

MEMORANDUM 2024-27

Notice of Administrative Subpoena

At its October 2023 meeting, the Commission¹ decided to begin a short second-look study of issues raised during the legislative process for [Assembly Bill 522](#) (Kalra).² This memorandum provides a brief status update for that work.

AB 522 would implement the Commission's recommendation on [State and Local Agency Access to Electronic Communications: Notice of Administrative Subpoena \(Mar. 2022\)](#).

On June 4, the Commission staff met with representatives from Assemblymember Kalra's office and the Department of Justice (DOJ) to discuss DOJ's concerns.³

Administrative subpoenas may be used in a variety of different situations. For example, the DOJ may use administrative subpoenas differently in enforcing consumer privacy laws in superior court than they would when imposing a penalty against a licensee in an administrative proceeding. Without engagement from a broader set of state and local agencies, as well as communication service providers, it will be difficult to resolve DOJ's concerns, while protecting privacy and ensuring the process is workable for the different entities who use and receive administrative subpoenas.⁴

Given the significance of potential amendments and the late stage of the legislative process,⁵ Assemblymember Kalra decided to hold the bill in the Appropriations Committee, thereby ending the bill's progress this legislative session. This will give the

¹ Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Most 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.

² [Minutes \(Oct. 2023\)](#), p. 5; see also [Memorandum 2023-42](#).

³ [Memorandum 2023-42](#). Among other suggestions, the DOJ proposed to require the communication service provider to provide notice to the target of the administrative subpoena instead of the government and limit the obligation to provide notice to "natural" persons (i.e., excluding other entities including corporations).

⁴ For example, the Department of Consumer Affairs and the California Department of Public Health use administrative procedures to adjudicate licensing concerns for health care entities, including clinics and pharmacies. Individuals' data could be used in investigating and prosecuting corporate licenses, and the broad exemption in this bill could be read to exclude notice to those people.

⁵ [AB 522](#) is presently in Senate Appropriations and would need to be voted out of that committee by August 16, 2024 to continue the legislative process. In addition to other stakeholders, any proposed amendments would need to be approved by the four previous policy committees of both houses and the Assembly Appropriations Committee before the bill could move forward.

Commission time to more fully survey the agencies who issue administrative subpoenas and other interested stakeholders to consider the issues raised during the legislative process and get broader input on those matters.

The staff appreciates the work of Assemblymember Kalra and his staff on AB 522. Given Assemblymember Kalra's work on this topic, the staff intends to remain in contact with Assemblymember Kalra's office as this work proceeds and when an author for implementing legislation is sought.

Would the Commissioners like the staff to begin stakeholder outreach to discuss potential revisions to the Commission's recommendation?

Respectfully submitted,

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