Memorandum 2018-32

California Public Records Act Clean-Up: Part 5. Specific Types of Public Records (Chapters 2-4)

In this study, the Commission¹ is building a tentative recommendation that proposes to recodify the California Public Records Act ("CPRA").² Once completed, the tentative recommendation will be posted to the Commission’s website and widely circulated for comment.

The current version of the outline for the recodification is attached to Memorandum 2018-23, which the Commission considered earlier this year.³ For convenient reference at the upcoming meeting, Memorandum 2018-40 presents a draft of all the material already approved for inclusion in the tentative recommendation thus far — i.e., Parts 1-4 and Chapter 1 of Part 5 of proposed new Division 10 of Title 1 of the Government Code.

This memorandum continues the drafting process. It presents a staff draft of the following chapters in Part 5, which is entitled "Specific Types of Public Records":

- Chapter 2. Election Materials and Petitions
- Chapter 4. Financial Records and Tax Returns

Commissioners and other interested persons should review the attached draft and determine whether any revisions are needed. Staff Notes in the draft

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.

². Gov’t Code §§ 6250-6276.48.

³. See Draft Minutes (May 2018), p. 3.
raise some specific questions for consideration. Comments on any aspect of the draft would be helpful.

Respectfully submitted,

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**DRAFT LEGISLATION**

**Staff Note.** This is a work in progress. The material shown below may be changed. For the current tentative outline of proposed 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 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 Barbara Gaal (bgaal@clrc.ca.gov).

Gov’t Code §§ 7920.000-79xx.xxx (added). California Public Records Act

SEC. ____. Division 10 (commencing with Section 7920.000) is added to Title 1 of the Government Code, to read:

DIVISION 10. ACCESS TO PUBLIC RECORDS

....
PART 5. SPECIFIC TYPES OF PUBLIC RECORDS

....

CHAPTER 2. ELECTION MATERIALS AND PETITIONS

Article 1. Voter Information

§ 7924.000. Voter registration information
7924.000. (a) Except as provided in Section 2194 of the Elections Code, both of the following are confidential and shall not be disclosed to any person:
   (1) The home address, telephone number, email address, precinct number, or other number specified by the Secretary of State for voter registration purposes.
   (2) Prior registration information shown on an affidavit of registration.
   (b) The California driver’s license number, the California identification card number, the social security number, and any other unique identifier used by the State of California for purposes of voter identification shown on an affidavit of registration, or added to the voter registration records to comply with the requirements of the federal Help America Vote Act of 2002 (52 U.S.C. Sec. 20901 et seq.), are confidential and shall not be disclosed to any person.
   (c) The signature of the voter that is shown on an affidavit of registration is confidential and shall not be disclosed to any person.
   (d) For purposes of this section, “home address” means street address only, and does not include an individual’s city or post office address.

Comment. Section 7924.000 continues former Section 6254.4 without substantive change. The citation to the federal Help America Vote Act of 2002 has been updated to reflect relocation of that Act within the United States Code.

Staff Notes.
(1) Existing Section 6254.4(c) refers to “the federal Help America Vote Act of 2002 (42 U.S.C. Sec. 15301 et seq.) ….” As discussed at page 8 of Memorandum 2017-50, the content of the federal Help America Vote Act was transferred to a new title of the federal code in 2012 (52 U.S.C. § 20901).

   The Commission previously directed the staff to update this cross-reference when recodifying Section 6254.4. See Minutes (Dec. 2017), p. 7. Proposed Section 7924.000(b) would implement that decision.

   Unless the Commission otherwise directs, the staff will mention this correction in the list of corrected cross-references at the end of the Commission’s draft report (see Memorandum 2018-40, Attachment p. 41).

(2) Existing Section 6254.4(b) defines “home address” for purposes of that section. The phrase “home address” is also used elsewhere in the CPRA, without definition. See Sections 6254(u)(2)-(3), 6254.3, 6254.16, 6254.18(b)(2), 6254.21; see also Sections 6276.14, 6276.24, 6276.36.
The Commission needs to resolve where to recodify Section 6254.4(b)’s definition of “home address.” Should it be placed in alphabetical order in “Chapter 2. Definitions” of Part 1 of the proposed recodification? Should that definition instead stay in close proximity to the substantive material to which it pertains (i.e., the remaining substance of Section 6254.4)?

Proposed Section 7924.000 would take the latter approach. The entire substance of existing Section 6254.4, including the definition of “home address,” would be recodified in the same place. That would make it easy to conform the seven statutes that cross-refer to Section 6254.4.

More importantly, the definition of “home address” would be readily accessible when a person refers to the substantive material to which that definition applies (i.e., Section 6254.4(a), which would be continued in proposed Section 7924.000(a)). Such a person probably would be more likely to see and apply the definition than if it were placed in “Chapter 2. Definitions.”

Another consideration is whether the Legislature would ever want to use Section 6254.4(b)’s definition of “home address” elsewhere in the CPRA. Unless that is a reasonable possibility, there might not be much advantage to placing that definition in “Chapter 2. Definitions.” The staff does not know whether such usage of the definition is likely to occur.

Is the staff’s suggested treatment of Section 6254.4(b)’s definition of “home address” acceptable? If so, should there be a “signpost” provision in “Chapter 2. Definitions,” which would alert readers to the definition of “home address” in proposed Section 7924.000(d)? Comments on these issues would be helpful.

§ 7924.005. Information identifying requester of bilingual ballot or ballot pamphlet

7924.005. (a) Notwithstanding Sections 7920.505, 7920.510, 7920.515, 7920.525, 7920.535, 7920.540, 7922.545, subdivision (a) of Section 7920.520, subdivision (b) of Section 7922.540, and Sections 7922.500 to 7922.535, inclusive, information compiled by a public officer or public employee that reveals the identity of a person who has requested a bilingual ballot or ballot pamphlet, in accordance with any federal or state law, or other data that would reveal the identity of the requester, is not a public record and shall not be provided to any person other than a public officer or public employee who is responsible for receiving the request and processing it.

(b) Subdivision (a) does not prohibit a person, otherwise authorized by law, from examining election materials, including, but not limited to, an affidavit of registration, provided that a request for a bilingual ballot or ballot pamphlet is subject to the restrictions in subdivision (a).

Comment. Section 7924.005 continues former Section 6253.6 without substantive change. See Section 13 (singular includes plural and vice versa).

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

Article 2. Initiative, Referendum, Recall, and Other Petitions and Related Materials

§ 7924.100. “Petition”

7924.100. As used in this article, “petition” means any petition to which a registered voter has affixed the voter’s own signature.

Comment. Section 7924.100 continues former Section 6253.5(c) without substantive change.
Existing Section 6253.5(c) defines “petition” for purposes of that section. The term “petition” is also used in two other substantive provisions of the CPRA. Those provisions do not define the term, but it is clear from the context that they are not referring to the same type of petition as in Section 6253.5. See Sections 6259 (petition alleging improper withholding of public record), 6264 (district attorney’s petition to inspect public record).

The term “petition” also appears three times in the list of exemptions in Article 2 of the CPRA. See Sections 6259 (petition alleging improper withholding of public record), 6264 (district attorney’s petition to inspect public record).

The term “petition” also appears three times in the list of exemptions in Article 2 of the CPRA. See Sections 6276.26 (“Initiative, referendum, recall, and other petitions, confidentiality of names of signers, Section 6253.5”), 6276.34 (“Petition signatures, Section 18650, Elections Code”), 6276.48 ("Wards, petition for sealing records, Section 781, Welfare and Institutions Code"). That list is just a reference tool, not substantive law.

The Commission needs to resolve where to recodify Section 6253.5’s definition of “petition.” Should it be placed in alphabetical order in “Chapter 2. Definitions” of Part 1 of the proposed recodification? Should it instead stay in close proximity to the substantive material to which it pertains (i.e., the remaining substance of Section 6253.5)?

Proposed Section 7924.100 would take the latter approach. The entire substance of existing Section 6253.5, including the definition of “petition,” would be recodified in the same article. That would make it easy to conform the ten statutes that cross-refer to Section 6253.5.

More importantly, the definition of “petition” would be readily accessible when a person refers to the substantive material to which that definition applies (i.e., Section 6253.5(a)-(b), which would be continued in proposed Section 7924.110). Such a person probably would be more likely to see and apply the definition than if it were placed in “Chapter 2. Definitions.”

Is the staff’s suggested treatment of Section 6253.5’s definition of “petition” acceptable? If so, should there be a “signpost” provision in “Chapter 2. Definitions,” which would alert readers to the definition of “petition” in proposed Section 7924.100? Comments on these issues would be helpful.

§ 7924.105. “Proponent of the petition”

7924.105. As used in this article, “proponent of the petition” means the following:

(a) For a statewide initiative or referendum measure, the person who submits a draft of a petition proposing the measure to the Attorney General with a request that the Attorney General prepare a title and summary of the chief purpose and points of the proposed measure.

(b) For other initiative and referendum measures, the person who publishes a notice of intention to circulate a petition, or, where publication is not required, who files the petition with an elections official.

(c) For a recall measure, the person defined in Section 343 of the Elections Code.

(d) For a petition circulated pursuant to Section 5091 of the Education Code, the person having charge of the petition who submits the petition to the county superintendent of schools.

(e) For a petition circulated pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, the person designated as chief petitioner under Section 35701 of the Education Code.

(f) For a petition circulated pursuant to Part 46 (commencing with Section 74000) of the Education Code, the person designated as chief petitioner under Section 74102, 74133, or 74152 of the Education Code.

Comment. Section 7924.105 continues former Section 6253.5(d) without substantive change. Section 13 (singular includes plural and vice versa).

See Sections 7920.515 (“person”), 7924.100 (“petition”).
**Staff Note.** Existing Section 6253.5(d) defines “proponents of the petition” for purposes of that section. The term is not used elsewhere in the CPRA.

The Commission needs to resolve where to recodify Section 6253.5’s definition of “proponents of the petition.” Proposed Section 7924.105 would place that definition in the same article as the rest of the substance of existing Section 6253.5.

That would make it easy to conform the ten statutes that cross-refer to Section 6253.5. The definition would also be readily accessible to persons who refer to the substantive material to which that definition applies.

Proposed Section 7924.105 would also singularize the definition (it would refer to the “proponent” instead of the “proponents”). Drafting in the singular is widely preferred and has no substantive effect because the singular includes the plural. See Gov’t Code § 13.

Is the staff’s suggested treatment of Section 6253.5’s definition of “proponents of the petition” acceptable? If so, should there be a “signpost” provision in “Chapter 2. Definitions,” which would alert readers to the definition in proposed Section 7924.105? **Comments on these issues would be helpful.**

§ 7924.110. Initiative, referendum, or recall petition, or petition for reorganization of school districts or community college districts

7924.110. (a) Notwithstanding Sections 7920.505, 7920.510, 7920.515, 7920.525, 7920.535, 7920.540, 7922.545, subdivision (a) of Section 7920.520, subdivision (b) of Section 7922.540, and Sections 7922.500 to 7922.535, inclusive, the following are not public records:

1. A statewide, county, city, or district initiative, referendum, or recall petition.
2. A petition circulated pursuant to Section 5091 of the Education Code.
3. A petition for reorganization of school districts submitted pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code.
4. A petition for reorganization of community college districts submitted pursuant to Part 46 (commencing with Section 74000) of the Education Code.
5. A memorandum prepared by a county elections official in the examination of a petition, indicating which registered voters signed that particular petition.

(b) The materials described in subdivision (a) shall not be open to inspection except by the following persons:

1. A public officer or public employee who has the duty of receiving, examining, or preserving the petition, or who is responsible for preparation of the memorandum.
2. If a petition is found to be insufficient, by the proponent of the petition and a representative of the proponent as may be designated by the proponent in writing, in order to determine which signatures were disqualified and the reasons therefor.
3. Notwithstanding subdivisions (a) and (b), the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a city attorney, a school district attorney, and a community college district attorney shall be permitted to examine the materials described in subdivision (a) upon approval of the appropriate superior court.
4. If the proponent of a petition is permitted to examine a petition and a memorandum pursuant to subdivision (b), the examination shall commence not later than 21 days after certification of insufficiency, and the county elections official shall retain the documents as prescribed in Section 17200 of the Elections Code.
Comment. Subdivision (a) and (b) of Section 7924.110 continue the first sentence of former Section 6253.5(a) without substantive change.
Subdivision (c) continues the second sentence of former Section 6253.5(a) without substantive change.
Subdivision (d) continues former Section 6253.5(b) without substantive change.
See Sections 7920.515 (“person”), 7920.525 (“public records”), 7920.540 (“writing”), 7924.100 (“petition”), 7924.105 (“proponent of the petition”). See also Section 13 (singular includes plural and vice versa).

CHAPTER 3. ENVIRONMENTAL PROTECTION, BUILDING STANDARDS, AND SAFETY REQUIREMENTS


§ 7924.300. Disclosure of pesticide safety and efficacy information
7924.300. If both of the following conditions are satisfied, nothing in this division exempts from public disclosure the same categories of pesticide safety and efficacy information that are disclosable under paragraph (1) of subsection (d) of Section 10 of the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136h(d)(1)):
(a) The individual requesting the information is not an officer, employee, or agent specified in subdivision (a) of Section 7924.310.
(b) The individual signs the affirmation specified in subdivision (b) of Section 7924.310.

Comment. Section 7924.300 continues former Section 6254.2(a) without substantive change.

§ 7924.305. Data submitted and designated as trade secret
7924.305. (a) The Director of Pesticide Regulation, upon the Director’s initiative, or upon receipt of a request pursuant to this division for the release of data submitted and designated as a trade secret by a registrant or applicant, shall determine whether any or all of the data so submitted is a properly designated trade secret. In order to assure that the interested public has an opportunity to obtain and review pesticide safety and efficacy data and to comment prior to the expiration of the public comment period on a proposed pesticide registration, the director shall provide notice to interested persons when an application for registration enters the registration evaluation process.
(b) If the director determines that the data is not a trade secret, the director shall notify the registrant or applicant by certified mail.
(c) The registrant or applicant shall have 30 days after receipt of this notification to provide the director with a complete justification and statement of the grounds on which the trade secret privilege is claimed. This justification and statement shall be submitted by certified mail.
(d) The director shall determine whether the data is protected as a trade secret within 15 days after receipt of the justification and statement or, if no justification and statement is filed, within 45 days of the original notice. The director shall notify the registrant or applicant and any party who has requested the data pursuant to this division of that determination by certified mail. If the director determines that the data is not protected as a trade secret, the final notice shall also specify a date, not sooner than 15 days after the date of mailing of the final notice, when the data shall be available to any person requesting information pursuant to Section 7924.300.

(e) This article does not prohibit any person from maintaining a civil action for wrongful disclosure of a trade secret.

(f) “Trade secret” means data that is nondisclosable under paragraph (1) of subsection (d) of Section 10 of the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136h(d)(1)).

Comment. Subdivision (a) of Section 7924.305 continues former Section 6254.2(b) without substantive change.

  Subdivision (b) continues former Section 6254.2(c) without substantive change.
  Subdivision (c) continues former Section 6254.2(d) without substantive change.
  Subdivision (d) continues former Section 6254.2(e) without substantive change.
  Subdivision (e) continues former Section 6254.2(m) without substantive change.
  Subdivision (f) continues former Section 6254.2(f) without substantive change.

  See Section 7920.515 (“person”). See also Section 13 (singular includes plural and vice versa).

Staff Notes.

(1) Existing Section 6254.2(f) refers to a provision in the federal Insecticide, Fungicide, and Rodenticide Act, but does not include a parallel citation to the United States Code. The Commission previously decided that the recodification of Section 6254.2(f) should include the parallel citation. Proposed Section 7924.305(f) would implement that decision.

(2) Existing Section 6254.2(b) says:

(b) The Director of Pesticide Regulation, upon his or her initiative, or upon receipt of a request pursuant to this chapter for the release of data submitted and designated as a trade secret by a registrant or applicant, shall determine whether any or all of the data so submitted is a properly designated trade secret. In order to assure that the interested public has an opportunity to obtain and review pesticide safety and efficacy data and to comment prior to the expiration of the public comment period on a proposed pesticide registration, the director shall provide notice to interested persons when an application for registration enters the registration evaluation process.

The second sentence (shown in italics) establishes a notice requirement for a proposed pesticide registration. At best, it is marginally related to the first sentence.

The staff considered recodifying the second sentence as a stand-alone section within this proposed article. However, such a notice requirement seems out-of-place in the CPRA.

Perhaps that sentence should be recodified elsewhere, with other material governing regulation of pesticides. For instance, Food and Agricultural Code Section 11502 could be amended as shown in underscore below:

11502. The director shall adopt regulations which govern the conduct of the business of pest control. In order to assure that the interested public has an opportunity to obtain and review pesticide safety and efficacy data and to comment prior to the expiration of the public comment period on a proposed pesticide registration, the
To avoid causing alarm, proposed Section 7924.305(a) would track existing Section 6254.2(b), instead of moving the second sentence elsewhere. For purposes of a tentative recommendation, should the Commission follow that approach and include a Note soliciting input on where to place the substance of the second sentence? Would it be preferable to propose to amend Food and Agricultural Code Section 11502 as shown above? Is there a better alternative? Comments on these issues would be helpful.

(3) Existing Section 6254.2(f) defines “trade secret” as follows:

11502. “Trade secret” means data that is nondisclosable under paragraph (1) of subsection (d) of Section 10 of the federal Insecticide, Fungicide and Rodenticide Act.

This definition is not expressly limited to Section 6254.2 but such a limitation seems implicit from the context.

Importantly, the term “trade secret” is also used elsewhere in the CPRA. In some of those places, the term is not defined. See Sections 6254.15, 6254.26(b). In other places, the applicable definition does not refer to the federal Insecticide, Fungicide and Rodenticide Act. See Sections 6254(ad)(5)(A)-(B), 6254.7. There are also numerous nonsubstantive references to “trade secret” in the list of exemptions in Article 2 of the CPRA. See Sections 6276.04, 6276.12, 6276.24, 6276.26, 6276.32, 6276.44.

In recodifying Section 6254.2’s definition of “trade secret,” the Commission should consider several points:

- Should the definition track the existing language or should it be expressly limited to the continuation of Section 6254.2 (e.g., “As used in this section, “trade secret” means …”)?
- Should the definition remain in close proximity to the substance of Section 6254.2?
- If Section 6254.2(f)’s definition would remain in close proximity to the substance of Section 6254.2, should there be a signpost provision in “Chapter 2. Definitions,” alerting persons to that definition as well as the other definitions of “trade secret” used in the CPRA?

Proposed Section 7924.305 would track the existing language of Section 6254.2(f) and keep it in close proximity to the substance of Section 6254.2. If the Commission decides to follow that approach, it might be helpful to include a signpost provision in “Chapter 2. Definitions,” as described above. We encourage input on that possibility and the other issues discussed here.

§ 7924.310. Prohibition on disclosure of application or registration information to person with specified foreign connection

7924.310. (a) Unless the applicant or registrant consents to disclosure of information that the applicant or registrant submits to the state pursuant to Article 4 (commencing with Section 12811) of Chapter 2 of Division 7 of the Food and Agricultural Code, the Director of Pesticide Regulation shall not knowingly disclose any of that information to any of the following:

(1) An officer, employee, or agent of any business or other entity engaged in the production, sale, or distribution of pesticides in a country other than the United States, or in a country in addition to the United States.
(2) Any other person who intends to deliver this information to any foreign or multi-national business or entity.

(b) To implement this section, the director shall require a person requesting information described in subdivision (a) to sign the following affirmation:

AFFIRMATION OF STATUS

This affirmation is required by Article 1 (commencing with Section 7924.310) of Chapter 3 of Part 5 of Division 10 of Title 1 of the Government Code.

I have requested access to information submitted to the Department of Pesticide Regulation (or previously submitted to the Department of Food and Agriculture) by a pesticide applicant or registrant pursuant to the California Food and Agricultural Code. I hereby affirm all of the following statements:

(1) I do not seek access to the information for purposes of delivering it or offering it for sale to any business or other entity, including the business or entity of which I am an officer, employee, or agent, engaged in the production, sale, or distribution of pesticides in a country other than the United States or in a country in addition to the United States, or to an officer, employee, or agent of such a business or entity.

(2) I will not purposefully deliver or negligently cause the data to be delivered to a business or entity specified in paragraph (1) or its officers, employees, or agents.

I am aware that I may be subject to criminal penalties under Section 118 of the Penal Code if I make any statement of material facts knowing that the statement is false or if I willfully conceal any material fact.

___________________________
Name of Requester

___________________________
Signature of Requester

___________________________
Date       Request No.

___________________________
Name, Address, and Telephone Number of Requester’s Client if the requester has requested access to the information on behalf of someone other than the requester or the requester’s organization listed above.
(c) Section 118 of the Penal Code applies to any affirmation made pursuant to this article.

Comment. Subdivisions (a) and (b) of Section 7924.310 continue former Section 6254.2(h) without substantive change.

Subdivision (c) continues former Section 6254.2(k) without substantive change.

See Section 7920.515 (“person”).

§ 7924.315. Information needed to determine whether pesticide or ingredient causes unreasonable adverse effect on health or environment

7924.315. Notwithstanding any other provision of this article, if the Director of Pesticide Regulation determines that information submitted by an applicant or registrant is needed to determine whether a pesticide, or any ingredient of any pesticide, causes unreasonable adverse effects on health or the environment, the director may disclose that information to any person in connection with a public proceeding conducted under law or regulation.

Comment. Section 7924.315 continues former Section 6254.2(i) without substantive change.

See Section 7920.515 (“person”).

§ 7924.320. Recordkeeping and notification

7924.320. The Director of Pesticide Regulation shall maintain records of the names of persons to whom data is disclosed pursuant to this article and the persons or organizations they represent and shall inform the applicant or registrant of the names and the affiliation of these persons.

Comment. Section 7924.320 continues former Section 6254.2(j) without substantive change.

See Section 7920.515 (“person”).

§ 7924.325. Effect of frivolous request

7924.325. The Director of Pesticide Regulation may limit an individual to one request per month pursuant to this article if the director determines that a person has made a frivolous request within the past 12-month period.

Comment. Section 7924.325 continues former Section 6254.2(m) without substantive change.

See Section 7920.515 (“person”).

§ 7924.330. Penalty for willfully disclosing material prohibited from disclosure by this article

7924.330. (a) Any officer or employee of the state, or former officer or employee of the state, who, because of this employment or official position, obtains possession of, or has access to, material which is prohibited from disclosure by this article, and who, knowing that disclosure of this material is prohibited by this article, willfully discloses the material in any manner to any person not entitled to receive it, shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000), or by imprisonment in the county jail for not more than one year, or by both fine and imprisonment.
(b) For purposes of this section, any contractor with the state who is furnished information pursuant to this article, or any employee of any contractor, shall be considered an employee of the state.

Comment. Section 7924.330 continues former Section 6254.2(l) without substantive change. See Section 7920.515 (“person”).

§ 7924.335. Conditional operation

7924.335. This article shall be operative only so long as, and to the extent that, enforcement of paragraph (1) of subsection (d) of Section 10 of the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136h(d)(1)) has not been enjoined by federal court order. If a final and unappealable federal court judgment or decision holds that paragraph invalid, this article shall become inoperative, to the extent of the invalidity.

Comment. Section 7924.335 continues former Section 6254.2(g) without substantive change.

Article 2. Pollution

§ 7924.500. Information received or compiled by air pollution control officer

7924.500. Nothing in this division requires the disclosure of records that relate to volatile organic compound or chemical substance information received or compiled by an air pollution control officer pursuant to Section 42303.2 of the Health and Safety Code.

Comment. Section 7924.500 continues former Section 6254.11 without substantive change. See Section 13 (singular includes plural and vice versa).

§ 7924.505. Financial data in application under California Pollution Control Financing Authority Act

7924.505. (a) Except as provided in Sections [6254.13], 7924.510, and 7924.700, this division does not require the disclosure of financial data contained in an application for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, if an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain a guarantee from the United States Small Business Administration.

(b) The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application that are subject to disclosure under this division.

Comment. Section 7924.505 continues former Section 6254(o) without substantive change. See Section 13 (singular includes plural and vice versa).

For other provisions governing disclosure of financial records, see “Chapter 4. Financial Records and Tax Records” (Sections 7925.000-7925.010).
§ 7924.510. Pollution information generally

7924.510. (a) Any information, analysis, plan, or specification that discloses the nature, extent, quantity, or degree of an air contaminant or other pollution that any article, machine, equipment, or other contrivance will produce, which any air pollution control district or air quality management district, or any other state or local agency or district, requires any applicant to provide before the applicant builds, erects, alters, replaces, operates, sells, rents, or uses the article, machine, equipment, or other contrivance, is a public record.

(b) All air or other pollution monitoring data, including data compiled from a stationary source, are public records.

(c) Except as otherwise provided in subdivision (d) and Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code, a trade secret is not a public record under this section or Section 7924.700.

(d) Notwithstanding any other provision of law, all air pollution emission data, including those emission data that constitute trade secrets as defined in subdivision (f), are public records. Data used to calculate emission data are not emission data for the purposes of this subdivision and data that constitute trade secrets and that are used to calculate emission data are not public records.

(e) Data used to calculate the costs of obtaining emissions offsets are not public records. At the time that an air pollution control district or air quality management district issues a permit to construct to an applicant who is required to obtain offsets pursuant to district rules and regulations, data obtained from the applicant consisting of the year the offset transaction occurred, the amount of offsets purchased, by pollutant, and the total cost, by pollutant, of the offsets purchased is a public record. If an application is denied, the data shall not be a public record.

(f) As used in this section, “trade secret” may include, but is not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information that satisfies all of the following requirements:

(1) It is not patented.

(2) It is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value.

(3) It gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

Comment. Subdivision (a) of Section 7924.510 continues former Section 6254.7(a) without substantive change.

Subdivision (b) continues former Section 6254.7(b) without substantive change.

Subdivision (c) continues the first sentence of former Section 6254.7(d) without substantive change.

Subdivision (d) continues former Section 6254.7(e) without substantive change.

Subdivision (e) continues former Section 6254.7(f) without substantive change.

Subdivision (f) continues the second sentence of former Section 6254.7(d) without substantive change.

See Sections 7920.505 (“local agency”), 7920.525 (“public records”), 7920.535 (“state agency”). See also Section 13 (singular includes plural and vice versa).
(1) Subdivisions (a), (b), (d), (e), and (f) of existing Section 6254.7 concern pollution data and other pollution-related matters. In contrast, subdivision (c) concerns violations of building standards and safety requirements. It says:

(c) All records of notices and orders directed to the owner of any building of violations of housing or building codes, ordinances, statutes, or regulations which constitute violations of standards provided in Section 1941.1 of the Civil Code, and records of subsequent action with respect to those notices and orders, are public records.

Because subdivision (c) deals with a distinct topic, the staff suggests recodifying it in a separate article (“Article 3. Building Standards and Safety Requirements”) instead of in “Article 2. Pollution” with the rest of the substance of Section 6254.7. That organizational scheme would help draw attention to the provision. However, the approach would also slightly complicate the task of conforming the many statutes that cross-refer to Section 6254.7.

Would the benefits of this organizational scheme outweigh that detriment? Comments on this point would be helpful.

(2) The second sentence of existing Section 6254.7(d) says:

“Trade secrets” as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

As previously discussed, the term “trade secret” is also used elsewhere in the CPRA. In some places, the term is not defined. See Sections 6254.15, 6254.26(b). In other places, the applicable definition differs from the one in Section 6254.7(d). See Sections 6254(ad)(5)(A)-(B), 6254.2(f). There are also numerous nonsubstantive references to “trade secret” in the list of exemptions in Article 2 of the CPRA. See Sections 6276.04, 6276.12, 6276.24, 6276.26, 6276.32, 6276.44.

The Commission needs to resolve where to recodify Section 6254.7(d)’s definition of “trade secrets.” Should it be placed in alphabetical order in “Chapter 2. Definitions” of Part 1 of the proposed recodification? Should it instead stay in close proximity to the substantive material to which it pertains (i.e., the remaining substance of Section 6254.7)? If so, should there be a signpost provision in “Chapter 2. Definitions,” alerting persons to that definition as well as the other definitions of “trade secret” used in the CPRA?

Proposed Section 7924.510 would keep Section 6254.7(d)’s definition of “trade secrets” in close proximity to the remaining substance of Section 6254.7. If the Commission decides to follow that approach, it might be helpful to include a signpost provision in “Chapter 2. Definitions,” as described above. We encourage input on that possibility and the related issues raised here.

Article 3. Building Standards and Safety Requirements

§ 7924.700. Record relating to housing or building violation

7924.700. (a) A record of a notice or an order that is directed to the owner of any building and relates to violation of a housing or building code, ordinance, statute, or regulation that constitutes a violation of a standard provided in Section 1941.1 of the Civil Code is a public record.
(b) A record of subsequent action with respect to a notice or order described in subdivision (a) is a public record.

Comment. Section 7924.700 continues former Section 6254.7(c) without substantive change.
For a special rule applicable to a trade secret, see Section 7924.510(c).
See Section 7920.525 (“public records”). See also Section 13 (singular includes plural and vice versa).

Staff Note. Subdivision (c) of existing Section 6254.7 is awkwardly phrased. It says:

(c) All records of notices and orders directed to the owner of any building of
violations of housing or building codes, ordinances, statutes, or regulations which
constitute violations of standards provided in Section 1941.1 of the Civil Code, and
records of subsequent action with respect to those notices and orders, are public records.

The staff considered the possibility of recodifying this awkward language, but decided that
rephrasing it could be helpful and could be done without much risk of a substantive change.
Is proposed Section 7924.700 satisfactory as drafted? Would it be better to retain the existing
language in Section 6254.7(c)?
Comments on this point would be helpful.

Article 4. Enforcement Orders

§ 7924.900. Internet posting of final enforcement orders of California Environmental Protection Agency and specified entities within that agency

7924.900. (a) Every final enforcement order issued by an agency listed in subdivision (b) under any provision of law that is administered by an entity listed in subdivision (b), shall be displayed on the entity’s Internet website, if the final enforcement order is a public record that is not exempt from disclosure pursuant to this division.

(b) This section applies to the California Environmental Protection Agency and to all of the following entities within the agency:

(1) The State Air Resources Board.
(3) The State Water Resources Control Board, and each California regional water quality control board.
(4) The Department of Pesticide Regulation.
(5) The Department of Toxic Substances Control.

(c)(1) Except as provided in paragraph (2), for purposes of this section, an enforcement order is final when the time for judicial review has expired on or after January 1, 2001, or when all means of judicial review have been exhausted on or after January 1, 2001.

(2) In addition to the requirements of paragraph (1), with regard to a final enforcement order issued by the State Water Resources Control Board or a California regional water quality control board, this section shall apply only to a final enforcement order adopted by that entity at a public meeting.
(d) An order posted pursuant to this section shall be posted for not less than one year.

(e) The California Environmental Protection Agency shall oversee the implementation of this section.

Comment. Section 7924.900 continues former Section 6253.8(a)-(e) without substantive change.

See Section 7920.525 (“public records”).

Staff Note. Section 6253.8(f) says that the section “shall become operative April 1, 2001.” That language appears to be obsolete. It would not be continued in proposed Section 7924.900.

CHAPTER 4. FINANCIAL RECORDS AND TAX RECORDS

§ 7925.000. Confidential taxpayer information required in collection of local taxes

7925.000. Except as provided in Sections [6254.13], 7924.510, and 7924.700, this division does not require the disclosure of information required from any taxpayer in connection with the collection of local taxes if that information is received in confidence and disclosure of it to other persons would result in unfair competitive disadvantage to the person supplying the information.

Comment. Section 7925.000 continues former Section 6254(i) without substantive change.

See Section 7920.515 (“person”).

§ 7925.005. Personal financial records required by licensing agency

7925.005. Except as provided in Sections [6254.13], 7924.510, and 7924.700, this division does not require the disclosure of a statement of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish the applicant’s personal qualification for the license, certificate, or permit requested.

Comment. Section 7925.005 continues former Section 6254(n) without substantive change.

§ 7925.010. Financial data relating to service contractor

7925.010. Except as provided in Sections [6254.13], 7924.510, and 7924.700, this division does not require the disclosure of any of the following records:

(a) Financial data contained in an application for registration, or registration renewal, as a service contractor, which is filed with the Director of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor’s net worth,

(b) Financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

Comment. Section 7925.010 continues former Section 6254(x) without 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.

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## 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.

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