection at all times during the office
25 hours of a state or local agency and every person has a right to inspect any public
26 record, except as otherwise provided.

27 (b) Any reasonably segregable portion of a record shall be available for
28 inspection by any person requesting the record after deletion of the portions that
29 are exempted by law.

30 **Comment.** Subdivision (a) of Section 7922.525 continues the first sentence of former Section
31 6253(a) without substantive change.

32 Subdivision (b) continues the second sentence of former Section 6253(a) without change.

33 For an agency's duty to assist a person in making a focused and effective record request, see
34 Section 7922.600. For guidance on obtaining a copy of a public record, see Section 7922.530.

1 See also Sections 7921.000-7922.210 (disclosure and exemptions generally), 7922.535 (time to
2 respond), 7922.540 (denial of request), 7922.545 (posting of public record on agency’s Internet
3 Web site), 7922.570 (disclosure of information in electronic format), 7922.640 (limitations on
4 guidelines & regulations).

5 See Sections 7920.505 (“local agency”), 7920.515 (“person”), 7920.525 (“public records”),
6 7920.535 (“state agency”).

7 **§ 7922.530. Copy of public record**

8 7922.530. Except with respect to public records exempt from disclosure by
9 express provisions of law, each state or local agency, upon a request for a copy of
10 records that reasonably describes an identifiable record or records, shall make the
11 records promptly available to any person upon payment of fees covering direct
12 costs of duplication, or a statutory fee if applicable. Upon request, an exact copy
13 shall be provided unless impracticable to do so.

14 **Comment.** Section 7922.530 continues former Section 6253(b) without change.

15 For an agency’s duty to assist a person in making a focused and effective record request, see
16 Section 7922.600. For guidance on inspection of a public record, see Section 7922.525.

17 See also Sections 7921.000-7922.210 (disclosure and exemptions generally), 7922.535 (time to
18 respond), 7922.540 (denial of request), 7922.545 (posting of public record on agency’s Internet
19 Web site), 7922.570 (disclosure of information in electronic format), 7922.640 (limitations on
20 guidelines & regulations).

21 See Sections 7920.505 (“local agency”), 7920.515 (“person”), 7920.525 (“public records”),
22 7920.535 (“state agency”).

23 **§ 7922.535. Time to respond**

24 7922.535. (a) Each agency, upon a request for a copy of records, shall, within 10
25 days from receipt of the request, determine whether the request, in whole or in
26 part, seeks copies of disclosable public records in the possession of the agency and
27 shall promptly notify the person making the request of the determination and the
28 reasons therefor. If the agency determines that the request seeks disclosable public
29 records, the agency shall also state the estimated date and time when the records
30 will be made available.

31 (b) In unusual circumstances, the time limit prescribed in this article and Article
32 1 (commencing with Section 7922.500) may be extended by written notice from
33 the head of the agency or a designee to the person making the request, setting forth
34 the reasons for the extension and the date on which a determination is expected to
35 be dispatched. No notice shall specify a date that would result in an extension for
36 more than 14 days.

37 (c) As used in this section, “unusual circumstances” means the following, but
38 only to the extent reasonably necessary to the proper processing of the particular
39 request:

40 (1) The need to search for and collect the requested records from field facilities
41 or other establishments that are separate from the office processing the request.

42 (2) The need to search for, collect, and appropriately examine a voluminous
43 amount of separate and distinct records that are demanded in a single request.

1 (3) The need for consultation, which shall be conducted with all practicable
2 speed, with another agency having substantial interest in the determination of the
3 request or among two or more components of the agency having substantial
4 subject matter interest therein.

5 (4) The need to compile data, to write programming language or a computer
6 program, or to construct a computer report to extract data.

7 **Comment.** Subdivision (a) of Section 7922.535 continues the first and fourth sentences of
8 former Section 6253(c) without substantive change.

9 Subdivision (b) continues the second and third sentences of former Section 6253(c) without
10 substantive change.

11 Subdivision (c) continues the fifth sentence of former Section 6253(c) without change.

12 For further guidance on the timing of an agency's response to a record request, see Section
13 7922.500 (no delay or obstruction).

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

15 **Staff Note.** The fifth sentence of existing Section 6253(c) defines the term "unusual
16 circumstances" for purposes of that section. In drafting proposed Section 7922.535, the staff had
17 to decide whether to place that definition in "Chapter 2. Definitions" of Part 1 of the proposed
18 recodification, or keep the definition in close proximity to the substantive material where the
19 definition is used.

20 The definition of "unusual circumstances" is specific to the context of Section 6253(c). It
21 seems unlikely that the Legislature would ever want to apply the same definition elsewhere in the
22 CPRA. For that reason, and because readers might not expect "unusual circumstances" to be a
23 defined term, we decided to keep the definition of "unusual circumstances" in close proximity to
24 the substance of Section 6253(c). See proposed Section 7922.535(c).

25 **Comments on this approach would be helpful.**

26 **§ 7922.540. Denial of request**

27 7922.540. (a) A response to a written request for inspection or copies of public
28 records that includes a determination that the request is denied, in whole or in part,
29 shall be in writing.

30 (b) The notification of denial shall set forth the names and titles or positions of
31 each person responsible for the denial.

32 (c) An agency shall justify withholding any record by complying with Section
33 7922.000.

34 **Comment.** Subdivision (a) of Section 7922.540 continues former Section 6255(b) without
35 change.

36 Subdivision (b) continues the second sentence of former Section 6253(d) without substantive
37 change.

38 Subdivision (c) is new. It is a nonsubstantive signpost provision, included simply to alert
39 readers to the requirements of Section 7922.000 (justification for withholding of record).

40 For further guidance on denial of a record request, see Sections 7921.000-7922.210 (disclosure
41 & exemptions generally), 79xx.xxx-79xx.xxx (specific types of public records), 79xx.xxx-
42 79xx.xxx (other exemptions from disclosure).

43 See Sections 7920.515 ("person"), 7920.540 ("writing").

44 **§ 7922.545. Posting public record on agency's Internet Web site**

45 7922.545. (a) In addition to maintaining public records for public inspection
46 during its office hours, a public agency may comply with Section 7922.525 by

1 posting any public record on its Internet Web site and, in response to a request for
2 a public record posted on the Internet Web site, directing a member of the public
3 to the location on the Internet Web site where the public record is posted.

4 (b) However, if after the public agency directs a member of the public to the
5 Internet Web site, the member of the public requesting the public record requests a
6 copy of the public record due to an inability to access or reproduce the public
7 record from the Internet Web site, the public agency shall promptly provide a copy
8 of the public record pursuant to Section 7922.530.

9 **Comment.** Subdivision (a) of Section 7922.545 continues the first sentence of former Section
10 6253(f) without substantive change.

11 Subdivision (b) continues the second sentence of former Section 6253(f) without substantive
12 change.

13 For further guidance on agency websites, see Sections 7922.680 (formatting of record that
14 local agency posts on Internet Resource), 7922.705 (posting catalog of enterprise systems on
15 local agency's website). See also Section 7922.520 (disclosure of information in electronic
16 format).

17 See Sections 7920.510 ("member of the public"), 7920.520 ("public agency"), 7920.525
18 ("public records").

19 Article 3. Information in Electronic Format

20 § 7922.570. Disclosure of information in electronic format

21 7922.570. (a) Unless otherwise prohibited by law, any agency that has
22 information that constitutes an identifiable public record not exempt from
23 disclosure pursuant to this division that is in an electronic format shall make that
24 information available in an electronic format when requested by any person.

25 (b) When applicable, the agency shall do the following:

26 (1) The agency shall make the information available in any electronic format in
27 which it holds the information.

28 (2) The agency shall provide a copy of an electronic record in the format
29 requested if the requested format is one that the agency has used to create copies
30 for its own use or for provision to other agencies.

31 (c) If a request is for information in other than electronic format, and the
32 information also is in electronic format, an agency may inform the requester that
33 the information is available in electronic format.

34 **Comment.** Subdivision (a) of Section 7922.570 continues the first part of the introductory
35 clause of former Section 6253.9 without substantive change.

36 Subdivision (b) continues paragraph (a)(1), the first sentence of paragraph (a)(2), and the
37 second part of the introductory clause of former Section 6253.9 without substantive change.

38 Subdivision (c) continues former Section 6253.9(d) without substantive change.

39 For guidance on the cost of duplicating an electronic record, see Section 7922.575. For
40 limitations on the application of this article, see Section 7922.580.

41 For guidance regarding agency websites, see Sections 7922.545 (posting public record on
42 agency's Internet Web site), 7922.680 (formatting of record that local agency posts on Internet
43 Resource).

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

1 **§ 7922.575. Cost of duplication**

2 7922.575. (a) The cost of duplication of an electronic record pursuant to
3 paragraph (2) of subdivision (b) of Section 7922.570 shall be limited to the direct
4 cost of producing a copy of a record in an electronic format.

5 (b) Notwithstanding subdivision (a), the requester shall bear the cost of
6 producing a copy of the record, including the cost to construct a record, and the
7 cost of programming and computer services necessary to produce a copy of the
8 record when either of the following applies:

9 (1) In order to comply with subdivisions (a) and (b) of Section 7922.520, the
10 public agency would be required to produce a copy of an electronic record and the
11 record is one that is produced only at otherwise regularly scheduled intervals.

12 (2) The request would require data compilation, extraction, or programming to
13 produce the record.

14 **Comment.** Subdivision (a) of Section 7922.575 continues the second sentence of former
15 Section 6253.9(a)(2) without substantive change.

16 Subdivision (b) continues former Section 6253.9(b) without substantive change.

17 See Section 7920.520 (“public agency”).

18 **§ 7922.580. Limitations**

19 7922.580. (a) Nothing in this article shall be construed to require a public
20 agency to reconstruct a record in an electronic format if the agency no longer has
21 the record available in an electronic format.

22 (b) Nothing in this article shall be construed to permit an agency to make
23 information available only in an electronic format.

24 (c) Nothing in this article shall be construed to require a public agency to release
25 an electronic record in the electronic form in which it is held by the agency if its
26 release would jeopardize or compromise the security or integrity of the original
27 record or of any proprietary software in which it is maintained.

28 (d) Nothing in this article shall be construed to permit public access to records
29 held by any agency to which access is otherwise restricted by statute.

30 **Comment.** Subdivision (a) of Section 7922.580 continues former Section 6253.9(c) without
31 substantive change.

32 Subdivision (b) continues former Section 6253.9(e) without substantive change.

33 Subdivision (c) continues former Section 6253.9(f) without substantive change.

34 Subdivision (d) continues former Section 6253.9(g) without substantive change.

35 See Section 7920.520 (“public agency”).

36 Article 4. Duty to Assist in Formulating Request

37 **§ 7922.600. Duty to provide assistance**

38 7922.600. (a) When a member of the public requests to inspect a public record
39 or obtain a copy of a public record, the public agency, in order to assist the
40 member of the public make a focused and effective request that reasonably

1 describes an identifiable record or records, shall do all of the following, to the
2 extent reasonable under the circumstances:

3 (1) Assist the member of the public to identify records and information that are
4 responsive to the request or to the purpose of the request, if stated.

5 (2) Describe the information technology and physical location in which the
6 records exist.

7 (3) Provide suggestions for overcoming any practical basis for denying access to
8 the records or information sought.

9 (b) The requirements of paragraph (1) of subdivision (a) shall be deemed to have
10 been satisfied if the public agency is unable to identify the requested information
11 after making a reasonable effort to elicit additional clarifying information from the
12 requester that will help identify the record or records.

13 (c) The requirements of subdivision (a) are in addition to any action required of
14 a public agency by Article 1 (commencing with Section 7922.500) or Article 2
15 (commencing with Section 7922.525).

16 **Comment.** Section 7922.600 continues former Section 6253.1(a)-(c) without substantive
17 change.

18 For further guidance regarding assistance to the public, see Sections 7922.500 (no delay or
19 obstruction), 7922.505 (option to adopt requirements that allow faster, more efficient, or greater
20 access than minimum standards).

21 See Sections 7920.510 (“member of the public”), 7920.520 (“public agency”), 7920.525
22 (“public records”).

23 **§ 7922.605. Inapplicability of article**

24 7922.605. This article shall not apply to a request for public records if any of the
25 following applies:

26 (a) The public agency makes the requested records available pursuant to Article
27 1 (commencing with Section 7922.500) and Article 2 (commencing with Section
28 7922.525).

29 (b) The public agency makes an index of its records available.

30 (c) The public agency determines that the request should be denied and bases
31 that determination solely on an exemption listed in Section 7920.500.

32 **Comment.** Section 7922.605 continues former Section 6253.1(d) without substantive change.

33 See Sections 7920.520 (“public agency”), 7920.525 (“public records”).

34 **CHAPTER 2. AGENCY REGULATIONS, GUIDELINES, SYSTEMS, AND**
35 **SIMILAR MATTERS**

36 **Article 1. Agency Regulations and Guidelines**

37 **§ 7922.630. Authority to adopt regulations**

38 7922.630. Every agency may adopt regulations in accordance with this article
39 stating the procedures to be followed when making its records available.

1 **Comment.** Section 7922.630 continues the first paragraph of former Section 6253.4(a) without
2 substantive change.

3 For further guidance on adoption of regulations, see Sections 7922.500 (no delay or
4 obstruction), 7922.505 (option to adopt requirements that allow faster, more efficient, or greater
5 access than minimum standards), 7922.635 (agencies required to establish & make available
6 written guidelines for accessibility of records), 7922.640 (limitations on guidelines &
7 regulations).

8 **§ 7922.635. Agencies required to establish and make available written guidelines for**
9 **accessibility of records**

10 7922.635. (a) The following state and local bodies shall establish written
11 guidelines for accessibility of records:

- 12 (1) All regional water quality control boards
- 13 (2) Bay Area Air Pollution Control District
- 14 (3) Bureau of Real Estate
- 15 (4) California Coastal Commission
- 16 (5) Department of Business Oversight
- 17 (6) Department of Consumer Affairs
- 18 (7) Department of Corrections and Rehabilitation
- 19 (8) Department of General Services
- 20 (9) Department of Industrial Relations
- 21 (10) Department of Insurance
- 22 (11) Department of Justice
- 23 (12) Department of Managed Health Care
- 24 (13) Department of Motor Vehicles
- 25 (14) Department of Parks and Recreation
- 26 (15) Department of Toxic Substances Control
- 27 (16) Department of Veterans Affairs
- 28 (17) Department of Water Resources
- 29 (18) Division of Juvenile Justice
- 30 (19) Employment Development Department
- 31 (20) Golden Gate Bridge, Highway and Transportation District
- 32 (21) Los Angeles County Air Pollution Control District
- 33 (22) Office of Environmental Health Hazard Assessment
- 34 (23) Public Employees' Retirement System
- 35 (24) Public Utilities Commission
- 36 (25) San Francisco Bay Area Rapid Transit District
- 37 (26) San Francisco Bay Conservation and Development Commission
- 38 (27) Secretary of State
- 39 (28) State Air Resources Board
- 40 (29) State Board of Equalization
- 41 (30) State Department of Developmental Services
- 42 (31) State Department of Health Care Services
- 43 (32) State Department of Public Health

- 1 (33) State Department of Social Services
- 2 (34) State Department of State Hospitals
- 3 (35) State Water Resources Control Board
- 4 (36) Teachers' Retirement Board
- 5 (37) Transportation Agency

6 (b) A copy of these guidelines shall be posted in a conspicuous public place at
7 the offices of these bodies, and a copy of the guidelines shall be available upon
8 request, free of charge, to any person requesting that body's records.

9 **Comment.** Section 7922.635 continues the second paragraph of former Section 6253.4(a)
10 without substantive change.

11 See Section 7920.515 ("person").

12 **§ 7922.640. Limitations on guidelines and regulations**

13 7922.640. (a) Guidelines and regulations adopted pursuant to this article shall be
14 consistent with all other sections of this division and shall reflect the intention of
15 the Legislature to make the records accessible to the public.

16 (b) Guidelines and regulations adopted pursuant to this article shall not operate
17 to limit the hours public records are open for inspection as prescribed in Article 1
18 (commencing with Section 7922.500) and Article 2 (commencing with Section
19 7922.525).

20 **Comment.** Section 7922.640 continues former Section 6253.4(b) without substantive change.

21 See Section 7920.525 ("public records").

22 For further guidance on adoption of guidelines and regulations, see Sections 7922.500 (no
23 delay or obstruction), 7922.505 (option to adopt requirements that allow faster, more efficient, or
24 greater access than minimum standards).

25 **Article 2. Internet Resources**

26 **§ 7922.680. Formatting of record that local agency posts on Internet Resource**

27 7922.680. If a local agency, except a school district, maintains an Internet
28 Resource, including, but not limited to, an Internet Web site, Internet Web page, or
29 Internet Web portal, which the local agency describes or titles as "open data," and
30 the local agency voluntarily posts a public record on that Internet Resource, the
31 local agency shall post the public record in an open format that meets all of the
32 following requirements:

33 (a) Retrievable, downloadable, indexable, and electronically searchable by
34 commonly used Internet search applications.

35 (b) Platform independent and machine readable.

36 (c) Available to the public free of charge and without any restriction that would
37 impede the reuse or redistribution of the public record.

38 (d) Retains the data definitions and structure present when the data was
39 compiled, if applicable.

40 **Comment.** Section 7922.680 continues former Section 6253.10 without change.

41 See Section 7920.505 ("local agency"), 7920.525 ("public records").

Article 3. Catalog of Enterprise Systems

§ 7922.700. Creation of catalog

7922.700. (a) In implementing this division, each local agency, except a local educational agency, shall create a catalog of enterprise systems.

(b) The local agency shall complete and post the catalog as required by this article by July 1, 2016, and thereafter shall update the catalog annually.

Comment. Subdivision (a) of Section 7922.700 continues the first sentence of former Section 6270.5(a) without substantive change.

Subdivision (b) continues former Section 6270.5(f) without substantive change.

See Sections 7920.495 (“catalog of enterprise systems”), 7920.505 (“local agency”).

Staff Note. Existing Section 6270.5(c)(1) & (3) define the term “enterprise system” for purposes of that section. Existing Section 6270.5(c)(2) defines the term “system of record,” which is used in the definition of “catalog of enterprise systems.” Neither of the terms is used elsewhere in the CPRA.

In drafting proposed Section 7922.700, the staff had to decide where the definitions of “enterprise system” and “system of record” should go: (1) in “Chapter 2. Definitions” of Part 1 of the proposed recodification, or (2) in this article entitled “Catalog of Enterprise Systems,” which will contain the substantive material where the definitions are currently used.

The staff regards this as a close call. It seems possible, however, that in the future the Legislature might want to apply those definitions in one or more CPRA provisions outside this article.

Thus, our current inclination is to place the two definitions in “Chapter 2. Definitions,” instead of in this article. The definitions would be proposed Sections 7920.495 and 7920.537, as follows:

7920.495. (a) As used in Article 3 (commencing with Section 7922.700) of Chapter 2 of Part 3, “enterprise system” means a software application or computer system that collects, stores, exchanges, and analyzes information that the agency uses that is both of the following:

(1) A multidepartmental system or a system that contains information collected about the public.

(2) A system of record.

(b) An enterprise system shall not include any of the following:

(1) Information technology security systems, including firewalls and other cybersecurity systems.

(2) Physical access control systems, employee identification management systems, video monitoring, and other physical control systems.

(3) Infrastructure and mechanical control systems, including those that control or manage street lights, electrical, natural gas, or water or sewer functions.

(4) Systems related to 911 dispatch and operation or emergency services.

(5) Systems that would be restricted from disclosure pursuant to [Section 6254.19].

Comment. Section 7920.495 continues former Section 6270.5(c)(1) & (3) without substantive change.

See Section 7920.537 (“system of record”).

7920.537. “System of record” means a system that serves as an original source of data within an agency.

Comment. Section 7920.537 continues former Section 6270.5(c)(2) without substantive change.

1 The Comments to proposed Sections 7922.700, 7922.705, and 7922.710 would refer to Section
2 7920.495’s definition of “enterprise system,” and the Comment to Section 7920.495 would refer
3 to Section 7920.537’s definition of “system of record.” That would help alert readers to the two
4 definitions.

5 **Comments on this approach would be helpful.**

6 **§ 7922.705. Availability of catalog**

7 7922.705. (a) The catalog of enterprise systems required by Section 7922.700
8 shall be made publicly available upon request in the office of the person or officer
9 designated by the agency’s legislative body.

10 (b) If the agency has an Internet Web site, the catalog shall be posted in a
11 prominent location on the agency’s Internet Web site.

12 **Comment.** Subdivision (a) of Section 7922.705 continues the second sentence of former
13 Section 6270.5(a) without substantive change.

14 Subdivision (b) continues the third sentence of former Section 6270.5(a) without substantive
15 change.

16 See Sections 7920.495 (“catalog of enterprise systems”), 7920.515 (“person”), 7920.505
17 (“local agency”).

18 **§ 7922.710. Content of catalog**

19 7922.710. (a) The catalog of enterprise systems required by Section 7922.700
20 shall disclose a list of the enterprise systems utilized by the agency.

21 (b) For each system, the catalog shall also disclose all of the following:

22 (1) Current system vendor.

23 (2) Current system product.

24 (3) A brief statement of the system’s purpose.

25 (4) A general description of categories or types of data.

26 (5) The department that serves as the system’s primary custodian.

27 (6) How frequently system data is collected.

28 (7) How frequently system data is updated.

29 (c) If, on the facts of the particular case, the public interest served by not
30 disclosing the information described in paragraph (1) or (2) of subdivision (b)
31 clearly outweighs the public interest served by disclosure of the record, the local
32 agency may instead provide a system name, brief title, or identifier of the system.

33 **Comment.** Subdivisions (a) and (b) of Section 7922.710 continue the fourth sentence of
34 former Section 6270.5(a) without substantive change.

35 Subdivision (c) continues former Section 6270.5(e) without substantive change.

36 See Sections 7920.495 (“catalog of enterprise systems”), 7920.505 (“local agency”).

37 **§ 7922.715. Construction of article**

38 7922.715. (a) This article shall not be interpreted to limit a person’s right to
39 inspect public records pursuant to this division.

40 (b) Nothing in this article shall be construed to permit public access to records
41 held by an agency to which access is otherwise restricted by statute or to alter the
42 process for requesting a public record, as set forth in this division.

- 1 **Comment.** Subdivision (a) of Section 7922.715 continues former Section 6270.5(b) without
- 2 substantive change.
- 3 Subdivision (b) continues former Section 6270.5(d) without substantive change.
- 4 See Sections 7920.515 (“person”), 7920.525 (“public records”).

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, 2018. Unless otherwise indicated, all statutory references are to the Government Code.

Existing Provision	Corresponding New Provision
6253(a) 1st sent	7922.525(a)
6253(a) 2nd sent	7922.525(b)
6253(b)	7922.530
6253(c) 1st sent	7922.535(a)
6253(c) 2nd sent	7922.535(b)
6253(c) 3rd sent	7922.535(b)
6253(c) 4th sent	7922.535(a)
6253(c) 5th sent	7922.535(c)
6253(d) 1st sent	7922.500
6253(d) 2nd sent	7922.540(b)
6253(e)	7922.505
6253(f) 1st sent	7922.545(a)
6253(f) 2nd sent	7922.545(b)
6253.1(a)-(c)	7922.600
6253.1(d)	7922.605
6253.4(a) 1st para	7922.630
6253.4(a) 2nd para	7922.635
6253.4(b)	7922.640
6253.9 intro cl 1st part	7922.570(a)
6253.9 intro cl 2nd part	7922.570(b)
6253.9(a)(1)	7922.570(b)
6253.9(a)(2) 1st sent	7922.570(b)
6253.9(a)(2) 2nd sent	7922.575(a)
6253.9(b)	7922.575(b)
6253.9(c)	7922.580(a)
6253.9(d)	7922.570(c)
6253.9(e)	7922.580(b)
6253.9(f)	7922.580(c)
6253.9(g)	7922.580(d)
6253.10	7922.680
6255(b)	7922.540(a)
6270.5(a) 1st sent	7922.700(a)
6270.5(a) 2nd sent	7922.705(a)
6270.5(a) 3rd sent	7922.705(b)
6270.5(a) 4th sent	7922.710(a), (b)
6270.5(b)	7922.715(a)
6270.5(d)	7922.715(b)
6270.5(e)	7922.710(c)
6270.5(f)	7922.700(b)

DERIVATION OF NEW LAW

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

Proposed New Provision	Corresponding Existing Provision
7922.500	6253(d) 1st sent
7922.505	6253(e)
7922.525(a)	6253(a) 1st sent
7922.525(b)	6253(a) 2nd sent
7922.530	6253(b)
7922.535(a)	6253(c) 1st, 4th sent
7922.535(b)	6253(c) 2nd, 3rd sent
7922.535(c)	6253(c) 5th sent
7922.540(a)	6255(b)
7922.540(b)	6253(d) 2nd sent
7922.540(c)	new
7922.545(a)	6253(f) 1st sent
7922.545(b)	6253(f) 2nd sent
7922.570(a)	6253.9 intro cl 1st part
7922.570(b)	6253.9 intro cl 2nd part, 6253.9(a)(1), (a)(2) 1st sent
7922.570(c)	6253.9(d)
7922.575(a)	6253.9(a)(2) 2nd sent
7922.575(b)	6253.9(b)
7922.580(a)	6253.9(c)
7922.580(b)	6253.9(e)
7922.580(c)	6253.9(f)
7922.580(d)	6253.9(g)
7922.600	6253.1(a)-(c)
7922.605	6253.1(d)
7922.630	6253.4(a) 1st para
7922.635	6253.4(a) 2nd para
7922.640	6253.4(b)
7922.680	6253.10
7922.700(a)	6270.5(a) 1st sent
7922.700(b)	6270.5(f)
7922.705(a)	6270.5(a) 2nd sent
7922.705(b)	6270.5(a) 3rd sent
7922.710(a), (b)	6270.5(a) 4th sent
7922.710(c)	6270.5(e)
7922.715(a)	6270.5(b)
7922.715(b)	6270.5(d)