

Memorandum 2018-64

**California Public Records Act Clean-Up:
Updated Version of Tentative Outline**

At the request of the Legislature,¹ the Commission² is preparing a nonsubstantive recodification of the California Public Records Act (“CPRA”).³ Attached for convenient reference is an updated version of the Commission’s tentative outline for that recodification.

The Commission has previously approved all but one of the organizational decisions reflected in the attached outline. The lone exception concerns newly enacted Government Code Section 6270.6,⁴ which will take effect on January 1, 2019.⁵

New Section 6270.6 pertains to special districts. The bill containing this new section includes an uncodified provision explaining the role and importance of special districts:

The Legislature finds and declares all of the following:

(a) Special districts are local government agencies that provide essential services to millions of Californians.

(b) As of January 2018, there are 2,085 independent special districts in California.

(c) Each special district focuses on a specific set of services, including, but not limited to, water, utilities, and parks.

(d) Throughout California’s history, special districts have empowered residents to find local solutions to fit the unique needs of their communities.

(e) It is this local approach that continues to make special districts a popular method for delivering essential public services and infrastructure in communities throughout the state.

1. See 2018 Cal. Stat. res. ch. 158 (SCR 91 (Roth & Chau)).

2. 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.

3. Gov’t Code §§ 6250-6276.48.

4. See 2018 Cal. Stat. ch. 408, § 2 (SB 929 (McGuire)).

5. See Cal. Const. art. IV, § 8(c)(1); Gov’t Code § 9600(a).

(f) In order to further public access to information related to these essential services, it is the intent of the Legislature that each independent special district provide easily accessible and accurate information on an Internet Web site.

Consistent with this set of findings, Section 6270.6 provides:

6270.6. In implementing this chapter [i.e., the CPRA], each independent special district shall maintain an Internet Web site in accordance with Section 53087.8.⁶

The staff reviewed the Commission's outline to determine where to recodify this new section. We tentatively decided that the substance of Section 6270.6 would fit best in "Chapter 15. Public Entity Spending, Finances, and Oversight" of "Part 5. Specific Types of Public Records" of proposed new "Division 10. Access to Public Records." See page 11 of the attached outline.

Is this the best place for the substance of new Section 6270.6? Comments on this point, or on any other aspect of the attached outline, would be helpful.

Respectfully submitted,

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Chief Deputy Counsel

6. Section 53087.8 was enacted in the same bill as Section 6270.6. It specifies details regarding the website required by Section 6270.6:

53087.6. (a) (1) Except as provided in subdivision (b), beginning on January 1, 2020, every independent special district, as defined in Section 56044, shall maintain an Internet Web site.

(2) The Internet Web site required by paragraph (1) shall conform to any other provisions of law applicable to the Internet Web site of the district, including, but not limited to, Sections 6270.5, 53893, 53908, and 54954.2 of this code, and Section 32139 of the Health and Safety Code.

(3) The Internet Web site required by paragraph (1) shall clearly list contact information for the independent special district.

(b)(1) An independent special district shall be exempt from subdivision (a) if, pursuant to a majority vote of its governing body at a regular meeting, the district adopts a resolution declaring its determination that a hardship exists that prevents the district from establishing or maintaining an Internet Web site.

(2) A resolution adopted pursuant to this subdivision shall include detailed findings, based upon evidence set forth in the minutes of the meeting, supporting the board's determination that a hardship prevents the district from establishing or maintaining an Internet Web site. The findings may include, but shall not be limited to, inadequate access to broadband communications network facilities that enable high-speed Internet access, significantly limited financial resources, or insufficient staff resources.

(3) A resolution adopted pursuant to this subdivision shall be valid for one year. In order to continue to be exempt from subdivision (a), the governing body of an independent special district shall adopt a resolution pursuant to this subdivision annually so long as the hardship exists.

CPRA RECODIFICATION: TENTATIVE OUTLINE (11/20/2018)

This is a tentative outline for recodification of the CPRA, incorporating all Commission decisions regarding the outline to date. The outline tentatively proposes to create a new division (Division 10 (commencing with Section 7920.000)) in “Title 1. General” of the Government Code. The new division would be organized along the following lines, with details shown on the pages indicated:

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DIVISION 10. ACCESS TO PUBLIC RECORDS

PART 1. GENERAL PROVISIONS

CHAPTER 1. PRELIMINARY PROVISIONS

Article 1. Short Titles

Material to include:

- The substance of Gov't Code § 6251 (short title)
- A provision modeled on Penal Code § 16000 (Deadly Weapons Recodification Act of 2010)

Article 2. Effect of Recodification

Material to include:

- A provision modeled on Penal Code § 16005 (nonsubstantive reform)
- A provision modeled on Penal Code § 16010 (continuation of existing law)
- A provision modeled on Penal Code § 16020 (judicial decision interpreting former law)
- A provision similar to Penal Code § 16020, but pertaining to Attorney General opinions instead of judicial decisions
- A provision modeled on Penal Code § 16025 (constitutionality), but pertaining to both judicial decisions and Attorney General opinions

Article 3. Effect of Division

Material to include:

- The substance of Gov't Code § 6260 (effect of chapter)

CHAPTER 2. DEFINITIONS

Material to include (with definitions arranged alphabetically):

- The substance of the second sentence of Gov't Code § 6254.5 (definition of "agency" for purposes of § 6254.5)
- A provision defining the term "former Section 6254 provisions," to be modeled on Penal Code §§ 16575 ("former Article 4 of Chapter 1 provisions"), 16580 ("former Chapter 1 provisions"), 16585 ("former Section 12078 provisions")
- The substance of Gov't Code § 6252(a) ("local agency")
- The substance of Gov't Code § 6252(b) ("member of the public")
- The substance of Gov't Code § 6252(c) ("person")
- The substance of Gov't Code § 6252(d) ("public agency")
- The substance of Gov't Code § 6252(e) ("public records")

The substance of Gov't Code § 6252(f) ("state agency")

The substance of Gov't Code § 6252(g) ("writing")

The substance of Gov't Code § 6254.24 ("public safety official")

A signpost provision pointing to the section continuing the substance of Gov't Code § 6254.18(b)(3) (definition of "public agency" for purposes of § 6254.18)

A signpost provision pointing to (1) the section continuing the substance of Gov't Code § 6254.2(f) (definition of "trade secret") and (2) the section continuing the substance of the second sentence of Gov't Code § 6254.7(d) (definition of "trade secrets" for purposes of § 6254.7)

Other material to consider including:

The substance of the second and third sentences of Gov't Code § 6254(ab) (definition of "voluntarily submitted" for purposes of § 6254(ab))

The substance of Gov't Code § 6254(ad)(7)(F) (definition of "fully executed" for purposes of § 6254(ad)(7))

The substance of Gov't Code § 6254.9 (definition of "computer software" for purposes of § 6254.9)

The substance of Gov't Code § 6254.21(c)(1)(E) (definitions of "publicly post" and "publicly display" for purposes of § 6254.21(c)(1))

The substance of Gov't Code § 6254.21(f) (definition of "elected or appointed official" for purposes of § 6254.21)

The substance of Gov't Code § 6254.26(c) (definitions of "alternative investment," "alternative investment vehicle," "portfolio positions," and "public investment fund" for purposes of § 6254.26)

The substance of the last four paragraphs of Gov't Code § 6267 (definition of "patron use records" for purposes of § 6267)

**PART 2. DISCLOSURE AND EXEMPTIONS
GENERALLY**

CHAPTER 1. RIGHT OF ACCESS TO PUBLIC RECORDS

Material to include:

The substance of Gov't Code § 6250 (legislative finding and declaration)

The substance of Gov't Code § 6253.3 (prohibition against control of disclosure by third party)

The substance of Gov't Code § 6270 (prohibition on providing record to private entity in manner that prevents agency from directly disclosing that record)

CHAPTER 2. GENERAL RULES GOVERNING DISCLOSURE

Article 1. Nondiscrimination

Material to include:

The substance of Gov't Code § 6252.5 (access by elected member or officer of agency)

The substance of Gov't Code § 6252.7 (nondiscrimination by local agency in disclosure to members of local legislative body)

The substance of Gov't Code § 6257.5 (prohibition on limitation of access based on purpose of request)

Article 2. Voluntary Disclosure

Material to include:

The substance of Gov't Code § 6254, 2d-to-last ¶ (voluntary disclosure by agency)

The substance of Gov't Code § 6254.5 (waiver of exemption based on disclosure), except the definition of "agency"

Article 3. Disclosure to District Attorney and Related Matters

Material to include:

The substance of Gov't Code § 6263 (inspection or copying of record by district attorney)

The substance of Gov't Code § 6264 (judicial action by district attorney)

The substance of Gov't Code § 6265 (effect of disclosure to district attorney)

CHAPTER 3. GENERAL RULES GOVERNING EXEMPTIONS FROM DISCLOSURE

Article 1. Justification for Withholding of Record

Material to include:

The substance of Gov't Code § 6255(a) (justification for withholding of record; often referred to as the CPRA catchall provision)

Article 2. Truncation of Social Security Numbers and Related Matters

Material to include:

The substance of Gov't Code § 6254.27 (SSN truncation program)

The substance of Gov't Code § 6254.28 (truncation of SSN with regard to secured transaction)

The substance of Gov't Code § 6254.29 (redaction of SSN by local agency)

PART 3. PROCEDURES

CHAPTER 1. REQUEST FOR A PUBLIC RECORD

Article 1. General Principles

Material to include:

The substance of the 1st sentence of Gov't Code § 6253(d) (no delay or obstruction)

The substance of Gov't Code § 6253(e) (option to adopt requirements that allow faster, more efficient, or greater access than minimum standards)

Article 2. Procedural Requirements Generally

Material to include:

The substance of Gov't Code § 6253(a) (inspection of public record)

The substance of Gov't Code § 6253(b) (copy of public record)

The substance of Gov't Code § 6253(c) (time to respond to request)

The substance of the 2nd sentence of Gov't Code § 6253(d) (person responsible for denial of request)

The substance of Gov't Code § 6253(f) (posting public record on agency's Internet Web site)

The substance of Gov't Code § 6255(b) (required written denial of request)

Article 3. Information in Electronic Format

Material to include:

The substance of Gov't Code § 6253.9 (information in electronic format)

Article 4. Duty to Assist in Formulating Request

Material to include:

The substance of Gov't Code § 6253.1 (duty to provide assistance)

CHAPTER 2. AGENCY REGULATIONS, GUIDELINES, SYSTEMS, AND SIMILAR MATTERS

Article 1. Agency Regulations and Guidelines

Material to include:

The substance of Gov't Code § 6253.4 (agency regulations and guidelines)

Article 2. Internet Resources

Material to include:

The substance of Gov't Code § 6253.10 (formatting of record posted on Internet Resource)

Article 3. Catalog of Enterprise Systems

Material to include:

The substance of Gov't Code § 6270.5 (catalog of enterprise systems)

PART 4. ENFORCEMENT

CHAPTER 1. GENERAL PRINCIPLES

Material to include:

The substance of Gov't Code § 6258 (judicial proceeding for enforcement of right to inspect or receive record)

CHAPTER 2. PROCEDURE

Article 1. Petition to Superior Court

Material to include:

The substance of Gov't Code § 6259(a), (b) & (d)
The substance of Gov't Code § 6259(c), 5th sent.

Article 2. Appellate Review

Material to include:

The substance of Gov't Code § 6259(c), 1st sent. (except introductory clause, which is obsolete)
The substance of Gov't Code § 6259(c), 2d-4th sent.

PART 5. SPECIFIC TYPES OF PUBLIC RECORDS

Note. The chapters within Part 5 would be arranged alphabetically, as shown below.

CHAPTER 1. CRIMES, WEAPONS, AND LAW ENFORCEMENT

Article 1. Law Enforcement Records Generally

Material to include:

The substance of Gov't Code § 6254(f) (law enforcement records)

Article 2. Obtaining Access to Law Enforcement Records

Material to include:

The substance of Gov't Code § 6254.30 (required documentation as prerequisite to receipt of information)

The substance of Gov't Code § 6262 (disclosure of licensing records to district attorney)

Article 3. Records of Emergency Communications to Public Safety Authorities

Material to include:

The substance of Gov't Code § 6254(z) (emergency information)

Article 4. Records Specifically Relating to Crime Victims

Material to include:

The substance of Gov't Code § 6254.4.5 (audio and video recordings)

The substance of Gov't Code § 6254.17 (records of California Victim Compensation Board)

Article 5. Firearm Licenses and Related Records

Material to include:

The substance of Gov't Code § 6254(u)(1) (personal information)

The substance of Gov't Code § 6254(u)(2)-(3) (address or phone number of person in criminal justice field)

CHAPTER 2. ELECTION MATERIALS AND PETITIONS

Article 1. Voter Information

Material to include:

The substance of Gov't Code § 6253.6 (information identifying requester of bilingual ballot or ballot pamphlet)

The substance of Gov't Code § 6254.4 (voter registration information)

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

Material to include:

The substance of Gov't Code § 6253.5 (access to initiative, referendum, recall, and other petitions and related materials)

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

Article 1. Pesticide Safety and Efficacy Information Disclosable Under
the Federal Insecticide, Fungicide, and Rodenticide Act

Material to include:

The substance of Gov't Code § 6254.2 (pesticide information)

Article 2. Pollution

Material to include:

The substance of Gov't Code § 6254(o) (financial data in application under California Pollution Control Financing Authority Act)

The substance of Gov't Code § 6254.7(a), (b), (d), (e) & (f) (pollution information generally)

The substance of Gov't Code § 6254.11 (information reviewed or compiled by air pollution control officer)

Article 3. Building Standards and Safety Requirements

Material to include:

The substance of Gov't Code § 6254.7(c) (record relating to housing or building violation)

Article 4. Enforcement Orders

Material to include:

The substance of Gov't Code § 6253.8 (Internet posting of final enforcement orders of California Environmental Protection Agency and specified entities within that agency), except subdivision (f), which is obsolete

CHAPTER 4. FINANCIAL RECORDS AND TAX RECORDS

Material to include:

The substance of Gov't Code § 6254(i) (confidential taxpayer information required in collection of local taxes)

The substance of Gov't Code § 6254(n) (personal financial records required by licensing agency)

The substance of Gov't Code § 6254(x) (financial data relating to service contractor)

CHAPTER 5. HEALTH CARE

Article 1. Accreditation

Material to include:

The substance of Gov't Code § 6254(s) (final accreditation report of Joint Commission on Accreditation of Hospitals)

Article 2. Advance Health Care Directive and Related Matters

Material to include:

The substance of Gov't Code § 6254(ac) (information provided for purpose of registration in Advance Health Care Directive Registry)

Article 3. Contracts and Negotiations

Material to include:

The substance of Gov't Code § 6254(q) (records relating to selective provider contracts or certain other health care contracts)

The substance of Gov't Code § 6254(t) (records of municipal hospital or local hospital district that relate to contract with insurer or nonprofit hospital service plan for alternative rates)

The substance of Gov't Code § 6254(v) (specified records of Managed Risk Medical Insurance Board and State Department of Health Care Services)

The substance of Gov't Code § 6254(w) (records of Managed Risk Medical Insurance Board relating to Small Employer Health Insurance)

The substance of Gov't Code § 6254(y) (additional records of Managed Risk Medical Insurance Board and State Department of Health Care Services)

The substance of the unlabeled last paragraph of Gov't Code § 6254 (health facility disclosing relevant financing information to certified bargaining agent)

The substance of Gov't Code § 6254.14 (information relating to contracts for health care services)

The substance of Gov't Code § 6254.22 (specified health plan records)

Article 4. In-Home Supportive Services and Personal Care Services

Material to include:

The substance of Gov't Code § 6253.2 (information regarding persons paid by state to provide in-home supportive services or personal care services)

Article 5. Reproductive Health Services Facility

Material to include:

The substance of Gov't Code § 6254.18 (personal information in record relating to reproductive health services facility)

Article 6. Web Sites and Related Matters

Material to include:

The substance of new Gov't Code § 6270.7 (implementation of CPRA by health care district) — see 2018 Cal. Stat. ch. 257, § 1 (AB 2019 (Aguiar-Curry))

CHAPTER 6. HISTORICALLY OR CULTURALLY SIGNIFICANT RECORDS

Material to include:

The substance of Gov't Code § 6254(r) (records of Native American sacred, historical, or culturally significant places)

The substance of Gov't Code § 6254.10 (archaeological site information)

CHAPTER 7. LIBRARY RECORDS

Material to include:

The substance of Gov't Code § 6254(j) (library circulation records)

The substance of Gov't Code § 6267 (patron use records of publicly-supported library), except possibly the definition of “patron use records”

CHAPTER 8. LITIGATION RECORDS

Material to include:

The substance of Gov't Code § 6254(b) (records relating to pending litigation)

The substance of Gov't Code § 6254.25 (litigation memoranda)

CHAPTER 9. MISCELLANEOUS PUBLIC RECORDS

Material to include:

The substance of Gov't Code § 6254(e) (confidential information relating to utility systems development, or market or crop reports)

The substance of Gov't Code § 6254.9 (software developed by agency), except possibly the definition of “computer software”

CHAPTER 10. PERSONAL INFORMATION AND CUSTOMER RECORDS

Material to include:

The substance of Gov't Code § 6252.6 (information relating to deceased minor foster child)

The substance of Gov't Code § 6254.1(a)-(b) (personal information governed by other statutes)

The substance of Gov't Code § 6254.16 (information about local agency utility customers)

The substance of Gov't Code § 6254.20 (personal information electronically collected by state agency)

CHAPTER 11. PRELIMINARY DRAFTS AND SIMILAR MATERIALS

Material to include:

The substance of Gov't Code § 6254(a) (preliminary drafts, notes, or memoranda)

CHAPTER 12. PRIVATE INDUSTRY

Material to include:

The substance of Gov't Code § 6254.6 (identity of private industry employer obtained in conjunction with collection of private industry wage data)

The substance of Gov't Code § 6254.15 (records relating to siting of private company)

CHAPTER 13. PRIVATE RECORDS, PRIVILEGED MATERIALS, AND OTHER RECORDS PROTECTED BY LAW FROM DISCLOSURE

Material to include:

The substance of Gov't Code § 6254(c) (personnel records, medical files, and other private records)

The substance of Gov't Code § 6254(k) (privileged materials and other records protected by law)

CHAPTER 14. PUBLIC EMPLOYEE OR OFFICIAL

Material to include (may divide into several articles):

The substance of Gov't Code § 6254(l) (correspondence of or to Governor or Governor's staff)

The substance of Gov't Code § 6254(m) (records of Legislative Counsel)

The substance of Gov't Code § 6254(p) (records reflecting state agency's views on employee relations and related matters)

The substance of Gov't Code § 6254.3 (personal information of agency employee)

The substance of Gov't Code § 6254.8 (agency employment contracts)

The substance of Gov't Code § 6254.21 (online posting or sale of personal information of elected or appointed official), except possibly the definitions of "publicly post," "publicly display," and "elected or appointed official"

The substance of Gov't Code § 6268 (archiving and disclosure of Governor's public records)

The substance of Gov't Code § 6268.5 (appraisal and management of Governor's public records by Secretary of State)

CHAPTER 15. PUBLIC ENTITY SPENDING, FINANCES, AND OVERSIGHT

Material to include:

The substance of Gov't Code § 6253.31 (access to agency contract requiring private entity to review, audit, or report on that agency)

The substance of Gov't Code § 6254(h) (documents relating to acquisition of property by state or local agency)

The substance of Gov't Code § 6254.26 (records relating to alternative investments of public investment funds), except possibly the definitions of "alternative investment," "alternative investment vehicle," "portfolio positions," and "public investment fund"

The substance of Gov't Code § 6254.33 (unique vendor, contractor, or affiliate identifying information)

The substance of Gov't Code § 6261 (itemized statement of agency's total expenditures and disbursement)

The substance of new Gov't Code § 6270.6 (Web site of independent special district) — see 2018 Cal. Stat. ch. 408, § 2 (SB 929 (McGuire))

CHAPTER 16. REGULATION OF FINANCIAL INSTITUTIONS AND SECURITIES

Material to include:

The substance of Gov't Code § 6254(d) (records of state agency that regulates or supervises financial institutions or issuance of securities)

The substance of Gov't Code § 6254.12 (disciplinary records made available to Department of Business Oversight through computer system)

CHAPTER 17. SECURITY MEASURES AND RELATED MATTERS

Material to include:

The substance of Gov't Code § 6254(aa) (assessment of vulnerability to terrorist attack or other criminal acts)

The substance of Gov't Code § 6254(ab) (critical infrastructure information voluntarily submitted to Office of Emergency Services), except possibly the definition of "voluntarily submitted"

The substance of Gov't Code § 6254.19 (information security record)

The substance of Gov't Code § 6254.23 (risk assessment or infrastructure protection program)

CHAPTER 18. STATE COMPENSATION INSURANCE FUND

Material to include:

The substance of Gov't Code § 6254(ad) (records of State Compensation Insurance Fund), except possibly the definition of "fully executed"

CHAPTER 19. TEST MATERIALS, TEST RESULTS, AND RELATED MATTERS

Material to include:

The substance of Gov't Code § 6254(g) (test materials)

The substance of Gov't Code § 6254.1(c) (DMV test in study of physical or mental factors affecting driving ability)

The substance of Gov't Code § 6254.13 (disclosure of Dep't of Education examination questions to legislative or executive branch)

PART 6. OTHER EXEMPTIONS FROM DISCLOSURE

Material to include:

The substance of "Article 2. Other Exemptions From Disclosure" of "Chapter 3.5. Inspection of Public Records" of "Division 7. Miscellaneous" of "Title 1. General" of the Gov't Code (i.e., Gov't Code §§ 6275-6276.48, which is the current CPRA catalog of exemptions from disclosure)

Note. The Commission has not yet resolved how to handle "Article 2. Other Exemptions From Disclosure" (Gov't Code §§ 6275-6276.48) in recodifying the CPRA. **The Commission welcomes comments on any aspect of this proposed outline, but comments on this point would be especially helpful.**