

Memorandum 2025-18

**State and Local Agency Access to Customer Information  
from Communication Service Providers:  
Notice of Subpoena  
(Draft of Tentative Recommendation)**

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At its January 2025 meeting, the Commission<sup>1</sup> directed the staff to prepare a draft tentative recommendation that would require a government entity to provide notice to a customer when the government uses a subpoena to obtain the customer's records from a communication service provider under specified circumstances. The draft would implement decisions the Commission made earlier in this study.<sup>2</sup>

In addition to the material previously approved by the Commission, the staff made several technical amendments and added the Comment below:

**Comment.** Section 7455 imposes specified requirements when a government entity seeks to use a subpoena to obtain a subscriber's electronic communication information from a service provider.

Subdivision (b)(1) is similar to the process described in Penal Code Section 1546.2(a)(1).

Subdivision (d) is similar to Section 7474(a)(3).

Subdivision (e) is similar to Section 7474(d).

Subdivision (f) is similar to the last two sentences of Section 7470(c).

Subdivision (g) is new. It requires the service provider to preserve requested information to prevent its deletion or modification by the affected subscriber. See also 18 U.S.C. § 2703(f).

Subdivision (h) is new. This section is not intended to apply to circumstances prior to a government entity formally charging an individual with wrongdoing.

Subdivision (j) is copied from Penal Code Section 1546.1(i)(2).

Subdivision (k) is copied from Penal Code Section 1546.1(j).

Subdivision (l) is copied Penal Code Section 1546.1(k).

The draft tentative recommendation is attached. The draft proposes a public comment deadline of May 16, 2025. This would mean the Commission could consider any additional public comment at its June 26, 2025, meeting. **The Commission needs to decide whether to approve it for release as a tentative recommendation, with or without additional changes.**

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<sup>1</sup> 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](#). 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.

<sup>2</sup> See [Memorandum 2025-8](#), [Draft Minutes](#) (January 2025), p. 5.

Respectfully submitted,

Sarah Huchel  
Chief Deputy Director

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# CALIFORNIA LAW REVISION COMMISSION

**STAFF DRAFT**

TENTATIVE RECOMMENDATION

## State and Local Agency Access to Electronic Communications: Notice of Subpoena

April 2025

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines the content of the recommendation it will submit to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

**COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN MAY 16, 2025.**

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the report the Commission will submit to the Legislature.

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## SUMMARY OF TENTATIVE RECOMMENDATION

The California Law Revision Commission has been directed to prepare proposed legislation on government access to customer records of communication service providers, in order to protect customers' constitutional rights.

Most of the areas for possible reform that the Commission identified were addressed by the California Electronic Communication Privacy Act ("CalECPA"), which was enacted before the Commission could complete its work on this study.

This tentative recommendation addresses one issue that was not resolved by CalECPA, the need for notice to a customer when a subpoena is served on a communication service provider to obtain the customer's information. The proposed law would require such notice. This tentative recommendation is a revision of the proposed legislation in a final recommendation in this study issued in March 2022.

This tentative recommendation was prepared pursuant to Resolution Chapter 115 of the Statutes of 2013.



1 STATE AND LOCAL AGENCY ACCESS TO  
2 ELECTRONIC COMMUNICATIONS

3 BACKGROUND

4 In 2013, the Legislature directed the Commission to recommend revisions to  
5 statutes controlling state and local government access to customer information from  
6 communications service providers.<sup>1</sup> The following year, the Commission  
7 considered a series of staff memoranda analyzing relevant statutory and  
8 constitutional law governing California state and local agencies. Before the  
9 Commission could develop proposed legislation, [Senate Bill 178](#), the California  
10 Electronic Communications Privacy Act (hereafter “CalECPA”), authored by  
11 Senator Leno, was introduced. This bill proposed to resolve many of the issues  
12 within the scope of the original legislative mandate to the Commission by  
13 heightening requirements for governmental access to electronic communications  
14 information.

15 In 2015, the Commission produced a final report based on its research, though  
16 it provided no legislative recommendations.<sup>2</sup> Following CalECPA’s enactment,<sup>3</sup> the  
17 Commission waited several years for the law to take effect before proposing new  
18 changes.<sup>4</sup> The Commission considered several options for further action in 2020,<sup>5</sup>  
19 and chose to study and propose reforms relating to the use of administrative  
20 subpoenas on third party communications providers in non-criminal investigations.<sup>6</sup>  
21 At its June 24, 2021 meeting, the Commission directed the staff to prepare proposed  
22 legislation.<sup>7</sup> A draft tentative recommendation was prepared<sup>8</sup> and sent out for public  
23 comment after the September 23, 2021 Commission meeting, with comments due  
24 by February 14, 2022.<sup>9</sup> The staff received no comments on the tentative  
25 recommendation,<sup>10</sup> and a final recommendation<sup>11</sup> was approved on March 17, 2022<sup>11</sup>  
26 and thereafter submitted to the Legislature.<sup>12</sup> Following minor amendments to the  
27 Commission’s recommendation to reflect technical drafting changes by Legislative  
28 Counsel,<sup>13</sup> Assembly Member (and Commissioner) Kalra introduced [Assembly Bill](#)

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<sup>1</sup> [2013 Cal. Stat. res. ch. 115](#). See also [Memorandum 2014-5](#).

<sup>2</sup> [State and Local Agency Access to Electronic Communications: Constitutional and Statutory Requirements](#) (August 2015).

<sup>3</sup> [SB 178](#) (Leno) (2015).

<sup>4</sup> Memorandum [2021-44](#), p. 1.

<sup>5</sup> See Memoranda [2015-51](#), [2020-20](#), [2020-31](#), [2020-36](#), [2020-54](#), [2020-55](#).

<sup>6</sup> [Minutes](#) of Commission Meeting on October 15, 2020, p. 4.

<sup>7</sup> Minutes of Commission Meeting on [October 24, 2021](#), p.4; see also Memorandum [2021-32](#).

<sup>8</sup> Memorandum [2021-44](#).

<sup>9</sup> Minutes of Commission Meeting on [September 23, 2021](#), p. 3.

<sup>10</sup> Memorandum [2022-20](#), p.1.

<sup>11</sup> Minutes of Commission Meeting on [March 17, 2022](#), p. 3.

<sup>12</sup> [State and Local Agency Access to Electronic Communications: Notice of Administrative Subpoena](#) (Preprint – March 2022).

<sup>13</sup> Memorandum [2023-4](#), pp. 1-2.



1 [522](#) on February 7, 2023. The bill received no formal opposition and no “no” votes,  
2 but the California Department of Justice (hereafter “DOJ”) raised concerns with  
3 Assembly Member Kalra’s office about some provisions in the bill in June 2023.<sup>14</sup>  
4 In 2024, the bill was held on the Senate Appropriations Committee suspense file  
5 because the DOJ’s concerns were unable to be resolved within legislative  
6 deadlines.<sup>15</sup> This tentative recommendation reflects amendments made as a result of  
7 stakeholder feedback, but does not change the underlying policy analysis in the prior  
8 recommendation.

9 CHANGES FROM THE PRIOR RECOMMENDATION

10 The revisions in the tentative recommendation were made to accommodate  
11 stakeholders’ concerns while still reflecting provisions of the California Right to  
12 Financial Privacy Act (CRFPA),<sup>16</sup> CalECPA,<sup>17</sup> and the federal Stored  
13 Communications Act,<sup>18</sup> which the staff noted “simplifies the drafting of the  
14 proposed law, improves its readability, and would create useful uniformity between  
15 this statute and CalECPA.”<sup>19</sup>

16 **Notice Requirement**

17 The DOJ noted that a customer’s identity may not be known when requesting  
18 electronic communications, and therefore the service provider is better positioned  
19 to give notice of the subpoena to the customer than the government entity.<sup>20</sup> This  
20 recommendation was grounded in the assumption the service provider would have  
21 a greater ability to reach the customer through the information provided by the  
22 customer to establish service. While a customer may block receipt from unknown  
23 senders, a service provider may be able to circumvent those preferences.<sup>21</sup>

24 AB 522 was modeled on CFRPA, which requires a government entity to serve  
25 notice of a subpoena pursuant to existing general service of summons  
26 requirements.<sup>22</sup> These requirements give multiple options for service, including  
27 handing the documents directly to the individual,<sup>23</sup> by mail,<sup>24</sup> leaving the documents

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<sup>14</sup> See Memorandum [2023-42](#), pp. 2-3.

<sup>15</sup> Memorandum [2024-27](#), pp. 1-2.

<sup>16</sup> Memorandum [2021-32](#) and Gov’t Code §§ [7460-7493](#).

<sup>17</sup> Penal Code §§ [1546-1546.5](#).

<sup>18</sup> [18 U.S.C. §§ 2701](#) et seq. The Stored Communications Act authorizes the use of an administrative subpoena to obtain electronic communication content information only if (1) the information has been in storage for more than 180 days, and (2) “with prior notice from the governmental entity to the subscriber or customer.” [18 U.S.C. § 2703\(a\), \(b\)\(1\)\(B\)\(i\)](#).

<sup>19</sup> Memorandum [2021-38](#), p. 2.

<sup>20</sup> Memorandum [2023-42](#), p. 3.

<sup>21</sup> Memorandum [2023-42](#), p. 3.

<sup>22</sup> [AB 522](#) states “The department has served notice of the administrative subpoena on the customer pursuant to Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure.”

<sup>23</sup> Code Civ. Proc. § [415.10](#)

<sup>24</sup> Code Civ. Proc. § [415.30](#).

1 with a responsible party,<sup>25</sup> or service by publication.<sup>26</sup> However, all of the options  
2 require specific knowledge of an individual’s identity. Traditional service of process  
3 in the financial services context is reasonable because an individual is generally  
4 required to provide more detailed personal information when establishing a bank  
5 account than when creating an electronic communications account, some of which  
6 may be established with merely an email address. Requiring a government entity to  
7 find the information necessary to serve notice to a customer pursuant to general  
8 service of summons requirements would be very difficult.

9 CalECPA navigated these concerns by establishing alternative methods of  
10 providing notice in specified circumstances, including by email.<sup>27</sup> Acknowledging  
11 the difficulty of reaching a subscriber through traditional means, the tentative  
12 recommendation parallels the CalECPA notification process, giving the government  
13 entity greater flexibility in reaching the subscriber. If the government entity is not  
14 able to reach the subscriber, it may petition the court to order the service provider  
15 to provide notice on behalf of the government entity.

## 16 **Application to Local Agencies**

17 The Legislature<sup>28</sup> originally directed the Commission to develop  
18 recommendations for both state and local government agencies. As written, AB 522  
19 is placed within the Government Code in the chapter relating to state departments.  
20 Without further amendment, the bill only applies to local governments in narrow  
21 circumstances.<sup>29</sup>

22 CalECPA and CFRPA both extend its consumer protections against state and  
23 local government through their definitions.<sup>30</sup>

24 The tentative recommendation replaces the term “department” with  
25 “government entity” and defines “government entity” in the same manner as  
26 CalECPA.<sup>31</sup>

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<sup>25</sup> Code Civ. Proc. § [415.20](#)

<sup>26</sup> Code Civ. Proc. § [415.50](#). California law requires publication in “a named newspaper, published in this state, that is most likely to give actual notice to the party to be served.”

<sup>27</sup> Penal Code § [1546.2 \(a\)\(1\)](#).

<sup>28</sup> 2013 Cal. Stat. res. Ch. 115 ([SCR 54](#) (Padilla)).

<sup>29</sup> Bus. & Prof. Code § [16759](#) grants the powers of the Attorney General as a department head to district attorneys and certain city attorneys when prosecuting certain business practice violations.

<sup>30</sup> Penal Code § [1546\(i\)](#) “Government entity” means a department or agency of the state or a political subdivision thereof, or an individual acting for or on behalf of the state or a political subdivision thereof. Gov’t Code § [7465 \(e\)](#) defines “state agency” as every state office, officer, department, division, bureau, board, and commission or other state agency, including the Legislature. Gov’t Code § [7465\(f\)](#) defines “local agency” to include a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; of other local public agency. Gov’t Code § [7474\(a\)](#) authorizes access to financial records to “An officer, employee, or agent of a state or local agency or department thereof...”

<sup>31</sup> Penal Code § [1546 \(i\)](#).

1 **Miscellaneous Changes:**

- 2           • The provisions are relocated to a newly created chapter in Division 7 of  
3 the Government Code,<sup>32</sup> titled “Governmental Access to Electronic  
4 Communications Information.”
- 5           • The adjective “administrative” is removed in the current proposed  
6 legislation because “administrative subpoena” is not defined in code and  
7 did not correspond to the text of CalECPA.
- 8           • An amendment clarifies the proposed legislation shall not apply during  
9 pretrial investigations to preserve government entities’ investigatory  
10 powers.
- 11          • Language was added to clarify this proposed legislation does not expand  
12 state authority under existing law to compel the production of or access  
13 to electronic communication information or subscriber information.
- 14          • The definition of “subscriber” was amended to include a “user” of a  
15 service provider, which prevents a government entity from  
16 circumventing the notice requirement by accessing electronic  
17 communications information from a source with which an individual  
18 does not have an account.<sup>33</sup>
- 19          • Language requiring payment for a subscriber to get a copy of their own  
20 records was deleted, as such costs are likely minimal, and it is the  
21 subscriber’s own information being requested.
- 22          • Safe harbor language for government entities was added from  
23 CalECPA.<sup>34</sup>
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<sup>32</sup> CFRPA is also located in Division 7: Gov’t Code §§ [7460-7493](#).

<sup>33</sup> For example, if a government entity is searching for an email from X to Y, under the prior draft, the government entity could subpoena Y’s service provider instead of X’s and avoid the notice requirement.

<sup>34</sup> Proposed Gov’t Code §§ 7455 (j), (k), and (l) parallel Penal Code §§ [1546.1 \(i\)\(2\), \(j\), and \(k\)](#), respectively.

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## RECOMMENDATION

The proposed law would require notice to the affected customer (now termed “subscriber” to more closely track CalECPA<sup>35</sup>) when a subpoena is served on a communications service provider to obtain the customer’s records. Specifically, the following steps would be required:

- (1) A government entity must provide notice to the affected subscriber after serving a subpoena on a communication service provider to obtain subscriber information. The notice would include a copy of the subpoena and a specified advisory statement.
- (2) The subpoena would require that the service provider make and retain a copy of the requested information to prevent spoliation, until the subpoena operates or is quashed.
- (3) Unless the subscriber or service provider moves to quash the subpoena, the requested information must be produced 10 days after the notice was provided to the subscriber.

## PUBLIC COMMENT

The Commission invites public comment on this tentative recommendation. It would be helpful to receive comments on the overall merit of establishing a statute along the lines proposed, as well as comments addressing any technical issues with the proposed legislation.

**Comments should be sent to [shuchel@clrc.ca.gov](mailto:shuchel@clrc.ca.gov) by May 16, 2025.**

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<sup>35</sup> Penal Code § [1546\(l\)](#) defines “subscriber information” as “the name, street address, telephone number, email address, or similar contact information provided by the subscriber to the service provider to establish or maintain an account or communication channel, a subscriber or account number or identifier, the length of service, and the types of services used by a user of or subscriber to a service provider.” CalECPA does not define “subscriber,” however.

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## PROPOSED LEGISLATION

2 **Gov't Code § 7455 (added). Governmental access to electronic communication**  
3 **information**

4 SECTION 1. Chapter 19.5 (commencing with Section 7455) is added to Division 7 of  
5 Title 1 of the Government Code, to read:

6 CHAPTER 19.5. GOVERNMENTAL ACCESS TO ELECTRONIC COMMUNICATION  
7 INFORMATION

8 **§ 7455. Notice requirements for governmental access to electronic communication**  
9 **information**

10 7455. (a) For purposes of this section:

11 (1) "Electronic communication information" has the meaning provided in subdivision  
12 (d) of Section 1546 of the Penal Code.

13 (2) "Electronic communication service" has the meaning provided in subdivision (e) of  
14 Section 1546 of the Penal Code.

15 (3) "Government entity" has the meaning provided in subdivision (i) of Section 1546  
16 of the Penal Code.

17 (4) "Service provider" has the meaning provided in subdivision (j) of Section 1546 of  
18 the Penal Code.

19 (5) "Subscriber" means a person who has an account with or is a user of a service  
20 provider.

21 (b) In addition to any other requirements that govern the use of a subpoena by a  
22 government entity, a subpoena may be used to obtain a subscriber's electronic  
23 communication information from a service provider only if all of the following conditions  
24 are satisfied:

25 (1) The government entity has served upon, or delivered to by registered or first-class  
26 mail, electronic mail, or other means reasonably calculated to be effective, notice of the  
27 subpoena to the subscriber.

28 (2) A copy of the subpoena is attached to the notice.

29 (3) The subpoena includes the name of the government entity that issued the subpoena  
30 and the statutory purpose for which the electronic communication information is to be  
31 obtained.

32 (4) The notice includes a statement in substantially the following form:

33 "The attached subpoena was served on a communication service provider to  
34 obtain your electronic communication information. The service provider was  
35 required to make a copy of the information specified in the subpoena. Unless you  
36 (1) move to quash or modify the subpoena within 10 days of service of this notice  
37 and (2) notify the service provider that you have done so, the service provider will  
38 disclose the information pursuant to the subpoena."

39 (c) If the government entity is not able to deliver notice to the subscriber, the government  
40 entity may petition the court to order the service provider to serve or deliver the notice  
41 specified in paragraph (4) of subdivision (b) to the subscriber on behalf of the government  
42 entity.

43 (d) Unless the subscriber has notified the service provider that a motion to quash or  
44 modify the subpoena has been filed, or the service provider has filed a motion to quash or

1 modify the subpoena, the service provider shall produce the electronic communication  
2 information specified in the subpoena no sooner than 10 days after either the government  
3 entity or the service provider has served or delivered notice of the subpoena to the  
4 subscriber.

5 (e) If a subscriber or service provider files a motion to quash or modify the subpoena,  
6 the proceeding shall be afforded priority on the court calendar, and the matter shall be heard  
7 within 10 days from the filing of the motion to quash or modify.

8 (f) Upon subscriber request, a service provider shall provide to the subscriber any part  
9 of the information copied pursuant to subdivision (g) that relates to the subscriber.

10 (g)(1) If a subpoena is served on a service provider pursuant to this section, the service  
11 provider shall promptly make a copy of any electronic communication information that is  
12 within the scope of the subpoena and within the possession of the service provider at the  
13 time that the subpoena was served.

14 (2) The copy made pursuant to this subdivision shall be preserved until it is provided  
15 to the governmental entity pursuant to the subpoena, the subpoena is quashed or modified,  
16 the subpoena is withdrawn and no other subpoena requesting the information remains  
17 pending, or until any action to enforce the subpoena or any other subpoena requesting the  
18 information is fully resolved.

19 (3) This subdivision does not prevent a service provider from preserving electronic  
20 communication information as otherwise provided by law.

21 (h) This chapter shall not apply to any subpoenas issued in connection with a pretrial  
22 investigation.

23 (i) Nothing in this section shall be construed to expand any authority under state law to  
24 compel the production of or access to electronic communication information or subscriber  
25 information.

26 (j) This section does not limit the authority of a government entity to use an  
27 administrative, grand jury, trial, or civil discovery subpoena to require an entity that  
28 provides electronic communications services to its officers, directors, employees, or agents  
29 for the purpose of carrying out their duties, to disclose electronic communication  
30 information associated with an electronic communication.

31 (k) This section does not limit the authority of the Public Utilities Commission or the  
32 State Energy Resources Conservation and Development Commission to obtain energy or  
33 water supply and consumption information pursuant to the powers granted to them under  
34 the Public Utilities Code or the Public Resources Code and other applicable state laws.

35 (l) This chapter shall not be construed to alter the authority of a government entity that  
36 owns an electronic device to compel an employee who is authorized to possess the device  
37 to return the device to the government entity's possession.

38 **Comment.** Section 7455 imposes specified requirements when a government entity seeks to use  
39 a subpoena to obtain a subscriber's electronic communication information from a service provider.

40 Subdivision (b)(1) is similar to the process described in Penal Code Section 1546.2(a)(1).

41 Subdivision (d) is similar to Section 7474(a)(3).

42 Subdivision (e) is similar to Section 7474(d).

43 Subdivision (f) is similar to the last two sentences of Section 7470(c).

44 Subdivision (g) requires the service provider to preserve requested information to prevent its  
45 deletion or modification by the affected subscriber. See also 18 U.S.C. § 2703(f).

46 Subdivision (h) provides that this section is not intended to apply to circumstances prior to a  
47 government entity formally charging an individual with wrongdoing.

48 Subdivision (j) duplicates Penal Code Section 1546.1(i)(2).

- 1 Subdivision (k) duplicates Penal Code Section 1546.1(j).
- 2 Subdivision (l) duplicates Penal Code Section 1546.1(k).