CALIFORNIA PUBLIC RECORDS ACT:

How to Respond, The Nuts and Bolts, and New Updates

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Overview

- This session addresses California public record requests under the California Public Records Act (CPRA) and California Government Code Section 6250, et seq. This session will include discussion of:
  - The California Public Records Act (CPRA);
  - Requests under the Act;
  - Timeliness and other methods of responses to requests;
  - Exemptions and statutory objections to record requests;
  - Non-specified objections to requests;
  - Best practices for document protection.

BACKGROUND TO THE CALIFORNIA PUBLIC RECORDS ACT

California Public Records Act (CPRA)

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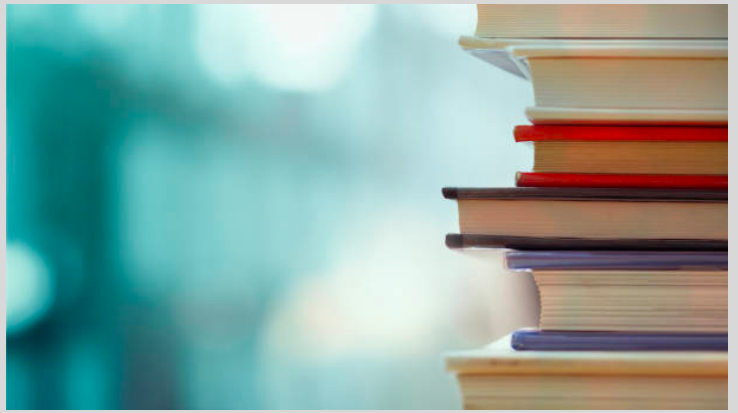
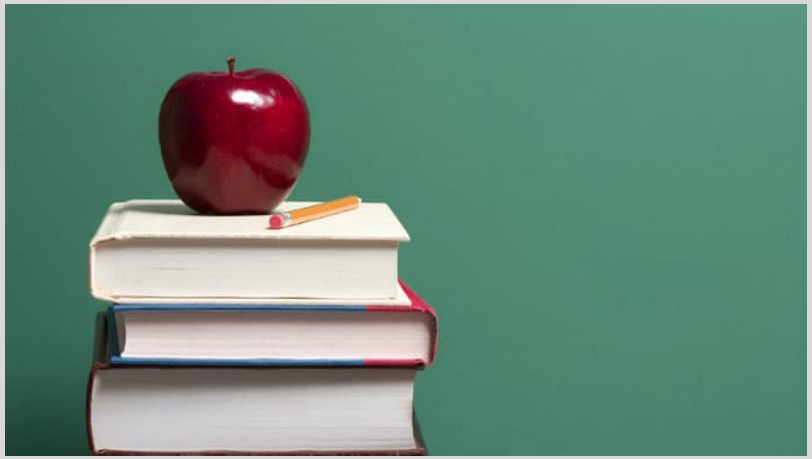
- Found in California Government Code Section 6250, et seq.
- Allows "every person in the state" to exercise "a fundamental and necessary right" to request "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency, regardless of physical form of characteristic." (Govt. Code §6252(d); *McMichaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th. 1065, 1071).



CPRA Continued

- Essentially every state and local agency and office, including political subdivisions, are subject to CPRA. (Govt. Code §6252(b-d)).
- Public school affiliated, non-profit auxiliary corporations established by law are not "state agencies" subject to CPRA (Govt. Code §6252(a); *California State University v. Superior Court* (2001) 90 Cal.App.4th. 810, 829-830.)



Federal Freedom of Information Act

- The CPRA was modeled after the Federal Freedom of Information Act ("FOIA") (5 U.S.C. §552) which was adopted in 1966.
- Although differences exist between the CPRA and the FOIA, the two are very similar and references to the FOIA and to federal cases decided under the FOIA can be used to interpret the Public Records Act. (*See Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1347; *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 447.)
- This ability of the courts to draw on the CPRA's federal counterpart for judicial construction and legislative history becomes a useful tool when California cases constructing the CPRA are lacking.

Policies and Theories of CPRA

- The policy of CPRA favors disclosures. Agencies must find a specific exemption from disclosure in order to avoid disclosing documents. (Govt. Code §6254, §6255; *Cook v. Craig* (1976) 55 Cal.App.3d 773, 781.)
- The purpose for which the requesting party is seeking the records is irrelevant. (*See State Board of Equalization v. Superior Court (Associated Sales Tax Consultants, Inc.)* (1992) 10 Cal.App.4th 1177, 1190-1191; even requests made for the purpose of planning a lawsuit against the agency are appropriate requests, *Wilder v. Superior Court (Metropolitan Transit Authority)* (1998) 66 Cal.App.4th 77, 83.)

DOCUMENT REQUESTS UNDER CPRA

Document Request Under CPRA

- The request must describe the documents clearly enough to permit the agency to determine whether such documents exist and are under the agency's control. (Govt. Code §6257.)
- However, the requirement of clarity must be tempered by the reality that a requester, having no access to agency files, may be unable to precisely identify the documents sought. (*See California First Amendment Coalition v. Superior Court (Wilson)* (1998) 67 Cal.App.4th 159, 166.)
- The request can describe documents by their content only, and if sufficiently described by the content, the agency must search for records based on the content criteria, subject to exemptions and objections. (*California First Amendment Coalition v. Superior Court (Wilson)* (1998) 67 Cal.App.4th 159, 166.)

CPRA Request Continued

- Requests made without specificity, or which would require a search of an enormous volume of data, will lead to objections for being unduly burdensome.

RESPONDING TO CPRA REQUESTS

Responding to CPRA Requests

- There is a two-step process that public entities must follow when responding to CPRA requests:
- First, the agency must provide the requesting party with a determination of whether the request seeks public records that are subject to disclosure and are in the agency's possession. The agency must also determine and disclose to the requesting party whether it will withhold some or all records and provide the requesting party any grounds for withholding.
- Second, the agency must then provide the records.

Step One: Method and Time Frame to Respond to CPRA Requests

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- After receipt of a CPRA request, a public entity must determine whether the request seeks disclosable records, and inform the requesting party of the same, within ten (10) days of receipt of the request. (Govt. Code §6253(c).)
- This deadline for determination can be extended up to fourteen (14) days where there are "unusual circumstances" for a total of 24 days. (Govt. Code §6253(c).)
- Practice Pointer: While the Government Code requires a determination within ten (10) days if documents will be produced, practically speaking, this timeframe can be extended by sending out letters to the requesting party and providing them with an estimated date by which the public entity will have made the determination and reserving objections.

Method and Time Frame Continued

- Under Government Code §6253, some of "unusual circumstances" include:
  - Needing to search for the requested records from offices that are separate from the office processing the request;
  - Needing to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request";
  - Needing to construct a computer report to extract data.

Method and Time Frame Continued

- When the agency does respond to the requesting party's CPRA request, the agency shall provide the requesting party with the estimated date and time the records will be made available. (Govt. Code §6253.)
- Please note that the agency does not have to produce the documents within the allotted ten (10) days. Rather, public agencies "shall make the records promptly available" and the public agency shall not "delay or obstruct the inspection or copying of public records." (Govt. Code §6253(b),(d).)

Method and Time Frame Continued

- Note that a failure to respond to a CPRA request in a timely fashion does not waive the rights to object or assert exemptions to the requested documents. (*McMichaelis, Montanari & Johnson v. Superior Court (2006) 38 Cal.4th. 1065,*1072.)
- The penalties for a late response should not be significant so long as the public agency timely and quickly corrects the oversight or delay.

Step Two: Making Records Available

- The public entity can respond to the CPRA request by either producing documents, citing statutory exemptions from CPRA disclosure, or citing other objections and protections.
- The public entity can produce documents in part and cite exemptions and objections to other documents.
- The public entity must clearly state exemptions and objections.
- While the agency is not required to provide a log of withheld documents, called a *Vaughn Index,* it is best practice to do so as courts are likely to require such an index if a requesting-party challenges a public agency's non-production. *(See Haynie v. Superior Court (County of Los Angles)* (2001) 26 C4th 1061, 1075.)

Burden of Production

- A public entity is obliged to comply with records requests, so long as the records are not exempt or objectionable, if the records are be located with reasonable effort.
- Reasonable effort includes:
  - Duty to search for responsive documents: "Unless a records request is overbroad or unduly burdensome, agencies are obliged to disclose all records they are locate with reasonable effort." (*City of San Jose v. Superior Court (Smith)* (2017) 2C5th 608, 627.)
  - Duty to inquire of knowledgeable personnel: This could include public documents held by an agency's contractor. (*Community Youth Athletic Center v. City of National City* (2013) 220 CA4th 1385, 1428-1429.)
- A public entity does not have a duty to create described record. There is no duty to create a new record that a requester has described that does not already exist at the time of request. (*Sander v. State Bar of California* (2018) 26 CA5th 651, 665-666.)

Burden of Production: Personal Accounts

- Everything that a public employee writes is not subject to review and disclosure. "To qualify as a public record, a writing must contain information relating to the conduct of the public's business." (*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 618 citing to Govt. Code §6252 (e).)
- However, "public records" are not limited to those records that are kept by the public agency but can extend to the personal written communications of public employees when these communications relate to the conduct of public business. "An agency's public records do not lose their agency character just because the official who possesses them takes them out the door…Documents otherwise meeting CPRA's definition of 'public records' do not lose this status because they are located in an employee's personal account." (*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 623.)

Burden of Production: Unduly Burdensome

- While all CPRA requests "inevitably impose some burden on public agencies," a request that requires an entity to search an enormous volume of data for a "needle in the haystack," or that compels production of a huge volume of material may be objectionable as unduly burdensome. (*California First Amendment Coalition v. Superior Court (Wilson)* (1998) 67 Cal.App.4th 159, 1166.)
- As a practice point, some accommodation and effort at production of documents, even if voluminous, should be made, as public policy favors disclosure.
- Courts do not treat the quantum of resources that an agency has committed to responding to a CPRA request as fixed. Courts have been willing to order agencies to increase staffing if reasonably necessary to respond to CPRA requests. (*State Board of Equalization v. Superior Court (Associated Sales Tax Consultants, Inc.)* (1992) 10 CA4th 117, 1190.)

Burden of Production: Costs Associated with Production

- An agency may not charge a fee to make records available, but it may charge for copies. (Govt. Code §6253(a),(b).)
- For paper records, agencies can *only* recover direct costs, meaning the cost of running the copy machine, and conceivably, the expense of the person operating the copy machine. (*County of Santa Clara v. Superior Court* (2009),170 Cal.App.4th 1301, 1336.

Burden of Production: Costs Associated with Production Continued

- When the requester is seeking electronic copies, courts are less settled in interpreting the CRPA.
- First, the requester bears the cost of producing a copy of the record when the record is "one that is produced only at otherwise regularly scheduled intervals." (Govt. Code §6253.9)
  - This means that if a document is produced every two months and a party is requesting it during the one month that it is not produced, the additional costs, if any, to the agency in producing that document can be passed on to the requesting party. (*Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 237-238.
- Second, the public agency can recover costs when a "request would require data compilation, extraction, or programming to produce the record." (Govt. Code §6253.9)
  - Some courts have interpreted this to mean that the agency can recover costs from the requester when responsive production requires the public agency to incur special costs, such as computer programming and time for staff to prepare electronic documents for production. (*National Lawyer Guild v. City of Hayward* (2018) 27 Cal.App.5th 937, 951.)

Burden of Production: Costs Associated with Production Continued

- In both scenarios, production of paper records and production of electronic records, courts will weigh the cost to the agency against the benefit of an individual's access to public documents.
- However, if a public agency delivers costs to a requesting party and that party refuses to pay and instead files an action against the public agency, it could be grounds for the court awarding attorney's fees to the requesting party.
- One cost saving tip: Under California Government Code §6253(f), if the documents requested already exist on an internet platform (most likely the public entity's website), a public entity may direct the requesting party to the exact URL where the documents can be found in lieu of producing documents.

EXEMPTIONS FROM PRODUCTION

Exemptions from Production

- The burden of establishing an exemption from disclosure is always on the part of the public entity. (Govt. Code §6255; *Citizens for a Better Environment v. Department of Food and Agriculture* (1985) 171 Cal.App.3d 704, 712; *Vallejos v. California Highway Patrol* (1979) 89 Call.App.3d 781, 787.)
- Under the Government Code Section 6254, exemptions to the production of documents in CPRA are enumerated. Some key exemptions will be discussed in this presentation; however, please note that this list is not exhaustive.

Exemption: Litigation Records

- Records "pertaining to pending litigation to which the public agency is a party" are exempt until the litigation is finally adjudicated or otherwise settled. (Govt. Code §6254(b); *State of California ex rel. Division of Industrial Safety v. Superior Court* (1974) 43 Cal.App.3d 778, 783.)
  - This exemption applies only to documents specifically prepared for use in litigation. (*Fairley v. Superior County (City of Long Beach)* (1998) 66 Cal.App.4th 1414, 1420-1422.)
  - For documents prepared for dual purpose, the document is exempt from disclosure if its dominant purpose was for use in pending litigation. (*Fairley v. Superior County (City of Long Beach)* (1998) 66 Cal.App.4th 1414,1420-1421.)
  - However, this exception is broader than merely attorney-client privilege or the work product doctrine, as it covers work by any agency staff in connection to or "in anticipation of litigation." (*County of Los Angles v. Superior Court (Axelrad*) (2000) 82 CA4th 819, 830-831.
  - Litigation need not have commenced when record was created. (*Fairley v. Superior County (City of Long Beach)* (1998) 66 Cal.App.4th 1414,1421.)

Exemption: Litigation Records Continued

- The litigation exemption applies to prevent the disclosure of documents and correspondence obtained from outside of the public entity during litigation, if not meant to be revealed outside of the litigation, such as correspondence between counsel. (*Board of Trustees of California State University v. Superior Court (Copley Press, Inc.)* (2005) 132 Cal.App.4th 889, 898-901.)
- A Government Tort Claim is not a document subject to the litigation exemption and must be disclosed. (*Poway Unified School District v. Superior Court* (1998) 62 Cal.App.4th 1496, 1502-1505.)
- Deposition transcripts which are otherwise available to the public under the Discovery Act are not subject to the litigation exemption. (*Board of Trustees of California State University v. Superior Court (Copley Press, Inc.)* (2005) 132 Cal.App.4th 889, 901-902; CCP §2025.570.)
  - NOTE: If confidential documents are exhibits to or discussed in a deposition, you will need to find another exemption or protection to keep them from the public.

Exemption: Litigation Records Continued

- Only records pertaining to "pending litigation to which the public agency is a party" are exempt from disclosure. (Govt. Code §6254(b).)
- A public agency cannot keep a settlement agreement confidential. Once a settlement is final, information regarding the settlement must be disclosed to any person upon inquiry. (Govt. Code §54957.1(a)(3)(B).)
- Nevertheless, a public entity may require the adverse parties in a settlement to keep the terms confidential. That way, the settlement terms may only be disclosed in the event a person makes records request under the CPRA.
  - Practice point: Make sure any such release with a confidentiality clause states that, if one provision is found invalid or unenforceable, the rest of the release is still valid and enforceable.

Exemption: Personnel Records

- Personnel records are exempt as an unwarranted invasion of privacy. (Govt. Code §6254(c); *see Board of Trustees v. Superior Court* (1981) 119 Cal.App.3d 516, 528-530; *see also San Diego Trolley, Inc. v. Superior Court* (2001) 87 Cal.App.4th 1083, 1097).
  - Personnel records are subject to the right of privacy, which is a constitutional right under both the California State Constitution the Federal Constitution, as well as a protection under Government Code §6254(c).
  - Public employee salaries are not exempt as personnel records. (*International Federation of Professional and Technical Engineers, Local 21, AFL-CIO, et al v. Superior Court* (2007) 42 Cal.4th 319.) If necessary, for safety or certain privacy needs, names can be withheld, but not salaries. (*Id.* At 338-339.)
  - Public employee's home addresses, birthdates, and similar personal information are not public records. (Govt. Code §6254.3(a)(b).)
    - However, there is no protection for non-sensitive personnel records. (*Braun v. City of Taft* (1984) 154 CA3d 332, where Court found that a fireman's transfer paperwork to a different firehouse was not a non-sensitive personnel record.)

Exemption: Personnel Records of Peace Officers

- Except for records pertaining to certain incidents, such as those relating to incidents resulting in great bodily harm or death, "the personnel records of peace officers and custodial officers and records [of citizen complaints] maintain by any other state or local agency…are confidential and shall not be disclosed…" (Pen. Code §832.7(a).)
- For a citizen to obtain the personnel records of peace officers, including complaints against the officer, a noticed motion must be filed with the court showing good cause for disclosure. (Evidence Code §1043; *Commission on Peace Office Standards & Training v. Superior Court (Los Angeles Times Communications, LLC)* (2007) 42 C4th 278, 289.)

Exception to Personnel Records Exemption: Complaint Investigations

- Complaints and the related investigation reports against public employees are subject to disclosure if discipline was imposed, even if that discipline was limited to a letter of reprimand. (*Marken v. Santa Monica-Malibu Unified School District* (2012) 202 CA4th 1250, 1274-1276.)
- Where there was no discipline imposed, a complaint shall still be disclosed where the complaint was "of a substantial nature" and there was "reasonable cause to believe the complaint was well founded." (*Marken v. Santa Monica-Malibu Unified School District* (2012) 202 CA4th 1250, 1274-1276.)
  - When this rule has been applied, to determine if the complaint was of a "substantial nature," courts have analyzed if the complaint alleges "sexual harassment, sexual misconduct, physical violence, threats of violence, drug-related wrongdoing, criminal activity, or any other egregious misconduct." (*Associated Chino Teachers v. Chino Valley Unified School District* (2018) 30 Cal.App.5th 530, 535; *see also Bakersfield City School District v. Superior Court* (2004) 118 Cal.App.4th 1041.)

Exception to Personnel Records Exemption Con't: *Marken* Notice

- Prior to disclosure of files in response to a CPRA request that pertain employees, public entities are advised that they should notify effected employee or employees once the request is received. (*Marken v. Santa Monica-Malibu Unified School District* (2012) 202 Cal.App.4th 1250.)
  - Note: The documents that could affect an employee is not limited to documents that are in their personnel file, and can extend to embarrassing emails that are responsive to a CPRA request.
- Public entities need not delay their responses to CRPA requests, as previously discussed, to allow for effected person(s) to intervene in the action. (*Marken v. Santa Monica-Malibu Unified School District* (2012) 202 CA4th 1250,1268.)

Confidential Exemption By Agreement?

- Nondisclosure due to prior assurance of confidentiality generally does not outweigh public interest in disclosure and a public agency is not able to "transform what was a public record into a private one" through confidentiality agreements. (*Register Division of Freedom Newspaper, Inc. v. County of Orange* (1984) 158 CA3d 893, 909-910).
- "Assurances of confidentiality are insufficient in themselves to justify withholding pertinent public information from the public." (*San Gabriel Tribune v. Superior Court (City of West Covina*) (1983) 143 CA3d 762, 776).

Exemption: Medical Records & Similar Files

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- Government Code §6254(c) exempts from disclosure of personnel, medical, or "similar" files, as subject to the right of privacy (both constitutional and statutory).
  - This includes workers' compensation claim records for employees. (Govt. Code §6254(c).)
- The reference in Government Code §6254(c) to personnel, medical, or "similar" files, along with the reference to the invasion of personal privacy, leaves open the argument that other closely associated records of individual employees or students can be protected under the right to privacy, even though not specifically enumerated in detail.

Exemption: Right to Privacy is Qualified

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- The protection afforded for privacy is qualified, not absolute. In each case, the court must carefully balance the right of privacy against the need for discovery.
  - Ultimately disclosure may be ordered if the proponent can show that a "compelling public interest" is served by disclosure. (*Britt v. Superior Court (San Diego Unified Port District)* (1978) 20 Cal.3d 844, 855-856; *John B v. Superior Court (Bridget B.)* (2006) 38 Cal.4th 1177, 1199.)
  - Key case analysis: *International federation of Professional and Technical Engineers, Local 21, AFL-CIO, et al. v. Superior Court* (2007) 42 Cal.4th 319
- Redaction of otherwise public documents may serve as a means to protect private information, such as addresses or student names, on documents which are otherwise required to be produced.
  - Where redaction does not rectify the privacy issue, then the document is likely not be subject to production.

Exemption: Deliberative Process & Employee Relations Data

- This exemption excludes/exempts from disclosure categories of employee relations data, including:
  - The work product of an agency's decision (deliberative process, impressions, evaluations, opinions, recommendations, meeting minutes, etc.) for instruction, advice, or training to employees who do not have full collective bargaining and representation rights.
  - Higher education employer-employee relations and state employer-employee relations. (Govt. Code §6254(b).)

Exemption: Deliberative Process & Employee Relations Data Continued

- "The key question in every case is whether the disclosure of materials would expose an agency's decision making process in such a way as to discourage candid discussions within the agency and thereby undermine the agency's ability to perform its functions." (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1342 (internal quotes omitted); *see California First Amendment Coalition v. Superior Court (Wilson)* (1998) 67 Cal.App.4th 159, 169 [stating that staff evaluations regarding an applicant's fitness for appointment are protected from disclosure by deliberative process privilege.])

Exemption: Public Interest Catch-All Exception

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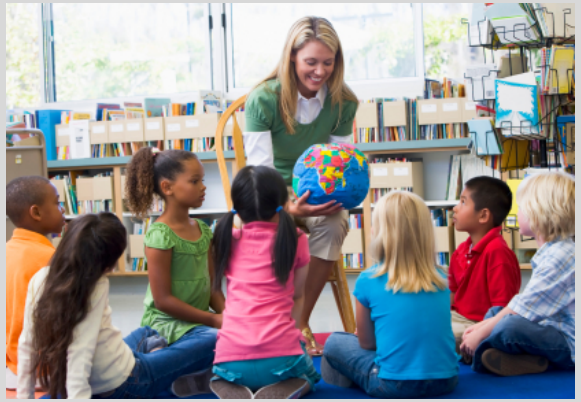
- A public entity can hold and exempt documents by demonstrating that the public interest will be served by non-disclosure in a way that "clearly outweighs the public interest served by disclosure itself." (Govt. Code §6255; *McMichaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th. 1065,1071; *Wilson v. Superior Court (Los Angles Times)* (1996) 51 Cal.App.4th 1136, 1143.)
- For this exemption to apply, a balancing process is required, and the burden of proof is on the public entity. (*McMichaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th. 1065 ,1071.)
- The catch-all exception will require significant circumstances.

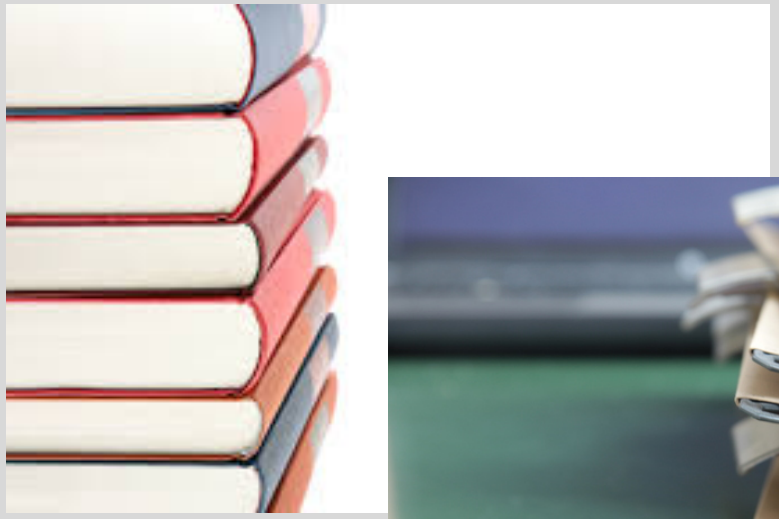


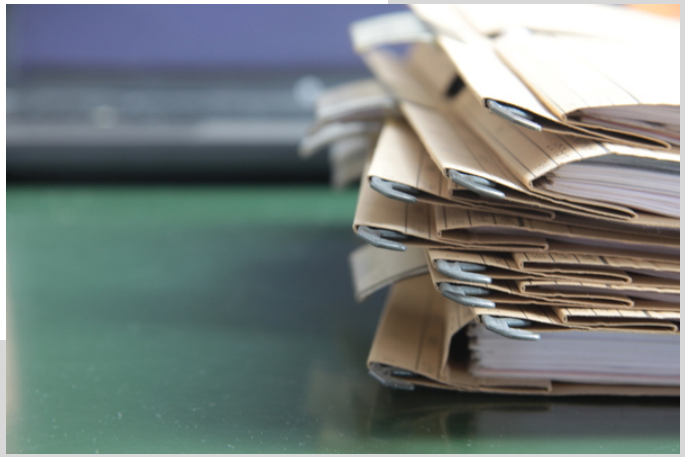
Exemption: Records Exempt Under Other Laws

- Government Code §6254(k) allows the entity to exempt records whose production is prohibited by federal and other state law.
  - Examples include state privileges, such as the attorney-client privilege;
  - Brown Act Documents: Government Code §54950, confidential and privileged matters discussed in closed session Brown Act subjected meetings;
  - Pupil and student records: Education Code §49076 prohibits school districts from releasing student records without parental consent or court order, except to school officials or employees, and some other narrow exceptions.
  - Student documents: Documents maintained in the normal course of business, such as registration forms, class schedules, grade transcripts, that are kept in a "central location along with education records" are protected from disclosure under Education Code §49076. (*BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 754-755.)
    - Note: This includes student cumulative files and SARB records.

Exemption: Records Exempt Under Other Laws Continued

- Public entity records, including investigations, can fall under the Government Code or the Education Code protection if kept centrally within the public entity and created and maintained in a regular course of the operation of the public entity.





Exemption Under Other Law: Attorney-Client Privilege

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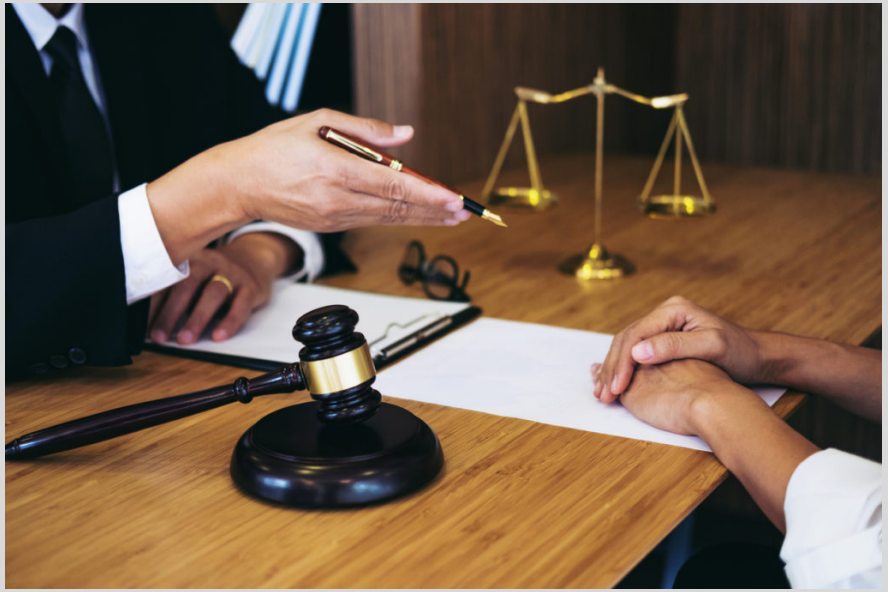
- A state law which protects communications between attorney and client (Evidence Code § 950-952.)
- Documents can be retained from disclosure under the attorney/client protection.



Exemption Under Other Law: Attorney-Client Privilege Continued

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- Communications between self-insured entity risk managers and its employees can be protected by the attorney-client privilege if:
  - Prepared by risk mangers at the directive of its legal advisors; and
  - The reports are listed as "confidential" and "attorney-client privilege"; and
  - The statements are reports are provided to the risk manages and/or counsel for the purpose of transmittal to attorney; and
  - The reports are kept confidential and people are limited as to access to them. (*See Scripps Health v. Superior Court* (2003) 109 Cal.App.4th 529, 534-536.)

Exemption Under Other Law: Attorney-Client Privilege Continued

- *Scripps* protection is a key tool for public entities to investigate incidences.
- *Scripps* protections apply to investigative materials even when no litigation is yet pending or yet anticipated. (*Scripps Health v. Superior Court* (2003) 109 Cal.App.4th 529, 534-536.)
- Note: Witness statements obtained as a result of attorney-directed interviews are not automatically entitled as a matter of law to absolute work product protection. The applicability of absolute protection must be determined on a case by case basis. (*Coito v. Superior Court* (2012) 54 Cal.4th 480, 495).
  - Practice tip: Have investigator/questioner write up summaries of statements, which are privileged and need not be produced.

Exemption Under Other Law: Work Product Doctrine

- The Work Product Doctrine protects writings that include impressions, conclusions, opinions, legal research, and theories of the attorney or attorney's agent. (CCP §2018.)
- Notes, reports, sketches, and writings of investigators and experts of the attorneys are protected.
- Reports and tests generated by experts retained by the attorney are protected by under the work product doctrine, as are the communications, reports, and written opinions of the attorney.
  - Practice point: Courts are more likely to recognize the Work Product Doctrine exception where consultants or experts were hired by the attorney.

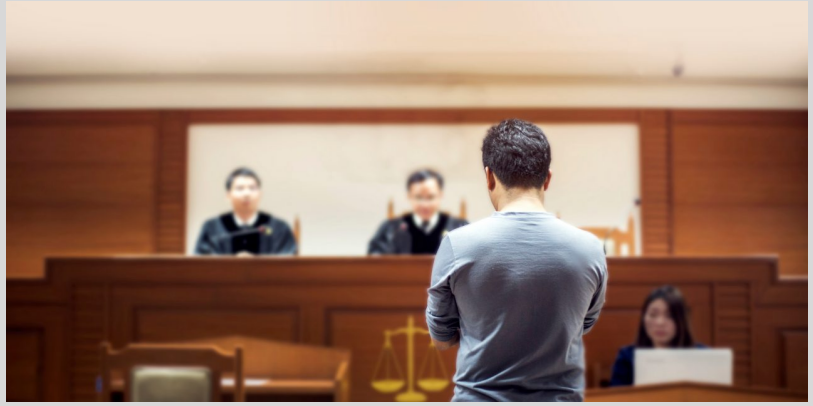
POTENTIAL LEGAL ACTIONS FOLLOWING CPRA REQUESTS

Actions Brought By Requesting Party

- The California Public Records Act expressly authorizes a requester who is denied public records by a public agency to file suit in a superior court "to enforce his or her right to inspect or to receive a copy of any public record or class of public records" under the CPRA. (Govt. Code §6258.) The requesting party may file an action for an injunction, declaratory judgement, or a writ of mandate. (Govt. Code §6258.)
- If this is done, "the court shall order the officer of person charged with withholding the records to disclose the public record or show cause why he or she should not do so." (Govt. Code §6259.)
  - Note: While not required at the outset, it is for this reason that it best practice to send a *Vaughn Index* when providing a response to the requesting party.

Actions Brought By Requesting Party Continued

- If the denied-requesting party is successful in bringing a suit against the public entity, the court shall award reasonable attorneys fees to the plaintiff. (Govt. Code §6259(d).) "The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official." (Govt. Code §6259(d).)
- Conversely, "[i]f the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency." (Govt. Code §6259(d).)



Actions Brought By Employees or Former Personnel

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- A third-party threatened with injury by the possible disclosure of records (meaning, parties to whom a *Marken* notice has been or should have been sent) could be named as a real party of interest in any action, and if they are not, those third-parties have the right to intervene in an action by a requesting party. (*Marken v. Santa Monica-Malibu Unified School District* (2012) 202 CA4th 1250,1267-1268.)
- When a public entity is willing to disclose the requested documents and such disclosure could cause injury to a third-party, that third-party may file a reverse-PRA action to enjoin the public entity from producing the documents. (*Marken v. Santa Monica-Malibu Unified School District* (2012) 202 CA4th 1250,1265-1267).
- In either of the above two cases, failure to name all parties (the requesting party, the public entity, and the effected third-party) could be grounds for dismissal. (*Tracy Press, Inc. v. Superior Court (City of Tracy)* (2008) 164 CA4th 1290, 1297-1302.)

RESPONSES AND BEST PRACTICES FOR CPRA

Responses and Best Practices for CPRA Requests

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- Review the requests for particularity and specificity of documents.
- Find the exemptions and objections that apply to the documents.
- Produce the documents which do not fall under an exemption or objection, and identify the category/type of documents that are exempted, citing why they are exempted and that they will not be produced.
  - Note: This does allow for requesting party to bring a motion to obtain the documents.
- Try to meet the ten day response rule for initial communications with the requesting party. If you cannot, make sure to send out letter advising the requesting party that you have received the request and you are in the process of determining if you have responsive documents.

Best Practices Continued

- Limit the number of copies any one document.
- Limit the number of different file locations that a series of documents are located
  - Try and keep one central file, even if expanded into separate subgroups, for all categories of one matter.
- Limit the amount of people that have access to a group of documents.

Best Practices Continued

- Keep individual documents stored within the category of protected documents.
  - Schools should keep as many documents as possible within student files, as the student files are protected under the Education Code;
  - In litigation, documents potentially relating to the matter litigated should all be stored in one litigation matter file;
  - Personnel/employee documents should often all be stores in the personnel file.
- Once an attorney represent the public entity, have the attorney be involved in as many discussion as possible; direct as much of the work as possible to him or her; and store keep, and generate as many of the documents as possible with the attorney in order to make full use of the attorney-client privilege and work product doctrine.

Questions

Thank You

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