California Public Records Act
GOVT. CODE §§ 6250 - 6276.48

THE BASICS
The Public Records Act is designed to give the public access to information in possession of public agencies: "public records are open to inspection at all times during the office hours of the...agency and every person has a right to inspect any public record, except as...provided, [and to receive] an exact copy" of an identifiable record unless impracticable. (§ 6253). Specific exceptions to disclosure are listed in sections 6253.2, 6253.5, 6253.6, 6254, 6254.1-6254.22, 6255, 6267, 6268, 6276.02-6276.48; to ensure maximum access, they are read narrowly. The agency always bears the burden of justifying nondisclosure, and "any reasonably segregable portion...shall be available for inspection...after deletion of the portions which are exempt." (§ 6253(a))

WHO'S COVERED
- All state and local agencies, including: (1) any officer, bureau, or department; (2) any "board, commission or agency" created by the agency (including advisory boards); and (3) nonprofit entities that are legislative bodies of a local agency. (§ 6252(a),(b)). Many state and regional agencies are required to have written public record policies. A list appears in § 6253.4.

WHO'S NOT COVERED
- Courts (except itemized statements of total expenditures and disbursement). (§§ 6252(a), 6261)
- The Legislature. (§ 6252) See Legislative Open Records Act, Govt. Code §§ 9070-9080.
- Private non-profit corporations and entities.

WHAT'S COVERED
- "Records" include all communications related to public business "regardless of physical form or characteristics, including any writing, picture, sound, or symbol, whether paper,..., magnetic or other media." (§ 6252(e) Electronic records are included, but software may be exempt. (§§ 6253.9(a),(g), 6254.9 (a),(d))

WHAT MUST HAPPEN
- Access is immediate and allowed at all times during business hours. (§ 6253(a)) Staff need not disrupt operations to allow immediate access, but a decision whether to grant access must be prompt. An agency may not adopt rules that limit the hours records are open for viewing and inspection. (§§ 6253(c); 6253.4(b))
- The agency must provide assistance by helping to identify records and information relevant to the request and suggesting ways to overcome any practical basis for denying access. (§ 6253.1)
- An agency has 10 days to decide if copies will be provided. In "unusual" cases (request is "voluminous," seeks records held off-site, OR requires consultation with other agencies), the agency may, upon written notice to the requestor, give itself an additional 14 days to respond. (§ 6253(c)) These time periods may not be used solely to delay access to the records. (§ 6253(d))
- The agency may never make records available only in electronic form. (§ 6253.9(e))
- Access is always free. Fees for "inspection" or "processing" are prohibited. (§ 6253)
- Copy costs are limited to "statutory fees" set by the Legislature (not by local ordinance) or the "direct cost of duplication", usually 10 to 25 cents per page. Charges for search, review or deletion are not allowed. (§ 6253(b); North County Parents v. D.O.E., 23 Cal.App.4th 144 (1994)) If a request for electronic records either (1) is for a record normally issued only periodically, or (2) requires data compilation, extraction, or programming, copy costs may include the cost of the programming. (§ 6253.9(a),(b))
- The agency must justify the withholding of any record by demonstrating that the record is exempt or that the public interest in confidentiality outweighs the public interest in disclosure. (§ 6255)

REQUESTING PUBLIC RECORDS
- Plan your request; know what exemptions may apply.
- Ask informally before invoking the law. If necessary, use this guide to state your rights under the Act.
- Don't ask the agency to create a record or list.
- A written request is not required, but may help if your request is complex, or you anticipate trouble.
- Put date limits on any search.
- If the agency claims the records don't exist, ask what files were searched; offer any search clues you can.
- Limit pre-authorized costs (or ask for a cost waiver), and pay only copying charges.
- Demand a written response within 10 days.

IF YOUR REQUEST IS DENIED
- Keep a log of to whom you speak and the stated reason for the denial.
- Employ the following six-step DENIAL strategy:
  D = Discretionary: Exemptions are permissive, never mandatory. Ask the agency if it will waive the exemption and release the record.
  E = Explanation: Insist that the agency explain in a written denial why the exemption applies to the requested record.
  N = Narrow Application: The Act favors access. Exemptions must be narrowly construed.
  I = Isolate: Request the release of any non-exempt portions of the record.
  A = Appeal: State your rights, use this guide, and ask to speak to a higher agency official.
  L = Lawsuit: File suit to enforce your rights. If you win, the agency must pay your costs and legal fees. (§ 6259(d); Belt v. Garmon, 232 Cal.App.3d 896 (1991)).
- Write a news story or Letter to the Editor about the denial.
- Consult your supervisor or lawyer, or contact one of the groups listed on this brochure.
WHAT’S NOT COVERED

- Employees’ private papers, unless they "relate[e] to the conduct of the public's business [and are] prepared, owned, used, or retained by the agency." (§ 6252(e))
- Computer software "developed by a state or local agency ... including computer mapping systems, computer programs, and computer graphic systems." (§§ 6254.9(a),(b))
- Records not yet in existence: The PRA covers only records that already exist, and an agency cannot be required to create a record, list, or compilation. "Rolling requests" for future-generated records are not permitted.

RECORDS EXEMPT FROM DISCLOSURE

The Act exempts certain records from disclosure in whole or in part. This does not mean they are not public records or that disclosure is prohibited. An agency may withhold the records, but it may allow greater access if it wishes. (§ 6253(e)). However, "selective" or "favored" access is prohibited; once it is disclosed to one requester, the record is public for all. (§ 6254.5) Many categories of records are exempt, some by the Act itself, (§§ 6254(a)-(z)) and some by other laws (§§ 6275-6276.48). These include:

- Attorney-Client discussions are confidential, even if the agency is the client, but the agency (not the lawyer) may waive secrecy. (§§ 6254(k), 6254.25, 6276.04)
- Appointment calendars and applications, phone records, and other records which impair the deliberative process by revealing the thought process of government decision-makers may be withheld only if "the public interest served by not making the record[s] public clearly outweighs the public interest served by disclosure of the record[s]." (§ 6255; Times Mirror v. Superior Ct., 53 Cal.3d 1325 (1991); CFAC v. Superior Ct., 67 Cal.App.4th 159 (1998); Rogers v. Superior Ct., 19 Cal.App.4th 469 (1993)) If the interest in secrecy does not clearly outweigh the interest in disclosure, the records must be disclosed, "whatever the incidental impact on the deliberative process." (Times Mirror v. Superior Ct.) The agency must explain, not merely state, why the public interest does not favor disclosure.
- Preliminary drafts, notes and memos may be withheld only if: (1) they are "not retained...in the ordinary course of business" and (2) "the public interest in withholding clearly outweighs the public interest in disclosure." Drafts are not exempted if: (1) staff normally keep copies; or (2) the report or document is final even if a decision is not. (§ 6254(a)) Where a draft contains both facts and recommendations, only the latter may be withheld. The facts must be disclosed. (CBE v. CDF, 171 Cal.App.3d 704 (1985))
- Home Addresses in DMV, voter registration, gun license, public housing, local agency utility and public employee records are exempt, as are addresses of certain crime victims. (§§ 6254(f),(u), 6254.1, 6254.3, 6254.4, 6254.16, 6254.21)
- Records concerning agency litigation are exempt, but only until the claim is resolved or settled. The complaint, claim, or records filed in court, records that pre-date the suit (e.g., reports about projects that eventually end in litigation), and settlement records are public. (§§ 6254(b), 6254.25; Register Div. of Freedom Newspapers, Inc. v. County of Orange, 158 Cal. App. 3d 893 (1984))
- Personnel, medical and similar files are exempt only if disclosure would reveal intimate, private details. (§ 6254(c) Employment contracts are not exempt. (§ 6254.8)
- Police Incident reports, rap sheets and arrest records are exempt (Penal Code §§ 11075, 11105, 11105.1), but information in the "police blotter" (time and circumstances of calls to police; name and details of arrests, warrants, charges, hearing dates, etc.) must be disclosed unless disclosure would endanger an investigation or the life of an investigator. Investigative files may be withheld, even after an investigation is over. (Gov. Code § 5254(f); Williams v. Superior Ct., 5 Cal. 4th 337 (1993); County of L.A. v. Superior Ct., 16 Cal. App. 4th 588 (1994). Identifying data in police personnel files and misconduct complaints are exempt, but disclosure may be obtained using special procedures under Evidence Code section 1043.
- Financial data submitted for licenses, certificates, or permits, or given in confidence to agencies that oversee insurance, securities, or banking firms; tax, welfare, and family/adoption/birth records are all exempt. (§§ 6254(d),(k),(l), 6276)

FOR MORE INFORMATION OR HELP:
FIRST AMENDMENT PROJECT...........510/208-7744 www.thefirstamendment.org
California First Amendment Coalition........415/460-5060 www.cfac.org

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ON-LINE VERSION OF A POCKET GUIDE TO
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FOR MORE INFORMATION OR HELP:
First Amendment Project: 510/208-7744
SPJ-Northern California Chapter: 415/703-7902
Calif. First Amendment Coalition: 916/447-2322

HOW TO USE THIS GUIDE

This on-line version of the pocket guide is intended to be a
quick reference for journalists and citizens on the Public
Records Act as of April 1, 1994. It does not substitute for
research or consultation with a lawyer on detailed questions. It
is intended to address the most common access problems but can't
cover everything. The guide contains five sections:

Basics: what agencies, what records
Your rights under the Public Records Act
Common types of records that are not public
What To Do... tips in seeking public records
How to enforce your rights

THE BASICS:

Agencies Covered

All State and local agencies are covered by the PRA except
courts and the Legislature ($6252(a),(b)).

This includes any "board, commission or agency" created by
the agency (including advisory boards), and any private,
non-profit entity delegated legal authority to carry out
public functions if supported solely by public funds
($6252(b)).

Records Covered

All records of public agencies are open for inspection and
copying during office hours ($§6253(a), 6256).

"Records" includes every means of recording or communication
or representation: any writing, picture, sound or symbol,
whether paper, film, magnetic media or other ($§6252(e)).
Employees' private papers incidentally at the office are not
records unless they "relat[e] to the conduct of the public's
business [and are] prepared, owned, used or retained by the agency" ($6252(d)).

Computer data are included in the definition of "records" ($6252(e)). "Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer. Public records stored in a computer shall be disclosed..." ($6254.9(d)). BUT: computer software developed by an agency is not a public record ($6254.9(a)), and the form in which data are provided is left to agency discretion ($6256). Legislative records are now available to all in electronic form (Govt. Code § 10248).

The PRA covers only records that already exist. A PRA request can not require an agency to create a document, list or compilation.

YOUR RIGHTS UNDER THE PRA:

Access: A written request is not required. You have a right to immediate access to inspect records during business hours ($6253(a)). But a written request helps if you anticipate trouble.

Copies: You have a right to an exact copy upon request ($§6256, 6257). But a copy request triggers a 10-day waiting period for the agency to decide whether copies will be provided, although you must be notified "immediately" of a decision and its basis ($6256).

Ask for both: A written request should ask for both access under $6253(a) and copies under §§6256, 6257. After inspection you can reduce the copy request.

Cost: For copies an agency may charge only "direct costs of duplication" ($6257), usually 6-25 cents per page. An agency may not include charges or fees to search, review, redact or copy records (North County Parents, etc. v. Dept. of Education, 93 D.A.R. 3224 (4th DCA, 3/10/94). You can limit your initially authorized copy cost (e.g., $50). Access under §6253(a) is free.

Timing: Access ($6253(a)) is allowed during business hours. Though the agency need not drop everything to respond, a decision on whether your request will be honored should be immediate. Delay is prohibited: "nothing in this chapter shall be construed to permit an agency to delay access." ($6256.2.)

Extensions: The 10-day period for a decision on copies may be extended once by the agency head. It must state the reason for the delay and a date for the decision ($6256.1). Permitted reasons: gathering records from off-site locales; voluminous requests; need to consult with other agencies ($6256.1(a)-(c)).

Responses to a request must be in writing if an agency rejects any part of a request ($6256.2) or gives itself an extension for copies ($6256.1).
Deletions are required if part of a request or a particular document is exempt. Nonexempt portions must be provided ($6257).

Selective disclosure is prohibited. Once disclosed, a record is public for all ($6254.5).

RECORDS EXEMPT FROM DISCLOSURE:

The following examples are exempt in whole or in part. This does not mean that they are not public records or that the agency is prohibited from releasing them. It means that the agency may withhold them. An agency may also allow greater access ($6253.1).

Drafts: preliminary drafts, notes and memos, but only if "not retained...in the ordinary course of business" and "the public interest in withholding clearly outweighs the public interest in disclosure" ($6254(a)).

Draft reports are not exempt if the agency personnel normally keep copies on file. No further analysis is required. (CBE v. Dept of Food and Agriculture, 171 CA3d 704 (1985)). Even if not normally kept, the agency must also show a compelling public interest in nondisclosure.

If the draft report contains both facts and a preliminary staff recommendation, only the latter may be withheld, while factual matters must be disclosed (CBE v. Dept of Food and Agriculture).

A report may not be withheld on the basis that, e.g., the City Council has not yet seen it. When it goes to a majority of Council members, it becomes a public record under the Brown Act, unless covered by an exception for a closed session (Govt. Code §54957.5).

Litigation: Documents involving litigation may be withheld only if the agency is a party AND only until the matter is finally resolved or settled ($6254(b)). BUT, the complaint (or claim under the Tort Claims Act) must be disclosed (71 Ops.Atty.Gen. 235 (1988)).

The exception is limited to records specifically created by the lawyer or agency (attorney work-product), or between the agency and lawyer (attorney-client), for the litigation. An agency may not withhold records predating the litigation, nor everything that "relates" to the litigation, nor, e.g., staff reports or minutes for a project whose approval results in a lawsuit (71 Ops.Atty.Gen. 235 (1988); 87 Ops.Atty.Gen. 304 (1988)).

Settlement records are public ($6254(b); Freedom Newspapers v. Orange County, 158 CA3d 893 (1984)).

Personnel: "Personnel, medical, or similar files" may be withheld if disclosure "would constitute an unwarranted invasion of personal privacy." This is not a generalized "personnel" exception for an entire file, only intimate, private details of a person's life (68 Ops.Ag 73 (1985)). There are special rules for police files (Ev. Code §1043).
BUT "[e]very employment contract between [an] agency and any public official or public employee is a public record" ($6254.8). Public contracts are not in the personnel exception (San Diego Union v. City Council, 146 CA3d 947 (1983)).

Confidential: Data submitted confidentially, or made secret by law, may be withheld ($6254(d)). E.g.: financial data to agencies responsible for banks, securities or insurance companies ($6254(d)); income tax data (6254(i), Rev. & Tax Code §§19572, 19133, 15619); financial data required for a license, certificate or permit ($6254(n)).

BUT, financial data used for a public decision, e.g., to set city garbage rates, is public (San Diego Union v. City Council of San Diego, 146 CA3d 947 (1983)).

Police: Law enforcement records may be withheld ($6254(f)). BUT the "police blotter" is public, with names and details of arrests, warrants, booking, bail, charges and hearings ($6254(f)(1)), and requests for assistance, including time, occurrence, crime and response. ($6254(f)(2)). Victim names are not public for most sex crimes, child endangerment, spousal abuse, or interference with civil rights ($6254(f)(2)). Rap sheets are not public (Penal Code §§11075, 11105 and 11300). "Investigative files" may be withheld, even after an investigation is complete ($6254(f); Williams v. Superior Court, 5 Cal.4th 341 (1993)).

Also exempt from disclosure:

- Test material for exams ($6254(g));
- Library circulation records ($$6254(j), 6267);
- Disclosures prohibited under other laws ($6254(k));
- Labor negotiation instructions ($6254(p), (q));
- Home addresses: DMV ($6254.1(b)); public housing ($6254.1(a));
- State employees (and phone numbers, §6254.3); active and retired court officials, some lawyers and police (and their phone numbers ($6254.4)); applicants for collection agency licenses ($6254(v)); applicants for concealed weapons permits in limited circumstances ($6254(u));
- Voting records: petitions for initiatives, referenda and recalls ($6253.5); identities on bilingual ballots ($6253.6);
- Real estate appraisals for agencies considering property transactions ($6254(h));
- Attorney-client communications, even if an agency is the client, BUT the agency (not the lawyer), may decide to waive it; income tax information on most individuals and businesses is confidential, but nonprofit corporate returns are public at the Attorney General's Registry of Charitable Trusts;
- Family records showing adoptions (Civil Code §227), some data in birth certificates (Health & Safety Code §10125.5) and welfare records (Welfare & Inst. Code §§11478, 10850).

TIPS IN MAKING YOUR REQUEST

- Ask informally before invoking the law.
- Try asking more than one agency.
- Always ask for immediate access and copies.
Use this guide to cite the law in your request. You needn't give a reason for asking for records. Put date limits on any search. Don't ask the agency to create a record or a list. Limit pre-authorized costs; pay only copy costs. Demand a written response in 10 days.

WHAT TO DO:

IF YOUR REQUEST IS REFUSED

State your rights, using this guide, and ask to speak to the highest-ranking official.

Keep a log of whom you spoke with, what reason you were given, and get a denial in writing.

Write a story or letter to the editor about a denial.

Consult your supervisor or attorney or call (see phone numbers at top of this file) if you need help.

TO ENFORCE THE PUBLIC RECORDS ACT

An action may be filed in the county where the records are located, with a hearing set as soon as practicable ($§6258, 6259(a)).

If you win, the agency must pay your costs and attorney fees ($6259(d); Belth v. Garamendi 232 CA3d 896 (1991)).