

Memorandum 2018-25

California Public Records Act Clean-Up: Part 4. Enforcement

As directed by the Legislature, the Commission¹ is preparing a proposed recodification of the California Public Records Act (“CPRA”).² This is a strictly nonsubstantive project, intended to make the CPRA more user-friendly.³ The Commission is using its normal, time-tested study process, which involves circulation of a tentative recommendation for comment before finalizing a proposal for submission to the Legislature.⁴

For purposes of a tentative recommendation, the Commission decided to recodify the CPRA in a new division (Division 10) in Title 1 of the Government Code. That division would be split into six parts (Parts 1-6), as detailed in the Commission’s tentative outline.⁵

The Commission has previously considered staff drafts of Parts 1 through 3. For convenient reference, a cumulative preliminary draft, incorporating the Commission’s decisions to date, is attached to Memorandum 2018-24.

This memorandum presents a staff draft of Part 4. **Commissioners and other interested persons should review the draft and consider whether any revisions are needed.**

Respectfully submitted,

Steve Cohen
Staff Counsel

1. 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.

2. Gov’t Code §§ 6250-6276.48.

3. See 2016 Cal. Stat. res. ch. 150.

4. For a brief description of the Commission’s study process, see http://www.clrc.ca.gov/Menu5_about/process.html.

5. The current version of the tentative outline is attached to Memorandum 2018-23, which was previously distributed for convenient reference in connection with the upcoming meeting.

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DRAFT LEGISLATION

Note. This is a work in progress. The material shown below may be changed. For the current tentative outline of new Division 10 of Title 1 of the Government Code, see CLRC Staff Memorandum 2018-23.

A draft of an official Commission “Comment” follows each proposed code section in the proposed recodification. Such Comments will be included in any final recommendation. The Comments indicate the source of each recodified code section (or provision within the code section) and describe how the recodified code section (or provision) compares with prior law. Courts have routinely held that the Commission’s Comments are evidence of legislative intent with regard to any legislation that implements a Commission recommendation.

There is a “disposition table” at the end of the proposed recodification. It summarizes, in tabular form, the disposition of every provision of the existing code that has been included in this proposed recodification.

There is also a “derivation table” at the end of the proposed recodification. It summarizes, in tabular form, the statutory derivation of every new code provision in this proposed recodification.

Some provisions in this draft are followed by a “Staff Note.” These Staff Notes are intended to be temporary and will not be part of the Commission’s final recommendation. In general, the Staff Notes serve to flag issues requiring special attention or treatment.

Some provisions in this draft contain a bracketed reference to one or more existing code sections. As new Division 10 is drafted, these references will be conformed to the new numbering scheme.

In some places, it is necessary to refer to a section that has not yet been drafted. That is done by referring to “Section 79xx.xxx.” The Commission will fill in these references as it drafts the proposed recodification.

All of the proposed provisions would be located in the Government Code. All references are to the Government Code unless otherwise indicated.

The Commission welcomes public comment on any issue relating to the content of this draft or any other aspect of its ongoing CPRA Clean-Up study. Comments should be directed to Steve Cohen (scohen@clrc.ca.gov) or Barbara Gaal (bgaal@clrc.ca.gov).

1 **Gov’t Code §§ 7920.000-79xx.xxx (added). California Public Records Act**
2 SEC. ____ . Division 10 (commencing with Section 7920.000) is added to the
3 Government Code, to read:

4 **DIVISION 10. ACCESS TO PUBLIC RECORDS**

5 ...

6 **PART 4. ENFORCEMENT**

7 **CHAPTER 1. GENERAL PRINCIPLES**

8 **§ 7923.000. Right to seek enforcement of request**

9 7923.000. Any person may institute a proceeding for injunctive or declarative
10 relief, or for a writ of mandate, in any court of competent jurisdiction, to enforce
11 that person’s right under this division to inspect or receive a copy of any public

1 record or class of public records.

2 **Comment.** Section 7923.000 continues the first sentence of former Section 6258 without
3 substantive change.

4 See Sections 7920.515 (“person”), 7920.525 (“public records”).

5 **Staff Note.** The first sentence of Section 6258 says that any person may “institute
6 proceedings ... in any *court of competent jurisdiction* ...” (Emphasis added.) The reference to “a
7 court of competent jurisdiction” is superfluous, because it is always necessary to file a petition in
8 a court of competent jurisdiction.

9 The phrase is probably a relic from when California had several types of trial courts (superior
10 courts, municipal courts, and justice courts), with differing jurisdictional rules. Now that the state
11 has a unified trial court system (municipal and justice courts no longer exist and superior courts
12 have broad jurisdiction), a statutory reminder to file in a court of competent jurisdiction is less
13 necessary.

14 In perhaps an excess of caution, the staff nonetheless retained the phrase “court of competent
15 jurisdiction” in drafting proposed Section 7923.000, which would continue the substance of the
16 first sentence of Section 6258. Should the phrase be deleted in the interest of simplification?

17 **Comments on this matter would be helpful.**

18 Proposed Section 7921.705 presents a similar issue. See Memorandum 2018-24, Attachment
19 pp. 16-17. The Commission should be consistent in how it treats this matter.

20 **§ 7923.005. Court to set schedule that promotes prompt decision**

21 7923.005. In a proceeding under Section 7923.000, the court shall set the times
22 for hearings and responsive pleadings with the object of securing a decision as to
23 the matters at issue at the earliest possible time.

24 **Comment.** Section 7923.005 continues the second sentence of former Section 6258 without
25 substantive change.

26 CHAPTER 2. PROCEDURE

27 Article 1. Petition to Superior Court

28 **§ 7923.100. Verified petition and order to show cause**

29 7923.100. Whenever it is made to appear, by verified petition to the superior
30 court of the county where the records or some part thereof are situated, that certain
31 public records are being improperly withheld from a member of the public, the
32 court shall order the officer or other person charged with withholding the records
33 to disclose those records or show cause why that person should not do so.

34 **Comment.** Section 7923.100 continues the first sentence of former Section 6259(a) without
35 substantive change.

36 See Sections 7920.510 (“member of the public”), 7920.525 (“public records”).

37 **§ 7923.105. Material to be considered by court**

38 7923.105. The court shall decide the case after the court does all of the
39 following:

40 (a) Examine the record in camera, if permitted by subdivision (b) of Section 915
41 of the Evidence Code.

1 (b) Examine any papers filed by the parties.

2 (c) Consider any oral argument and additional evidence as the court may allow.

3 **Comment.** Section 7923.105 continues the second sentence of former Section 6259(a) without
4 substantive change.

5 **§ 7923.110. Decision and order**

6 7923.110. (a) If the court finds that the public official’s decision to refuse
7 disclosure is not justified under Section 7922.000 or any provision listed in
8 Section 7920.500, the court shall order the public official to make the record
9 public.

10 (b) If the court finds that the public official was justified in refusing to make the
11 record public, the court shall return the record to the public official without
12 disclosing its content, together with an order supporting the decision refusing
13 disclosure.

14 **Comment.** Section 7923.110 continues former Section 6259(b) without substantive change.

15 **§ 7923.115. Costs and attorney fees**

16 7923.115. (a) If the plaintiff prevails in litigation filed pursuant to this chapter,
17 the court shall award court costs and reasonable attorney fees to the plaintiff. The
18 costs and fees shall be paid by the public agency and shall not become a personal
19 liability of the public official involved.

20 (b) If the court finds that a plaintiff’s case pursuant to this chapter is clearly
21 frivolous, the court shall award court costs and reasonable attorney fees to the
22 public agency.

23 **Comment.** Section 7923.115 continues former Section 6259(d) without substantive change.
24 See Section 7920.520 (“public agency”).

25 **§ 7923.120. Failure to obey order as grounds for contempt**

26 7923.120. Any person who fails to obey an order of the court pursuant to this
27 chapter shall be cited to show cause why that person is not in contempt of court.

28 **Comment.** Section 7923.120 continues the fifth sentence of former Section 6259(c) without
29 substantive change.

30 See Section 7920.515 (“person”).

31 **Article 2. Appellate Review**

32 **§ 7923.500. Order reviewable by petition for extraordinary writ**

33 7923.500. An order of the court pursuant to this chapter, whether directing a
34 public official to disclose a record or supporting a public official’s decision to
35 refuse disclosure, is not a final judgment or order from which an appeal may be
36 taken pursuant to Section 904.1 of the Code of Civil Procedure. The order shall,
37 however, be immediately reviewable by a petition to the appellate court for
38 issuance of an extraordinary writ.

1 **Comment.** Section 7923.500 continues the first sentence of former Section 6259(c) without
2 substantive change. The introductory clause, which limited the applicability of this provision to
3 an action filed on or after January 1, 1991, is discontinued as obsolete.

4 **§ 7923.505. Time for filing writ petition**

5 7923.505. (a) To obtain review of an order entered pursuant to this chapter, a
6 party shall file a petition pursuant to Section 7923.500 within 20 days after service
7 upon that party of a written notice of entry of the order, or within a period not
8 exceeding an additional 20 days as the court may for good cause allow.

9 (b) If the notice of entry of the order is served by mail, the period within which
10 to file the petition shall be increased by five days.

11 **Comment.** Subdivision (a) of Section 7923.505 continues the second sentence of former
12 Section 6259(c) without substantive change.

13 Subdivision (b) continues the third sentence of former Section 6259(c) without change.

14 **§ 7923.510. Stay of judgment or order**

15 7923.510. A court shall not grant a stay of a judgment or order entered pursuant
16 to this chapter unless the petitioning party demonstrates both of the following:

17 (1) Probable success on the merits.

18 (2) The petitioning party will otherwise sustain irreparable damage.


19 **Comment.** Section 7923.510 continues the fourth sentence of former Section 6259(c) without
20 substantive change.

DISPOSITION OF FORMER LAW

Note. This table shows the proposed disposition of the following provisions of the California Public Records Act (Gov't Code §§ 6250-6276.48), as that law existed on January 1, 2018. Unless otherwise indicated, all statutory references are to the Government Code.

Existing Provision	Proposed Provision(s)	Existing Provision	Proposed Provision(s)
6258, 1st sent	7923.000	6259(c) 1st sent, remainder	7923.500
6258, 2nd sent	7923.005	6259(c) 2nd sent	7923.505(a)
6259(a) 1st sent	7923.100	6259(c) 3rd sent	7923.505(b)
6259(a) 2nd sent	7923.105	6259(c) 4th sent	7923.510
6259(b)	7923.110	6259(c) 5th sent	7923.120
6259(c) 1st sent, intro cl	not cont'd	6259(d)	7923.115

DERIVATION OF NEW LAW

 **Note.** This table shows the derivation of each proposed provision in this draft. Unless otherwise indicated, all statutory references are to the Government Code.

Proposed Provision	Existing Provision(s)	Proposed Provision	Existing Provision(s)
7923.000	6258 1st sent	7923.120	6259(c) 5th sent
7923.005	6258 2nd sent	7923.500	6259(c) 1st sent
7923.100	6259(a) 1st sent	7923.505(a)	6259(c) 2nd sent
7923.105	6259(a) 2nd sent	7923.505(b)	6259(c) 3rd sent
7923.110	6259(b)	7923.510	6259(c) 4th sent
7923.115	6259(d)		
