First Supplement to Memorandum 2021-25

2021 Legislative Program: California Public Records Act Clean-Up

Assembly Bill 473 (Chau) would implement the Commission’s proposed recodification of the California Public Records Act (“CPRA”).1 A companion bill, Assembly Bill 474 (Chau), contains the conforming revisions for the recodification.2

Both bills passed the Assembly without a dissenting vote. They are now pending in the Senate. There is no known opposition.

A few issues relating to the bills are discussed below. Absent input, the staff recommends treating this memorandum as a consent item at the upcoming meeting. If anyone has a concern about a proposed revision, please express it before the meeting or be prepared to raise it for discussion at the meeting.

TECHNICAL AMENDMENTS OF AB 474

While it was pending in the Assembly, the approximately 900-page bill consisting of conforming revisions (AB 474) was amended to correct a few typographical errors and make some other purely technical changes. Some of those changes were requested by the staff, to properly implement the Commission’s recommendation. Most of the technical changes were made by the Office of Legislative Counsel to conform to its legislative drafting conventions, without any input from the Commission or its staff.


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. For the Commission’s recommendation on the conforming revisions, see California Public Records Act Clean-Up: Conforming Revisions, 46 Cal. L.Revision Comm’n Reports 563 (2019).
The staff has since reviewed the revisions. All of them are innocuous, having no apparent substantive impact.

To give the Commission a feel for the situation, here are a few examples:

- In Government Code Section 6527, the reference to “worker’s compensation liabilities” was replaced with “workers’ compensation liabilities.”
- In Government Code Section 12419.10(a)(2), the reference to “three year maximum term” was replaced with “three-year maximum term.”
- In Military and Veterans Code Section 55(n)(1)(A), the reference to the “Senate Committee on Veterans Affairs” was replaced with “Senate Committee on Military and Veterans Affairs,” and the reference to the “Assembly Committee on Veterans Affairs” was replaced with “Assembly Committee on Military and Veterans Affairs.”
- In paragraph (o)(3), “service member” was replaced with “servicemember.”
- In Public Contract Code Section 20119.3, “shortlisted” was replaced with “short-listed.”
- In Public Resources Code Section 21167.6.2, the references to “5 business days” were replaced with “five business days.” Similarly, a reference to “7 business days” was replaced with “seven business days.”

The other recent technical revisions can be seen (in red strikeout and blue italics) by accessing the current version of the bill online using Legislative Counsel’s search engine.4

When the Office of Legislative Counsel makes changes like these, the Commission is sometimes able to incorporate them into its recommendation before the recommendation gets published. That is not possible here, because (1) the recommendation has already been published, and (2) due to the bulk of the proposed legislation in this instance, the published version does not include the full statutory text (which is publicly available in the bill itself).

The published version does, however, contain the Commission’s Comments. Due to the above-described revisions made by the Office of Legislative Counsel, some of those Comments need corresponding adjustments. For example, the Comment to the conforming revision of Government Code Section 6527 should be revised as shown in strikeout and underscore below:

3. Emphasis added.
Gov’t Code § 6527 (amended). Participation of nonprofit corporation in pooling of self-insurance claims or losses


The section is also amended to make technical changes.

Similarly, the published Comment to the conforming revision of Government Code Section 12419.10 should be revised as shown in underscore below:

Gov’t Code § 12419.10 (amended). Offsets


The section is also amended to make a technical change.

Attached as Exhibit pages 1-10 are the Comment revisions that should be made to properly reflect the current content of AB 474. These revisions are in addition to the ones that the Commission already approved in March.5

Are the Comment revisions in Exhibit pages 1-10 acceptable to the Commission?

CONFORMING REVISIONS (AB 474): COMMENTS THAT REFER TO THE “CPRA RECODIFICATION ACT OF 2020”

In the Commission’s report on the conforming revisions, the Comments for the following amendments refer to the “CPRA Recodification Act of 2020:”

- Gov’t Code § 8201.5
- Gov’t Code § 12525 (two references)
- Gov’t Code § 15570.42
- Gov’t Code § 15650
- Gov’t Code § 15652
- Gov’t Code § 60201
- Gov’t Code § 66024

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5. See Draft Minutes (March 2021), p. 3; see also First Supplement to Memorandum 2021-14. The new Comments supersede any prior conflicting versions.
• Health & Safety Code § 1439 (two references)
• Health & Safety Code § 25152.5 (two references)
• Penal Code § 13519.4
• Rev. & Tax. Code § 408.3
• Rev. & Tax. Code § 409

Those references were correct when the Commission approved the report, but they are now incorrect because the recodification was delayed by a year due to the pandemic.

Each of the above references to the “CPRA Recodification Act of 2020” should be replaced with a reference to the “CPRA Recodification Act of 2021.” Unless the Commission otherwise directs, the staff will make this correction in the Comments for the above-listed provisions.

AB 343 (Fong): CPRA Ombudsperson

Assembly Bill 343 (Fong) would direct the State Auditor to appoint a CPRA Ombudsperson. If a member of the public believes that a state agency improperly denied a CPRA request, that person could ask the CPRA Ombudsperson to investigate and review the denial. The ombudsperson would be responsible for determining whether the CPRA request sought disclosable public records in the possession of the state agency and whether the agency’s denial of the request complied with the CPRA.

AB 343 passed the Assembly by a vote of 79-0 and is currently pending in the Senate Committee on Judiciary. The staff is monitoring its progress.

As currently drafted, the bill would not revise the CPRA itself. Instead, it would add a new article elsewhere in the Government Code.

Nonetheless, the bill is worth mentioning here for two reasons. First, it contains several cross-references to the CPRA. If both it and the CPRA recodification are enacted, those cross-references will need updating to reflect the recodification. The staff is considering the best means to accomplish this and will provide further information about it later. Perhaps the simplest approach would be to address the matter in a bill next year (either a CPRA clean-up bill or

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6. The published version of the Comment to the conforming revision of Fish and Game Code Section 2584 also refers to the “CPRA Recodification Act of 2020.” That version of the Comment also requires revisions to reflect recent technical changes made by the Office of Legislative Counsel. The new version of the Comment shown on Exhibit page 3 would fix both problems.

7. Article 5 (commencing with Section 8549) of Chapter 6.5 of Division 1 of Title 2 of the Government Code.
next year’s bill on maintenance of the codes).\textsuperscript{8} Assuming that bill is enacted, it would become operative at the same time as the CPRA recodification (January 1, 2023).

Another reason for mentioning AB 343 is because its enactment would be an important addition to the law governing CPRA requests. Assuming that bill is enacted, \textit{it would be helpful to refer to the CPRA Ombudsperson in most of the Commission’s Comments to the CPRA recodification (the ones that provide a “roadmap” to the CPRA and other key sources)}. For example, the Comment to proposed Government Code Section 7921.020 could be revised as shown in underscore below:

\textbf{Comment.} Section 7921.010 continues former Section 6270 without substantive change.

For a similar restriction, see Section 7921.005 (control of disclosure of information by another party). For legislative findings and declarations underlying the California Public Records Act (“CPRA”), see Section 7921.000. For inspection and copying of a public record, see Sections 7922.525 and 7922.530.

For general rules governing disclosure of public records, see Sections 7921.300-7921.710. For general rules governing exemptions from disclosure, see Sections 7922.000-7922.210. For CPRA procedures and related matters, see Sections 7922.500-7922.725; see also Sections 7923.000-7923.500 (enforcement); 8549-8549.1 (CPRA Ombudsperson).

For special rules applicable to specific types of public records, see Sections 7923.600-7929.610; see also Sections 7930.000-7930.215 (alphabetical index of many CPRA exemptions).

For the effect of the CPRA, see Section 7920.200; see also Sections 7920.100-7920.120 (effect of CPRA recodification). For references to some other bodies of law governing public records, see Section 7920.000 Comment.

See Sections 7920.510 (“local agency”), 7920.530 (“public records”), 7920.540 (“state agency”).

Including this information in the Comments would help make the CPRA user-friendly, which is the main objective of the CPRA recodification.

\textbf{Contingent on enactment of AB 343 in essentially its current form, would the Commission like to revise the “roadmaps” in the Comments to the CPRA recodification along the lines shown above?}

\textsuperscript{8} Such a bill could also update any other new cross-references to the CPRA, or provisions within the CPRA, that are added to the codes this year. The staff will conduct a thorough search for such provisions after the legislative session ends.
COORDINATION WITH OTHER PENDING BILLS

In addition to the recodification bill (AB 473), several other pending bills would affect provisions within the CPRA. The staff is aware of the following:

- Assembly Bill 386 (Cooper) would add Government Code Section 6254.32 to the CPRA. This bill is pending in the Senate Committee on Labor, Public Employment, and Retirement.
- Assembly Bill 562 (Low) is an urgency bill. Among other things, it would amend Government Code Section 6276.30, a provision in the CPRA index. This bill is pending in the Senate Committee on Business, Professions, and Economic Development.
- Senate Bill 823 (Committee on Health) is an omnibus bill on public health. Among other things, it would amend Government Code Sections 6276.14 and 6276.30, which are provisions in the CPRA index. This bill is pending in the Assembly Committee on Health.

At some point, it may be necessary to take steps to coordinate the recodification bill with one or more of these other pending bills. The staff is monitoring this situation; there is no need for the Commission to take any action on it right now.

Respectfully submitted,

Barbara Gaal
Chief Deputy Director

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9. The staff is also aware of the following bills:

- Senate Bill 663 (Newman) relates to recall petitions. Among other things, it would amend Government Code Section 6253.5 (a provision in the CPRA). This bill is still pending in the Senate Committee on Judiciary, so does not appear to be going anywhere this year.
- Senate Bill 735 (Rubio) relates to speed safety cameras. Among other things, it would amend Government Code Section 6276.44, a provision in the CPRA index. It would also add a new cross-reference to a provision in the CPRA (see proposed Veh. Code § 22368 (f)(1)). This bill is still pending in the Senate Committee on Transportation, so it does not appear to be going anywhere this year.

10. There is no need for similar steps with regard to the conforming revisions bill (AB 474). That bill contains a subordination clause, which will prevent it from overriding any bills that substantively change the provisions it would amend. See Gov’t Code § 9605(b). If any of the conforming revisions are nullified due to a conflicting bill, that could be addressed in a clean-up bill or the maintenance of the codes bill next year, before the CPRA recodification becomes operative on January 1, 2023.
REVISED COMMENTS FOR CPRA
CONFORMING REVISIONS

The following Comments in the Commission’s recommendation on California Public Records Act Clean-Up: Conforming Revisions (Dec. 2019) should be revised as shown in strikeout and underscore below:\footnote{1}

\textbf{Bus. & Prof. Code § 655 (amended). Optometrist with ownership or other interest in registered dispensing optician or optical company}


The section is also amended to make technical changes.

\textbf{Bus. & Prof. Code § 6001 (amended). State Bar of California}


The section is also amended to eliminate gendered pronouns and make another other technical change changes.

\textbf{Bus. & Prof. Code § 6056 (amended). California Lawyers Association}


The section is also amended to make a technical change technical changes.

\textbf{Bus. & Prof. Code § 9882.6 (amended). Enforcement program to investigate violations}


The section is also amended to make technical changes.

\textbf{Code Civ. Proc. § 425.16 (amended). Special motion to strike}


The section is also amended to eliminate gendered pronouns and make other technical changes.

\footnote{1. These revisions are \textit{in addition} to the revisions that the Commission approved in March 2021. See \textit{Draft Minutes (March 2021)}, p. 3; see also First Supplement to Memorandum 2021-14. The new Comments supersede any prior conflicting versions.}

EX 1
Corp. Code § 25247 (amended). Disclosure of information


The section is also amended to make technical changes.


The section is also amended to make technical changes.

Educ. Code § 17611 (amended). Records of pesticide use at schoolsite


The section is also amended to make technical changes.

Educ. Code § 33133 (amended). Information to strengthen and promote opportunity for quality involvement by parents and guardians in schoolsite councils


The section is also amended to make technical changes.

Educ. Code § 72696 (amended). Confidential records of auxiliary organization


The section is also amended to make a technical change.

Elec. Code § 2166.7 (amended). Confidentiality of public safety officer’s residence address, telephone number, and email address


The section is also amended to eliminate gendered pronouns and make another technical change.

Fam. Code § 17514 (amended). Child abduction records


The section is also amended to make a technical change.
**Fin. Code § 22380 (amended). Utilization summaries**

**Comment.** Section 22380 is amended to reflect nonsubstantive reorganization of the California Public Records Act. See *California Public Records Act Clean-Up*, 46 Cal. L. Revision Comm’n Reports 207 (2019).

The section is also amended to make technical changes.

**Fish & Game Code § 2584 (amended). Remedy for actionable violation**

**Comment.** Section 2584 is amended to reflect nonsubstantive reorganization of the California Public Records Act. See *California Public Records Act Clean-Up*, 46 Cal. L. Revision Comm’n Reports 207 (2019).

The amendment also eliminates gendered pronouns, makes other technical changes, and corrects a cross-reference to subdivision (d) of former Government Code Section 6252, which became obsolete when subdivision (d) was relabeled as subdivision (e). *Compare* 1988 Cal. Stat. ch. 1059, § 4 (original version of Section 2584, which cross-references to “public records, as defined in subdivision (d) of Section 6252 of the Government Code”) with 1981 Cal. Stat. ch. 968, § 1 (version of former Gov’t Code § 6252 in place when Section 2584 was added to the codes); see also 1998 Cal. Stat. ch. 620, § 2 (relabeling definition of “public records” as subdivision (e)); 2015 Cal. Stat. ch. 537, § 20 (version of former Gov’t Code § 6252 repealed by CPRA Recodification Act of 2020); Section 7920.530 (continuing former Gov’t Code § 6252(e)’s definition of “public records”).

**Food & Agric. Code § 13134 (amended). Assessment of dietary risks from foods treated with pesticides**

**Comment.** Section 13134 is amended to reflect nonsubstantive reorganization of the California Public Records Act. See *California Public Records Act Clean-Up*, 46 Cal. L. Revision Comm’n Reports 207 (2019).

The section is also amended to make technical changes.

**Food & Agric. Code § 46014.1 (amended). Registration and other procedures relating to products certified as organic**

**Comment.** Section 46014.1 is amended to reflect nonsubstantive reorganization of the California Public Records Act. See *California Public Records Act Clean-Up*, 46 Cal. L. Revision Comm’n Reports 207 (2019).

The section is also amended to make technical changes.

**Food & Agric. Code § 71089 (amended). Confidentiality and disclosure of records of California Rice Commission**

**Comment.** Section 71089 is amended to reflect nonsubstantive reorganization of the California Public Records Act. See *California Public Records Act Clean-Up*, 46 Cal. L. Revision Comm’n Reports 207 (2019).

The section is also amended to make a technical change.

**Gov’t Code § 6527 (amended). Participation of nonprofit corporation in pooling of self-insurance claims or losses**

**Comment.** Section 6527 is amended to reflect nonsubstantive reorganization of the California Public Records Act. See *California Public Records Act Clean-Up*, 46 Cal. L. Revision Comm’n Reports 207 (2019).

The section is also amended to make technical changes.
Gov’t Code § 8301.3 (amended). Authority and duties of task force and its members


The section is also amended to make a technical change.

Gov’t Code § 8585 (amended). Office of Emergency Services


The section is also amended to eliminate gendered pronouns and make another technical change.

Gov’t Code § 11019.7 (amended). Personal information in mail sent by state agency


The section is also amended to make technical changes.

Gov’t Code § 12019.45 (amended). Grant application form


The section is also amended to make technical changes.

Gov’t Code § 12172.5 (amended). Role of Secretary of State


The section is also amended to make technical changes.

Gov’t Code § 12419.10 (amended). Offsets


The section is also amended to make a technical change.

Gov’t Code § 53753 (amended). Notice, protest, and hearing requirements for levy of new or increased assessment


The section is also amended to eliminate gendered pronouns and make another technical change.
Gov’t Code § 65913.4 (amended). Streamlined, ministerial approval process for
development application

Comment. Section 65913.4 is amended to reflect nonsubstantive reorganization of the
Comm’n Reports 207 (2019).
The section is also amended to make technical changes, including some such changes that were
enacted by 2020 Cal. Stat. ch. 370, § 178 (SB 1371) but chaptered out by 2020 Cal. Stat. ch. 194,
§ 1.5 (AB 831).

Health & Safety Code § 1255.7 (amended). Safe surrender site for newborn child

Comment. Section 1255.7 is amended to reflect nonsubstantive reorganization of the
Comm’n Reports 207 (2019).
The section is also amended to eliminate gendered pronouns and make other technical changes.

Health & Safety Code § 1397.5 (amended). Records of grievances

Comment. Section 1397.5 is amended to reflect nonsubstantive reorganization of the
Comm’n Reports 207 (2019).
The section is also amended to make technical changes.

Health & Safety Code § 1399.72 (amended). Conversion of health care service plan from
non-profit to for-profit status

Comment. Section 1399.72 is amended to reflect nonsubstantive reorganization of the
Comm’n Reports 207 (2019).
The section is also amended to make technical changes.

Health & Safety Code § 1399.74 (amended). Restructuring or conversion of nonprofit
health care service plan

Comment. Section 1399.74 is amended to reflect nonsubstantive reorganization of the
Comm’n Reports 207 (2019).
The section is also amended to make a technical change.

Health & Safety Code § 1457 (amended). Patient records of county hospital

Comment. Section 1457 is amended to reflect nonsubstantive reorganization of the California
Reports 207 (2019).
The section is also amended to make technical changes.


Comment. Section 1798.200 is amended to reflect nonsubstantive reorganization of the
Comm’n Reports 207 (2019).
The section is also amended to eliminate gendered pronouns and make a grammatical
correction other technical changes.
Health & Safety Code § 25201.10 (amended). Application of CPRA to generator


The section is also amended to make a grammatical correction and another technical change.

Health & Safety Code § 25215.51 (amended). LABRIC Program


The section is also amended to make technical changes.

Health & Safety Code § 25968 (amended). Condom testing data


The section is also amended to make a technical change.


The section is also amended to make a technical change.

Health & Safety Code § 42303.2 (amended). Customer lists and purchase information


The section is also amended to insert paragraph labels and make grammatical corrections other technical changes.

Health & Safety Code § 101855 (amended). Powers and duties of Kern Hospital System Authority


The section is also amended to eliminate gendered pronouns and make another technical change.


Comment. Section 115000.1 is amended to reflect nonsubstantive reorganization of the California Public Records Act ("CPRA"). See California Public Records Act Clean-Up, 46 Cal. L. Revision Comm’n Reports 207 (2019). By updating the reference to the CPRA, the amendment also eliminates an erroneous reference to “Division 6” (as opposed to “Division 7”).

The section is also amended to eliminate gendered pronouns and make a grammatical correction other technical changes.
Health & Safety Code § 131052 (amended). Jurisdiction of Department of Public Health

Comment. Section 131052 is amended to delete obsolete material. See Gov’t Code § 7926.000 & Comment (continuing former Gov’t Code § 6254(s), with revisions correcting erroneous reference to State Department of Health Care Services).
The section is also amended to make a technical change.

Ins. Code § 10113.2 (amended). Entering into, brokering, or soliciting life settlements

The section is also amended to eliminate gendered pronouns and make other technical changes.

Ins. Code § 11401.5 (amended). Opinion of qualified actuary

The section is also amended to make technical changes.

Labor Code § 432.3 (amended). Salary history information

The section is also amended to eliminate gendered pronouns and make another technical change.

Labor Code § 4610 (amended). Utilization review and medical treatment

The section is also amended to make a technical change.

Mil. & Vet. Code § 55 (amended). Inspector general

The section is also amended to make technical changes, including some such changes that were enacted by 2020 Cal. Stat. ch. 370, § 227 (SB 1371) but chaptered out by 2020 Cal. Stat. ch. 97, § 13 (AB 2193).

Penal Code § 832.5 (amended). Complaint by member of public against peace officer or custodial officer

The section is also amended to make a technical change.
Penal Code § 5058 (amended). Rules and regulations for administration of prisons and parole


The section is also amended to insert paragraph labels and make another technical change.

Penal Code § 11167.5 (amended). Reports of child abuse or neglect


The section is also amended to eliminate gendered pronouns and make another technical change.


The section is also amended to make a technical change.


The section is also amended to make a technical change.


The section is also amended to make a technical change.

Pub. Cont. Code § 20663.3 (amended). Award of best value contract by community college district


The section is also amended to make a technical change.


The section is also amended to make technical changes.
   
   
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   The section is also amended to make a technical change.

   
   
   The section is also amended to make a grammatical correction technical changes.

Pub. Res. Code § 41821.5 (amended). Information on handling, processing, and disposal of solid wastes and recyclable materials
   
   
   The section is also amended to make technical changes.

   
   
   The section is also amended to make a technical change technical changes.

Rev. & Tax. Code § 408.2 (amended). Public access to assessor’s records and information
   
   
   The section is also amended to eliminate gendered pronouns and make grammatical corrections other technical changes.
Rev. & Tax. Code § 7284.7 (amended). Prohibited disclosure of information in utility user tax records of local jurisdiction


The section is also amended to make a technical change.

Rev. & Tax. Code § 7284.10 (as added by 2018 Cal. Stat. ch. 61, § 1) (amended). Definitions


The section is also amended to make a technical change.

Welf. & Inst. Code § 4712.5 (amended). Written decision of hearing officer


The section is also amended to make a technical change.

Welf. & Inst. Code § 14087.36 (amended). Health Authority in City and County of San Francisco


The section is also amended to eliminate gendered pronouns and make another technical change.

Welf. & Inst. Code § 14124.24 (amended). Drug Medi-Cal reimbursable services


The section is also amended to make technical changes.


The section is also amended to make a technical change.

EX 10