

Memorandum 2019-24

California Public Records Act Clean-Up: Conforming Revisions

As directed by the Legislature,¹ the Commission² has been preparing a proposed recodification of the California Public Records Act (“CPRA”),³ which is intended to make the CPRA more user-friendly without making any substantive change. The proposed recodification is almost complete;⁴ the staff plans to present a draft of a tentative recommendation at the June meeting.

The proposed recodification would move the CPRA to a new division of the Government Code (proposed Division 10 of Title 1) and would reorganize the content of the CPRA in a more logical, readily accessible manner. Such relocation necessarily entails renumbering the provisions within the CPRA.

Many provisions throughout the codes refer to the CPRA, in whole or in part. If the proposed recodification is enacted, each of those provisions will have to be revised to conform to the new numbering scheme.

For example, Section 211 of the Business and Professions Code currently refers to “the California Public Records Act (*Chapter 3.5 commencing with Section 6250*) of *Division 7* of Title 1 of the Government Code.”⁵ If the proposed recodification is enacted, Section 211 will need to be amended to refer instead to “the California Public Records Act (*Division 10 (commencing with Section 7920.000)*) of Title 1 of the Government Code.”⁶

1. See 2018 Cal. Stat. res. ch. 158 (SCR 91 (Roth & Chau)).

2. 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.

3. Gov’t Code §§ 6250-6276.48.

4. The most significant remaining task is to determine how to recodify Article 2 of the CPRA (Gov’t Code §§ 6275-6276.48), which is sometimes referred to as the “CPRA index.” Memorandum 2019-25 will address that matter.

5. Emphasis added.

6. Emphasis added.

The staff is in the process of preparing the conforming revisions for this study. Approximately 600 of them will be necessary, but the vast majority are likely to be simple and straightforward.

We will present the conforming revisions for the Commission's review and potential inclusion in a tentative recommendation when we have a complete draft ready. Depending on the timing, it might be possible to incorporate them into the same tentative recommendation as the proposed CPRA recodification itself. Alternatively, it might be necessary or otherwise preferable to present the conforming revisions in a separate tentative recommendation.

Of the conforming revisions that the staff has worked on thus far, only three of them present questions that appear to warrant the Commission's attention. The provisions involved are:

- (1) Section 3 of Article I of the California Constitution.
- (2) Insurance Code Section 12921.
- (3) Public Resources Code Section 5096.513.

Each provision is discussed in order below.

SECTION 3 OF ARTICLE I OF THE CALIFORNIA CONSTITUTION

Section 3 of Article I of the California Constitution refers to the CPRA. It says:

SEC. 3. (a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b)(1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

....

(7) In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies, as specified in paragraph (1), each local agency is hereby required to comply with *the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.*⁷

7. Emphasis added.

Ideally, it would be a simple matter to amend this provision to update the reference to the CPRA (replacing “Chapter 3.5 (commencing with Section 6250) of Division 7” with “Division 10 (commencing with Section 7920.000).” Because the provision is part of the California Constitution, however, it would not be possible to accomplish such an amendment through the normal legislative process. Rather, it would be considerably more complicated and burdensome to achieve such a constitutional change.

Fortunately, that step does not seem necessary, given the wording of the constitutional provision in question and the nature and substance of the Commission’s proposal. In particular, Section 3 of Article I refers not only to the CPRA, but also to “any subsequent statutory enactment ... enacting a successor act” In addition, the Commission’s recodification includes several relevant provisions:

- Proposed Government Code Section 7920.005 expressly states that new Division 10 “recodifies the provisions of former Chapter 3.5 (commencing with Section 6250) of Division 7 of this title.”
- Proposed Government Code Section 7920.105(a) says that a “provision of this division, or any other provision of the CPRA Recodification Act of 2020, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be considered as a restatement and continuation thereof and not as a new enactment.”
- Proposed Government Code Section 7920.105(b) says that “reference in a statute to a previously existing provision that is restated and continued in this division, or in any other provision of the CPRA Recodification Act of 2020, shall, unless a contrary intent appears, be deemed a reference to the restatement and continuation.”

The proposed new division containing the CPRA (Division 10) would thus fall within the scope of Section 3 of Article I of the California Constitution: A court almost certainly would conclude that (1) the constitutional reference to the current CPRA encompasses new Division 10 (due to proposed Government Code Sections 7920.005 and 7920.105(a)-(b)), or (2) new Division 10 is a “subsequent statutory enactment ... enacting a successor act.”

Either way, there appears to be no real need for a conforming revision of the constitutional provision. For that reason, and because of the difficulties inherent in revising a constitutional provision, **it may be best to leave well enough alone.**

Does the Commission agree with this approach to Section 3 of Article I of the California Constitution? Comments on how to handle the CPRA reference in that provision would be helpful.

INSURANCE CODE SECTION 12921

Insurance Code Section 12921 contains a cross-reference to the CPRA. If the CPRA recodification is enacted, that cross-reference could be updated as follows:

Ins. Code § 12921.2 (amended). Inspection and copying of public records of department and commissioner

SEC. ____. Section 12921.2 of the Insurance Code is amended to read:

12921.2. All public records of the department and the commissioner subject to disclosure under ~~Chapter 3.5 (commencing with Section 6250) of Division 7~~ Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code shall be available for inspection and copying pursuant to those provisions at the offices of the department in the City and County of San Francisco, in the City of Los Angeles, and in the City of Sacramento. Adequate copy facilities for this purpose shall be made available. Notwithstanding any other provision of law, a person requesting copies of these records shall receive the copies from employees of the department and the fee charged for the copies shall not exceed the actual cost of producing the copies. Notwithstanding Section 6256 of the Government Code, any public record submitted to the department as computer data on an electronic medium shall, in addition to any other formats, be made available to the public pursuant to this section through an electronic medium.

Comment. Section 12921.2 is amended to reflect nonsubstantive recodification of the California Public Records Act. See *California Public Records Act Clean-Up*, __ Cal. L. Revision Comm'n Reports __ (2019).

The staff noticed, however, that the last sentence of Section 12921.2 refers to “Section 6256 of the Government Code.” There no longer is such a provision. It used to be part of the CPRA, but it was repealed in 1998.⁸

When Insurance Code Section 12921.2 was enacted, it included the cross-reference to Section 6256 (in exactly the same sentence as today)⁹ and Section 6256 said:

8. See 1998 Cal. Stat. ch. 620, § 7.

9. See 1991 Cal. Stat. ch. 880, § 9.

6256. Any person may receive a copy of any identifiable public record or copy thereof. Upon request, an exact copy shall be provided unless impracticable to do so. *Computer data shall be provided in a form determined by the agency.*

Each agency, upon any request for a copy of records shall determine within 10 days after the receipt of such request whether to comply with the request and shall immediately notify the person making the request of such determination and the reasons therefor.¹⁰

The content of Section 6256 remained the same until it was repealed.

The italicized sentence in former Section 6256 (“Computer data shall be provided in a form determined by the agency”) has no counterpart in the current CPRA. Rather, disclosure of electronic records is now generally governed by Government Code Section 6253.9, which provides:

6253.9. (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

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

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

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

(c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

(d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency

10. See 1981 Cal. Stat. ch. 968, § 3.1.

may inform the requester that the information is available in electronic format.

(e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

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

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

Given these circumstances, **the Commission needs to decide how to handle the obsolete cross-reference to Government Code Section 6256 in the last sentence of Insurance Code Section 12921.2.**

A simple option would be to leave that problematic cross-reference alone, because the problem long predates the Commission's proposed CPRA recodification. The cross-reference has been obsolete ever since Section 6256 was repealed many years ago.

Although that hands-off approach would be easy, it seems to some extent at odds with the goal of this study, which is to make the CPRA more user-friendly. Section 6256 is not currently part of the CPRA, but it was at one time. Cleaning up a cross-reference to a former CPRA provision may assist persons using the CPRA and may thus further the Legislature's key objective in requesting this study.

Another option would be to try to fix the obsolete cross-reference in some manner. For instance, the Commission could propose to revise the last sentence of Insurance Code Section 12921.2 as follows:

12921.2. All public records ... ~~Notwithstanding Section 6256 of the Government Code, any~~ Any public record submitted to the department as computer data on an electronic medium shall, in addition to any other formats, be made available to the public pursuant to this section through an electronic medium.

The accompanying Comment could explain that the deleted phrase is obsolete due to the repeal of Government Code Section 6256 and the enactment of Government Code Section 6253.9. The tentative recommendation could also include a Note specifically soliciting input on the proposed revision.

For purposes of a tentative recommendation, what is the Commission's preference on this point? Comments on the matter would be helpful.

PUBLIC RESOURCES CODE SECTION 5096.513

Public Resources Code Section 5096.513 contains a cross-reference to the CPRA, which could readily be conformed to the proposed CPRA recodification:

Pub. Res. Code § 5096.513 (amended). Disclosure of information by acquisition agency before public hearing on authorizing major acquisition of conservation lands

SEC. ____. Section 5096.513 of the Public Resources Code is amended to read:

5096.513. Not less than 30 calendar days prior to holding a public hearing for the purpose of authorizing a major acquisition of conservation lands, an acquisition agency shall make available for public review information, except information that is exempt from being disclosed pursuant to the California Public Records Act (~~Chapter 3.5 (commencing with Section 6250) of Division 7~~ Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code) all of, that includes, but is not limited to, the following:

(a) A copy of the independent appraisal review prepared pursuant to Section 5096.512.

(b) A summary of the basis for the recommendation of approval for the major acquisition of the land made by the acquisition agency.

(c) Any relevant environmental studies, documents, or other information.

Comment. Section 5096.513 is amended to reflect nonsubstantive recodification of the California Public Records Act. See *California Public Records Act Clean-Up*, __ Cal. L. Revision Comm'n Reports __ (2019).

Unfortunately, however, there appears to be a grammatical problem in Section 5096.513. It requires an acquisition agency to “make available for public review information, except information that is exempt from being disclosed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) *all of, that includes,* but is not limited to, the following”¹¹

The staff is not sure how to fix this grammatical problem. Perhaps the phrase “all of,” was inadvertently included in the section and should be deleted. **Would the Commission like to propose such a revision? Is there a better answer to the problem?**

11. Emphasis added.

For purposes of a tentative recommendation, **it might be helpful to include a Note soliciting input on the matter.** If the Commission is ultimately unable to find a clear, noncontroversial solution, however, it probably would be best to leave the problematic language in place.

How would the Commission like to frame the conforming revision of Section 5096.513 in its tentative recommendation?

Respectfully submitted,

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