

CALIFORNIA LAW REVISION COMMISSION

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.

STATE AND LOCAL AGENCY ACCESS TO ELECTRONIC COMMUNICATIONS

BACKGROUND

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

12 In 2015, the Commission produced a final report based on its research, though
13 it provided no legislative recommendations.² Following CalECPA’s enactment,³ the
14 Commission waited several years for the law to take effect before proposing new
15 changes.⁴ The Commission considered several options for further action in 2020,⁵
16 and chose to study and propose reforms relating to the use of administrative
17 subpoenas on third party communications providers in non-criminal investigations.⁶
18 At its June 24, 2021 meeting, the Commission directed the staff to prepare proposed
19 legislation.⁷ A draft tentative recommendation was prepared⁸ and sent out for public
20 comment after the September 23, 2021 Commission meeting, with comments due
21 by February 14, 2022.⁹ The staff received no comments on the tentative
22 recommendation,¹⁰ and a final recommendation was approved on March 17, 2022¹¹
23 and thereafter submitted to the Legislature.¹² Following minor amendments to the
24 Commission’s recommendation to reflect technical drafting changes by Legislative
25 Counsel,¹³ Assembly Member (and Commissioner) Kalra introduced [Assembly Bill](#)

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

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

³ [SB 178](#) (Leno) (2015).

⁴ Memorandum [2021-44](#), p. 1.

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

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

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

⁸ Memorandum [2021-44](#).

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

¹⁰ Memorandum [2022-20](#), p.1.

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

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

¹³ 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 2023.¹⁴
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.¹⁵ 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.

CHANGES FROM THE PRIOR RECOMMENDATION

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

Notice Requirement

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

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

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

¹⁵ Memorandum [2024-27](#), pp. 1-2.

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

¹⁷ Penal Code §§ [1546-1546.5](#).

¹⁸ [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\(a\), \(b\)\(1\)\(B\)\(i\)](#).

¹⁹ Memorandum [2021-38](#), p. 2.

²⁰ Memorandum [2023-42](#), p. 3.

²¹ Memorandum [2023-42](#), p. 3.

²² [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.”

²³ Code Civ. Proc. § [415.10](#)

²⁴ Code Civ. Proc. § [415.30](#).

1 with a responsible party,²⁵ or service by publication.²⁶ 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.²⁷ 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.

Application to Local Agencies

16 The Legislature²⁸ originally directed the Commission to develop
17 recommendations for both state and local government agencies. As written, AB 522
18 is placed within the Government Code in the chapter relating to state departments.
19 Without further amendment, the bill only applies to local governments in narrow
20 circumstances.²⁹

21 CalECPA and CFRPA both extend its consumer protections against state and
22 local government through their definitions.³⁰

23 The tentative recommendation replaces the term “department” with
24 “government entity” and defines “government entity” in the same manner as
25 CalECPA.³¹

²⁵ Code Civ. Proc. § [415.20](#)

²⁶ 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.”

²⁷ Penal Code § [1546.2 \(a\)\(1\)](#).

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

²⁹ 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.

³⁰ 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...”

³¹ Penal Code § [1546 \(i\)](#).

Miscellaneous Changes:

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

³² CFRPA is also located in Division 7: Gov’t Code §§ [7460-7493](#).

³³ 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.

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

RECOMMENDATION

1 The proposed law would require notice to the affected customer (now termed
2 “subscriber” to more closely track CalECPA³⁵) when a subpoena is served on a
3 communications service provider to obtain the customer’s records. Specifically, the
4 following steps would be required:

- 5 (1) A government entity must provide notice to the affected subscriber after
6 serving a subpoena on a communication service provider to obtain
7 subscriber information. The notice would include a copy of the
8 subpoena and a specified advisory statement.
- 9 (2) The subpoena would require that the service provider make and retain a
10 copy of the requested information to prevent spoliation, until the
11 subpoena operates or is quashed.
- 12 (3) If the government entity is not able to deliver notice to the subscriber, the
13 government entity may petition the court to order the service provider to deliver
14 the notice to the subscriber on behalf of the government entity.
- 15 (4) Unless the subscriber or service provider moves to quash the subpoena,
16 the requested information must be produced 10 days after the notice was
17 provided to the subscriber.

PUBLIC COMMENT

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

22 **Comments should be sent to shuchel@clrc.ca.gov by May 16, 2025.**

³⁵ 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.

PROPOSED LEGISLATION

1 **Gov’t Code § 7455 (added). Governmental access to electronic communication information**

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

4 CHAPTER 19.5. GOVERNMENTAL ACCESS TO ELECTRONIC COMMUNICATION INFORMATION

5 **§ 7455. Notice requirements for governmental access to electronic communication**
6 **information**

7 7455. (a) For purposes of this section:

8 (1) “Electronic communication information” has the meaning provided in subdivision
9 (d) of Section 1546 of the Penal Code.

10 (2) “Electronic communication service” has the meaning provided in subdivision (e) of
11 Section 1546 of the Penal Code.

12 (3) “Government entity” has the meaning provided in subdivision (i) of Section 1546
13 of the Penal Code.

14 (4) “Service provider” has the meaning provided in subdivision (j) of Section 1546 of
15 the Penal Code.

16 (5) “Subscriber” means a person who has an account with or is a user of a service
17 provider.

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

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

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

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

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

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

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

40 (d) Unless the subscriber has notified the service provider that a motion to quash or
41 modify the subpoena has been filed, or the service provider has filed a motion to quash or
42 modify the subpoena, the service provider shall produce the electronic communication
43 information specified in the subpoena no sooner than 10 days after either the government

1 entity or the service provider has served or delivered notice of the subpoena to the
2 subscriber.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47 Subdivision (k) duplicates Penal Code Section 1546.1(j).

48 Subdivision (l) duplicates Penal Code Section 1546.1(k).