

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Preprint RECOMMENDATION

State and Local Agency Access to Electronic
Communications: Notice of Subpoena

Note: This is a pre-print recommendation. The Law Revision Commission has approved the substance of this recommendation, but minor editorial changes may be made prior to final publication.

June 2025

California Law Revision Commission
c/o Legislative Counsel Bureau
925 L Street, Suite 275
Sacramento, CA 95814
www.clrc.ca.gov

SUMMARY OF RECOMMENDATION

The California Law Revision Commission has been directed to prepare proposed legislation on government access to customer records of communication service providers, in order to protect customers' constitutional rights.

Most of the areas for possible reform that the Commission identified were addressed by the California Electronic Communication Privacy Act ("CalECPA"), which was enacted before the Commission could complete its work on this study.

This recommendation addresses one issue that was not resolved by CalECPA, the need for notice to a customer when a subpoena is served on a communication service provider to obtain the customer's information. The proposed law would require such notice. This recommendation is a revision of the proposed legislation in a final recommendation in this study issued in March 2022.

This recommendation was prepared pursuant to Resolution Chapter 115 of the Statutes of 2013.

STATE AND LOCAL AGENCY ACCESS TO ELECTRONIC COMMUNICATIONS

BACKGROUND

In 2013, the Legislature directed the Commission to recommend revisions to statutes controlling state and local government access to customer information from communications service providers.¹ The following year, the Commission considered a series of staff memoranda analyzing relevant statutory and constitutional law governing California state and local agencies. Before the Commission could develop proposed legislation, [Senate Bill 178](#), the California Electronic Communications Privacy Act (hereafter “CalECPA”), authored by Senator Leno, was introduced. This bill proposed to resolve many of the issues within the scope of the original legislative mandate to the Commission by heightening requirements for governmental access to electronic communications information.

In 2015, the Commission produced a final recommendation based on its research, though it provided no legislative recommendations.² Following CalECPA’s enactment,³ the Commission waited several years for the law to take effect before proposing new changes.⁴ The Commission considered several options for further action in 2020,⁵ and chose to study and propose reforms relating to the use of administrative subpoenas on third party communications providers in non-criminal investigations.⁶ At its June 24, 2021 meeting, the Commission directed the staff to prepare proposed legislation.⁷ A draft tentative recommendation was prepared⁸ and sent out for public comment after the September 23, 2021 Commission meeting, with comments due by February 14, 2022.⁹ The staff received no comments on the tentative recommendation,¹⁰ and a final recommendation was approved on March 17, 2022¹¹ and thereafter submitted to the Legislature.¹² Following minor amendments to the Commission’s recommendation to reflect technical drafting

¹ [2013 Cal. Stat. res. ch. 115](#). See also Memorandum [2014-5](#).

² [State and Local Agency Access to Electronic Communications: Constitutional and Statutory Requirements](#), 44 Cal. L. Revision Comm’n Reports 229 (2015).

³ [SB 178](#) (Leno) (2015).

⁴ Memorandum [2021-44](#), p. 1.

⁵ See Memoranda [2015-51](#), [2020-20](#), [2020-31](#), [2020-36](#), [2020-54](#), [2020-55](#).

⁶ Minutes of Commission Meeting on [October 15, 2020](#), p. 4.

⁷ Minutes of Commission Meeting on [October 24, 2021](#), p. 4; see also Memorandum [2021-32](#).

⁸ Memorandum [2021-44](#).

⁹ Minutes of Commission Meeting on [September 23, 2021](#), p. 3.

¹⁰ Memorandum [2022-20](#), p. 1.

¹¹ Minutes of Commission Meeting on [March 17, 2022](#), p. 3.

¹² [State and Local Agency Access to Electronic Communications: Notice of Administrative Subpoena](#) (Preprint – March 2022).

1 changes by Legislative Counsel,¹³ Assembly Member (and Commissioner) Kalra
2 introduced [Assembly Bill 522](#) on February 7, 2023. The bill received no formal
3 opposition and no “no” votes, but the California Department of Justice (hereafter
4 “DOJ”) raised concerns with Assembly Member Kalra’s office about some
5 provisions in the bill in June 2023.¹⁴ In 2024, the bill was held on the Senate
6 Appropriations Committee suspense file because the DOJ’s concerns were unable
7 to be resolved within legislative deadlines.¹⁵ This recommendation reflects
8 amendments made as a result of stakeholder feedback, but does not change the
9 underlying policy analysis in the prior recommendation.

10 CHANGES FROM THE PRIOR RECOMMENDATION

11 The revisions in the recommendation were made to accommodate stakeholders’
12 concerns while still reflecting provisions of the California Right to Financial Privacy
13 Act (CRFPA),¹⁶ CalECPA,¹⁷ and the federal Stored Communications Act,¹⁸ which
14 the staff noted “simplifies the drafting of the proposed law, improves its readability,
15 and would create useful uniformity between this statute and CalECPA.”¹⁹

16 Notice Requirement

17 The DOJ noted that a customer’s identity may not be known when requesting
18 electronic communications, and therefore the service provider is better positioned
19 to give notice of the subpoena to the customer than the government entity.²⁰ This
20 recommendation was grounded in the assumption the service provider would have
21 a greater ability to reach the customer through the information provided by the
22 customer to establish service. While a customer may block receipt from unknown
23 senders, a service provider may be able to circumvent those preferences.²¹

24 AB 522 was modeled on CFRPA, which requires a government entity to serve
25 notice of a subpoena pursuant to existing general service of summons
26 requirements.²² These requirements give multiple options for service, including

¹³ Memorandum [2023-4](#), pp. 1-2.

¹⁴ See Memorandum [2023-42](#), pp. 2-3.

¹⁵ Memorandum [2024-27](#), pp. 1-2.

¹⁶ Memorandum [2021-32](#) and Gov’t Code §§ [7460-7493](#).

¹⁷ Penal Code §§ [1546-1546.5](#).

¹⁸ [18 U.S.C. §§ 2701](#) et seq. The Stored Communications Act authorizes the use of an administrative subpoena to obtain electronic communication content information only if (1) the information has been in storage for more than 180 days, and (2) “with prior notice from the governmental entity to the subscriber or customer.” [18 U.S.C. § 2703\(a\), \(b\)\(1\)\(B\)\(i\)](#).

¹⁹ Memorandum [2021-38](#), p. 2.

²⁰ Memorandum [2023-42](#), p. 3.

²¹ Memorandum [2023-42](#), p. 3.

²² [AB 522](#) (Kalra, 2023) states “The department has served notice of the administrative subpoena on the customer pursuant to Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure.”

handing the documents directly to the individual,²³ by mail,²⁴ leaving the documents with a responsible party,²⁵ or service by publication.²⁶ However, all of the options require specific knowledge of an individual’s identity. Traditional service of process in the financial services context is reasonable because an individual is generally required to provide more detailed personal information when establishing a bank account than when creating an electronic communications account, some of which may be established with merely an email address. Requiring a government entity to find the information necessary to serve notice to a customer pursuant to general service of summons requirements would be very difficult.

CalECPA navigated these concerns by establishing alternative methods of providing notice in specified circumstances, including by email.²⁷ Acknowledging the difficulty of reaching a subscriber through traditional means, the recommendation parallels the CalECPA notification process, giving the government entity greater flexibility in reaching the subscriber. If the government entity is not able to reach the subscriber, it may petition the court to order the service provider to provide notice on behalf of the government entity.

Application to Local Agencies

The Legislature²⁸ originally directed the Commission to develop recommendations for both state and local government agencies. As written, AB 522 is placed within the Government Code in the chapter relating to state departments. Without further amendment, the bill only applies to local governments in narrow circumstances.²⁹

CalECPA and CFRPA both extend its consumer protections against state and local government through their definitions.³⁰

The recommendation replaces the term “department” with “government entity” and defines “government entity” in the same manner as CalECPA.³¹

²³ Code Civ. Proc. § [415.10](#).

²⁴ Code Civ. Proc. § [415.30](#).

²⁵ Code Civ. Proc. § [415.20](#).

²⁶ Code Civ. Proc. § [415.50](#). California law requires publication in “a named newspaper, published in this state, that is most likely to give actual notice to the party to be served.”

²⁷ Penal Code § [1546.2 \(a\)\(1\)](#).

²⁸ 2013 Cal. Stat. res. Ch. 115 ([SCR 54](#)).

²⁹ Bus. & Prof. Code § [16759](#) grants the powers of the Attorney General as a department head to district attorneys and certain city attorneys when prosecuting certain business practice violations.

³⁰ Penal Code § [1546\(i\)](#) “Government entity” means a department or agency of the state or a political subdivision thereof, or an individual acting for or on behalf of the state or a political subdivision thereof. Gov’t Code § [7465\(e\)](#) defines “state agency” as every state office, officer, department, division, bureau, board, and commission or other state agency, including the Legislature. Gov’t Code § [7465\(f\)](#) defines “local agency” to include a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; of other local public agency. Gov’t Code § [7474\(a\)](#) authorizes access to financial records to “An officer, employee, or agent of a state or local agency or department thereof....”

³¹ Penal Code § [1546\(i\)](#).

Miscellaneous Changes:

- The provisions are relocated to a newly created chapter in Division 7 of the Government Code,³² titled “Governmental Access to Electronic Communications Information.”
- The adjective “administrative” is removed in the current proposed legislation because “administrative subpoena” is not defined in code and did not correspond to the text of CalECPA.
- An amendment clarifies the proposed legislation shall not apply during pretrial investigations to preserve government entities’ investigatory powers.
- Language was added to clarify this proposed legislation does not expand state authority under existing law to compel the production of or access to electronic communication information or subscriber information.
- The definition of “subscriber” was amended to include a “user” of a service provider, which prevents a government entity from circumventing the notice requirement by accessing electronic communications information from a source with which an individual does not have an account.³³
- Language requiring payment for a subscriber to get a copy of their own records was deleted, as such costs are likely minimal, and it is the subscriber’s own information being requested.
- Safe harbor language for government entities was added from CalECPA.³⁴

³² CFRPA is also located in Division 7, Gov’t Code §§ [7460-7493](#).

³³ For example, if a government entity is searching for an email from X to Y, under the prior draft, the government entity could subpoena Y’s service provider instead of X’s and avoid the notice requirement.

³⁴ Proposed Gov’t Code §§ 7455 (j), (k), and (l) parallel Penal Code §§ [1546.1\(i\)\(2\), \(j\), and \(k\)](#), respectively.

RECOMMENDATION

The proposed law would require notice to the affected customer (now termed “subscriber” to more closely track CalECPA³⁵) when a subpoena is served on a communications service provider to obtain the customer’s records. Specifically, the following steps would be required:

- (1) A government entity must provide notice to the affected subscriber after serving a subpoena on a communication service provider to obtain subscriber information. The notice would include a copy of the subpoena and a specified advisory statement.
- (2) The subpoena would require that the service provider make and retain a copy of the requested information to prevent spoliation, until the subpoena operates or is quashed.
- (3) If the government entity is not able to deliver notice to the subscriber, the government entity may petition the court to order the service provider to deliver the notice to the subscriber on behalf of the government entity.
- (4) Unless the subscriber or service provider moves to quash the subpoena, the requested information must be produced 10 days after the notice was provided to the subscriber.

³⁵ Penal Code § [1546\(l\)](#) defines “subscriber information” as “the name, street address, telephone number, email address, or similar contact information provided by the subscriber to the service provider to establish or maintain an account or communication channel, a subscriber or account number or identifier, the length of service, and the types of services used by a user of or subscriber to a service provider.” CalECPA does not define “subscriber,” however.

PROPOSED LEGISLATION

1 **Gov't Code § 7455 (added). Governmental access to electronic communication information**
2 SECTION 1. Chapter 19.5 (commencing with Section 7455) is added to
3 Division 7 of Title 1 of the Government Code, to read:

4
5 CHAPTER 19.5. GOVERNMENTAL ACCESS TO ELECTRONIC COMMUNICATION
6 INFORMATION

7 **§ 7455. Notice requirements for governmental access to electronic communication**
8 **information**

9 7455. (a) For purposes of this section:

10 (1) "Electronic communication information" has the meaning provided in
11 subdivision (d) of Section 1546 of the Penal Code.

12 (2) "Electronic communication service" has the meaning provided in subdivision
13 (e) of Section 1546 of the Penal Code.

14 (3) "Government entity" has the meaning provided in subdivision (i) of Section
15 1546 of the Penal Code.

16 (4) "Service provider" has the meaning provided in subdivision (j) of Section
17 1546 of the Penal Code.

18 (5) "Subscriber" means a person who has an account with or is a user of a service
19 provider.

20 (b) In addition to any other requirements that govern the use of a subpoena by a
21 government entity, a subpoena may be used to obtain a subscriber's electronic
22 communication information from a service provider only if all of the following
23 conditions are satisfied:

24 (1) The government entity has served upon, or delivered to by registered or first-
25 class mail, electronic mail, or other means reasonably calculated to be effective,
26 notice of the subpoena to the subscriber.

27 (2) A copy of the subpoena is attached to the notice.

28 (3) The subpoena includes the name of the government entity that issued the
29 subpoena and the statutory purpose for which the electronic communication
30 information is to be obtained.

31 (4) The notice includes a statement in substantially the following form:

32 "The attached subpoena was served on a communication service provider
33 to obtain your electronic communication information. The service provider
34 was required to make a copy of the information specified in the subpoena.
35 Unless you (1) move to quash or modify the subpoena within 10 days of
36 service of this notice and (2) notify the service provider that you have done
37 so, the service provider will disclose the information pursuant to the
38 subpoena."

39 (c) If the government entity is not able to deliver notice to the subscriber, the
40 government entity may petition the court to order the service provider to serve or

1 deliver the notice specified in paragraph (4) of subdivision (b) to the subscriber on
2 behalf of the government entity.

3 (d) Unless the subscriber has notified the service provider that a motion to quash
4 or modify the subpoena has been filed, or the service provider has filed a motion to
5 quash or modify the subpoena, the service provider shall produce the electronic
6 communication information specified in the subpoena no sooner than 10 days after
7 either the government entity or the service provider has served or delivered notice
8 of the subpoena to the subscriber.

9 (e) If a subscriber or service provider files a motion to quash or modify the
10 subpoena, the proceeding shall be afforded priority on the court calendar, and the
11 matter shall be heard within 10 days from the filing of the motion to quash or
12 modify.

13 (f) Upon subscriber request, a service provider shall provide to the subscriber
14 any part of the information copied pursuant to subdivision (g) that relates to the
15 subscriber.

16 (g)(1) If a subpoena is served on a service provider pursuant to this section, the
17 service provider shall promptly make a copy of any electronic communication
18 information that is within the scope of the subpoena and within the possession of
19 the service provider at the time that the subpoena was served.

20 (2) The copy made pursuant to this subdivision shall be preserved until it is
21 provided to the governmental entity pursuant to the subpoena, the subpoena is
22 quashed or modified, the subpoena is withdrawn and no other subpoena requesting
23 the information remains pending, or until any action to enforce the subpoena or any
24 other subpoena requesting the information is fully resolved.

25 (3) This subdivision does not prevent a service provider from preserving
26 electronic communication information as otherwise provided by law.

27 (h) This chapter shall not apply to any subpoenas issued in connection with a
28 pretrial investigation.

29 (i) Nothing in this section shall be construed to expand any authority under state
30 law to compel the production of or access to electronic communication information
31 or subscriber information.

32 (j) This section does not limit the authority of a government entity to use an
33 administrative, grand jury, trial, or civil discovery subpoena to require an entity that
34 provides electronic communications services to its officers, directors, employees, or
35 agents for the purpose of carrying out their duties, to disclose electronic
36 communication information associated with an electronic communication.

37 (k) This section does not limit the authority of the Public Utilities Commission
38 or the State Energy Resources Conservation and Development Commission to
39 obtain energy or water supply and consumption information pursuant to the powers
40 granted to them under the Public Utilities Code or the Public Resources Code and
41 other applicable state laws.

1 (l) This chapter shall not be construed to alter the authority of a government
2 entity that owns an electronic device to compel an employee who is authorized to
3 possess the device to return the device to the government entity's possession.

4 **Comment.** Section 7455 imposes specified requirements when a government entity seeks to use
5 a subpoena to obtain a subscriber's electronic communication information from a service provider.

6 Subdivision (b)(1) is similar to the process described in Penal Code Section 1546.2(a)(1).

7 Subdivision (d) is similar to Section 7474(a)(3).

8 Subdivision (e) is similar to Section 7474(d).

9 Subdivision (f) is similar to the last two sentences of Section 7470(c).

10 Subdivision (g) requires the service provider to preserve requested information to prevent its
11 deletion or modification by the affected subscriber. See also 18 U.S.C. § 2703(f).

12 Subdivision (h) makes clear that the procedure in this section to provide notice to a consumer
13 before serving a subpoena for the consumer's electronic communication information is inapplicable
14 to a subpoena served in a pretrial investigation.

15 Subdivision (j) duplicates Penal Code Section 1546.1(i)(2).

16 Subdivision (k) duplicates Penal Code Section 1546.1(j).

17 Subdivision (l) duplicates Penal Code Section 1546.1(k).