

Memorandum 2019-58

California Public Records Act Clean-Up (Comments on Tentative Recommendation Presenting Conforming Revisions)

As directed by the Legislature,¹ the Commission² is working on a proposed recodification of the California Public Records Act (“CPRA”).³ The goal is to make the CPRA more user-friendly, without changing its substance. Memorandum 2019-57 (previously released) presents a draft of a final recommendation on this topic,⁴ for consideration at the upcoming meeting.

To facilitate sound reorganization, the proposed recodification would relocate the entire CPRA to a new division of the Government Code, split overlong sections into shorter provisions, and place substantively similar provisions together in a logical order. That would necessarily involve renumbering every provision in the CPRA.

Many sections throughout the codes cross-refer to the CPRA. If the proposed recodification is enacted, each of those sections will have to be revised to reflect the new numbering scheme.

The Commission therefore prepared and broadly circulated a separate tentative recommendation, consisting of the necessary conforming revisions. The deadline for comments on that tentative recommendation was October 31.

The Commission only received input on one of the many provisions in that tentative recommendation: the proposed amendment of Government Code Section 11126. As already reported in September (in connection with the comments on the proposed recodification itself), the California News Publishers

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

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. Tentative Recommendation on *California Public Records Act Clean-Up* (May 2019). The tentative recommendation can be downloaded from the Commission’s website at <http://www.clrc.ca.gov/G400.html>.

Association believes that the technical corrections of Section 11126 originally presented at pages 11-16 of Memorandum 2017-50 “are appropriate.”⁵

The lack of other input on the conforming revisions is not surprising, because they are voluminous (over 700 pages), time-consuming to review, and quite straightforward. To the best of the staff’s knowledge, they are uncontroversial.

The staff therefore converted the tentative recommendation into a draft of a final recommendation. The preliminary part (narrative portion) of that draft is attached for Commissioners and other interested persons to review. Due to its bulk, the proposed legislation is presented separately, in a supplement to this memorandum.

In preparing the draft recommendation, the staff made the following types of changes:

- **Routine changes to convert a tentative recommendation into a draft of a final recommendation.**
- **Incorporation of legislation enacted in 2019.** Thirty-five of the provisions in the tentative recommendation were amended by one or more bills in 2019.⁶ For each of those provisions, the staff (1) replaced the version used in the tentative recommendation with the newly-amended version, (2) indicated in strikeout and underscore how the newly-amended version should be amended to conform to the proposed CPRA recodification, (3) described the proposed revisions in an accompanying Comment, and (4) included a boxed “Note” referring to the pertinent 2019 legislation.
- **Revisions necessary to fully implement the decisions that the Commission made in September.** For example, some of the Commission’s decisions entailed renumbering of a provision in the proposed recodification, which in turn required renumbering of a cross-reference in one of the conforming revisions. Similarly, the Commission’s decision to standardize references to the internet required changes to some of the conforming revisions, not just changes to the proposed recodification.
- **Various reformatting and other technical corrections.**

Commissioners and other interested persons should (1) read the attached draft of the preliminary part and (2) examine the proposed legislation in the

5. See Memorandum 2019-47, p. 8 & Exhibit p. 12.

6. See Bus. & Prof. Code §§ 27, 30, 5070, 5070.5, 10166.07; Civ. Code §§ 1798.29, 1798.82; Educ. Code §§ 35147, 49060, 76060.5; Elec. Code § 2227; Fam. Code §§ 17212, 17514; Fish & Game Code § 9002.5; Food & Agric. Code § 29041; Gov’t Code § 11126, 12172.5, 20057, 65913.4, 100508; Health & Safety Code § 1385.07, 1536, 128735; Ins. Code § 922.41, 1215.8, 10181.7, 12968; Labor Code §§ 138.7, 4610; Mil. & Vet. Code §§ 55, 56; Penal Code § 6126.3; Pub. Res. Code §§ 3160, 25402.10; Welf. & Inst. Code § 14301.1.

supplement to whatever extent they consider appropriate. At the upcoming meeting, **the Commission will need to decide whether to approve the redraft of the conforming revisions (with or without further changes) as a final recommendation, for publication and submission to the Legislature and the Governor.**

Because the matters discussed in this memorandum appear to be straightforward and uncontroversial, **the staff recommends treating it as a consent item at the upcoming meeting, to be voted on without discussion.** If anyone believes discussion is warranted, please say so at or before the meeting.

Respectfully submitted,

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#G-400

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

RECOMMENDATION

California Public Records Act Clean-Up:
Conforming Revisions

November 2019

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SUMMARY OF RECOMMENDATION

At the request of the Legislature, the Law Revision Commission prepared a recommendation that proposes to recodify the California Public Records Act (“CPRA”) in a more user-friendly manner without changing its substantive effect.

To facilitate logical reorganization of the CPRA, the proposed recodification would relocate the CPRA in a new division (Division 10) of Title 1 of the Government Code. That would entail renumbering the entire CPRA.

Hundreds of provisions throughout the codes cross-refer to the CPRA, in whole or in part. If the recodification is enacted, those provisions will need to be revised to conform to the new numbering scheme.

This recommendation proposes the necessary conforming revisions.

This recommendation was prepared pursuant to Resolution Chapter 158 of the Statutes of 2018.

CALIFORNIA PUBLIC RECORDS ACT CLEAN-UP: CONFORMING REVISIONS

1 In 2016, the Legislature directed the Law Revision Commission to conduct a
2 strictly nonsubstantive clean-up of the California Public Records Act (“CPRA”)¹
3 and related provisions.² The goal is to make the CPRA easier for the public to use
4 and understand.³

5 As requested, the Commission prepared a proposed recodification of the CPRA.⁴
6 To facilitate sound reorganization, the proposed recodification would relocate the
7 CPRA to a new division (Division 10) of Title 1 of the Government Code. Every
8 existing code section would be renumbered,⁵ some of those sections (particularly
9 the long ones) would be split into two or more new sections, and substantively
10 similar provisions would be placed together in a logical order.

11 Literally hundreds of provisions throughout the codes cross-refer to the CPRA,
12 in whole or in part. If the recodification is enacted, those provisions will need to
13 be revised to conform to the new numbering scheme.

14 This recommendation proposes the necessary conforming revisions. In general,
15 they are quite straightforward. A few key points are explained below.

16 **Nonsubstantive Reform**

17 In directing the Commission to study the CPRA, the Legislature said that the
18 Commission’s recommended legislation should “[c]learly express legislative
19 intent *without any change* in the substantive provisions” and “[n]either *expand*
20 *nor contract* the scope of existing exemptions to the general rule that records are
21 open to the public pursuant to the current provisions of the Public Records Act.”⁶
22 The Commission was very careful to adhere to that limitation in preparing its
23 proposed recodification of the CPRA.⁷

24 The Commission took similar care in preparing the conforming revisions
25 presented in this recommendation. In particular, the proposed legislation would

1. Gov’t Code §§ 6250-6276.48.

2. 2016 Cal. Stat. res. ch. 150 (ACR 148 (Chau)); see also 2018 Cal. Stat. res. ch. 158 (SCR 91 (Roth)) (reaffirming Commission’s authority to study CPRA).

3. See, e.g., Assembly Committee on Judiciary Analysis of ACR 148 (April 19, 2016), p. 3; Senate Committee on Judiciary Analysis of ACR 138 (June 14, 2016), p. 4.

4. *California Public Records Act Clean-Up*, __ Cal. L. Revision Comm’n Reports __ (Nov. 2019), (hereafter, “*CPRA Recodification*”).

5. The CPRA would be recodified as Government Code Sections 7920.000-7930.215.

6. 2016 Cal. Stat. res. ch. 150 (emphasis added).

7. For a description of specific measures the Commission took to prevent any substantive change, see *CPRA Recodification*, *supra* note 4, at 5-10.

1 only update the cross-references to the CPRA and make other minor technical
2 revisions, such as:

- 3 • Correction of spelling⁸ and typographical errors.⁹
- 4 • Correction of grammatical and punctuation errors, especially improper
5 usage of “which” instead of “that.”¹⁰
- 6 • Elimination of gendered pronouns.¹¹
- 7 • Insertion of subdivision or paragraph labels (where this would not create any
8 ambiguity or necessitate additional conforming revisions).¹²
- 9 • Other revisions to conform to legislative drafting conventions.¹³
- 10 • Correction of erroneous cross-references. Each such correction is explained
11 in the accompanying comment.¹⁴
- 12 • A few miscellaneous technical revisions.¹⁵

13 Consistent with the limited scope of its legislative mandate, the Commission did
14 not consider, and is not proposing, any other kinds of changes to the provisions
15 affected by this recommendation.¹⁶

8. See proposed amendment of Educ. Code § 44438 *infra* (“subdivison” instead of “subdivision”); proposed amendment of Health & Safety Code § 25214.8.5 *infra* (“fourth” instead of “forth”).

9. See proposed amendment of Gov’t Code § 6204.1 *infra*; proposed amendment of Health & Safety Code § 110845 *infra*.

10. See, e.g., proposed amendment of Gov’t Code § 62001 *infra*; proposed amendment of Health & Safety Code § 25186.5 *infra*; proposed amendment of Labor Code § 6396 *infra*; proposed amendment of Pub. Res. Code § 5096.513 *infra*.

11. See, e.g., proposed amendment of Food & Agric. Code § 40629 *infra*; proposed amendment of Gov’t Code § 1363 *infra*; proposed amendment of Pub. Cont. Code § 6703 *infra*.

12. See, e.g., proposed amendment of Penal Code § 5058 *infra*; proposed amendment of Pub. Res. Code § 21160 *infra*; proposed amendment of Pub. Util. Code § 92946 *infra*. For an example of a situation where the Commission deliberately refrained from inserting labels, see proposed amendment of Penal Code § 13300 *infra* (especially Penal Code § 13300(c)(11), which consists of four unlabeled paragraphs, some of which refer to “this paragraph”).

13. See, e.g., proposed amendment of Gov’t Code § 12894.5 *infra* (deleting phrase “of the Government Code,” which is not necessary when cross-referring to provision in same code); proposed amendment of Pub. Res. Code § 41821.6 *infra* (replacing word “such,” which is disfavored in legislative drafting except in phrase “such as”); proposed amendment of Pub. Util. Code § 388.2 (replacing “Internet Web site” with “internet website,” which is current preferred usage).

14. See proposed amendment of Fish & Game Code § 2584 & Comment *infra*; proposed amendments of Gov’t Code §§ 8201.5, 11126, 12525, 15570.42, 15650, 15652, 60201, 66024 & Comments *infra*; proposed amendments of Health & Safety Code §§ 1439, 25152.5, 101848.2, 101848.9, 101850, 115000.1 & Comments *infra*; proposed amendment of Ins. Code § 12921.2 & Comment *infra*; proposed amendments of Penal Code §§ 7443, 13519.4 & Comments *infra*; proposed amendments of Rev. & Tax. Code §§ 408.3, 409 & Comments *infra*; proposed amendments of Welf. & Inst. Code §§ 13302, 14087.58, 14129.2, 15805, 16809.4 & Comments *infra*.

15. See proposed amendment of Food & Agric. § 14407 & Comment *infra*; proposed amendment of Gov’t Code § 11126 & Comment *infra*; proposed amendment of Health & Safety Code § 131052 & Comment *infra*.

1 Due to their bulk, the conforming revisions in this recommendation probably
2 will be introduced as a separate bill, instead of being included in the same bill as
3 the CPRA recodification itself. Regardless of whether they are in a separate bill,
4 the Commission will make sure that they are statutorily defined to be part of the
5 “CPRA Recodification Act of 2020.”¹⁷

6 That is important, because the proposed recodification includes the following
7 provision:

8 7920.100. Nothing in the CPRA Recodification Act of 2020 is intended to
9 substantively change the law relating to inspection of public records. The act is
10 intended to be entirely nonsubstantive in effect. Every provision of this division
11 and every other provision of this act, *including, without limitation, every cross-*
12 *reference in every provision of the act*, shall be interpreted consistent with the
13 nonsubstantive intent of the act.¹⁸

14 This provision underscores the nonsubstantive nature of the recodification as a
15 whole and the updated cross-references in particular. It will help to ensure that the
16 courts and others interpret the recodification accordingly.

17 **Contingent Operation**

18 On the assumption that the conforming revisions will be introduced as a separate
19 bill, the proposed legislation includes an uncodified provision that would make the
20 conforming revisions operative only if the recodification bill is enacted and
21 becomes operative.¹⁹ The Commission will insert the appropriate bill number in
22 that uncodified provision after the recodification bill is introduced.

23 **Subordination Clause**

24 The proposed legislation also includes a subordination clause, in case one or
25 more of the code provisions with a conforming revision is also amended in a
26 substantive manner by another bill.²⁰ The subordination clause would ensure that
27 the substantive reform overrides the conforming revision, regardless of which bill
28 is chaptered first. Although the conforming revision would be nullified by the
29 substantive reform, it could be reintroduced the following year and a stopgap
30 provision in the proposed recodification would make the outdated cross-reference
31 workable in the interim.²¹

16. Accordingly, readers should not infer that the Commission has evaluated and approved language that would not be changed by this recommendation.

17. “CPRA Recodification Act of 2020” is defined in proposed Government Code Section 7920.005. See *CPRA Recodification*, *supra* note 4, at __.

18. CPRA Recodification TR, *supra* note 4, at 28 (emphasis added).

19. See proposed uncodified provision on contingent operation (at end of proposed legislation) *infra*.

20. See proposed uncodified subordination clause (at end of proposed legislation) *infra*.

21. See proposed 7920.105(b) in *CPRA Recodification*, *supra* note 4, at __ (“A reference in a statute to a previously existing provision that is restated and continued in this division, or in any other provision of the

1 **Legislation Enacted in 2019**

2 Some of the code provisions that cross-refer to the CPRA were amended in
3 2019.²² In preparing conforming revisions of those code provisions, the
4 Commission started from the newly-amended versions. A boxed “Note”
5 accompanies the conforming revision of each code provision that was affected by
6 2019 legislation. The Note cites to the newly-enacted legislation, so readers can
7 refer to that legislation as needed. There are also a few other boxed “Notes” in the
8 proposed legislation, which provide background information on other relevant
9 matters.²³

CPRA Recodification Act of 2020, shall, unless a contrary intent appears, be deemed a reference to the restatement and continuation.”).

22. See Bus. & Prof. Code §§ 27, 30, 5070, 5070.5, 10166.07; Civ. Code §§ 1798.29, 1798.82; Educ. Code §§ 35147, 49060, 76060.5; Elec. Code § 2227; Fam. Code §§ 17212, 17514; Fish & Game Code § 9002.5; Food & Agric. Code § 29041; Gov’t Code § 11126, 12172.5, 20057, 65913.4, 100508; Health & Safety Code § 1385.07, 1536, 128735; Ins. Code § 922.41, 1215.8, 10181.7, 12968; Labor Code §§ 138.7, 4610; Mil. & Vet. Code §§ 55, 56; Penal Code § 6126.3; Pub. Res. Code §§ 3160, 25402.10; Welf. & Inst. Code § 14301.1.

23. See Notes accompanying proposed amendments of Health & Safety Code §§ 125290.30, 125290.50 *infra*; Notes accompanying proposed amendments of Rev. & Tax. Code §§ 7284.10 (as added by 2018 Cal. Stat. ch. 61, § 1), 7284.10 (as added by 2018 Cal. Stat. ch. 88, § 1) *infra*.