

Memorandum 2018-66

**California Public Records Act Clean-Up:
Part 5. Specific Types of Public Records
(Chapters 6-13)**

As directed by the Legislature, the Commission¹ is preparing a nonsubstantive recodification of the California Public Records Act (“CPRA”).² For purposes of a tentative recommendation, the Commission has 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.³ This memorandum presents a staff draft of the following chapters in Part 5:

Chapter 6. Historically or Culturally Significant Matters

Chapter 7. Library Records

Chapter 8. Litigation Records

Chapter 9. Miscellaneous Public Records

Chapter 10. Personal Information and Customer Records

Chapter 11. Preliminary Drafts and Similar Materials

Chapter 12. Private Industry

Chapter 13. Private Records, Privileged Materials, and Other Records
Protected By Law From Disclosure

Staff Notes in the attached draft provide some background information and raise a few issues for consideration. **Commissioners and other interested persons should review the attached draft and determine whether any revisions are needed.**

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. The current version of the tentative outline is attached to Memorandum 2018-64. For the most recent cumulative draft of material tentatively approved by the Commission, see Memorandum 2018-65.

Comments on any aspect of the draft would be helpful.⁴ Of particular note, the Commission decided in October that when the staff prepares a complete draft of a tentative recommendation for the Commission to consider, “the staff should review all of the proposed Comments, *insert additional references to related statutory material as appears appropriate*, and bring those suggested revisions to the Commission’s attention.”⁵ The staff would appreciate suggestions about which code provisions to mention in which Comments.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

4. Written comments can be in any form. They should be directed to bgaal@clrc.ca.gov. Comments may also be made orally at the Commission’s upcoming meeting, which will be open to the public. The agenda is available at http://www.clrc.ca.gov/Menu1_meetings/agenda.html.

5. Minutes (Oct. 2018), p. 4 (emphasis added).

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DRAFT LEGISLATION

1 **Staff Note.** This is a work in progress. The material shown below may be changed. For the
2 current tentative outline of proposed Division 10 of Title 1 of the Government Code, see
3 Memorandum 2018-64.

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

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

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

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

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

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

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

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

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

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

31 DIVISION 10. ACCESS TO PUBLIC RECORDS

32

33 PART 5. SPECIFIC TYPES OF PUBLIC
34 RECORDS

35

36 CHAPTER 6. HISTORICALLY OR CULTURALLY SIGNIFICANT MATTERS

37 **Staff Note.** In the Commission’s tentative outline, Chapter 6 would be entitled “Historically or
38 Culturally Significant Records.” See Memorandum 2018-64, Attachment p. 9.

1 That title could be misleading. The proposed provisions in the chapter pertain to records of
2 historically or culturally significant matters, like “graves, cemeteries, and sacred places” and
3 “Native American ... objects” The *subject matter* of the records is historically or culturally
4 significant, but not necessarily *the records themselves*.

5 To prevent confusion, it may be helpful to give the chapter a new name. The staff suggests
6 renaming it “Historically or Culturally Significant *Matters*,” as shown above.

7 **Is this acceptable to the Commission?**

8 **§ 7927.000. Native American sacred places, features, and objects**

9 7927.000. Except as provided in Sections [6254.13], 7924.510, and 7924.700, this
10 division does not require disclosure of any of the following:

11 (a) Records of Native American graves, cemeteries, and sacred places.

12 (b) Records of Native American places, features, and objects described in Sections
13 5097.9 and 5097.993 of the Public Resources Code, which are maintained by, or in the
14 possession of, the Native American Heritage Commission, another state agency, or a local
15 agency.

16 **Comment.** Section 7927.000 continues former Section 6254(r) without substantive change.

17 See Sections 7920.505 (“local agency”), 7920.535 (“state agency”).

18 **§ 7927.005. Archaeological site information and reports**

19 7927.005. Nothing in this division requires disclosure of records that relate to
20 archaeological site information and reports maintained by, or in the possession of, the
21 Department of Parks and Recreation, the State Historical Resources Commission, the State
22 Lands Commission, the Native American Heritage Commission, another state agency, or
23 a local agency, including the records that the agency obtains through a consultation process
24 between a California Native American tribe and a state or local agency.

25 **Comment.** Section 7927.005 continues former Section 6254.10 without substantive change.

26 See Sections 7920.505 (“local agency”), 7920.535 (“state agency”).

27 **CHAPTER 7. LIBRARY RECORDS**

28 **§ 7927.100. Library circulation records and library and museum materials**

29 7927.100. (a) Except as provided in Sections [6254.13], 7924.510, and 7924.700, this
30 division does not require disclosure of any of the following:

31 (1) Library circulation records kept for the purpose of identifying the borrower of items
32 available in libraries.

33 (2) Library and museum materials made or acquired and presented solely for reference
34 or exhibition purposes.

35 (b) The exemption in this section does not apply to records of fines imposed on the
36 borrowers.

37 **Comment.** Section 7927.100 continues former Section 6254(j) without substantive change.

1 **§ 7927.105. Patron use records of library supported by public funds**

2 7927.105. (a) As used in this section, the term “patron use records” includes the
3 following:

4 (1) Any written or electronic record that is used to identify a library patron and is
5 provided by the patron to become eligible to borrow or use books and other materials. This
6 includes, but is not limited to, a patron’s name, address, telephone number, or e-mail
7 address.

8 (2) Any written record or electronic transaction that identifies a patron’s borrowing
9 information or use of library information resources. This includes, but is not limited to,
10 database search records, borrowing records, class records, and any other personally
11 identifiable uses of library resources information requests, or inquiries.

12 (b) This section does not apply to either of the following:

13 (1) Statistical reports of patron use.

14 (2) Records of fines collected by a library.

15 (c) All patron use records of a library that is in whole or in part supported by public funds
16 shall remain confidential. A public agency, or a private actor that maintains or stores patron
17 use records on behalf of a public agency, shall not disclose those records to any person,
18 local agency, or state agency, except as follows:

19 (1) By a person acting within the scope of the person’s duties within the administration
20 of the library.

21 (2) By a person authorized in writing to inspect the records. The authorization shall be
22 from the individual to whom the records pertain.

23 (3) By order of the appropriate superior court.

24 **Comment.** Section 7927.105 continues former Section 6267 without substantive change.

25 See Sections 7920.505 (“local agency”), 7920.515 (“person”), 7920.520 (“public agency”),
26 7920.535 (“state agency”), 7920.540 (“writing”).

27 **Staff Note.** Existing Section 6267 defines the term “patron use record” for purposes of that
28 section. The term is not used anywhere else within the CPRA.

29 Similarly, proposed Section 7927.105 (continuing the substance of existing Section 6267)
30 would define the term “patron use record” for purposes of that section. This location seems more
31 appropriate than placing the definition in “Chapter 2. Definitions” of Part 1 of the recodified
32 CPRA, because the term would only be used in Section 7927.105.

33 **Is the suggested approach acceptable to the Commission?**

34 **CHAPTER 8. LITIGATION RECORDS**

35 **§ 7927.200. Records relating to pending litigation or pending claim**

36 7927.200. Except as provided in Sections [6254.13], 7924.510, and 7924.700, this
37 division does not require disclosure of any of the following records:

38 (a) Records pertaining to pending litigation to which the public agency is a party, until
39 the pending litigation has been finally adjudicated or otherwise settled.

40 (b) Records pertaining to a claim made pursuant to Division 3.6 (commencing with
41 Section 810), until the pending claim has been finally adjudicated or otherwise settled.

1 **Comment.** Section 7927.200 continues former Section 6254(b) without substantive change.
2 See Section 7920.520 (“public agency”).

3 **§ 7927.205. Memorandum of legal counsel relating to pending litigation**

4 7927.205. Nothing in this division or any other provision of law requires disclosure of a
5 memorandum submitted to a state body or to the legislative body of a local agency by its
6 legal counsel pursuant to subdivision (e) of Section 11126 or Section 54956.9 until the
7 pending litigation has been finally adjudicated or otherwise settled. The memorandum is
8 protected by the attorney work-product privilege until the pending litigation has been
9 finally adjudicated or otherwise settled.

10 **Comment.** Section 7927.205 continues former Section 6254.25 without substantive change. The
11 cross-reference to Section 11126 has been updated to reflect relocation of the relevant material
12 from subdivision (q) to subdivision (e) of that section.

13 See Section 7920.505 (“local agency”).

14 **Staff Note.** Existing Section 6254.25 cross-refers to “subdivision (q) of Section 11126.”
15 However, Section 11126 no longer has a subdivision (q); the material in question was relocated to
16 subdivision (e) in 1996 (see 1996 Cal. Stat. ch. 1041, § 5).

17 As the Commission instructed in December 2017, proposed Section 7927.205 (continuing the
18 substance of Section 6254.25) would correct this erroneous cross-reference. Unless the
19 Commission otherwise directs, the staff will add this correction to the list of “Corrected Cross-
20 References” at the end of the Commission’s proposed recodification.

21 As explained at pages 11-16 of Memorandum 2017-50, the cross-referenced provision (Section
22 11126) appears to contain an inadvertent drafting error; some relabeling is needed. The
23 Commission previously decided to correct this problem as suggested on pages 14-15 of that
24 memorandum. To implement that decision, the staff will include a technical amendment of Section
25 11126 when we prepare the conforming revisions and repeals for the Commission’s proposed
26 recodification.

27 **CHAPTER 9. MISCELLANEOUS PUBLIC RECORDS**

28 **§ 7927.300. Computer software**

29 7927.300. (a) As used in this section, “computer software” includes computer mapping
30 systems, computer programs, and computer graphics systems.

31 (b) Computer software developed by a state or local agency is not itself a public record
32 under this division. The agency may sell, lease, or license the software for commercial or
33 noncommercial use.

34 (c) This section shall not be construed to create an implied warranty on the part of the
35 State of California or any local agency for errors, omissions, or other defects in any
36 computer software as provided pursuant to this section.

37 (d) Nothing in this section is intended to affect the public record status of information
38 merely because it is stored in a computer. Public records stored in a computer shall be
39 disclosed as required by this division.

40 (e) Nothing in this section is intended to limit any copyright protections.

41 **Comment.** Section 7927.300 continues former Section 6254.9 without substantive change.
42 See Sections 7920.505 (“local agency”), 7920.525 (“public records”), 7920.535 (“state agency”).

1 **Staff Note.** Existing Section 6254.9 defines the term “computer software” for purposes of that
2 section. The term is not used anywhere else within the CPRA.

3 Similarly, proposed Section 7927.300 (continuing the substance of existing Section 6254.9)
4 would define the term “computer software” for purposes of that section. This location seems more
5 appropriate than placing the definition in “Chapter 2. Definitions” of Part 1 of the recodified
6 CPRA, because the term would only be used in Section 7927.300.

7 **Is the suggested approach acceptable to the Commission?**

8 **§ 7927.305. Confidential information relating to utility systems development, or market or**
9 **crop reports**

10 7927.305. Except as provided in Sections [6254.13], 7924.510, and 7924.700, this
11 division does not require disclosure of geological and geophysical data, plant production
12 data, and similar information relating to utility systems development, or market or crop
13 reports, that are obtained in confidence from any person.

14 **Comment.** Section 7927.305 continues former Section 6254(e) without substantive change.
15 See Section 7920.515 (“person”).

16 CHAPTER 10. PERSONAL INFORMATION AND CUSTOMER RECORDS

17 **§ 7927.400. Personal information electronically collected by state agency**

18 7927.400. Nothing in this division requires the disclosure of records that relate to
19 electronically collected personal information, as defined by Section 11015.5, that is
20 received, collected, or compiled by a state agency.

21 **Comment.** Section 7927.400 continues former Section 6254.20 without substantive change.

22 **§ 7927.405. Residence or mailing address in records of Department of Motor Vehicles**

23 7927.405. Nothing in this division requires the disclosure of the residence or mailing
24 address of any person in any record of the Department of Motor Vehicles except in
25 accordance with Section 1808.21 of the Vehicle Code.

26 **Comment.** Section 7927.405 continues former Section 6254.1(b) without substantive change.
27 See Section 7920.515 (“person”).

28 **§ 7927.410. Personal information of local agency utility customers**

29 7927.410. Nothing in this division requires the disclosure of the name, credit history,
30 utility usage data, home address, or telephone number of a utility customer of a local
31 agency, except that disclosure of the name, utility usage data, and the home address of a
32 utility customer of a local agency shall be made available upon request as follows:

33 (a) To an agent or authorized family member of the person to whom the information
34 pertains.

35 (b) To an officer or employee of another governmental agency when necessary for the
36 performance of its official duties.

37 (c) Upon court order or the request of a law enforcement agency relative to an ongoing
38 investigation.

1 (d) Upon determination by the local agency that the utility customer who is the subject
2 of the request has used utility services in a manner inconsistent with applicable local utility
3 usage policies.

4 (e) Upon determination by the local agency that the utility customer who is the subject
5 of the request is an elected or appointed official with authority to determine the utility usage
6 policies of the local agency, provided that the home address of an appointed official shall
7 not be disclosed without the official’s consent.

8 (f) Upon determination by the local agency that the public interest in disclosure of the
9 information clearly outweighs the public interest in nondisclosure.

10 **Comment.** Section 7927.410 continues former Section 6254.16 without substantive change.
11 See Sections 7920.505 (“local agency”), 7920.515 (“person”).

12 **§ 7927.415. Residence address in records of Department of Housing and Community**
13 **Development**

14 7927.415. Except as provided in Sections 7924.510 and 7924.700, nothing in this
15 division requires disclosure of records that are the residence address of any person
16 contained in the records of the Department of Housing and Community Development, if
17 the person has requested confidentiality of that information, in accordance with Section
18 18081 of the Health and Safety Code.

19 **Comment.** Section 7927.415 continues former Section 6254.1(a) without substantive change.
20 See Section 7920.515 (“person”).

21 **§ 7927.420. Information relating to deceased minor foster child**

22 7927.420. Notwithstanding paragraph (2) of subdivision (a) of Section 827 of the
23 Welfare and Institutions Code, after the death of a foster child who is a minor, the name,
24 date of birth, and date of death of the child shall be subject to disclosure by the county child
25 welfare agency pursuant to this division.

26 **Comment.** Section 7927.420 continues former Section 6252.6 without substantive change.

27 **CHAPTER 11. PRELIMINARY DRAFTS AND SIMILAR MATERIALS**

28 **§ 7927.500. Preliminary drafts, notes, or interagency or intra-agency memoranda not**
29 **ordinarily retained**

30 7927.500. Except as provided in Sections [6254.13], 7924.510, and 7924.700, this
31 division does not require disclosure of any preliminary drafts, notes, or interagency or intra-
32 agency memoranda that are not retained by a public agency in the ordinary course of
33 business, if the public interest in withholding those records clearly outweighs the public
34 interest in disclosure.

35 **Comment.** Section 7927.500 continues former Section 6254(a) without substantive change.
36 See Section 7920.520 (“public agency”).

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CHAPTER 12. PRIVATE INDUSTRY

§ 7927.600. Identity of private industry employer obtained in conjunction with collection of private industry wage data

7927.600. Whenever a city and county or a joint powers agency, pursuant to a mandatory statute or charter provision to collect private industry wage data for salary setting purposes, or a contract entered to implement that mandate, is provided this data by the federal Bureau of Labor Statistics on the basis that the identity of private industry employers shall remain confidential, the identity of the employers shall not be open to the public or be admitted as evidence in any action or special proceeding.

Comment. Section 7927.600 continues former Section 6254.6 without substantive change.

§ 7927.605. Records relating to siting of private company

7927.605. (a) Nothing in this division requires the disclosure of records that are any of the following: corporate financial records, corporate proprietary information including trade secrets, and information relating to siting within the state furnished to a government agency by a private company for the purpose of permitting the agency to work with the company in retaining, locating, or expanding a facility within California.

(b) Except as provided in subdivision (c), incentives offered by a state or a local government agency, if any, shall be disclosed upon communication to the agency or the public of a decision to stay, locate, relocate, or expand, by a company, or upon application by that company to a governmental agency for a general plan amendment, rezone, use permit, building permit, or any other permit, whichever occurs first.

(c) Before publicly disclosing a record that describes state or local incentives offered by an agency to a private business to retain, locate, relocate, or expand the business within California, the agency shall delete information that is exempt pursuant to this section.

Comment. Section 7927.605 continues former Section 6254.15 without substantive change. See Sections 7920.505 (“local agency”), 7920.535 (“state agency”).

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

§ 7927.700. Personnel, medical, and similarly private files

7927.700. Except as provided in Sections [6254.13], 7924.510, and 7924.700, this division does not require disclosure of personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

Comment. Section 7927.700 continues former Section 6254(c) without substantive change.

Staff Note. At the October meeting, the Commission decided that when the staff prepares a complete draft of a tentative recommendation for the Commission to consider, “the staff should review all of the proposed Comments, *insert additional references to related statutory material as appears appropriate*, and bring those suggested revisions to the Commission’s attention.” (Minutes (Oct. 2018)), p. 4 (emphasis added).

Proposed Section 7927.700 would continue the substance of Section 6254(c), which refers broadly to “personnel, medical, or similar files, the disclosure of which would constitute an

1 unwarranted invasion of personal privacy.” There are also a variety of other, more specific, code
2 provisions protecting medical, personnel, and similarly private records.

3 It would be helpful to refer to the most important such code provisions in the Comment to
4 proposed Section 7927.700. **We encourage input on which code provisions to refer to in the**
5 **Comment.**

6 **§ 7927.705. Privileged records and other records protected by law from disclosure**

7 7927.705. Except as provided in Sections [6254.13], 7924.510, and 7924.700, this
8 division does not require disclosure of records, the disclosure of which is exempted or
9 prohibited pursuant to federal or state law, including, but not limited to, provisions of the
10 Evidence Code relating to privilege.

11 **Comment.** Section 7927.705 continues former Section 6254(k) without substantive change.

12 For evidentiary privileges under state law, see Evid. Code §§ 900-1070; see also Code Civ. Proc.
13 §§ 2018.010-2018.080 (attorney work product); Evid. Code §§ 1115-1129 (mediation
14 confidentiality). For evidentiary privileges under federal law, see Fed. R. Evid. 501.

15 Many other state and federal laws also exempt or prohibit disclosure of records. See, e.g.,
16 Sections 7922.000 (CPRA catchall provision); 7923.600-79xx.xxx (specific types of public
17 records), 79xx.xxx-79xx.xxx (other exemptions from disclosure).

18 **Staff Note.** Proposed Section 7927.705 would continue the substance of Section 6254(k), which
19 refers broadly to “records, the disclosure of which is exempted or prohibited pursuant to federal or
20 state law, including, but not limited to, provisions of the Evidence Code relating to privilege.”

21 As drafted above, the accompanying Comment would refer to the Evidence Code provisions
22 on privilege and mediation confidentiality. The Comment would also refer to Federal Rule of
23 Evidence 501, the Code of Civil Procedure provisions on attorney work product, the CPRA catchall
24 exemption (proposed Section 7922.000), and other exemptions included in, or listed in, the CPRA.
25 The Comment would make clear that these are just examples, not an exhaustive list.

26 **We encourage input on whether to refer to any other code provisions or sources of law in**
27 **the proposed Comment.**

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). Unless otherwise indicated, all statutory references are to the Government Code.

Existing Provision	Proposed Provision(s)	Existing Provision	Proposed Provision(s)
6252.6	7927.420	6254.1(b).....	7927.405
6254(a).....	7927.500	6254.6	7927.600
6254(b)	7927.200	6254.9	7927.300
6254(c).....	7927.700	6254.10	7927.005
6254(e).....	7927.305	6254.13	7927.605
6254(j)	7927.100	6254.16	7927.410
6254(k)	7927.795	6254.20	7927.400
6254(r).....	7927.000	6254.25	7927.205
6254.1(a).....	7927.415	6267	7927.105

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)
7927.000	6254(r)	7927.410	6254.6
7927.005	6254.10	7927.405	6254.1(b)
7927.100	6254(j)	7927.410	6254.16
7927.105	6267	7927.415	6254.1(a)
7927.200	6254(b)	7927.500	6254(a)
7927.205	6254.25	7927.600	6254.6
7927.300	6254.9	7927.605	6254.15
7927.305	6254(e)	7927.700	6254(c)
7927.400	6254.20	7927.705	6254(k)