

## Memorandum 2018-32

**California Public Records Act Clean-Up: Part 5. Specific Types of Public Records (Chapters 2-4)**

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In this study, the Commission<sup>1</sup> is building a tentative recommendation that proposes to recodify the California Public Records Act (“CPRA”).<sup>2</sup> Once completed, the tentative recommendation will be posted to the Commission’s website and widely circulated for comment.

The current version of the outline for the recodification is attached to Memorandum 2018-23, which the Commission considered earlier this year.<sup>3</sup> For convenient reference at the upcoming meeting, Memorandum 2018-40 presents a draft of all the material already approved for inclusion in the tentative recommendation thus far — i.e., Parts 1-4 and Chapter 1 of Part 5 of proposed new Division 10 of Title 1 of the Government Code.

This memorandum continues the drafting process. It presents a staff draft of the following chapters in Part 5, which is entitled “Specific Types of Public Records”:

- Chapter 2. Election Materials and Petitions
- Chapter 3. Environmental Protection, Building Standards, and Safety Requirements.
- Chapter 4. Financial Records and Tax Returns

**Commissioners and other interested persons should review the attached draft and determine whether any revisions are needed.** Staff Notes in the draft

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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. Gov’t Code §§ 6250-6276.48.

3. See *Draft Minutes* (May 2018), p. 3.

raise some specific questions for consideration. **Comments on any aspect of the draft would be helpful.**

Respectfully submitted,

Barbara Gaal  
Chief Deputy Counsel

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## DRAFT LEGISLATION

1 **Staff Note.** This is a work in progress. The material shown below may be changed. For the  
2 current tentative outline of proposed Division 10 of Title 1 of the Government Code, see CLRC  
3 Staff Memorandum 2018-23.

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 section)  
7 and describe how the recodified code section (or provision) compares with prior law. Courts have  
8 routinely held that the Commission’s Comments are evidence of legislative intent with regard to  
9 any legislation that implements a Commission recommendation.

10 There is a “disposition table” at the end of the proposed recodification. It summarizes, in tabular  
11 form, the disposition of every provision of the existing code that has been included in this proposed  
12 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.” Most of the Staff Notes are intended  
16 to 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 sections.  
19 As new Division 10 is drafted, these references will be conformed to the new numbering scheme.

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

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

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

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

29 SEC. \_\_\_\_\_. Division 10 (commencing with Section 7920.000) is added to Title 1  
30 of the Government Code, to read:

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

32 .....



1 The Commission needs to resolve where to recodify Section 6254.4(b)'s definition of "home  
2 address." Should it be placed in alphabetical order in "Chapter 2. Definitions" of Part 1 of the  
3 proposed recodification? Should that definition instead stay in close proximity to the substantive  
4 material to which it pertains (i.e., the remaining substance of Section 6254.4)?

5 Proposed Section 7924.000 would take the latter approach. The entire substance of existing  
6 Section 6254.4, including the definition of "home address," would be recodified in the same place.  
7 That would make it easy to conform the seven statutes that cross-refer to Section 6254.4.

8 More importantly, the definition of "home address" would be readily accessible when a person  
9 refers to the substantive material to which that definition applies (i.e., Section 6254.4(a), which  
10 would be continued in proposed Section 7924.000(a)). Such a person probably would be more  
11 likely to see and apply the definition than if it were placed in "Chapter 2. Definitions."

12 Another consideration is whether the Legislature would ever want to use Section 6254.4(b)'s  
13 definition of "home address" elsewhere in the CPRA. Unless that is a reasonable possibility, there  
14 might not be much advantage to placing that definition in "Chapter 2. Definitions." The staff does  
15 not know whether such usage of the definition is likely to occur.

16 Is the staff's suggested treatment of Section 6254.4(b)'s definition of "home address"  
17 acceptable? If so, should there be a "signpost" provision in "Chapter 2. Definitions," which would  
18 alert readers to the definition of "home address" in proposed Section 7924.000(d)? **Comments on**  
19 **these issues would be helpful.**

20 **§ 7924.005. Information identifying requester of bilingual ballot or ballot pamphlet**

21 7924.005. (a) Notwithstanding Sections 7920.505, 7920.510, 7920.515,  
22 7920.525, 7920.535, 7920.540, 7922.545, subdivision (a) of Section 7920.520,  
23 subdivision (b) of Section 7922.540, and Sections 7922.500 to 7922.535, inclusive,  
24 information compiled by a public officer or public employee that reveals the identity  
25 of a person who has requested a bilingual ballot or ballot pamphlet, in accordance  
26 with any federal or state law, or other data that would reveal the identity of the  
27 requester, is not a public record and shall not be provided to any person other than  
28 a public officer or public employee who is responsible for receiving the request and  
29 processing it.

30 (b) Subdivision (a) does not prohibit a person, otherwise authorized by law, from  
31 examining election materials, including, but not limited to, an affidavit of  
32 registration, provided that a request for a bilingual ballot or ballot pamphlet is  
33 subject to the restrictions in subdivision (a).

34 **Comment.** Section 7924.005 continues former Section 6253.6 without substantive change. See  
35 Section 13 (singular includes plural and vice versa).

36 See Sections 7920.515 ("person"), 7920.525 ("public records").  
37

38 Article 2. Initiative, Referendum, Recall, and Other Petitions and  
39 Related Materials

40 **§ 7924.100. "Petition"**

41 7924.100. As used in this article, "petition" means any petition to which a  
42 registered voter has affixed the voter's own signature.

43 **Comment.** Section 7924.100 continues former Section 6253.5(c) without substantive change.

1 **Staff Note.** Existing Section 6253.5(c) defines “petition” for purposes of that section. The term  
2 “petition” is also used in two other substantive provisions of the CPRA. Those provisions do not  
3 define the term, but it is clear from the context that they are not referring to the same type of petition  
4 as in Section 6253.5. See Sections 6259 (petition alleging improper withholding of public record),  
5 6264 (district attorney’s petition to inspect public record).

6 The term “petition” also appears three times in the list of exemptions in Article 2 of the CPRA.  
7 See Sections 6276.26 (“Initiative, referendum, recall, and other petitions, confidentiality of names  
8 of signers, Section 6253.5”), 6276.34 (“Petition signatures, Section 18650, Elections Code”),  
9 6276.48. (“Wards, petition for sealing records, Section 781, Welfare and Institutions Code”). That  
10 list is just a reference tool, not substantive law.

11 The Commission needs to resolve where to recodify Section 6253.5’s definition of “petition.”  
12 Should it be placed in alphabetical order in “Chapter 2. Definitions” of Part 1 of the proposed  
13 recodification? Should it instead stay in close proximity to the substantive material to which it  
14 pertains (i.e., the remaining substance of Section 6253.5)?

15 Proposed Section 7924.100 would take the latter approach. The entire substance of existing  
16 Section 6253.5, including the definition of “petition,” would be recodified in the same article. That  
17 would make it easy to conform the ten statutes that cross-refer to Section 6253.5.

18 More importantly, the definition of “petition” would be readily accessible when a person refers  
19 to the substantive material to which that definition applies (i.e., Section 6253.5(a)-(b), which would  
20 be continued in proposed Section 7924.110). Such a person probably would be more likely to see  
21 and apply the definition than if it were placed in “Chapter 2. Definitions.”

22 Is the staff’s suggested treatment of Section 6253.5’s definition of “petition” acceptable? If so,  
23 should there be a “signpost” provision in “Chapter 2. Definitions,” which would alert readers to the  
24 definition of “petition” in proposed Section 7924.100? **Comments on these issues would be**  
25 **helpful.**

26 **§ 7924.105. “Proponent of the petition”**

27 7924.105. As used in this article, “proponent of the petition” means the following:

28 (a) For a statewide initiative or referendum measure, the person who submits a  
29 draft of a petition proposing the measure to the Attorney General with a request that  
30 the Attorney General prepare a title and summary of the chief purpose and points of  
31 the proposed measure.

32 (b) For other initiative and referendum measures, the person who publishes a  
33 notice of intention to circulate a petition, or, where publication is not required, who  
34 files the petition with an elections official.

35 (c) For a recall measure, the person defined in Section 343 of the Elections Code.

36 (d) For a petition circulated pursuant to Section 5091 of the Education Code, the  
37 person having charge of the petition who submits the petition to the county  
38 superintendent of schools.

39 (e) For a petition circulated pursuant to Article 1 (commencing with Section  
40 35700) of Chapter 4 of Part 21 of the Education Code, the person designated as chief  
41 petitioner under Section 35701 of the Education Code.

42 (f) For a petition circulated pursuant to Part 46 (commencing with Section 74000)  
43 of the Education Code, the person designated as chief petitioner under Section  
44 74102, 74133, or 74152 of the Education Code.

45 **Comment.** Section 7924.105 continues former Section 6253.5(d) without substantive change.  
46 Section 13 (singular includes plural and vice versa).

47 See Sections 7920.515 (“person”), 7924.100 (“petition”).

1 **Staff Note.** Existing Section 6253.5(d) defines “proponents of the petition” for purposes of that  
2 section. The term is not used elsewhere in the CPRA.

3 The Commission needs to resolve where to recodify Section 6253.5’s definition of “proponents  
4 of the petition.” Proposed Section 7924.105 would place that definition in the same article as the  
5 rest of the substance of existing Section 6253.5.

6 That would make it easy to conform the ten statutes that cross-refer to Section 6253.5. The  
7 definition would also be readily accessible to persons who refer to the substantive material to which  
8 that definition applies.

9 Proposed Section 7924.105 would also singularize the definition (it would refer to the  
10 “proponent” instead of the “proponents”). Drafting in the singular is widely preferred and has no  
11 substantive effect because the singular includes the plural. See Gov’t Code § 13.

12 Is the staff’s suggested treatment of Section 6253.5’s definition of “proponents of the petition”  
13 acceptable? If so, should there be a “signpost” provision in “Chapter 2. Definitions,” which would  
14 alert readers to the definition in proposed Section 7924.105? **Comments on these issues would be**  
15 **helpful.**

16 **§ 7924.110. Initiative, referendum, or recall petition, or petition for reorganization of school**  
17 **districts or community college districts**

18 7924.110. (a) Notwithstanding Sections 7920.505, 7920.510, 7920.515,  
19 7920.525, 7920.535, 7920.540, 7922.545, subdivision (a) of Section 7920.520,  
20 subdivision (b) of Section 7922.540, and Sections 7922.500 to 7922.535, inclusive,  
21 the following are not public records:

22 (1) A statewide, county, city, or district initiative, referendum, or recall petition.

23 (2) A petition circulated pursuant to Section 5091 of the Education Code.

24 (3) A petition for reorganization of school districts submitted pursuant to Article  
25 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code.

26 (4) A petition for reorganization of community college districts submitted  
27 pursuant to Part 46 (commencing with Section 74000) of the Education Code.

28 (5) A memorandum prepared by a county elections official in the examination of  
29 a petition, indicating which registered voters signed that particular petition.

30 (b) The materials described in subdivision (a) shall not be open to inspection  
31 except by the following persons:

32 (1) A public officer or public employee who has the duty of receiving, examining,  
33 or preserving the petition, or who is responsible for preparation of the memorandum.

34 (2) If a petition is found to be insufficient, by the proponent of the petition and a  
35 representative of the proponent as may be designated by the proponent in writing,  
36 in order to determine which signatures were disqualified and the reasons therefor.

37 (c) Notwithstanding subdivisions (a) and (b), the Attorney General, the Secretary  
38 of State, the Fair Political Practices Commission, a district attorney, a city attorney,  
39 a school district attorney, and a community college district attorney shall be  
40 permitted to examine the materials described in subdivision (a) upon approval of  
41 the appropriate superior court.

42 (d) If the proponent of a petition is permitted to examine a petition and a  
43 memorandum pursuant to subdivision (b), the examination shall commence not later  
44 than 21 days after certification of insufficiency, and the county elections official  
45 shall retain the documents as prescribed in Section 17200 of the Elections Code.

1 **Comment.** Subdivision (a) and (b) of Section 7924.110 continue the first sentence of former  
2 Section 6253.5(a) without substantive change.

3 Subdivision (c) continues the second sentence of former Section 6253.5(a) without substantive  
4 change.

5 Subdivision (d) continues former Section 6253.5(b) without substantive change.

6 See Sections 7920.515 (“person”), 7920.525 (“public records”), 7920.540 (“writing”), 7924.100  
7 (“petition”), 7924.105 (“proponent of the petition”). See also Section 13 (singular includes plural  
8 and vice versa).

9 CHAPTER 3. ENVIRONMENTAL PROTECTION, BUILDING STANDARDS,  
10 AND SAFETY REQUIREMENTS

11 Article 1. Pesticide Safety and Efficacy Information Disclosable  
12 Under the Federal Insecticide, Fungicide, and Rodenticide Act

13 § 7924.300. Disclosure of pesticide safety and efficacy information

14 7924.300. If both of the following conditions are satisfied, nothing in this division  
15 exempts from public disclosure the same categories of pesticide safety and efficacy  
16 information that are disclosable under paragraph (1) of subsection (d) of Section 10  
17 of the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec.  
18 136h(d)(1)):

19 (a) The individual requesting the information is not an officer, employee, or agent  
20 specified in subdivision (a) of Section 7924.310.

21 (b) The individual signs the affirmation specified in subdivision (b) of Section  
22 7924.310.

23 **Comment.** Section 7924.300 continues former Section 6254.2(a) without substantive change.

24 § 7924.305. Data submitted and designated as trade secret

25 7924.305. (a) The Director of Pesticide Regulation, upon the Director’s initiative,  
26 or upon receipt of a request pursuant to this division for the release of data submitted  
27 and designated as a trade secret by a registrant or applicant, shall determine whether  
28 any or all of the data so submitted is a properly designated trade secret. In order to  
29 assure that the interested public has an opportunity to obtain and review pesticide  
30 safety and efficacy data and to comment prior to the expiration of the public  
31 comment period on a proposed pesticide registration, the director shall provide  
32 notice to interested persons when an application for registration enters the  
33 registration evaluation process.

34 (b) If the director determines that the data is not a trade secret, the director shall  
35 notify the registrant or applicant by certified mail.

36 (c) The registrant or applicant shall have 30 days after receipt of this notification  
37 to provide the director with a complete justification and statement of the grounds on  
38 which the trade secret privilege is claimed. This justification and statement shall be  
39 submitted by certified mail.

1 (d) The director shall determine whether the data is protected as a trade secret  
2 within 15 days after receipt of the justification and statement or, if no justification  
3 and statement is filed, within 45 days of the original notice. The director shall notify  
4 the registrant or applicant and any party who has requested the data pursuant to this  
5 division of that determination by certified mail. If the director determines that the  
6 data is not protected as a trade secret, the final notice shall also specify a date, not  
7 sooner than 15 days after the date of mailing of the final notice, when the data shall  
8 be available to any person requesting information pursuant to Section 7924.300.

9 (e) This article does not prohibit any person from maintaining a civil action for  
10 wrongful disclosure of a trade secret.

11 (f) “Trade secret” means data that is nondisclosable under paragraph (1) of  
12 subsection (d) of Section 10 of the federal Insecticide, Fungicide, and Rodenticide  
13 Act (7 U.S.C. Sec. 136h(d)(1)).

14 **Comment.** Subdivision (a) of Section 7924.305 continues former Section 6254.2(b) without  
15 substantive change.

16 Subdivision (b) continues former Section 6254.2(c) without substantive change.

17 Subdivision (c) continues former Section 6254.2(d) without substantive change.

18 Subdivision (d) continues former Section 6254.2(e) without substantive change.

19 Subdivision (e) continues former Section 6254.2(m) without substantive change.

20 Subdivision (f) continues former Section 6254.2(f) without substantive change.

21 See Section 7920.515 (“person”). See also Section 13 (singular includes plural and vice versa).

22 **Staff Notes.**

23 (1) Existing Section 6254.2(f) refers to a provision in the federal Insecticide, Fungicide, and  
24 Rodenticide Act, but does not include a parallel citation to the United States Code. The Commission  
25 previously decided that the recodification of Section 6254.2(f) should include the parallel citation.  
26 Proposed Section 7924.305(f) would implement that decision.

27 (2) Existing Section 6254.2(b) says:

28 (b) The Director of Pesticide Regulation, upon his or her initiative, or upon receipt  
29 of a request pursuant to this chapter for the release of data submitted and designated  
30 as a trade secret by a registrant or applicant, shall determine whether any or all of the  
31 data so submitted is a properly designated trade secret. *In order to assure that the*  
32 *interested public has an opportunity to obtain and review pesticide safety and efficacy*  
33 *data and to comment prior to the expiration of the public comment period on a*  
34 *proposed pesticide registration, the director shall provide notice to interested persons*  
35 *when an application for registration enters the registration evaluation process.*

36 The second sentence (shown in italics) establishes a notice requirement for a proposed pesticide  
37 registration. At best, it is marginally related to the first sentence.

38 The staff considered recodifying the second sentence as a stand-alone section within this  
39 proposed article. However, such a notice requirement seems out-of-place in the CPRA.

40 Perhaps that sentence should be recodified elsewhere, with other material governing regulation  
41 of pesticides. For instance, Food and Agricultural Code Section 11502 could be amended as shown  
42 in underscore below:

43 11502. The director shall adopt regulations which govern the conduct of the business  
44 of pest control. In order to assure that the interested public has an opportunity to  
45 obtain and review pesticide safety and efficacy data and to comment prior to the  
46 expiration of the public comment period on a proposed pesticide registration, the

1 director shall provide notice to interested persons when an application for  
2 registration enters the registration evaluation process.  
3

4 To avoid causing alarm, proposed Section 7924.305(a) would track existing Section 6254.2(b),  
5 instead of moving the second sentence elsewhere. For purposes of a tentative recommendation,  
6 should the Commission follow that approach and include a Note soliciting input on where to place  
7 the substance of the second sentence? Would it be preferable to propose to amend Food and  
8 Agricultural Code Section 11502 as shown above? Is there a better alternative? **Comments on**  
9 **these issues would be helpful.**

10 (3) Existing Section 6254.2 (f) defines “trade secret” as follows:

11 11502. “Trade secret” means data that is nondisclosable under paragraph (1)  
12 of subsection (d) of Section 10 of the federal Insecticide, Fungicide and  
13 Rodenticide Act.

14 This definition is not expressly limited to Section 6254.2 but such a limitation seems implicit from  
15 the context.

16 Importantly, the term “trade secret” is also used elsewhere in the CPRA. In some of those  
17 places, the term is not defined. See Sections 6254.15, 6254.26(b). In other places, the applicable  
18 definition does not refer to the federal Insecticide, Fungicide and Rodenticide Act. See Sections  
19 6254(ad)(5)(A)-(B), 6254.7. There are also numerous nonsubstantive references to “trade secret”  
20 in the list of exemptions in Article 2 of the CPRA. See Sections 6276.04, 6276.12, 6276.24,  
21 6276.26, 6276.32, 6276.44.

22 In recodifying Section 6254.2’s definition of “trade secret,” **the Commission should consider**  
23 **several points:**

- 24 • Should the definition track the existing language or should it be *expressly*  
25 limited to the continuation of Section 6254.2 (e.g., “As used in this section,  
26 “trade secret” means ...”)?
- 27 • Should the definition remain in close proximity to the substance of Section 6254.2?  
28 Should it instead be placed in “Chapter 2. Definitions” of Part 1 of the proposed  
29 recodification?
- 30 • If Section 6254.2(f)’s definition would remain in close proximity to the substance  
31 of Section 6254.2, should there be a signpost provision in “Chapter 2. Definitions,”  
32 alerting persons to that definition as well as the other definitions of “trade secret”  
33 used in the CPRA?

34 Proposed Section 7924.305 would track the existing language of Section 6254.2(f) and keep it  
35 in close proximity to the substance of Section 6254.2. If the Commission decides to follow that  
36 approach, it might be helpful to include a signpost provision in “Chapter 2. Definitions,” as  
37 described above. **We encourage input on that possibility and the other issues discussed here.**

38 **§ 7924.310. Prohibition on disclosure of application or registration information to person**  
39 **with specified foreign connection**

40 7924.310. (a) Unless the applicant or registrant consents to disclosure of  
41 information that the applicant or registrant submits to the state pursuant to Article 4  
42 (commencing with Section 12811) of Chapter 2 of Division 7 of the Food and  
43 Agricultural Code, the Director of Pesticide Regulation shall not knowingly disclose  
44 any of that information to any of the following:

45 (1) An officer, employee, or agent of any business or other entity engaged in the  
46 production, sale, or distribution of pesticides in a country other than the United  
47 States, or in a country in addition to the United States.

1 (2) Any other person who intends to deliver this information to any foreign or  
2 multi-national business or entity.

3 (b) To implement this section, the director shall require a person requesting  
4 information described in subdivision (a) to sign the following affirmation:

5 AFFIRMATION OF STATUS

6 This affirmation is required by Article 1 (commencing with Section 7924.310) of  
7 Chapter 3 of Part 5 of Division 10 of Title 1 of the Government Code.

8 I have requested access to information submitted to the Department of Pesticide  
9 Regulation (or previously submitted to the Department of Food and Agriculture) by  
10 a pesticide applicant or registrant pursuant to the California Food and Agricultural  
11 Code. I hereby affirm all of the following statements:

12 (1) I do not seek access to the information for purposes of delivering it or offering  
13 it for sale to any business or other entity, including the business or entity of which I  
14 am an officer, employee, or agent, engaged in the production, sale, or distribution  
15 of pesticides in a country other than the United States or in a country in addition to  
16 the United States, or to an officer, employee, or agent of such a business or entity.

17 (2) I will not purposefully deliver or negligently cause the data to be delivered to  
18 a business or entity specified in paragraph (1) or its officers, employees, or agents.

19 I am aware that I may be subject to criminal penalties under Section 118 of the  
20 Penal Code if I make any statement of material facts knowing that the statement is  
21 false or if I willfully conceal any material fact.

22 \_\_\_\_\_  
23 Name of Requester

\_\_\_\_\_ Name of Requester's Organization

24 \_\_\_\_\_  
25 Signature of Requester

\_\_\_\_\_ Address of Requester

26 \_\_\_\_\_  
27 Date

\_\_\_\_\_ Request No.

\_\_\_\_\_ Telephone Number of Requester

28  
29 \_\_\_\_\_  
30 Name, Address, and Telephone  
31 Number of Requester's Client if  
32 the requester has requested access  
33 to the information on behalf of  
34 someone other than the requester  
35 or the requester's organization  
36 listed above.

1 (c) Section 118 of the Penal Code applies to any affirmation made pursuant to this  
2 article.

3 **Comment.** Subdivisions (a) and (b) of Section 7924.310 continue former Section 6254.2(h)  
4 without substantive change.

5 Subdivision (c) continues former Section 6254.2(k) without substantive change.

6 See Section 7920.515 (“person”).

7 **§ 7924.315. Information needed to determine whether pesticide or ingredient causes**  
8 **unreasonable adverse effect on health or environment**

9 7924.315. Notwithstanding any other provision of this article, if the Director of  
10 Pesticide Regulation determines that information submitted by an applicant or  
11 registrant is needed to determine whether a pesticide, or any ingredient of any  
12 pesticide, causes unreasonable adverse effects on health or the environment, the  
13 director may disclose that information to any person in connection with a public  
14 proceeding conducted under law or regulation.

15 **Comment.** Section 7924.315 continues former Section 6254.2(i) without substantive change.

16 See Section 7920.515 (“person”).

17 **§ 7924.320. Recordkeeping and notification**

18 7924.320. The Director of Pesticide Regulation shall maintain records of the  
19 names of persons to whom data is disclosed pursuant to this article and the persons  
20 or organizations they represent and shall inform the applicant or registrant of the  
21 names and the affiliation of these persons.

22 **Comment.** Section 7924.320 continues former Section 6254.2(j) without substantive change.

23 See Section 7920.515 (“person”).

24 **§ 7924.325. Effect of frivolous request**

25 7924.325. The Director of Pesticide Regulation may limit an individual to one  
26 request per month pursuant to this article if the director determines that a person has  
27 made a frivolous request within the past 12-month period.

28 **Comment.** Section 7924.325 continues former Section 6254.2(n) without substantive change.

29 See Section 7920.515 (“person”).

30 **§ 7924.330. Penalty for willfully disclosing material prohibited from disclosure by this**  
31 **article**

32 7924.330. (a) Any officer or employee of the state, or former officer or employee  
33 of the state, who, because of this employment or official position, obtains possession  
34 of, or has access to, material which is prohibited from disclosure by this article, and  
35 who, knowing that disclosure of this material is prohibited by this article, willfully  
36 discloses the material in any manner to any person not entitled to receive it, shall,  
37 upon conviction, be punished by a fine of not more than ten thousand dollars  
38 (\$10,000), or by imprisonment in the county jail for not more than one year, or by  
39 both fine and imprisonment.

1 (b) For purposes of this section, any contractor with the state who is furnished  
2 information pursuant to this article, or any employee of any contractor, shall be  
3 considered an employee of the state.

4 **Comment.** Section 7924.330 continues former Section 6254.2(l) without substantive change.  
5 See Section 7920.515 (“person”).

6 **§ 7924.335. Conditional operation**

7 7924.335. This article shall be operative only so long as, and to the extent that,  
8 enforcement of paragraph (1) of subsection (d) of Section 10 of the federal  
9 Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136h(d)(1)) has not been  
10 enjoined by federal court order. If a final and unappealable federal court judgment  
11 or decision holds that paragraph invalid, this article shall become inoperative, to the  
12 extent of the invalidity.

13 **Comment.** Section 7924.335 continues former Section 6254.2(g) without substantive change.

14 **Article 2. Pollution**

15 **§ 7924.500. Information received or compiled by air pollution control officer**

16 7924.500. Nothing in this division requires the disclosure of records that relate to  
17 volatile organic compound or chemical substance information received or compiled  
18 by an air pollution control officer pursuant to Section 42303.2 of the Health and  
19 Safety Code.

20 **Comment.** Section 7924.500 continues former Section 6254.11 without substantive change. See  
21 Section 13 (singular includes plural and vice versa).

22 **§ 7924.505. Financial data in application under California Pollution Control Financing**

23 **Authority Act**

24 7924.505. (a) Except as provided in Sections [6254.13], 7924.510, and 7924.700,  
25 this division does not require the disclosure of financial data contained in an  
26 application for financing under Division 27 (commencing with Section 44500) of  
27 the Health and Safety Code, if an authorized officer of the California Pollution  
28 Control Financing Authority determines that disclosure of the financial data would  
29 be competitively injurious to the applicant and the data is required in order to obtain  
30 a guarantee from the United States Small Business Administration.

31 (b) The California Pollution Control Financing Authority shall adopt rules for  
32 review of individual requests for confidentiality under this section and for making  
33 available to the public those portions of an application that are subject to disclosure  
34 under this division.

35 **Comment.** Section 7924.505 continues former Section 6254(o) without substantive change. See  
36 Section 13 (singular includes plural and vice versa).

37 For other provisions governing disclosure of financial records, see “Chapter 4. Financial Records  
38 and Tax Records” (Sections 7925.000-7925.010).

1    **§ 7924.510. Pollution information generally**

2       7924.510. (a) Any information, analysis, plan, or specification that discloses the  
3 nature, extent, quantity, or degree of an air contaminant or other pollution that any  
4 article, machine, equipment, or other contrivance will produce, which any air  
5 pollution control district or air quality management district, or any other state or  
6 local agency or district, requires any applicant to provide before the applicant builds,  
7 erects, alters, replaces, operates, sells, rents, or uses the article, machine, equipment,  
8 or other contrivance, is a public record.

9       (b) All air or other pollution monitoring data, including data compiled from a  
10 stationary source, are public records.

11       (c) Except as otherwise provided in subdivision (d) and Chapter 3 (commencing  
12 with Section 99150) of Part 65 of the Education Code, a trade secret is not a public  
13 record under this section or Section 7924.700.

14       (d) Notwithstanding any other provision of law, all air pollution emission data,  
15 including those emission data that constitute trade secrets as defined in subdivision  
16 (f), are public records. Data used to calculate emission data are not emission data  
17 for the purposes of this subdivision and data that constitute trade secrets and that are  
18 used to calculate emission data are not public records.

19       (e) Data used to calculate the costs of obtaining emissions offsets are not public  
20 records. At the time that an air pollution control district or air quality management  
21 district issues a permit to construct to an applicant who is required to obtain offsets  
22 pursuant to district rules and regulations, data obtained from the applicant consisting  
23 of the year the offset transaction occurred, the amount of offsets purchased, by  
24 pollutant, and the total cost, by pollutant, of the offsets purchased is a public record.  
25 If an application is denied, the data shall not be a public record.

26       (f) As used in this section, “trade secret” may include, but is not limited to, any  
27 formula, plan, pattern, process, tool, mechanism, compound, procedure, production  
28 data, or compilation of information that satisfies all of the following requirements:

29       (1) It is not patented.

30       (2) It is known only to certain individuals within a commercial concern who are  
31 using it to fabricate, produce, or compound an article of trade or a service having  
32 commercial value.

33       (3) It gives its user an opportunity to obtain a business advantage over competitors  
34 who do not know or use it.

35       **Comment.** Subdivision (a) of Section 7924.510 continues former Section 6254.7(a) without  
36 substantive change.

37       Subdivision (b) continues former Section 6254.7(b) without substantive change.

38       Subdivision (c) continues the first sentence of former Section 6254.7(d) without substantive  
39 change.

40       Subdivision (d) continues former Section 6254.7(e) without substantive change.

41       Subdivision (e) continues former Section 6254.7(f) without substantive change.

42       Subdivision (f) continues the second sentence of former Section 6254.7(d) without substantive  
43 change.

44       See Sections 7920.505 (“local agency”), 7920.525 (“public records”), 7920.535 (“state agency”).  
45 See also Section 13 (singular includes plural and vice versa).

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**Staff Notes.**

(1) Subdivisions (a), (b), (d), (e), and (f) of existing Section 6254.7 concern pollution data and other pollution-related matters. In contrast, subdivision (c) concerns violations of building standards and safety requirements. It says:

(c) All records of notices and orders directed to the owner of any building of violations of housing or building codes, ordinances, statutes, or regulations which constitute violations of standards provided in Section 1941.1 of the Civil Code, and records of subsequent action with respect to those notices and orders, are public records.

Because subdivision (c) deals with a distinct topic, the staff suggests recodifying it in a separate article (“Article 3. Building Standards and Safety Requirements”) instead of in “Article 2. Pollution” with the rest of the substance of Section 6254.7. That organizational scheme would help draw attention to the provision. However, the approach would also slightly complicate the task of conforming the many statutes that cross-refer to Section 6254.7.

Would the benefits of this organizational scheme outweigh that detriment? **Comments on this point would be helpful.**

(2) The second sentence of existing Section 6254.7(d) says:

“Trade secrets” as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

As previously discussed, the term “trade secret” is also used elsewhere in the CPRA. In some places, the term is not defined. See Sections 6254.15, 6254.26(b). In other places, the applicable definition differs from the one in Section 6254.7(d). See Sections 6254(ad)(5)(A)-(B), 6254.2(f). There are also numerous nonsubstantive references to “trade secret” in the list of exemptions in Article 2 of the CPRA. See Sections 6276.04, 6276.12, 6276.24, 6276.26, 6276.32, 6276.44.

The Commission needs to resolve where to recodify Section 6254.7(d)’s definition of “trade secrets.” Should it be placed in alphabetical order in “Chapter 2. Definitions” of Part 1 of the proposed recodification? Should it instead stay in close proximity to the substantive material to which it pertains (i.e., the remaining substance of Section 6254.7)? If so, should there be a signpost provision in “Chapter 2. Definitions,” alerting persons to that definition as well as the other definitions of “trade secret” used in the CPRA?

Proposed Section 7924.510 would keep Section 6254,7(d)’s definition of “trade secrets” in close proximity to the remaining substance of Section 6254.7. If the Commission decides to follow that approach, it might be helpful to include a signpost provision in “Chapter 2. Definitions,” as described above. **We encourage input on that possibility and the related issues raised here.**

40 Article 3. Building Standards and Safety Requirements

41 § 7924.700. Record relating to housing or building violation

42 7924.700. (a) A record of a notice or an order that is directed to the owner of any  
43 building and relates to violation of a housing or building code, ordinance, statute, or  
44 regulation that constitutes a violation of a standard provided in Section 1941.1 of  
45 the Civil Code is a public record.

1 (b) A record of subsequent action with respect to a notice or order described in  
2 subdivision (a) is a public record.

3 **Comment.** Section 7924.700 continues former Section 6254.7(c) without substantive change.

4 For a special rule applicable to a trade secret, see Section 7924.510(c).

5 See Section 7920.525 (“public records”). See also Section 13 (singular includes plural and vice  
6 versa).

7 **Staff Note.** Subdivision (c) of existing Section 6254.7 is awkwardly phrased. It says:

8 (c) All records of notices and orders directed to the owner of any building of  
9 violations of housing or building codes, ordinances, statutes, or regulations which  
10 constitute violations of standards provided in Section 1941.1 of the Civil Code, and  
11 records of subsequent action with respect to those notices and orders, are public records.

12 The staff considered the possibility of recodifying this awkward language, but decided that  
13 rephrasing it could be helpful and could be done without much risk of a substantive change.

14 Is proposed Section 7924.700 satisfactory as drafted? Would it be better to retain the existing  
15 language in Section 6254.7(c)?

16 **Comments on this point would be helpful.**

17  
18 Article 4. Enforcement Orders

19 § 7924.900. Internet posting of final enforcement orders of California Environmental  
20 Protection Agency and specified entities within that agency

21 7924.900. (a) Every final enforcement order issued by an agency listed in  
22 subdivision (b) under any provision of law that is administered by an entity listed in  
23 subdivision (b), shall be displayed on the entity’s Internet website, if the final  
24 enforcement order is a public record that is not exempt from disclosure pursuant to  
25 this division.

26 (b) This section applies to the California Environmental Protection Agency and  
27 to all of the following entities within the agency:

28 (1) The State Air Resources Board.

29 (2) The California Integrated Waste Management Board.

30 (3) The State Water Resources Control Board, and each California regional water  
31 quality control board.

32 (4) The Department of Pesticide Regulation.

33 (5) The Department of Toxic Substances Control.

34 (c)(1) Except as provided in paragraph (2), for purposes of this section, an  
35 enforcement order is final when the time for judicial review has expired on or after  
36 January 1, 2001, or when all means of judicial review have been exhausted on or  
37 after January 1, 2001.

38 (2) In addition to the requirements of paragraph (1), with regard to a final  
39 enforcement order issued by the State Water Resources Control Board or a  
40 California regional water quality control board, this section shall apply only to a  
41 final enforcement order adopted by that entity at a public meeting.

1 (d) An order posted pursuant to this section shall be posted for not less than one  
2 year.

3 (e) The California Environmental Protection Agency shall oversee the  
4 implementation of this section.

5 **Comment.** Section 7924.900 continues former Section 6253.8(a)-(e) without substantive  
6 change.

7 See Section 7920.525 (“public records”).

8 **Staff Note.** Section 6253.8(f) says that the section “shall become operative April 1, 2001.” That  
9 language appears to be obsolete. It would not be continued in proposed Section 7924.900.

#### 10 CHAPTER 4. FINANCIAL RECORDS AND TAX RECORDS

##### 11 § 7925.000. Confidential taxpayer information required in collection of local taxes

12 7925.000. Except as provided in Sections [6254.13], 7924.510, and 7924.700, this  
13 division does not require the disclosure of information required from any taxpayer  
14 in connection with the collection of local taxes if that information is received in  
15 confidence and disclosure of it to other persons would result in unfair competitive  
16 disadvantage to the person supplying the information.

17 **Comment.** Section 7925.000 continues former Section 6254(i) without substantive change.

18 See Section 7920.515 (“person”).

##### 19 § 7925.005. Personal financial records required by licensing agency

20 7925.005. Except as provided in Sections [6254.13], 7924.510, and 7924.700, this  
21 division does not require the disclosure of a statement of personal worth or personal  
22 financial data required by a licensing agency and filed by an applicant with the  
23 licensing agency to establish the applicant’s personal qualification for the license,  
24 certificate, or permit requested.

25 **Comment.** Section 7925.005 continues former Section 6254(n) without substantive change.

##### 26 § 7925.010. Financial data relating to service contractor

27 7925.010. Except as provided in Sections [6254.13], 7924.510, and 7924.700, this  
28 division does not require the disclosure of any of the following records:

29 (a) Financial data contained in an application for registration, or registration  
30 renewal, as a service contractor, which is filed with the Director of Consumer  
31 Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of  
32 the Business and Professions Code, for the purpose of establishing the service  
33 contractor’s net worth,

34 (b) Financial data regarding the funded accounts held in escrow for service  
35 contracts held in force in this state by a service contractor.

36 **Comment.** Section 7925.010 continues former Section 6254(x) without substantive change.



DISPOSITION OF FORMER LAW

**Note.** This table shows the proposed disposition of the following provisions of the California Public Records Act (Gov't Code §§ 6250-6276.48), as that law existed on January 1, 2018. Unless otherwise indicated, all statutory references are to the Government Code.

<b>Existing Provision</b>	<b>Proposed Provision(s)</b>	<b>Existing Provision</b>	<b>Proposed Provision(s)</b>
6253.5(a) 1st sent .....	7924.110(a)-(b)	6254.2(g) .....	7924.335
6253.5(a) 2d sent .....	7924.110(c)	6254.2(h) .....	7924.310(a)-(b)
6253.5(b) .....	7924.110(d)	6254.2(i) .....	7924.315
6253.5(c) .....	7924.100	6254.2(j) .....	7924.320
6253.5(d) .....	7924.105	6254.2(k) .....	7924.310(c)
6253.6 .....	7924.005	6254.2(l) .....	7924.330
6253.8(a)-(e) .....	7924.900	6254.2(m) .....	7924.305(e)
6253.8(f) .....	not cont'd	6254.2(n) .....	7924.325
6254(i) .....	7925.000	6254.4 .....	7924.000
6254(n) .....	7925.005	6254.7(a) .....	7924.510(a)
6254(o) .....	7924.505	6254.7(b) .....	7924.510(b)
6254(x) .....	7925.010	6254.7(c) .....	7924.700
6254.2(a) .....	7924.300	6254.7(d) 1st sent .....	7924.510(c)
6254.2(b) .....	7924.305(a)	6254.7(d) 2d sent .....	7924.510(f)
6254.2(c) .....	7924.305(b)	6254.7(e) .....	7924.510(d)
6254.2(d) .....	7924.305(c)	6254.7(f) .....	7924.510(e)
6254.2(e) .....	7924.305(d)	6254.11 .....	7924.500
6254.2(f) .....	7924.305(f)		

DERIVATION OF NEW LAW

**Note.** This table shows the derivation of each proposed provision in this draft. Unless otherwise indicated, all statutory references are to the Government Code.

<b>Proposed Provision</b>	<b>Existing Provision(s)</b>	<b>Proposed Provision</b>	<b>Existing Provision(s)</b>
7924.000 .....	6254.4	7924.320 .....	6254.2(j)
7924.005 .....	6253.6	7924.325 .....	6254.2(n)
7924.100 .....	6253.5(c)	7924.330 .....	6254.2(l)
7924.105 .....	6253.5(d)	7924.335 .....	6254.2(g)
7924.110(a)-(b) .....	6253.5(a) 1st sent	7924.500 .....	6254.11
7924.110(c) .....	6253.5(a) 2d sent	7924.505 .....	6254(o)
7924.110(d) .....	6253.5(b)	7924.510(a) .....	6254.7(a)
7924.300 .....	6254.2(a)	7924.510(b) .....	6254.7(b)
7924.305(a) .....	6254.2(b)	7924.510(c) .....	6254.7(d) 1st sent
7924.305(b) .....	6254.2(c)	7924.510(d) .....	6254.7(e)
7924.305(c) .....	6254.2(d)	7924.510(e) .....	6254.7(f)
7924.305(d) .....	6254.2(e)	7924.510(f) .....	6254.7(d) 2d sent
7924.305(e) .....	6254.2(m)	7924.700 .....	6254.7(c)
7924.305(f) .....	6254.2(f)	7924.900 .....	6253.8(a)-(e)
7924.310(a)-(b) .....	6254.2(h)	7925.000 .....	6254(i)
7924.310(c) .....	6254.2(k)	7925.005 .....	6254(n)
7924.315 .....	6254.2(i)	7925.010 .....	6254(x)