# Petitioner's Supporting Documents

finds "that the public official was justified in refusing" disclosure, it must "return the item to the public official without disclosing its content." (*Ibid.*) The Legislature's repeated use of the singular word "official" in section 6259 indicates an awareness that an individual may possess materials that qualify as public records. Moreover, the broad term "public official" encompasses officials in state *and* local agencies, signifying that CPRA disclosure obligations apply to individuals working in both levels of government.

4. *Owned, Used, or Retained by Any State or Local Agency*

CPRA encompasses writings prepared *by* an agency but also writings it owns, uses, or retains, regardless of authorship. Obviously, an agency engaged in the conduct of public business will use and retain a variety of writings related to that business, including those prepared by people outside the agency. These final two factors of the "public records" definition, use and retention, thus reflect the variety of ways an agency can possess writings used to conduct public business.

As to retention, the City argues "public records" include only materials in an agency's possession or directly accessible to the agency. Citing statutory arguments and cases limiting the duty to obtain and disclose documents possessed by others, the City contends writings held in an employee's personal account are beyond an agency's reach and fall outside CPRA. The argument fails.

Appellate courts have generally concluded records related to public business are subject to disclosure if they are in an agency's actual *or constructive* possession. (See, e.g., *Board of Pilot Comrs. for the Bays of San Francisco, San Pablo and Suisun v. Superior Court* (2013) 218 Cal.App.4th 577, 598; *Consolidated Irrigation Dist. v. Superior Court* (2012) 205 Cal.App.4th 697, 710 (*Consolidated Irrigation*).) "[A]n agency has constructive possession of records if it has the right to control the records, either directly or through another person." (*Consolidated Irrigation*, at p. 710.) For example, in *Consolidated Irrigation*, a city did not have constructive possession of documents in files maintained by subconsultants who prepared portions of an environmental impact report because

the city had no contractual right to control the subconsultants or their files. (*Id.* at pp. 703, 710-711.) By contrast, a city had a CPRA duty to disclose a consultant's field survey records because the city had a contractual ownership interest and right to possess this material. (See *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1426, 1428-1429 (*Community Youth*).)

An agency's actual or constructive possession of records is relevant in determining whether it has an obligation to search for, collect, and disclose the material requested. (See § 6253, subd. (c).) It is a separate and more fundamental question whether a document located outside an agency's walls, or servers, is sufficiently "owned, used, or retained" by the agency so as to constitute a public record. (See § 6252, subd. (e).) In construing FOIA, federal courts have remarked that an agency's public records "do not lose their agency character just because the official who possesses them takes them out the door." (*Competitive Enterprise Institute v. Office of Science and Technology Policy*, *supra*, 827 F.3d at p. 149.) We likewise hold that documents otherwise meeting CPRA's definition of "public records" do not lose this status because they are located in an employee's personal account. A writing retained by a public employee conducting agency business has been "retained by" the agency within the meaning of section 6252, subdivision (e), even if the writing is retained in the employee's personal account.

The City argues various CPRA provisions run counter to this conclusion. First, the City cites section 6270, which provides that a state or local agency may not transfer a public record to a private entity in a manner that prevents the agency "*from providing the record directly* pursuant to this chapter." (Italics added.) Taking the italicized language out of context, the City argues that public records are only those an agency is able to access "directly." But this strained interpretation sets legislative intent on its head. The statute's clear purpose is to prevent an agency from evading its disclosure duty by transferring custody of a record to a private holder and then arguing the record falls outside CPRA because it is no longer in the agency's possession. Furthermore, section 6270 does not

Filed 3/2/17

# IN THE SUPREME COURT OF CALIFORNIA

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| CITY OF SAN JOSE et al.,<br><br>Petitioners,<br><br>v.<br><br>THE SUPERIOR COURT OF SANTA CLARA COUNTY,<br>Respondent;<br><br>TED SMITH,<br><br>Real Party in Interest. | S218066<br><br>Ct.App. 6 H039498<br>Santa Clara County<br>Super. Ct. No. 109CV150427 |

Here, we hold that when a city employee uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act (CPRA or Act).[1] We overturn the contrary judgment of the Court of Appeal.

## I. BACKGROUND

In June 2009, petitioner Ted Smith requested disclosure of 32 categories of public records from the City of San Jose, its redevelopment agency and the agency's executive director, along with certain other elected officials and their

[1] Government Code section 6250 et seq. All statutory references are to the Government Code unless otherwise specified.

staffs.[2] The targeted documents concerned redevelopment efforts in downtown San Jose and included emails and text messages "sent or received on private electronic devices used by" the mayor, two city council members, and their staffs. The City disclosed communications made using City telephone numbers and email accounts but did not disclose communications made using the individuals' personal accounts.

Smith sued for declaratory relief, arguing CPRA's definition of "public records" encompasses all communications about official business, regardless of how they are created, communicated, or stored. The City responded that messages communicated through personal accounts are not public records because they are not within the public entity's custody or control. The trial court granted summary judgment for Smith and ordered disclosure, but the Court of Appeal issued a writ of mandate. At present, no documents from employees' personal accounts have been collected or disclosed.

## II. DISCUSSION

This case concerns how laws, originally designed to cover paper documents, apply to evolving methods of electronic communication. It requires recognition that, in today's environment, not all employment-related activity occurs during a conventional workday, or in an employer-maintained workplace.

Enacted in 1968, CPRA declares that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (§ 6250.) In 2004, voters made this principle part of our Constitution. A provision added by Proposition 59 states: "The people have the right of access to information concerning the conduct of the people's business, and, therefore, . . . the writings of public officials and agencies shall be open to public scrutiny." (Cal. Const., art. I, § 3, subd. (b)(1).) Public access laws serve a

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[2] These parties, sued as defendants below and the petitioners here, are collectively referred to as the "City."

crucial function. "Openness in government is essential to the functioning of a democracy. 'Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process.' " (*International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 328-329 (*International Federation*).)

However, public access to information must sometimes yield to personal privacy interests. When enacting CPRA, the Legislature was mindful of the right to privacy (§ 6250), and set out multiple exemptions designed to protect that right. (*Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 288 (*Commission on Peace Officer Standards*); see § 6254.) Similarly, while the Constitution provides for public access, it does not supersede or modify existing privacy rights. (Cal. Const., art. I, § 3, subd. (b)(3).)

CPRA and the Constitution strike a careful balance between public access and personal privacy. This case concerns how that balance is served when documents concerning official business are created or stored outside the workplace. The issue is a narrow one: Are writings concerning the conduct of public business beyond CPRA's reach merely because they were sent or received using a nongovernmental account? Considering the statute's language and the important policy interests it serves, the answer is no. Employees' communications about official agency business may be subject to CPRA regardless of the type of account used in their preparation or transmission.

A. *Statutory Language, Broadly Construed, Supports Public Access*

CPRA establishes a basic rule requiring disclosure of public records upon request. (§ 6253.)[3] In general, it creates "a presumptive right of access to any record *created or maintained* by a public agency that relates in any way to the business of the public agency." (*Sander v. State Bar of California* (2013) 58 Cal.4th 300, 323, italics added.) Every such record "must be disclosed unless a statutory exception is shown." (*Ibid.*) Section 6254 sets out a variety of exemptions, "many of which are designed to protect individual privacy." (*International Federation, supra*, 42 Cal.4th at p. 329.) The Act also includes a catchall provision exempting disclosure if "the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure." (§ 6255, subd. (a).)

"When we interpret a statute, '[o]ur fundamental task . . . is to determine the Legislature's intent so as to effectuate the law's purpose. We first examine the statutory language, giving it a plain and commonsense meaning. We do not examine that language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment. If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend. If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative history, and public policy.' [Citation.] 'Furthermore, we consider portions of a statute in the context of the entire statute and the statutory scheme of which it is a part, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.' " (*Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 165-166.)

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3 CPRA was modeled on the federal Freedom of Information Act (FOIA) (5 U.S.C. § 552). (*San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 772.)

In CPRA cases, this standard approach to statutory interpretation is augmented by a constitutional imperative. (See *Sierra Club v. Superior Court*, *supra*, 57 Cal.4th at p. 166.) Proposition 59 amended the Constitution to provide: "A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be *broadly* construed if it furthers the people's right of access, and *narrowly* construed if it limits the right of access." (Cal. Const., art. I, § 3, subd. (b)(2), italics added.) " 'Given the strong public policy of the people's right to information concerning the people's business (Gov. Code, § 6250), and the constitutional mandate to construe statutes limiting the right of access narrowly (Cal. Const., art. I, § 3, subd. (b)(2)), "all public records are subject to disclosure unless the Legislature has *expressly* provided to the contrary." ' " (*Sierra Club*, at p. 166.)

We begin with the term "public record," which CPRA defines to include "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." (§ 6252, subd. (e); hereafter "public records" definition.) Under this definition, a public record has four aspects. It is (1) a writing, (2) with content relating to the conduct of the public's business, which is (3) prepared by, *or* (4) owned, used, or retained by any state or local agency.

1. *Writing*

CPRA defines a "writing" as "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." (§ 6252, subd. (g).) It is undisputed that the items at issue here constitute writings.

In 1968, creating a "writing" could be a fairly involved process. Typically, a person would use an implement to type, or record words longhand, or would

dictate to someone else who would write or type a document. Writings were generally made on paper or some other tangible medium. These writings were physically identifiable and could be retrieved by examining the physical repositories where they were stored. Writings exchanged with people outside the agency were generally sent, on paper, through the mail or by courier. In part because of the time required for their preparation, such writings were fairly formal and focused on the business at hand.

Today, these tangible, if laborious, writing methods have been enhanced by electronic communication. Email, text messaging, and other electronic platforms, permit writings to be prepared, exchanged, and stored more quickly and easily. However, the ease and immediacy of electronic communication has encouraged a commonplace tendency to share fleeting thoughts and random bits of information, with varying degrees of import, often to broad audiences. As a result, the line between an official communication and an electronic aside is now sometimes blurred. The second aspect of CPRA's "public records" definition establishes a framework to distinguish between work-related and purely private communications.

2. *Relating to the Conduct of the Public's Business*

The overall structure of CPRA, with its many exemptions, makes clear that not everything written by a public employee is subject to review and disclosure. To qualify as a public record, a writing must "contain[] information relating to the conduct of the public's business." (§ 6252, subd. (e).) Generally, any "record . . . kept by an officer because it is necessary or convenient to the discharge of his official duty . . . is a public record." (*Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 340; see *People v. Purcell* (1937) 22 Cal.App.2d 126, 130.)

Whether a writing is sufficiently related to public business will not always be clear. For example, depending on the context, an email to a spouse complaining "my coworker is an idiot" would likely not be a public record. Conversely, an email to a superior reporting the coworker's mismanagement of an

agency project might well be. Resolution of the question, particularly when writings are kept in personal accounts, will often involve an examination of several factors, including the content itself; the context in, or purpose for which, it was written; the audience to whom it was directed; and whether the writing was prepared by an employee acting or purporting to act within the scope of his or her employment. Here, the City claimed all communications in personal accounts are beyond the reach of CPRA. As a result, the content of specific records is not before us. Any disputes over this aspect of the "public records" definition await resolution in future proceedings.

We clarify, however, that to qualify as a public record under CPRA, at a minimum, a writing must relate in some substantive way to the conduct of the public's business. This standard, though broad, is not so elastic as to include every piece of information the public may find interesting. Communications that are primarily personal, containing no more than incidental mentions of agency business, generally will not constitute public records. For example, the public might be titillated to learn that not all agency workers enjoy the company of their colleagues, or hold them in high regard. However, an employee's electronic musings about a colleague's personal shortcomings will often fall far short of being a "writing containing information relating to the conduct of the public's business." (§ 6252, subd. (e).)[4]

*Coronado Police Officers Assn. v. Carroll* (2003) 106 Cal.App.4th 1001 demonstrates the intricacy of determining whether a writing is related to public

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[4] We recognize that this test departs from the notion that "[o]nly purely personal" communications "totally void of reference to governmental activities" are excluded from CPRA's definition of public records. (Assem. Statewide Information Policy Com., Final Rep. (Mar. 1970) 1 Assem. J. (1970 Reg. Sess.) appen. p. 9; see *San Gabriel Tribune v. Superior Court*, *supra*, 143 Cal.App.3d at p. 774.) While this conception may yield correct results in some circumstances, it may sweep too broadly in others, particularly when applied to electronic communications sent through personal accounts.

business. There, police officers sought access to a database of impeachment material compiled by public defenders. The attorneys contributed to the database and used its contents in their work. (*Id.* at p. 1005.) However, their representation of individual clients, though paid for by a public entity, was considered under case law to be essentially a private function. (*Id.* at pp. 1007-1009; see *Polk County v. Dodson* (1981) 454 U.S. 312, 321-322.) Accordingly, the *Coronado* court concluded the database did not relate to public business and thus was not a public record. (*Id.* at pp. 1007-1009.) The court was careful to note that not all documents related to the database were private, however. Documents reflecting policy decisions about whether and how to maintain the database might well relate to public business, rather than the representation of individual clients. (*Id.* at p. 1009.) Content of that kind would constitute public records. (*Ibid.*)

3. *Prepared by Any State or Local Agency*

The City focuses its challenge on the final portion of the "public records" definition, which requires that writings be "prepared, owned, used, or retained by any state or local agency." (§ 6252, section (e).) The City argues this language does not encompass communications agency employees make through their personal accounts. However, the broad construction mandated by the Constitution supports disclosure.

A writing is commonly understood to have been prepared by the person who wrote it. If an agency employee prepares a writing that substantively relates to the conduct of public business, that writing would appear to satisfy the Act's definition of a public record. The City urges a contrary conclusion when the writing is transmitted through a personal account. In focusing its attention on the "owned, used, or retained by" aspect of the "public records" definition, however, it ignores the "prepared by" aspect. (§ 6252, subd. (e).) This approach fails to give " 'significance to every word, phrase, sentence, and part' " of the Act. (*Sierra Club v. Superior Court*, *supra*, 57 Cal.4th at p. 166.)

The City draws its conclusion by comparing the Act's definitions of "local" and "state" agency. Under CPRA, " '*Local agency*' includes 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; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952." (§ 6252, subd. (a), italics added.) The City points out that this definition does not specifically include individual government officials or staff members, whereas individuals *are* specifically mentioned in CPRA's definition of "*state agency*." According to that definition, " 'State agency' means every state office, *officer*, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution."[5] (§ 6252, subd. (f)(1), italics added.) The City contends this difference shows the Legislature intended to exclude individuals from the local agency definition. If a local agency does not encompass individual officers and employees, it argues, only writings accessible to the agency as a whole are public records. This interpretation is flawed for a number of reasons.

The City's narrow reading of CPRA's local agency definition is inconsistent with the constitutional directive of broad interpretation. (Cal. Const., art. I, § 3, subd. (b)(2); see *Sierra Club v. Superior Court*, *supra*, 57 Cal.4th at p. 175.) Broadly construed, the term "local agency" logically includes not just the discrete governmental entities listed in section 6252, subdivision (a) but also the individual officials and staff members who conduct the agencies' affairs. It is well established that a governmental entity, like a corporation, can act only through its

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5 Article IV establishes the Legislature, and article VI establishes the state's judiciary. (Cal. Const., arts. IV, VI.) These branches of government are thus generally exempt from CPRA. (See *Sander v. State Bar of California*, *supra*, 58 Cal.4th at p. 318; *Copley Press, Inc. v. Superior Court* (1992) 6 Cal.App.4th 106, 111.)

individual officers and employees. (*Suezaki v. Superior Court* (1962) 58 Cal.2d 166, 174; *Alvarez v. Felker Mfg. Co.* (1964) 230 Cal.App.2d 987, 998; see *United States v. Dotterweich* (1943) 320 U.S. 277, 281; *Reno v. Baird* (1998) 18 Cal.4th 640, 656.) A disembodied governmental agency cannot prepare, own, use, or retain any record. Only the human beings who serve in agencies can do these things. When employees are conducting agency business, they are working for the agency and on its behalf. (See, e.g., *Cal. Assn. of Health Facilities v. Dept. of Health Services* (1997) 16 Cal.4th 284, 296-297; cf. *Competitive Enterprise Institute v. Office of Science & Technology Policy* (D.C. Cir. 2016) 827 F.3d 145, 149 [reaching the same conclusion for federal FOIA requests].). We presume the Legislature was aware of these settled principles. (See *People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 199.) A writing prepared by a public employee conducting agency business has been "prepared by" the agency within the meaning of section 6252, subdivision (e), even if the writing is prepared using the employee's personal account.

The City also fails to explain how its proposed requirement that a public record be "accessible to the agency as a whole" could be practically interpreted. Even when documents were stored in filing cabinets or ledgers, many writings would not have been considered accessible to all agency employees, regardless of their level of responsibility or involvement in a particular project.

Moreover, although employees are not specifically mentioned in the local agency definition, nothing in the statutory language indicates the Legislature meant to *exclude* these individuals from CPRA obligations. The City argues the omission of the word "officer" from the local agency definition reflects a legislative intent that CPRA apply to individuals who work in *state* agencies but *not* employees in local government. The City offers no reason why the Legislature would draw such an arbitrary distinction. If it intended to impose different disclosure obligations on state and local agencies, one would expect to find this difference highlighted throughout the statutory scheme, particularly when the

obligations relate to a "fundamental and necessary right of every person in this state." (§ 6250.) Yet there is no mention of such an intent anywhere in the Act. Indeed, under the City's logic, CPRA obligations would potentially extend only to state *officers*, not necessarily state *employees*. The distinction between tenured public officers and those who hold public employment has long been recognized. (See *In re M.M.* (2012) 54 Cal.4th 530, 542-544.) Considering CPRA's goal of promoting public access, it would have been odd for the Legislature to establish different rules for different levels of state employment. Contrary to the City's view, it seems more plausible that the reference to "every state . . . officer" in the state agency definition (§ 6252, subd. (f)) was meant to extend CPRA obligations to elected state officers, such as the Governor, Treasurer, or Secretary of State, who are not part of a collective governmental body nor generally considered *employees* of a state agency.[6]

The City's position is further undermined by another CPRA provision, which indicates that public records can be held by individual officials and need not belong to an agency as a whole. When it is alleged that public records have been improperly withheld, section 6259, subdivision (a) directs that "the court shall order the officer or person charged with withholding the records" to disclose the records or show cause why they should not be produced. If the court concludes "the public official's decision to refuse disclosure is not justified," it can order "the public official to make the record public." (§ 6259, subd. (b).) If the court

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6 In one respect the local agency definition is worded more broadly than the state agency definition. Section 6252, subdivision (a) states that the term local agency "includes" a county, city, or one of several other listed entities. In statutory drafting, the term "includes" is ordinarily one "of enlargement rather than limitation." (*Ornelas v. Randolph* (1993) 4 Cal.4th 1095, 1101.) "The 'statutory definition of a thing as "including" certain things does not necessarily place thereon a meaning limited to the inclusions.' " (*Flanagan v. Flanagan* (2002) 27 Cal.4th 766, 774.) By contrast, the definition of "state agency" is couched in more restrictive language: " 'State agency' *means* every state office, officer . . .," and other listed entities. (§ 6252, subd. (f), italics added.)

finds "that the public official was justified in refusing" disclosure, it must "return the item to the public official without disclosing its content." (*Ibid.*) The Legislature's repeated use of the singular word "official" in section 6259 indicates an awareness that an individual may possess materials that qualify as public records. Moreover, the broad term "public official" encompasses officials in state *and* local agencies, signifying that CPRA disclosure obligations apply to individuals working in both levels of government.

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Appellate courts have generally concluded records related to public business are subject to disclosure if they are in an agency's actual *or constructive* possession. (See, e.g., *Board of Pilot Comrs. for the Bays of San Francisco, San Pablo and Suisun v. Superior Court* (2013) 218 Cal.App.4th 577, 598; *Consolidated Irrigation Dist. v. Superior Court* (2012) 205 Cal.App.4th 697, 710 (*Consolidated Irrigation*).) "[A]n agency has constructive possession of records if it has the right to control the records, either directly or through another person." (*Consolidated Irrigation*, at p. 710.) For example, in *Consolidated Irrigation*, a city did not have constructive possession of documents in files maintained by subconsultants who prepared portions of an environmental impact report because

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purport to excuse agencies from obtaining public records in the possession of *their own employees*. It simply prohibits agencies from attempting to evade CPRA by transferring public records to an intermediary not bound by the Act's disclosure requirements.

Next, the City relies on section 6253.9, subdivision (a)(1), which states that an agency must make a public record available "in any electronic format in which *it holds* the information" (italics added), and on section 6253, subdivision (a), which requires that public records be available for inspection "during . . . office hours." These provisions do not assist the City. They merely address the mechanics of how public records must be disclosed. They do not purport to define or limit what constitutes a public record in the first place. Moreover, to say that only public records "in the possession of the agency" (§ 6253, subd. (c)) must be disclosed begs the question of whether the term "agency" includes individual officers and employees. We have concluded it does.

Under the City's interpretation of CPRA, a document concerning official business is only a public record if it is located on a government agency's computer servers or in its offices. Indirect access, through the agency's employees, is not sufficient in the City's view. However, we have previously stressed that a document's status as public or confidential does not turn on the arbitrary circumstance of where the document is located.

In *Commission on Peace Officer Standards, supra*, 42 Cal.4th at pages 289 to 290, a state agency argued certain employment information was exempt from disclosure under CPRA because it had been placed in confidential personnel files. In considering a Penal Code provision that deems peace officer personnel records confidential, we rejected an interpretation that made confidentiality turn on the type of file in which records are located, finding it "unlikely the Legislature intended to render documents confidential based on their location, rather than their content." (*Commission*, at p. 291.) Although we made this observation in analyzing the scope of a CPRA exemption, the same logic applies to the Act's

definition of what constitutes a public record in the first place. We found it unlikely "the Legislature intended that a public agency be able to shield information from public disclosure simply by placing it in" a certain type of file. (*Commission*, at p. 291.) Likewise, there is no indication the Legislature meant to allow public officials to shield communications about official business simply by directing them through personal accounts. Such an expedient would gut the public's presumptive right of access (*Sander v. State Bar of California, supra*, 58 Cal.4th at p. 323), and the constitutional imperative to broadly construe this right (Cal. Const., art. I, § 3, subd. (b)(2)).

In light of these principles, and considering section 6252, subdivision (e) in the context of the Act as a whole (see *Smith v. Superior Court* (2006) 39 Cal.4th 77, 83), we conclude a city employee's communications related to the conduct of public business do not cease to be public records just because they were sent or received using a personal account. Sound public policy supports this result.

B. *Policy Considerations*

Both sides cite policy considerations to support their interpretation of the "public records" definition. The City argues the definition reflects a legislative balance between the public's right of access and individual employees' privacy rights, and should be interpreted categorically. Smith counters that privacy concerns are properly addressed in the case-specific application of CPRA's exemptions, not in defining the overall scope of a public record. Smith also contends any privacy intrusion resulting from a search for records in personal accounts can be minimized through procedural safeguards. Smith has the better of these arguments.

The City's interpretation would allow evasion of CPRA simply by the use of a personal account. We are aware of no California law requiring that public officials or employees use only government accounts to conduct public business. If communications sent through personal accounts were categorically excluded from CPRA, government officials could hide their most sensitive, and potentially

damning, discussions in such accounts. The City's interpretation "would not only put an increasing amount of information beyond the public's grasp but also encourage government officials to conduct the public's business in private." (Senat, *Whose Business Is It: Is Public Business Conducted on Officials' Personal Electronic Devices Subject to State Open Records Laws?* (2014) 19 Comm. L. & Pol'y 293, 322.)

It is no answer to say, as did the Court of Appeal, that we must presume public officials conduct official business in the public's best interest. The Constitution neither creates nor requires such an optimistic presumption. Indeed, the rationale behind the Act is that it is for the *public* to make that determination, based on information to which it is entitled under the law. Open access to government records is essential to *verify* that government officials are acting responsibly and held accountable to the public they serve. (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651.) "Such access permits checks against the arbitrary exercise of official power and secrecy in the political process." (*Ibid.*) The whole purpose of CPRA is to ensure transparency in government activities. If public officials could evade the law simply by clicking into a different email account, or communicating through a personal device, sensitive information could routinely evade public scrutiny.

The City counters that the privacy interests of government employees weigh against interpreting "public records" to include material in personal accounts. Of course, public employees do not forfeit all rights to privacy by working for the government. (*Long Beach City Employees Assn. v. City of Long Beach* (1986) 41 Cal.3d 937, 951.) Even so, the City essentially argues that the contents of personal email and other messaging accounts should be categorically excluded from public review because these materials have traditionally been considered private. However, compliance with CPRA is not necessarily inconsistent with the privacy rights of public employees. Any personal information not related to the conduct of public business, or material falling under

a statutory exemption, can be redacted from public records that are produced or presented for review. (See § 6253, subd. (a).)

Furthermore, a crabbed and categorical interpretation of the "public records" definition is unnecessary to protect employee privacy. Privacy concerns can and should be addressed on a case-by-case basis. (See *International Federation, supra*, 42 Cal.4th at p. 329.) Beyond the definition of a public record, the Act itself limits or exempts disclosure of various kinds of information, including certain types of preliminary drafts, notes, or memoranda (§ 6254, subd. (a)), personal financial data (§ 6254, subd. (n)), personnel and medical files (§ 6254, subd. (c)), and material protected by evidentiary privileges (§ 6254, subd. (k)). Finally, a catchall exemption allows agencies to withhold any record if the public interest served by withholding it "clearly outweighs" the public interest in disclosure. (§ 6255, subd. (a).) This exemption permits a balance between the public's interest in disclosure and the individual's privacy interest. (*International Federation*, at pp. 329-330; *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 755-756.) The analysis here, as with other exemptions, appropriately focuses on the *content* of specific records rather than their location or medium of communication. (See *Commission on Peace Officer Standards, supra*, 42 Cal.4th at p. 291.)[7]

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[7] While admitting it invoked no CPRA exemptions in the proceedings below, the City nevertheless asks us to decide that messages in employees' personal accounts are universally exempt from disclosure under section 6255. This issue has not been preserved and is beyond the scope of our grant of review. It also appears impossible to decide on this record. Answering threshold questions about whether employees have a reasonable expectation of privacy (see *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 35), or whether their messages are covered by the "deliberative process" privilege (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1339-1344) would require a fact-intensive review of the City's policies and practices regarding electronic communications, if not the contents of the challenged documents themselves. The record here is insufficient.

The City also contends the search for public records in employees' accounts would itself raise privacy concerns. In order to search for responsive documents, the City claims agencies would have to demand the surrender of employees' electronic devices and passwords to their personal accounts. Such a search would be tantamount to invading employees' homes and rifling through their filing cabinets, the City argues. It urges no case has extended CPRA so far.

Arguments that privacy interests outweigh the need for disclosure in CPRA cases have typically focused on the sensitive content of the documents involved, rather than the intrusiveness involved in searching for them. (See, e.g., *International Federation, supra*, 42 Cal.4th 319; *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272.) Assuming the search for responsive documents can also constitute an unwarranted invasion of privacy, however, this concern alone does not tip the policy balance in the City's favor. Searches can be conducted in a manner that respects individual privacy.

C. *Guidance for Conducting Searches*

The City has not attempted to search for documents located in personal accounts, so the legality of a specific kind of search is not before us. However, the City and some amici curiae do highlight concerns about employee privacy. Some guidance about how to strike the balance between privacy and disclosure may be of assistance.

CPRA requests invariably impose some burden on public agencies. Unless a records request is overbroad or unduly burdensome, agencies are obliged to disclose all records they can locate "with reasonable effort." (*California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166.) Reasonable efforts do not require that agencies undertake extraordinarily extensive or intrusive searches, however. (See *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 453; *Bertoli v. City of Sebastopol* (2015) 233 Cal.App.4th 353, 371-372.) In general, the scope of an agency's search for public records "need only be reasonably calculated to locate responsive documents."

(*American Civil Liberties Union of Northern Cal. v. Superior Court* (2011) 202 Cal.App.4th 55, 85; see *Community Youth, supra*, 220 Cal.App.4th at p. 1420.)

CPRA does not prescribe specific methods of searching for those documents. Agencies may develop their own internal policies for conducting searches. Some general principles have emerged, however. Once an agency receives a CPRA request, it must "communicate the scope of the information requested to the custodians of its records," although it need not use the precise language of the request. (*Community Youth, supra*, 220 Cal.App.4th at p. 1417.) As to requests seeking public records held in employees' nongovernmental accounts, an agency's first step should be to communicate the request to the employees in question. The agency may then reasonably rely on these employees to search *their own* personal files, accounts, and devices for responsive material.

Federal courts applying FOIA have approved of individual employees conducting their own searches and segregating public records from personal records, so long as the employees have been properly trained in how to distinguish between the two. (See *Ethyl Corp. v. U.S. Environmental Protection Agency* (4th Cir. 1994) 25 F.3d 1241, 1247.) A federal employee who withholds a document identified as potentially responsive may submit an affidavit providing the agency, and a reviewing court, "with a sufficient factual basis upon which to determine whether contested items were 'agency records' or personal materials." (*Grand Cent. Partnership, Inc. v. Cuomo* (2d Cir. 1999) 166 F.3d 473, 481.) The Washington Supreme Court recently adopted this procedure under its state public records law, holding that employees who withhold personal records from their employer "must submit an affidavit with facts sufficient to show the information is not a 'public record' under the PRA. So long as the affidavits give the requester and the trial court a sufficient factual basis to determine that withheld material is indeed nonresponsive, the agency has performed an adequate search under the PRA." (*Nissen v. Pierce County* (Wn. 2015) 183 Wn.2d 863 [357 P.3d 45, 57].) We agree with Washington's high court that this procedure, when followed in

good faith, strikes an appropriate balance, allowing a public agency "to fulfill its responsibility to search for and disclose public records without unnecessarily treading on the constitutional rights of its employees." (*Id.*, 357 P.3d at p. 58.)

Further, agencies can adopt policies that will reduce the likelihood of public records being held in employees' private accounts. "Agencies are in the best position to implement policies that fulfill their obligations" under public records laws "yet also preserve the privacy rights of their employees." (*Nissen v. Pierce County*, *supra*, 357 P.3d at p. 58.) For example, agencies might require that employees use or copy their government accounts for all communications touching on public business. Federal agency employees must follow such procedures to ensure compliance with analogous FOIA requests. (See 44 U.S.C. § 2911(a) [prohibiting use of personal electronic accounts for official business unless messages are copied or forwarded to an official account]; 36 C.F.R. § 1236.22(b) (2016) [requiring that agencies ensure official email messages in employees' personal accounts are preserved in the agency's recordkeeping system]; *Landmark Legal Foundation v. Environmental Protection Agency* (D.D.C. 2015) 82 F.Supp.3d 211, 225-226 [encouraging a policy that official emails be preserved in employees' personal accounts as well].)

We do not hold that any particular search method is required or necessarily adequate. We mention these alternatives to offer guidance on remand and to explain why privacy concerns do not require categorical exclusion of documents in personal accounts from CPRA's "public records" definition. If the City maintains the burden of obtaining records from personal accounts is too onerous, it will have an opportunity to so establish in future proceedings. (See *Connell v. Superior Court* (1997) 56 Cal.App.4th 601, 615-616; *State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1188.)

D. *Conclusion*

Consistent with the Legislature's purpose in enacting CPRA, and our constitutional mandate to interpret the Act broadly in favor of public access (Cal.

Const., art. I, § 3, subd. (b)(2)), we hold that a city employee's writings about public business are not excluded from CPRA simply because they have been sent, received, or stored in a personal account.

DISPOSITION

The judgment is reversed, and the case is remanded for further proceedings consistent with this opinion.

**CORRIGAN, J.**

**WE CONCUR:**

**CANTIL-SAKAUYE, C. J.**
**WERDEGAR, J.**
**CHIN, J.**
**LIU, J.**
**CUÉLLAR, J.**
**KRUGER, J.**

*See last page for addresses and telephone numbers for counsel who argued in Supreme Court.*

**Name of Opinion** City of San Jose v. Superior Court

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**Unpublished Opinion**
**Original Appeal**
**Original Proceeding**
**Review Granted** XXX 225 Cal.App.4th 75
**Rehearing Granted**

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**Opinion No.** S218066
**Date Filed:** March 2, 2017

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**Court:** Superior
**County:** Santa Clara
**Judge:** James P. Kleinberg

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was an implied finding that the City agency did not control the subconsultants or their files, and could not be required to produce them. (*Consolidated Irrigation Dist., supra,* 205 Cal.App.4th at p. 711.) The case is distinguishable on its facts, but it indicates that the contractual relationship of a public agency and its private consultant is important in determining the agency's duty of disclosure.[21]

E. Extent of City's PRA Obligations to Communicate with Custodians

In its related federal due process findings, the trial court said the City had failed to respond promptly to PRA requests for crime data and property survey information, and it unjustifiably claimed the survey data were not public records, and it had failed to secure that information during litigation to prevent it from being destroyed. (See pt. IV, *post.*) We next examine those factual conclusions, but in the PRA context.

Under Government Code section 6253.1, the City had the duty to assist a requester such as CYAC to formulate reasonable requests and to respond accordingly, by communicating the scope of the public information requested to the custodians of its records. Reasonableness goes both ways, and we disagree with CYAC that only a very few of its requests need be evaluated: July 27 regarding field survey data, and June 15 and July 27 with regard to crime data. The facts are otherwise, because the May 23 request included "all blight studies" and the June 15 requests included not only crime data, but also all materials provided to RSG regarding hazardous materials and building

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21 With reference to its fees motion, CYAC claims the case before us represents the first California PRA trial court ruling about a third party consultant's custody of public records, and the PRA obligation to disclose such records.

Filed 10/30/13

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

| | |
|---|---|
| COMMUNITY YOUTH ATHLETIC CENTER,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>CITY OF NATIONAL CITY et al.,<br><br>Defendants and Appellants,<br><br>ROBERT LEIF et al.,<br><br>Defendants and Respondents. | D060001, D061141<br><br>(Super. Ct. No. 37-2007-00076404-CU-EI-CTL) |

APPEAL from a judgment of the Superior Court of San Diego County, Steven R. Denton, Judge. Affirmed in part, reversed in part with directions.

Pillsbury Winthrop Shaw Pittman, Richard M. Segal, Brian D. Martin, Nathaniel R. Smith; Institute for Justice, Dana Berliner and Jeff Rowes, for Plaintiff and Appellant.

Claudia G. Silva, City Attorney; Best Best & Krieger, Bruce W. Beach, Rebecca J. Andrews and Ellen P. Head, for Defendants and Appellants.

Thorsnes Bartolotta McGuire, Vincent J. Bartolotta, Jr. and Karen R. Frostrom, for Defendants and Respondents.

In 2007, defendants and appellants, the City of National City and its Community Development Commission (the Commission or CDC; together, the City), approved an amendment to its 1995 redevelopment plan, ordinance No. 2007-2295 (Amendment), that extended the time period authorized by the plan for the use of eminent domain powers within a 300-acre area, based on certain designations of physical and economic blight. (Health & Saf. Code, § 33000 et seq., the Community Redevelopment Law (CRL); all further statutory references are to the Health & Safety Code unless noted.) During the City's months-long amendment and hearing process, it received statutorily mandated reports from a retained private consultant, held noticed hearings, and received opposition from two sets of landowners within the Amendment area, plaintiff and appellant Community Youth Athletic Center (CYAC), and additional respondents, Robert Leif, Suzanne Leif and Anthony Bedford (the "Interested Parties"). (§§ 33352, subd. (b); 33457.1.)[1]

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1 Under section 33352, subdivision (b): "Every redevelopment plan submitted by the agency to the legislative body shall be accompanied by a report containing all of the following: [¶] (b) A description of the physical and economic conditions specified in Section 33031 that exist in the area that cause the project area to be blighted. *The description shall include a list of the physical and economic conditions described in Section 33031 that exist within the project area and a map showing where in the project the conditions exist.* The description shall contain *specific, quantifiable evidence* that documents both of the following: [¶] (1) The physical and economic conditions specified in Section 33031. [¶] (2) That the described physical and economic conditions are so *prevalent and substantial* that, collectively, they seriously harm the entire project area." (Italics added.)

When their opposition to the City's approval of the Amendment was unsuccessful, CYAC brought this reverse validation action in superior court (Code Civ. Proc., § 860 et seq., the Validation Act), to seek declaratory and injunctive relief and damages under several statutory and constitutional theories, along with attorney fees and costs. (CRL, §§ 33500, 33501; Gov. Code, § 6250 et seq., Public Records Act (PRA) violations; U.S. Const., 14th Amend. (due process clause); 42 U.S.C. § 1988.) The response filed by the Interested Parties sought similar relief.

After a bench trial, the superior court issued a statement of decision and judgment in favor of CYAC, the Interested Parties and the interested public. In the reverse validation proceedings, the trial court examined the administrative record and set aside the Amendment to the redevelopment plan, by issuing declaratory relief based on its findings of several violations of the CRL: (1) contrary to the provisions of section 33457.1, the City failed to include in its mandated report, *prior to the hearing on such Amendment*, the maps required by section 33352, subdivision (b) that documented the physical and economic conditions of blight that existed within the project area, (2) the administrative record did not contain substantial evidence supporting the physical blight findings underlying the Amendment, and (3) neither the City nor its retained private consultant (Rosenow Spevacek Group, or "RSG") had produced, on request by CYAC, two types of underlying raw data relied upon in the RSG "Report to Council" (the "RTC") (i.e., RSG's field surveys of blight conditions, or the City's police department's

property-by-property crime data).[2] The City had relied on those RSG field surveys and crime data to support the enactment of the Amendment which extended the eminent domain redevelopment power, as they led to the RTC's conclusions that physical and economic blight existed within the project area, but the record did not support that reliance.

In an underlying finding, the trial court concluded that the administrative record nevertheless contained "substantial evidence" of a condition of economic blight (by using crime statistics City-wide). However, since the record failed to contain "substantial evidence of at least one condition of physical blight," and since both findings were needed, the Amendment was declared invalid. (§§ 33030, subd. (b); 33031, subds. (a), (b); 33333.2, subd. (a)(4).)

Additionally, the trial court issued declaratory relief on the ground that the City had violated the PRA, by failing to produce at the request of CYAC certain documents about the same two types of underlying raw data relied upon in the RTC (field surveys of blight conditions, and property-by-property crime data), which the City had used to justify its blight claims.

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2 Section 33457.1 provides: "*To the extent warranted by a proposed amendment to a redevelopment plan*, (1) the ordinance adopting an amendment to a redevelopment plan shall contain the findings required by Section 33367 and (2) the reports and information required by Section 33352 shall be prepared and made available to the public *prior to the hearing on such amendment*." (Italics added.) Section 33367, subdivision (d) requires the redevelopment ordinance or amendment to include findings of, inter alia, its necessity to alleviate blight conditions, "based on clearly articulated and documented evidence."

Further, the court determined that the federal procedural due process rights of CYAC and the public had not been adequately protected by the City during the amendment process, due to the City's failure to comply with CRL statutory requirements or to grant a continuance of the hearing. The court issued declaratory relief finding federal due process violations and awarded nominal damages ($1). (U.S. Const., 14th Amend. [due process clause]; *Mathews v. Eldridge* (1976) 424 U.S. 319 (*Mathews*).) However, CYAC's alternative California Constitution due process causes of action were found to lack merit. (Cal. Const., art. I, §§ 7(a), 19 [due process and takings clauses].)

After trial, the court ordered the City to pay substantial attorney fees to CYAC ($1,906,516.75) and to the Interested Parties ($84,652.50). The court had initially determined that their requests were untimely filed, but that discretionary relief from default should be granted to entertain the fees motion. (Cal. Rules of Court, rule 3.1702; all further rule references are to the California Rules of Court; Code Civ. Proc., § 473, 1021.5; 42 U.S.C. § 1988; Gov. Code, § 6259, subd. (d).)

The City appeals the judgment and in the consolidated appeal (D061141), the fee orders. CYAC has filed a cross-appeal of a portion of the underlying findings on the reverse validation decision (to challenge the trial court's ruling regarding economic blight, that City-wide crime data was correctly considered by the City, rather than just project-wide data). (§ 33031, subd. (b)(7); CYAC does not cross-appeal the dismissal of its California Constitution claims.)

CYAC has also cross-appealed on a timeliness issue regarding its attorney fees request, since the trial court granted CYAC and the Interested Parties discretionary relief

from the untimely filing, then awarded fees. However, CYAC contends there was no late filing in the first place that gave rise to any such need for such relief. (Rule 3.1702; Code Civ. Proc., § 473.)

In a previous order, we granted in part and denied in part the City's judicial notice request, to permit additional materials on the attorney fee questions to be considered on appeal. (See part V, *post*.)[3]

On the merits of the appeal and cross-appeal, first, our review of the administrative record persuades us that the trial court's reverse validation order is well supported by the facts and the law, concerning the CRL violations of sections 33352 and 33457.1 (map requirement and description of specific, quantifiable evidence supporting the blight findings). Although the Legislature abolished redevelopment agencies through its 2011 legislation, the issues regarding the invalidity of this Amendment have not become moot by the passage of time or the subsequent legislative action, particularly as to the attorney fees awards. (§ 33037, subd. (c); *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231 (*Matosantos*) [discussed *post*].)

Next, on the trial record of the PRA issues, which includes both the administrative record and the trial exhibits and testimony, we uphold the judgment of the trial court issuing declaratory relief in favor of CYAC. Although we disagree with some of the

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3 We denied the City's judicial notice request on appeal of the United States Environmental Protection Agency's Brownfields Studies of March 2005 ("Brownfields Studies") which previously studied contamination in the Amendment area. The trial court refused to include it as part of the administrative record, or to take judicial notice of it, or to admit that material as trial exhibit No. 501.

reasoning set forth in the statement of decision, the particular theory of the trial court is not controlling, and it reached the correct result. (Gov. Code, § 6250 et seq.; *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 18-19 (*D'Amico*).) We shall affirm the declaratory relief judgment on the reverse validation and PRA issues.

However, the judgment must be reversed in part with respect to the trial court's erroneous determination that as a matter of law, the City's proven statutory violations of the CRL additionally amounted to an actionable deprivation of federal due process protections, under the appropriate legal test. (*Mathews, supra*, 424 U.S. 319.)[4] Although CYAC properly pursued its remedy in the reverse validation action, to challenge such a blight designation amendment within the statutory limitations period (only 90 days; §§ 33500 or 33501), at this point, CYAC or the Interested Parties still cannot show their essential property interests were actually or potentially affected at the level necessary to satisfy the above-cited due process test.[5] There was no eminent domain filing by the City, nor had CYAC brought any inverse condemnation action, to crystallize its

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4 The *Mathews* procedural due process analysis requires the courts to consider (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of that interest through the procedures used, as well as the probable value of additional safeguards; and (3) the Government's interest, including any administrative burden that additional procedural requirements would entail. (*Mathews, supra,* 424 U.S. 319, 335.)

5 Section 33500 now provides: "(a) Notwithstanding any other provision of law, including Section 33501, an action may be brought to review the validity of the adoption or amendment of a redevelopment plan at any time within 90 days after the date of the adoption of the ordinance adopting or amending the plan, if the adoption of the ordinance occurred prior to January 1, 2011." Subdivision (b) is similar for review of agency findings. Section 33501 prescribes use of the validation statutes, Code of Civil Procedure section 860 et seq., for such CRL challenges.

immediate property interests as protectable under federal due process standards during this early stage redevelopment amendment proceeding. (*Cambria Spring Co. v. City of Pico Rivera* (1985) 171 Cal.App.3d 1080, 1097-1098 (*Cambria Spring Co.*).)

Accordingly, we affirm the judgment in part but reverse the grant of declaratory relief on the due process theory, with directions to enter a different order. On the attorney fees issues, we find the trial court appropriately granted CYAC and the Interested Parties discretionary relief from any applicable filing deadlines for their fees request, but we reverse the orders awarding such fees and costs to the extent that they incorrectly relied upon Title 42 United States Code section 1988 or Code of Civil Procedure section 1021.5 (the due process conclusions). Upon remand, the trial court shall reevaluate the extent to which such an award of fees and costs continues to be justified in light of the remaining statutory grounds for relief that we upheld in this opinion, in accordance with the principles of Code of Civil Procedure section 1021.5 and Government Code section 6259.

## BACKGROUND FACTS AND PROCEDURE

### *A. Ordinance and Complaint; Prior Appeal on Publication*

In broad outline, with more specialized facts to be added in the discussion portion of this opinion, the City's 1995 redevelopment plan and its amendments (the plan) authorized the use of eminent domain in the area where the CYAC and Interested Parties' properties are located, based on designations of blight. (§ 33037, subd. (c).) There are 692 parcels in the overall 300-acre Amendment area. On its parcel, CYAC operates a

boxing gym and athletic facility that serves at-risk youth as a community center. The Interested Parties and their lessees conduct business on their property.

As proposed, the 2007 Amendment reduced the area subject to eminent domain and restricted its use on residential properties, and focused on two business corridors (Civic Center Drive and National City Boulevard) and the harbor district area, where some environmental contamination existed due to previous industrial uses there. The City sought to amend the plan to extend the time for eminent domain proceedings to be conducted under redevelopment powers until 2017. The City was interested in allowing the construction of condominium developments in the designated area, as a redevelopment measure.

In preparation for amending the plan, the City's Commission hired the consulting firm of RSG, an independent contractor, to prepare reports required under the CRL. RSG assisted the Commission (sometimes designated the agency) in preparing and publishing the initial notice of the public hearings on the Amendment, both through mail notice to taxing agencies and through newspaper publication. From February 2007 to June 2007, RSG was in the process of drafting its report to the council (the RTC) on the need for the Amendment. RSG's contract with the City's Commission provided that this agency would have the property rights to the memoranda, reports, maps, drawings, plans, specifications and other documents prepared by RSG for the project, and all of these would be turned over to the agency upon completion of the project.

On April 17, 2007, a hearing was held by the City Council to adopt a resolution to authorize circulation and public review of the Amendment, and to set a public hearing for

June 19, 2007 to consider adoption of the Amendment. The Council's agenda statement attached a map indicating the boundary around the parcels that would be subject to the Amendment (the "boundary parcel map").

In May 2007, notice of the June hearing was mailed to all affected tax agencies, and to all affected property owners, businesses and residents. The same boundary parcel map that was attached to the April 17, 2007 Council Agenda Statement was also provided with the May 11, 2007 mailing.

In May 2007, CYAC retained expert witnesses to oppose the Amendment and began the process of requesting numerous documents that related in any way to the proposed amendment for the project area, which included CYAC. On May 23, it sought "Any and all blight studies that have been performed that specifically deal with National City Boulevard and its surrounding areas or any other blight studies that have been performed for National City since 2000. Please include any documents that show the actual areas the City or CDC included in conducting the blight study. [¶] Any and all blight studies the CDC or City will rely on in support of the redevelopment plan or eminent domain proceedings." CYAC's May 23 request relied upon the federal Freedom of Information Act (FOIA). (5 U.S.C. § 552 et seq.)[6]

City staff members responded to CYAC that such a "blight study" was also called the RTC, and that the City planned to make it and other reports available approximately

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6 Judicial interpretations of the FOIA in the federal courts may be used to construe the PRA. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325; *American Civil Liberties Union of Northern California v. Superior Court* (2011) 202 Cal.App.4th 55, 68 (*ACLU*).)

three days before the public hearing, pursuant to the standards of the Brown Act. (Gov. Code, § 54954.2, subd. (a).)

In June 2007, the City published three weekly notices in local newspapers, to give notice of the upcoming June 19, 2007 public hearing. On June 14, 2007, three business days before the hearing, the City released to the public for review its 37-page RTC recommending adoption of the Amendment. The RTC detailed in writing different types of blight conditions that it found were remaining in the Amendment area, and stated it had relied on six major sources in that analysis and assessment, including "the April 2007 field survey by RSG," and "Information from the National City police department." The RTC concluded that such blight could not be eliminated without the use of eminent domain.

The RTC referred in passing to 2005 findings by the United States Environmental Protection Agency (the Brownfields Studies) about environmental contamination existing in part of the Amendment area. (See fn. 3, *ante*.) No map was attached to the RTC made available to the public, to show where in the project any particular blighting conditions existed. (See fns. 1, 2, *ante*, text of CRL statutes requiring such a map.)

On June 15, 2007, CYAC sent three PRA requests to the City, referencing the same boundary parcel map that had been attached to the April 17, 2007 council agenda and the City's notice of hearing. On June 17, 2007, CYAC, represented by a law firm, the Institute of Justice, sent a letter to the City objecting to the Amendment on various statutory and constitutional grounds.

At the June 19, 2007 public hearing, the City Council heard opposition from CYAC and the Interested Parties and other citizens to the adoption of the Amendment. CYAC filed 34 pages of written objections to the Amendment. CYAC obtained permission from the City to file its six-volume appendix in opposition to the plan. The City denied CYAC's request for a continuance of the hearing, but allowed its additional written objections to be received after the hearing.

In July 2007, the City Council approved a negative declaration for the Amendment, and prepared written responses to written objections to the Amendment, as filed by members of the public.

On July 10, 2007, the City provided to the public four maps of the Amendment area showing the different types of blighting conditions on which it relied as justification for the Amendment (i.e., structural obsolescence, incompatible adjacent uses, deterioration and dilapidation, or defective design without parking). (§ 33352, subd. (b).) On July 17, 2007, the ordinance approving the Amendment was adopted, incorporating by reference documents contained in earlier studies.[7]

After several more PRA requests and much further communication, discussion, clarification, and objections taking place between June and August 2007, the City

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7 In the reply brief, the City, after first admitting in the opening brief that no map was attached to the council's copy of the RTC in June 2007, now contends that the boundary parcel map was timely provided to the council. This was the same boundary parcel map that had been provided with the May 2007 mailed notice to taxing agencies and property owners. However, it is still not disputed that the more detailed maps later provided in July 2007, identifying the four types of claimed blighting conditions, were not attached to the RTC when it was made available to the council or the public June 14, 2007.

supplied at least three additional sets of informational documents to CYAC. (See pts. II, III, *post*.)

In September 2007, CYAC brought this action seeking a judicial declaration that the Amendment was invalid on a number of specific grounds, including noncompliance with the procedures of the CRL. In particular, its first, fifth, and sixth causes of action alleged that the City failed to release or complete its reports or maps on the matter in a timely fashion, thus preventing the public from preparing any effective objections to the proposed Amendment, or from obtaining documents related to the required substantial evidence of existing blight and alleviation of blight through the proposed redevelopment.

In its second cause of action alleging violations of federal constitutional protections, CYAC contended it was deprived of procedural due process of law affecting the proposed use of its property (U.S. Const., 14th Amend.). In its third and fourth causes of action alleging state constitutional violations, CYAC claimed the eminent domain law was being used for constitutionally illegitimate purposes, such as economic development or increasing tax revenue. All these constitutional claims were alleged separately from the statutory causes of action. The prayer requested a declaration that the City had violated CYAC's procedural due process rights to a meaningful opportunity to be heard, and it sought invalidation of the ordinance and other relief (injunction and damages).

In its seventh cause of action, CYAC sought to compel the City to disclose numerous public records relied on by the City to support the blight designations underlying the Amendment. (PRA, Gov. Code, § 6250 et seq.)

As explained in two prior opinions issued by this court, CYAC obtained a court order through noticed ex parte proceedings for the publication of the summons, which was directed toward the City and to "All Persons Interested in the Matter of the Amendment to National City's Redevelopment Plan as Adopted by [the ordinance]." (*Community Youth Athletic Center v. City of National City* (2009) 170 Cal.App.4th 416 (our prior opinion); *Community Youth Athletic Center v. Superior Court* (Feb. 18, 2009, D052630) [nonpub. opn.] [reversing the judgment on the separate PRA petition; some facts stated here have been adapted from those opinions].) CYAC encountered difficulties with the publication process in English and Spanish newspapers, when one of the newspapers unexpectedly changed its publication schedule, and ultimately, the summons that was published after some delay retained an incorrect date for responses by any interested parties (i.e., the published summons contained the date for response as originally anticipated, thus advancing the allowable response period following publication, from Monday, Nov. 19 to Friday, Nov. 16, 2007). (Code Civ. Proc., §§ 861, 861.1, 863 [part of the Validation Act].)

The City then moved for judgment on the pleadings on all causes of action, claiming defective publication. The trial court ruled in favor of the City, and CYAC appealed. We reversed, allowing republication and further notice proceedings.

*B. Renewed Litigation After 2009 Prior Appeal*

Back on track, the parties negotiated the contents of the administrative record, for purposes of litigating the reverse validation issues. The administrative record was lodged

with the trial court in February 2011. The Interested Parties were granted leave to appear and respond, pleading similar theories.[8]

Extensive motion practice continued, in which CYAC pursued a motion for summary adjudication on the PRA claims, opposed by the City. The court denied the motion, ruling that there were remaining disputed material facts about whether the raw data regarding the blight studies created by the private consultant, RSG, constituted public records subject to disclosure.

Discovery disputes ensued, followed by motions to compel production of records or quash subpoenas. The City pursued a summary adjudication motion on the CYAC constitutional claims, both federal and state. Opposition was filed. The court denied the motion, ruling that the City could not establish on the undisputed evidence that CYAC had been afforded sufficient notice and documentation of the blight conditions to satisfy due process standards. The court relied on the test in *Mathews*, *supra*, 424 U.S. 319, and stated "what passes muster for constitutional due process is fact dependent." The court also ruled that the City had not yet established whether the two California constitutional claims, alleging wrongful taking of property, were totally without merit, since CYAC was also alleging that the process of adopting the redevelopment plan and blight designation was commenced for improper purposes.

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8 In their reply brief, the Interested Parties state they are responding to the City's appeal only on the reverse validation and attorney fees issues. Their responsive pleading is in the nature of a cross-complaint that asserts CRL violations. (Code Civ. Proc., § 863.)

In preparation for trial, the City sought to sever the PRA issues, but the court denied the motion. It had become known that the City's consultant RSG had routinely purged its records after completing the RTC, and had not retained copies of the raw data in the form of its field survey spreadsheets that were compiled by staff persons who walked the area to be covered by the Amendment, as they investigated physical blighting conditions.

Back in May 2007, the City police department's crime analyst sent RSG a chart containing three years of crime data (the "three-year chart") which RSG used to prepare a table of crime rates from 2006 for the RTC. However, the raw data used by the City's analyst to prepare the three-year chart was no longer available.

CYAC brought a motion seeking an order for sanctions for alleged spoliation of both kinds of that "critical evidence." The City filed opposition. The court denied the motions, ruling there was no evidence from which the court could reasonably infer intentional or willful conduct by City agents or employees to destroy either the raw data used by the consultant (field surveys) or any background data compiled by the City police department (crime statistics).

Trial briefs and motions in limine were filed, as well as motions for judicial notice. In limine, the court ruled that with respect to the reverse validation claims, review was limited to the administrative record.[9] However, on the PRA and constitutional issues,

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9 Apparently, neither the crime table referred to in the RTC, or the three-year chart that had been supplied to RSG for study, was actually included in the RTC or in the administrative record. However, the RTC discusses its conclusions, and the three-year

testimony and trial exhibits going beyond the administrative record were allowed to be presented, and a lengthy bench trial took place. The parties requested a statement of decision and prepared drafts.

*C. 2011 Statement of Decision and Judgment; Attorney Fees Awards*

In its April 20, 2011 statement of decision, the trial court found on the reverse validation claims that the City's lack of compliance with CRL requirements resulted in a lack of support for the Amendment, due to the failure to include the required map attachment in the RTC. (§ 33352, subd. (b).) Additionally, the court ruled the administrative record did not contain "specific, quantifiable evidence about the location and prevalence of the alleged blighting conditions," to show a serious physical and economic burden on the community, as required by section 33030, subdivision (b)(1) and section 33352, subdivision (b)(2). Even though the RTC and administrative record contained "substantial evidence" of one condition of economic blight (using crime statistics City-wide), they still "did not have substantial evidence of at least one condition of physical blight." (§ 33031, subds. (a), (b).) Thus, even if some blight conditions existed in the Amendment area, the administrative record did not contain substantial evidence that there were substantial and prevalent amounts of blighting conditions, or that any such conditions could not be eliminated without the use of eminent domain. (§ 33333.2, subd. (a)(4).) Declaratory relief was issued invalidating the Amendment.

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chart submitted to RSG by the police department was admitted as an exhibit at trial. The court also granted CYAC's request to augment the administrative record, to include fire dispatch reports previously requested to be produced. However, the court denied a CYAC request to augment the record with certain evidentiary presumptions.

On the PRA, the trial court's key findings were (a) both forms of raw data relied on by the RTC and the City, the property-by-property field surveys conducted by RSG and the property-by-property crime data for three years before the PRA request was made, constituted public records; (b) CYAC's various PRA requests were not unduly broad or vague, and thus (c) the City did not undertake a reasonable search for the requested information, nor carry its burden of showing that it justifiably withheld public records that were in the possession of its consultant, RSG, or in the possession of its police department when the requests were made. Specifically, "The Court holds that a reasonable search requires the agency to: (1) ask the known custodian of records for (2) *the documents requested in the PRA request*." (Italics added.) Thus, the court impliedly found that the City should have conveyed to the consultant the same request language that CYAC sent to the City. Although the court stated the City staff members had demonstrated evident neglect of their duties, the court was "not convinced that the violations of the PRA were intentional or that the City refused to attempt to obtain documents from its consultant." The court issued declaratory relief finding such violations of the PRA, but denied any injunctive relief, on the basis there was no showing of any need for prospective relief.

Regarding federal due process, the trial court made a series of rulings. First, the City was found to have violated "CYAC's right to procedural due process under the Fourteenth Amendment with respect to its failure to timely provide the maps with the RTC, *which were required by statute*." (Italics added.) The trial court determined that the "City's decision to provide CYAC with the RTC only three business days before the

public hearing, and at that time its failure to provide any underlying data and without the required maps, created an unreasonable risk of erroneous deprivation," denying CYAC its procedural due process rights. The trial court also concluded, "at a minimum, a continuance of the public hearing upon request was required."

In its federal due process findings, the trial court continued: "The evidence in this case presents a troubling picture where the [City] appears to have intentionally provided notices and scheduled all of the public hearings so as to provide as little time as possible to meaningfully prepare any opposition. The RTC itself was vaguely written." The City had compounded this process by failing to provide the statutorily required maps with the RTC, by failing to respond promptly to PRA requests for crime data and property survey information, by unjustifiably claiming the survey data were not public records, and by failing to secure that information during litigation to prevent it from being destroyed. (§ 33352, subd. (b).)

However, to the extent that CYAC seemed to be making a constitutional challenge to section 33457.1 (either facially or as applied), the trial court found that the notice and access to the RTC as provided by the City, pursuant to that section, did not create a further or broader denial of due process. (See fn. 2, *ante*.) Essentially, the court found the City had substantially complied with the notice requirements of section 33452, and CYAC had been able to protect its rights and to prepare and submit extensive opposition to the Amendment, based upon its own investigation and the material made known to it.

The court thus declined to make a broad finding that any particular number of weeks or months of access to the RTC must have been provided to the public by the City,

pursuant to the terms of section 33457.1. Declaratory relief and $1 in nominal damages were awarded to CYAC. With respect to the claims under the California Constitution, the court found them to be premature due to the lack of any eminent domain proceedings that had been initiated by the City. Judgment was issued in favor of CYAC.

Following requests for prevailing party attorney fees and costs by CYAC and the Interested Parties, the trial court granted them relief from default for late filing pursuant to Code of Civil Procedure section 473, subdivision (b), based on its interpretation of rule 3.1702 and related provisions. (Rules 8.104, 8.108.) The court ruled on the merits that both CYAC and the Interested Parties were entitled to attorney fees awards under several statutory provisions, including Title 42 United States Code section 1988, Code of Civil Procedure section 1021.5 and Government Code section 6259, subdivision (d). (Further details will be set forth in pt. V, *post.*)

## DISCUSSION

### I

### *OVERVIEW AND INTRODUCTORY REMARKS*

We will set forth the respective standards of review and statutory schemes as we discuss, in turn, the grant of declaratory relief on the reverse validation issues about CRL procedural protections for such a redevelopment plan amendment, and the application of the PRA standards in this factual and legal context. (Pts. II, III, *post.*) We can then address the propriety of the declaratory relief issued on the federal due process issues, as well as the attorney fees issues, both on the appeal and cross-appeal. (Pts. IV, V, *post.*)

In all of our analyses, we are mindful that in its 2011 legislation (§§ 34170 et seq., 34161 et seq.), the Legislature prospectively abolished all redevelopment agencies, reallocated their funding, and delegated their work to successor agencies. In *Matosantos, supra*, 53 Cal.4th 231, our Supreme Court held that because the Legislature had created redevelopment agencies in the CRL, it had the power to dissolve those agencies through subsequent legislation. (11 Miller & Starr, Cal. Real Estate (3d ed. 2012-2013 supp.), § 30B:0.10, pp. 45-46.)[10] Accordingly, this exact form of redevelopment method of condemnation will not be pursued by a City commission that no longer exists. (§ 33037, subd. (c); *California Redevelopment Association v. Matosantos II* (2013) 212 Cal.App.4th 1457, 1485 [issues on the existing obligations or duties of redevelopment agencies before their dissolution are not moot, where successor agencies have taken over their functions].) The briefs on appeal have only minimally addressed this dramatic legal development.[11]

We are required to review the existing ordinances and redevelopment actions in the time frame in which they were conducted, in this case, 2007. (See *County of Los*

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10 On another point, the Court in *Matosantos, supra*, 53 Cal.4th 231 invalidated a provision that would have provided for the continuation of redevelopment agencies if the local governing body agreed to make substantial payments to fund education and other functions. (*Id.* at pp. 274-276.)

11 Formerly, redevelopment agencies addressed problems of urban blight using "three extraordinary powers--the diversion of property taxes that otherwise would have gone to the state or other government entities; the use of public funds to subsidize private enterprise; and the power of eminent domain." (*Neilson v. City of California City* (2007) 146 Cal.App.4th 633, 642; *Evans v. City of San Jose* (2005) 128 Cal.App.4th 1123, 1131 (*Evans*).)

*Angeles v. Glendora Redevelopment Project* (2010) 185 Cal.App.4th 817, 832 (*Glendora*).) We do not speculate what action the City may take in the future to pursue any eminent domain powers based on blight designations within the area affected by the Amendment. In any case, the eminent domain powers controlled by Code of Civil Procedure section 1230.010 et seq. were not directly affected by the 2011 redevelopment legislation. (§ 33037, subd. (c).) The attorney fees issues raised in this appeal serve to keep these validation and related issues alive, despite the major changes in redevelopment law.

Our review of the judgment is conducted in view of the trial court's issuance of a detailed statement of decision that addressed each of the above-described substantive areas. When reviewing a judgment based on such a statement of decision, "any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision." (*In re Marriage of Hoffmeister* (1987) 191 Cal.App.3d 351, 358.) The ultimate facts found in the court's statement of decision necessarily include findings on the intermediate evidentiary facts that sustain them. (*Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106, 1125.)

Although the statement of decision reveals the basis for the judgment, all of its reasoning is not treated as binding on an appellate court. (*D'Amico*, *supra*, 11 Cal.3d 1, 18-19.) To the extent the record presents an undisputed or established set of facts, the interpretation and application of a statutory scheme to those facts are treated as questions of law and are subject to de novo review on appeal. (*Blue v. City of Los Angeles* (2006) 137 Cal.App.4th 1131, 1140 (*Blue*).) With regard to validation proceedings, the

undisputed set of facts is to be measured against the standards set by those statutes. (*Katz v. Campbell Union High School Dist.* (2006) 144 Cal.App.4th 1024, 1031 (*Katz*).) This appellate court is not bound by the trial court's statutory interpretations. (*Blue, supra,* at p. 1140; *California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 699.)

Essentially, these parties do not dispute that the trial court correctly stated each of the statutory standards for deciding the claims under the CRL and PRA regulatory schemes, but they each challenge portions of the trial court's interpretation and application of those standards to the facts as established by the evidence, and they also argue the sufficiency of that evidence. (*Glendora, supra,* 185 Cal.App.4th 817, 835-836 [administrative record must contain substantial proof of essential statutory criteria].) When the trial court applied federal procedural due process standards to that same set of established facts, it stated it was doing so narrowly and was rejecting CYAC's broader requested ruling. With respect to each of the operative components of the judgment, our task on appeal is to independently construe the statutory protections and evaluate the sufficiency of the supporting evidence for the legal conclusions reached. With those caveats, we turn to the substantive questions presented.

II

*REVERSE VALIDATION DECLARATORY RELIEF*

A. Validation Law and CRL

Under section 33501, CRL litigation may be framed as validation or reverse validation actions. These actions promote the important public policy of securing a

speedy determination of the validity of certain actions taken by a public agency. (*McLeod v. Vista Unified School Dist.* (2008) 158 Cal.App.4th 1156, 1166-1167 (*McLeod*); Code Civ. Proc., § 860 et seq.) Such in rem proceedings require notice to all those persons potentially interested in the issues of public interest presented (here, redevelopment and eminent domain). (*Katz, supra,* 144 Cal.App.4th 1024, 1028.) Under Code of Civil Procedure section 866, "[t]he court hearing the action shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties."

" 'The scope of judicial review of an agency's decision to adopt a redevelopment plan is quite limited. Both the trial court and this court review the administrative record to determine whether the findings and decision of the legislative body are supported by substantial evidence.' [Citations.] Appellate 'review is done independent of any determinations made by the superior court.' [Citations.] [¶] In examining the administrative record, we resolve all ' "reasonable doubts" ' and 'accept all reasonable inferences supporting the administrative findings.' [Citation.] 'The fact that different inferences or conclusions could be drawn, or that different methods of gathering and compiling statistics could have been employed, is not determinative in a substantial evidence review.' " (*Glendora, supra*, 185 Cal.App.4th 817, 835-836.)

On appeal, this court independently " 'determine[s] the law applicable to the facts in the administrative record' in assessing whether the statutory requirements have been met. [Citations.]" (*Glendora, supra*, 185 Cal.App.4th 817, 836.) We review de novo the legal issues involving the interpretation and application of statutes. (*Ibid.*, citing *Blue, supra*, 137 Cal.App.4th 1131, 1140.) We confine this review to the issues presented by

the administrative record, without use of the additional evidence presented at trial. (See *Glendora, supra*, at pp. 828-831, 835.)

To review the sufficiency of the evidence supporting the trial court's conclusions invalidating the Amendment, we are guided by the CRL sections outlining the characteristics of blighted areas that give rise to a need for redevelopment. "[A]n area is blighted, and hence eligible for redevelopment, if it is predominantly urban and if it is adversely affected by economic and physical conditions too serious to be cured by private or governmental enterprise, thus necessitating redevelopment." (*County of Riverside v. City of Murrieta* (1998) 65 Cal.App.4th 616, 624-625 (*Riverside*).)

In 2006, the Legislature made important, applicable changes in the redevelopment law, imposing more restrictions on the definitions and proof of blighting conditions. (*Glendora,* 185 Cal. App. 4th 817 at p. 832.) Section 33030 refers, inter alia, to the definitions of conditions that cause physical blight (§ 33031 (subd. (a)), and economic blight (§ 33031, subd. (b)). Formerly, section 33031, subdivisions (a)(1) and (2) each contained general language allowing "other similar factors" to be used to support a physical blight designation, but in 2006, the Legislature removed that general language. The Legislature also added language to section 33352 that required "specific [and] quantifiable evidence" to document alleged blight conditions to be included in the reports prepared for the legislative body, here, the City Council.[12] The same reports and

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12 As part of the 2006 amendments, section 33352 was amended to add the italicized language, showing a more restrictive approach to documenting blight: "Every redevelopment plan submitted by the agency to the legislative body shall be accompanied

information required by section 33352 must, under section 33457.1, be made available to the public prior to the redevelopment amendment hearing.[13]

Under section 33333.2, subdivision (a)(4), the 12-year time limitation for eminent domain ordinance authorizations may be extended only by amendment of the redevelopment plan after the agency finds, based on substantial evidence, both of the following: "(A) *That significant blight remains within the project area. [¶] (B) That this blight cannot be eliminated without the use of eminent domain.*" (Italics added.) Given the nature of the amendment to the redevelopment plan, new blight findings were warranted and required by section 33457.1. *(Blue, supra,* 137 Cal.App.4th at p. 1149; *Boelts v. City of Lake Forest* (2005) 127 Cal.App.4th 116, 120-121.) " 'Tangible proof which can be scrutinized in a meaningful way,' " is required. (*Glendora, supra,* 185 Cal.App.4th at p. 836.)

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by a report containing all of the following: [¶] (b) A description of the physical and economic conditions specified in Section 33031 that exist in the area that cause the project area to be blighted. The description shall include a list of the *physical and economic conditions* described in Section 33031 that exist within the project area and a map showing where in the project the conditions exist. *The description shall contain specific, quantifiable evidence that documents both of the following: [¶] (1) The physical and economic conditions specified in Section 33031. [¶] (2) That the described physical and economic conditions are so prevalent and substantial that, collectively, they seriously harm the entire project area.*" (Stats. 2006, ch. 595, § 1(e), p. 3777; italics added.)

13 The historical and statutory notes provided with section 33030 further explain that in 2006, the Legislature also amended sections 33500 and 33501 with the intent to lower the barriers for interested public members to challenge local officials' decisions regarding redevelopment and, in particular, to increase the opportunities for review of local officials' findings regarding the conditions of blight. (Historical and Statutory Notes, 41 West's Ann. Health & Saf. Code (2010 ed.) foll. § 33030, p. 451; Stats. 2006, ch. 595, § 1(f), p. 3778; see due process discussion, pt. IV, *post.*)

*B. CRL Rulings*

Many of the topics in the trial court's detailed analysis of the various blight showings regarding CYAC's reverse validation claims (first, fifth and sixth causes of action) are not directly discussed or attacked in this appeal and cross-appeal. We focus on the two major defects that prevented enforceability of this Amendment, and that are challenged on appeal: (1) the RTC omitted maps showing the location of blighting conditions that should have been made available before the time of the June 2007 public hearing under section 33352, subdivision (b) and section 33457.1; and (2) the administrative record, overall, lacked "specific, quantifiable evidence about the location and prevalence of the alleged blighting conditions" under the definitions of section 33352, subdivision (b) (referring in turn to § 33031), such that the administrative record "did not have substantial evidence of at least one condition of physical blight."[14] In particular, the RTC had relied on the field surveys prepared by the consulting firm RSG, but those field surveys had later been purged from their files and were not available for production by the City.

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14 Section 33031 subdivision (a) describes *physical conditions* that cause blight: "(1) Buildings in which it is unsafe or unhealthy for persons to live or work. These conditions may be caused by serious building code violations, serious dilapidation and deterioration caused by long-term neglect, construction that is vulnerable to serious damage from seismic or geologic hazards, and faulty or inadequate water or sewer utilities. [¶] (2) Conditions that prevent or substantially hinder the viable use or capacity of buildings or lots. These conditions may be caused by buildings of substandard, defective, or obsolete design or construction given the present general plan, zoning, or other development standards." (Note, no issues are raised here on additional subdivisions of § 33031, subd. (a)(3) regarding adjacent or nearby incompatible land uses; or subd. (a)(4) regarding existence of subdivided lots in multiple ownership.)

Even though the trial court determined that the administrative record contained "substantial evidence" of one condition of economic blight (by using crime statistics City-wide), the RTC still "did not have substantial evidence of at least one condition of physical blight." (§ 33031, subds. (a), (b).) And, even accepting that some blight conditions existed in the Amendment area, the court found the administrative record did not contain substantial evidence that there were substantial and prevalent amounts of blighting conditions, or that they could not be eliminated without the use of eminent domain. (§§ 33333.2, subd. (a)(4); 33030, subd. (b)(1); 33352, subd. (b)(2).)

In its cross-appeal, CYAC attacks the ruling there was some evidence of economic blight, claiming it was error for the trial court to use crime statistics City-wide. (§ 33031, subd. (b)(7).)[15] Rather, CYAC argues such economic conditions evidence is only relevant project-wide under section 33352, subdivision (b), and it further complains that the raw data underlying the crime statistics table referred to in the RTC (but left out) were not produced by the City, even though the police department analyst possessed the raw data at the time she prepared the three-year chart and sent it to RSG so it could prepare the RTC and table. Since evidence of both types of conditions was required, the Amendment was invalidated, and we shall discuss the cross-appeal's economic blight

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15 Section 33031, subdivision (b) describes *economic conditions* that cause blight: "(1) Depreciated or stagnant property values. [¶] (2) Impaired property values, due in significant part, to hazardous wastes on property where the agency may be eligible to use its [specified] authority . . . . [¶] . . . [¶] (7) A high crime rate that constitutes a serious threat to the public safety and welfare."

issues only if the trial court erred in its physical blight analysis. (§§ 33030, subd. (b); 33333.2, subd. (a)(4).)

C. Analysis: Appeal

*1. Defects in Notice of Hearing and Issuance of RTC*

Under sections 33457.1 and 33352, supporting reports and information must be provided to the public before a redevelopment plan is amended, "prior to the hearing," but no time frame is stated. (*Blue, supra*, 137 Cal.App.4th at p. 1144.) In that case, the court interpreted section 33352, subdivision (b), as not requiring the raw data regarding blight conditions to be included in the report or elsewhere in the administrative record, "in order for a redevelopment plan to be found valid." (*Blue, supra,* at p. 1142.) However, the court in *Blue* was interpreting the previous version of that section, which did not contain the recently added language requiring "*specific, quantifiable evidence that documents both of the following: [¶] (1) The physical and economic conditions specified in Section 33031. [¶] (2) That the described physical and economic conditions are so prevalent and substantial that, collectively, they seriously harm the entire project area.*" (§ 33352, subd. b; italics added.) More support is now required, but the City seems to have been operating under the previous version of the law.

The requirements for the RTC containing an attached map showing blight conditions prior to the hearing were admittedly not met. However, the City appears to argue on appeal that the administrative record as a whole sufficiently and substantially supports the Amendment, because this court should find it determinative that the original boundary parcel map was given to affected landowners with the notice of hearing, and

later, four more detailed maps were provided to the public a week before the adoption of the Amendment in July (showing the four alleged blighting conditions, under § 33031 definitions).

In its related due process ruling, the trial court determined that the publication of the RTC only three business days before the public hearing, and the failure by the City to provide any underlying data or the required maps at that time, "created an unreasonable risk of erroneous deprivation" of CYAC's procedural due process rights. In any case, the trial court said that with respect to the validation claims, even if the late filed maps were considered, they still did not contain any substantial evidence "that there is a substantial amount of this blight or that this blight cannot be eliminated without the use of eminent domain." (§ 33030, subd. (b).)

We reject the City's positions that it substantially complied with the CRL requirements, or that overall, the administrative record supports the Amendment. First, under section 33352, subdivision (b), regarding the provision of information by the redevelopment agency to the legislative body (City), the RTC was mandated to include the following: a description of the physical and economic blighting conditions in the project area, including "*a map showing where in the project the conditions exist.*" This description shall contain "specific, quantifiable evidence" documenting the conditions, and showing that the "physical and economic conditions are so prevalent and substantial that, collectively, they seriously harm the entire project area." (§ 33352, subd. (b).) The boundary parcel map originally sent out by the City with notice of the hearing, and provided to the City Council in the RTC, did not show any such conditions. The maps

later sent out to the public July 10, before the final approval of the Amendment on July 17, delineated the four types of conditions relied upon: structural obsolescence, incompatible adjacent uses, deterioration and dilapidation, and defective design without parking. (§ 33352, subd. (b); however, parking is now a relevant concern only with regard to development standards under § 33031, subd. (a)(2).) Some of these four condition maps were apparently supported by the field surveys, which were unavailable to CYAC. (See also pt. III, *post,* PRA topic.)

With respect to the map requirement for the RTC, section 33457.1 additionally required that, "*To the extent warranted by a proposed amendment to a redevelopment plan* . . . the reports and information required by Section 33352 shall be prepared and made available to the public *prior to the hearing on such amendment.*" (Italics added.) Thus, the trial court was required to make a statutory interpretation of section 33457.1, to rule on the extent that this Amendment "warranted" disclosure of the information required by section 33352, and when. The court reasonably concluded that it was not enough, under this statutory restriction, for the City not to disclose that required information with maps until a week before the approval of the Amendment. Earlier, the City had provided a different map and an incomplete RTC three business days before the public hearing of June 19, but that was not enough to constitute substantial compliance with either of those requirements.[16]

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16 In our discussion of the due process arguments on appeal (pt. IV, *post*), we will address to the extent necessary CYAC's argument that we should judicially impose a time deadline for disclosure of reports, as an interpretation of section 33457.1 (such as 60-90

The City relies on *Blue, supra,* 137 Cal.App.4th at page 1145, to argue that even though the map was not timely provided nor a continuance granted, CYAC was able to prepare extensive opposition and objections, it could have conducted more of its own investigation, and thus it should not be deemed to have suffered any prejudice in preparing its opposition. However, the court could reasonably have concluded, and impliedly did, that a more focused investigation would have been possible if the statutory compliance had been forthcoming, with the use of a map identifying the location of the blighting conditions being relied upon in the RTC. We agree with the findings of the trial court that this sequence of events in the processing of the Amendment did not qualify as excusable error that would permit validation of the Amendment, and it also did not constitute such "error, irregularity, or omission which does not affect the substantial rights of the parties," that accordingly could properly be "disregarded" by the court hearing the action. (Code Civ. Proc., § 866.) The Interested Parties were similarly entitled to more specific descriptions of blight before the hearing.

We are supported in this conclusion by the legislative history of the 2006 amendments to the CRL showing, in relevant part, that more stringent definitions and quantifiable factual support for alleged conditions of economic and physical blight are now required, so that interested public members are kept informed of potential redevelopment changes affecting them. (*Glendora, supra*, 185 Cal.App.4th at p. 832; Historical and Statutory Notes, 41 West's Ann. Health & Saf. Code (2010 ed.) foll.

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days). (But see *Glendora, supra,* 185 Cal.App.4th at p. 831 [such policy decisions are generally delegated to the Legislature, not the courts].)

§ 33030, p. 451 ["It is the intent of the Legislature, in amending Sections 33030, 33031 . . . , 33352, 33367 . . . of the Health and Safety Code *to restrict the statutory definition of blight and to require better documentation of local officials' findings regarding the conditions of blight*. The legislative purpose of these statutory amendments is to focus public officials' attention and their extraordinary redevelopment powers on properties with physical and economic conditions that are so significantly degraded that they seriously harm the prospects for physical and economic development without the use of redevelopment." (Italics added.)].)[17]

*2. Defects in Data Provided Under CRL Definitions of Blight*

The trial court ruled the administrative record did not contain any substantial "specific, quantifiable evidence about the location and prevalence of the alleged blighting conditions," under the definitions of section 33031, subdivision (a)(1), for physical blight. In reaching these conclusions, the court adopted the approach set forth in *Glendora, supra*, 185 Cal.App.4th at pages 835 through 836, and in *Blue, supra,* 137 Cal.App.4th at page 1147 and pages 1149 through 1150, that the meaning of "significant" remaining blight in an amended project area (as required for the use of redevelopment eminent

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17 Under section 33367, an amendment to the ordinance shall contain, inter alia: "(d) The findings and determinations of the legislative body, which shall be based on clearly articulated and documented evidence, that: [¶] (1) The project area is a blighted area, the redevelopment of which is necessary to effectuate the public purposes declared in this part. [¶] . . . [¶] (11) The elimination of blight and the redevelopment of the project area could not be reasonably expected to be accomplished by private enterprise acting alone without the aid and assistance of the agency. [¶] . . . [¶] (14) The implementation of the redevelopment plan will improve or alleviate the physical and economic conditions of blight in the project area, as described in the report prepared pursuant to Section 33352."

domain powers under section 33333.2, subdivision (a)(4)), can be gleaned from the basic definitions of blight contained in sections 33030 and 33031. The court also correctly observed that section 33352 now requires substantial evidence of specific quantification of blight conditions. (§ 33333.2, subd. (a)(4).) This was reflected in the 2006 amendments to the CRL, adding to section 33352, subdivision (b), this language: "The description [in required reports on the proposed specific amendment/project] shall contain *specific, quantifiable evidence* that documents both of the following: (1) The physical and economic conditions specified in Section 33031. (2) That the described physical and economic conditions are so prevalent and substantial that, collectively, they seriously harm the entire project area." (Italics added; Stats. 2006, ch. 595, § 7(b), p. 3780.)

In its statement of decision, the court exhaustively analyzed the types of blighting physical conditions set forth in the RTC and administrative record, under section 33031, subdivision (a)(1): "Buildings in which it is unsafe or unhealthy for persons to live or work," and subdivision (a)(2) "[c]onditions that prevent or substantially hinder the viable use or capacity of buildings or lots." The missing RSG/City field surveys were not in the administrative record, and the court criticized the City's overall showing on physical blight, such as duplicative photographic evidence that did not show the claimed serious dilapidation and deterioration of buildings, and that did not show the required nexus between the deterioration conditions and evidence showing that they rendered those buildings unsafe or unhealthy. Consequently, those blight findings were not supported by "tangible proof." (*Glendora, supra,* 185 Cal.App.4th at p. 836.) Indeed, the court found

the supporting "evidence" in the RTC for the City's claims of structural obsolescence to be mainly jargon and conclusory statements, which failed to satisfy statutory requirements. (*Riverside, supra,* 65 Cal.App.4th at p. 627.) The City does not adequately respond to those findings, mainly arguing instead that the Brownfields Studies should have been admitted (as next discussed).

In *Blue, supra,* 137 Cal.App.4th at pages 1142 through 1143, the court discussed pre-2006 CRL statutes and interpreted them as not expressly requiring raw data, such as field surveys, to be provided to the public before an amendment hearing is held (§ 33457.1), nor requiring such data to be provided if referenced in the report to the legislative body. (§ 33352.) In that case, the plaintiffs had been able to prepare adequate opposition, even without obtaining the raw data underlying the reports, and no prejudice to the substantial rights of those parties was found. (Code Civ. Proc., § 866.) Our case is different, and the recent amendments to section 33352 undermine this portion of the holding of *Blue* because now, the Legislature has made clear that better documentation of blight conditions is required, and "specific, quantifiable evidence" of prevalent, serious blighting conditions harming the entire project area must now be presented to support such an amendment. This was not done here to meet the amended standards added to section 33352, subdivision (b).

*3. Effect of Brownfields Studies Rulings*

As previously stated, the trial court declined to admit trial exhibit No. 501 (2005 Brownfields Studies), as evidence or as part of the administrative record, and it declined to take judicial notice of its contents. However, the trial court allowed the City in its

closing argument to discuss the effect of the mentions of the Brownfields Studies in the RTC, in terms of proof of economic blight conditions, and we briefly address those issues. (§ 33031, subd. (b); but see fn. 3, *ante*, regarding our denial of judicial notice of Brownfields Studies on appeal.)

In the briefs on appeal, the parties continue to dispute whether the Brownfields Studies were properly excluded, on either physical or economic blight issues. The City did not show that the studies were part of the 2007 redevelopment decisional process, but argues they could have been considered, since they already existed, and it was possible the hazardous conditions discussed in them regarding the harbor district (10 percent of the project) were relevant. (See *Franklin-McKinley School Dist. v. San Jose* (1991) 234 Cal.App.3d 1599, 1606-1608 [allowing incorporation of a general plan into an administrative record regarding redevelopment plan, because it was the city's underlying general planning document].) However, the trial court denied the City's request to take judicial notice of them, reasoning that the City should be judicially estopped from relying on the studies, because of its previous in limine motions excluding anything from the reverse validation proceedings that was not in the administrative record. The trial court was justified in that discretionary ruling. (See *Blix St. Records Inc. v. Cassidy* (2010) 191 Cal.App.4th 39, 47.)

Even if the Brownfields Studies had been considered to be part of the administrative record that supported an economic blight finding, (§ 33031, subd. (b)(2) [(hazardous wastes]), there was no still physical blight finding that was substantially supported by quantifiable data. Also, the studies would not properly be judicially noticed

for their truth about blight issues. (*Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063.) We find no error or abuse of discretion in the trial court's decision to exclude the Brownfields Studies from the administrative record, because they would not have added materially to the City's demonstration of blight conditions.

D. Analysis: Cross-Appeal on Economic Blight

To attack the trial court's economic blight "erroneous ruling" (§ 33031, subd. (b)(7)), CYAC says the crime statistics relied on should have been only project-wide, not City-wide, under the language of section 33030, subdivision (b), as interpreted in cases such as *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 555-556. (Also see § 33352, subd. (b) [referring to blight in the "project area."].)

We need not address this issue, because the issues previously discussed in connection with the City's unsuccessful appeal of the reverse validation order are dispositive. There was no adequately supported condition of physical blight in the administrative record, and for a valid Amendment, findings on both serious, significant remaining physical and economic blight, burdening the community and necessitating redevelopment, were required. (§§ 33030, subd. (b); 33333.2, subd. (a)(4).) There is no need to resolve the additional claims in the cross-appeal.

## III

## *PRA ISSUES*

### A. Introduction

As a separate and independent ground of the judgment, the trial court issued declaratory relief that the City violated PRA statutory standards, when the City did not produce, upon request, some of the raw data that underlay the RTC conclusions and the enactment of the Amendment. The attorney fees awards against the City are based on private attorney general theories (Code Civ. Proc., § 1021.5) and also a PRA provision (Gov. Code, § 6259, subd. (d)). There is some unavoidable overlap between these PRA issues and the CRL ruling that we have already discussed (pt. II, *ante*). Our review of the PRA ruling in favor of CYAC addresses the trial court's decision to issue declaratory relief strictly as it is reflected in the terms of the judgment, not in all of its broadly stated reasoning in the statement of decision. (*D'Amico*, *supra*, 11 Cal.3d at p. 19; see fn. 8, *ante*.)

The trial court ruled that both types of this underlying raw data constituted public records, (1) the property-by-property field surveys of the Amendment area (held and stored by the City's consultant, RSG, then destroyed), and (2) property-by-property crime data for the three years prior to the PRA request (held by the City's police department's crime analyst, and used by her to prepare the three-year chart that she sent to RSG for inclusion in the RTC; that underlying data was not found when requested). The court found that the CYAC requests for such material, among 22 or more categories of records, over a period of two or three months, were reasonably clear, but the City had not

responded with reasonable searches and was not justified in failing to require that the known custodians of the existing records should produce them. Injunctive relief was denied because there was no prospective problem shown. (Gov. Code, § 6253.1.)

On appeal in these respects, the City protests that it produced numerous documents to CYAC and should not have been faulted for failing to additionally provide the data its consultant discarded or the crime data, which it did not consider to be meaningful to anyone outside its police department. Under Government Code section 6253.1, the City has the duty to respond to requests for disclosure of the information in public records, including assisting the requester in formulating reasonable requests, because of the City's superior knowledge about the contents of its records. The City's duty requires it to communicate the scope of the information requested to the custodians of its records, who may include private retained consultants, but the City need not forward the exact language of a request, which may not have been accurate. (*ACLU, supra,* 202 Cal.App.4th 55, 82-83.) No exact duplication or "parroting" of the precise language of the requests by the agency to its known custodians is required, but the agency is obligated to make reasonable efforts toward clarification and production. (*Id.* at pp. 85-86, fn. 16.)[18] We agree with the trial court's analysis of the record that the evidence demonstrated that the City's efforts fell short of that accepted standard.

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18 As will be discussed, the statement of decision imposes an overly broad interpretation of the PRA, holding "that a reasonable search requires the agency to: (1) ask the known custodian of records for (2) *the documents requested in the PRA request.*" The PRA does not require an agency to convey to the custodian or consultant the identical language of the request.

B. PRA Law; CRL Context

The PRA defines "public record" as "any writing *containing information relating to the conduct of the public's business* prepared, owned, used, or retained by any state or local agency." (Gov. Code, § 6252, subd. (e); italics added.) "The definition is broad and ' " 'intended to cover every conceivable kind of record that is involved in the governmental process[.]' " ' " (*Coronado Police Officers Assn. v. Carroll* (2003) 106 Cal.App.4th 1001, 1006.) "[A]ll public records are subject to disclosure unless the Legislature has expressly provided to the contrary." (*Williams v. Superior Court* (1993) 5 Cal.4th 337, 346; Gov. Code, § 6253, subd. (a).)

In Government Code section 6254, specific exceptions to the PRA's policy of disclosure are enumerated, and in Government Code section 6255, a "catch-all exception" allows a governmental agency "to withhold a record if it can demonstrate that 'on the facts of a particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.' " (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 652; italics omitted.) Generally, " 'exemptions are construed narrowly, and the burden is on the public agency to show that the records should not be disclosed.' " (*California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 167 (*California First Amendment Coalition*).)

In *Blue, supra*, 137 Cal.App.4th 1131, similar PRA issues arose in the context of a redevelopment agency reverse validation action. There the court confirmed that PRA requests are a proper method for seeking information about the underlying raw data that were utilized to support an agency's redevelopment decisions. The court also clarified

that "the real 'raw data' was not the [field surveys], but rather, the existing conditions at the properties in the project area," which could independently be observed by opponents of a blight designation. (*Id.* at p. 1144.) However, the 2006 amendments to the CRL, section 33352, subdivision (b) now require more "specific, quantifiable evidence" in support of a blight designation than did the court in *Blue*, which was interpreting prior law. (See fn. 1, *ante*.)

In this case, we are presented not with a traditional claim of exemption of records, but rather with a question of the reasonableness of a given set of requests and responses. Under Government Code section 6253, subdivision (b), an agency has the duty to respond to "a request for a copy of records that reasonably describes an identifiable record or records . . . ." Government Code section 6253, subdivision (c) allows the agency to determine whether the request, in whole or in part, seeks copies of disclosable public records in its possession, and then to make them available within 10 days from receipt of the request. Where more time is needed, to the extent reasonably necessary to the proper processing of the particular request, that time limit may be extended by written notice. (*Ibid.*) Government Code section 6253, subdivision (d), provides: "Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records." In *CBS, Inc. v. Block, supra*, 42 Cal.3d 646, 652, the court said such statutory exemptions "are permissive, not mandatory. The Act endows the agency with discretionary authority to override the statutory exceptions when a dominating public interest favors disclosure."

Government Code section 6253.1, subdivisions (a) and (b) set forth additional requirements encouraging production of records, over those of Government Code section 6253: "(a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that *reasonably describes* an identifiable record or records, shall do all of the following, *to the extent reasonable under the circumstances: [¶] (1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated. [¶] (2) Describe the information technology and physical location in which the records exist.* [¶] (3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought. [¶] (b) The requirements of paragraph (1) of subdivision (a) shall be deemed to have been satisfied if the public agency is unable to identify the requested information *after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records.*" (Italics added.) Government Code section 6253.1, subdivision (c) states these requirements are in addition to those of section 6253.

In a case in which an agency has deliberately withheld its public records, Government Code section 6255, subdivision (a) requires it to justify the same "by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."

Here, the trial court did not find there had been any deliberate withholding of public records by the City. Rather, it ruled in connection with its due process holding that there had been City neglect, indifference or inadvertence in conveying the requests to the respective custodians of the records (field surveys and raw crime data). In the PRA context, we inquire into the scope of the searches as they were understood by each side. In *ACLU, supra*, 202 Cal.App.4th 55, 59, the court remarked, "The scope of the search agencies are required . . . to undertake need only be reasonably calculated to locate responsive documents [citation], and it is often not easy to say what is reasonable in the circumstances. The difficulty in this area also arises from the fact that the scope of the search is determined by the scope of the request. Because the requestor may not know what documents or information of interest an agency possesses, he or she may be unable to provide the specificity an agency may require."

In this light, we examine the statutory requirements on a de novo basis, and then evaluate the record for any substantial evidence support for the trial court's conclusions. (*San Diego County Employees Retirement Assn. v. Superior Court* (2011) 196 Cal.App.4th 1228, 1237, 1241-1242 [statutory interpretation issues are questions of law subject to independent review, while the reviewing court accepts as true any trial court findings of the "facts of the particular case," where supported by substantial evidence]; *ACLU, supra*, 202 Cal.App.4th 55, 66 [substantial evidence standard used for trial court factual determinations].)

C. PRA Requests and City's Responses

*1. Background of RTC; Initial Production of Documents*

The RTC stated it had relied on six major sources in the analysis and assessment of different types of blight conditions remaining in the Amendment area, including as relevant here, "the April 2007 field survey by RSG," and "Information from the [City] Police Department." From May through August 2007, CYAC requested many forms of data in its numerous PRA requests to the City, for over 20 categories of documents. Upon receiving the notice to property owners of the June 19, 2007 hearing, CYAC's official Casillas informally and then on May 23 formally requested documents referenced in that notice, including a copy of the City's "blight studies" together with the "negative declaration" report and "CDC's most recent report." In response to CYAC's May 23 request, and others later, the City disclosed more than 1,200 pages of documents.[19]

On June 15, 2007, CYAC sent three separate PRA requests to the City: (1) its fire department (regarding hazardous materials), (2) its building and safety department (regarding building code violations), and (3) its police department (regarding crime rates and "a property-by-property breakdown of crime in the shaded area over the last three years"). Each of these sought "any data provided to [RSG]" or to the agency, and also referred to "the shaded area" of the boundary parcel map sent out with the notice.

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19 CYAC made other PRA requests June 7, June 15 and June 29, but they are not directly involved in this appeal and need not be discussed in detail, except to note that CYAC used a broadsword approach, not the narrowly targeted one that its respondent's brief represents occurred here. The Interested Parties did not participate in the PRA disputes. (See fn. 8, *ante*.)

On July 27, 2007, CYAC's attorneys sent a lengthy status letter to the City discussing a number of the requests already made to the City. Although some responsive materials had been produced, the raw property-by-property survey data prepared by RSG had not been provided and were again requested, along with other documents.

In its ruling, the trial court determined that the City's response to the May 23, June 15 and July 27 requests violated the PRA because the City did not "diligently search for and produce" the requested documents, that were known to exist and that were under the control of its employees or its consultants. For purposes of this appeal, we need not summarize all the PRA requests or responses, but focus upon the requests that are the subject of this appeal, that pertain to the two types of raw data that were not provided, for various reasons.

*2. Field Surveys*

RSG's contract with the Commission gave that agency the property rights to the memoranda, reports, maps, etc. prepared by RSG for the project, all of which was to be turned over to the agency upon completion of the project. RSG used software to process data and to convert field studies from raw data into the documents submitted into the record. The field surveys of blight conditions prepared by RSG were referred to in the RTC as part of the methodology used in creating it. RSG used the 2005 field study as a base and added the 2007 data to it, but it could not later determine what data had been added from the 2007 field surveys.

In the June 15 Fire Department and Building Department requests, CYAC sought "any data provided to [RSG]" or to the commission regarding hazardous materials in the

City, or code violations. The City and Commission staff started to locate and provide CYAC with some responsive documents. Around July 10-12, a representative of the City Attorney's office asked RSG to hold onto its backup data or field notes. On July 17, 2007, the City's redevelopment manager Patricia Beard (Beard) sent an e-mail to RSG requesting the back-up data. This was done the same day that the Amendment was approved by the City Council. However, the PRA dispute raged on.

On July 27, 2007, CYAC's status letter to the City discussed a number of the requests it had made to the City, including those for the "raw property-by-property survey data that the consultant RSG used to write the 2007 [RTC]." CYAC's attorney stated that such field surveys of blight conditions had not been supplied.

On August 9, 2007, Beard sent another e-mail to RSG, requesting everything in RSG's files from the 2005 and 2007 Amendments. This request was copied to Frank Spevacek, president of RSG. He testified that only general requests were made to RSG for their files, and he did not understand this request to include any property-by-property field surveys. Beard followed up on CYAC's request by asking her administrative assistant to call RSG's staffer Walter Lauderdale, but it is not clear whether this was done. Nothing further was received from RSG. Their field surveys were later discarded, possibly between June or July of 2007 and May 2008.

*3. Crime Data*

In the RTC, the City referred to a "Table B-3" of crime statistics from 2006, showing the City's crime rates were higher than those of surrounding communities for certain offenses and further, a disproportionate share of the City's crime occurs within the

boundaries of the Amendment area. However, the table referred to does not appear in the RTC copies in the record. It was created from a chart of three years of crime data, dated May 8, 2007, "Part 1 Crime Statistics" in the target redevelopment area and City-wide, as provided by the City's police department crime analyst (the three-year chart). The three-year chart was admitted at trial as exhibit No. 14.

In the June 15 police department PRA request, CYAC requested four categories of information: "any data provided to [RSG]" or to the Commission in the last year regarding crime rates in the City. Next, by using the May 2007 notice copy of the boundary parcel map, it sought: "(2) Any data on the rate of crime *in the shaded area on the map* (map provided). (3) A property-by-property breakdown of crime *in the shaded area* over the last three years. (4) Numbers of parking and traffic violations issued *in the shaded area* over the last three years." (Italics added.)

The City's assistant city attorney responded on June 21, 2007, as follows: "You have requested documents from us in a manner that is vague and ambiguous as to what documents are inclusive to your request. For example, I am unclear as to the address of the documents requested via a *'shaded area'* in your attachment. I cannot ascertain the addresses in such shaded areas by inspection of the map you have attached. As such, I need clarification as to the category of items 2-4 as to the exact addresses intended. . . . Item 1 also refers to crime rates. If such crime statistics have not been created by the Department, the City is not required by law to create them for a Public Records Request. If they exist, you are, however, entitled to inspect them." (Italics added.)

On June 29, 2007, CYAC answered: "Regarding Request Number 2, that request is based on the statement in the [RTC] that the Police Department gave an estimate of the crime rate in that area. I do not know in what form the Police Department may have provided the information, *but I would like to receive it in whatever form it was provided.* [¶] Regarding Requests Numbers 3 and 4, unfortunately, I do not have the addresses. *If you are able to locate the responsive documents to Request Numbers 1 and/or 2, that would hopefully encompass the responses to Requests 3 and 4.* Also, although I do not have the number addresses, the addresses certainly include any address on National City Boulevard, any address on Civic Center Drive, [etc.]." (Italics added.)

On July 17, 2007, Beard e-mailed two RSG staffers, Lauderdale and Zachary Mikelson, to request back-up data for the "crime table" information mentioned in the RTC. On July 18, 2007, Beard was told by RSG staffer Mikelson that he received the three-year chart (crime statistics) from crime analyst Molli Knobbe (Knobbe) of the police department. She had used raw crime statistics to create the three-year chart, and RSG received and used it to create its table of 2006 crime statistics for the project area, which underlay its RTC conclusions.

On July 19, 2007, the City Attorney's office requested that Knobbe provide it with "any of the data you provided below to this company [RSG]." Knobbe forwarded to the City Attorney the information (the three-year chart) she had provided to RSG on May 8, 2007. When asked if she had provided any other information to RSG, Knobbe replied, "That was it."

On July 24, 2007, the City Attorney's office forwarded Knobbe's crime data information to CYAC, including the three-year chart containing crime statistics in the target redevelopment area and City-wide, as well as a list of properties by parcel number.

On July 27, 2007, CYAC's attorneys sent a letter to the City discussing a number of the requests made to the City, including those to the City's police department, and informed the City that it had satisfied the June 15, 2007 requests 1 and 2 to the police department (crime rates in City and shaded map area), *but it had not produced anything in response to requests 3 and 4 (property-by-property breakdown of crime in the shaded area over the last three years, and parking/traffic violations).*

On August 9, 22 and 27, 2007, the City supplied three more sets of documents to CYAC for inspection. On September 25, 2007, CYAC filed its lawsuit claiming in the seventh cause of action that the City had failed to provide responsive documents.

*4. Additional Trial Evidence*

Regarding the field surveys, the president of RSG, Spevacek, testified they had remained in its possession for a time, but were not made part of the RTC. Accordingly, RSG started to discard them when the project closed out in July 2007, and in 2008, RSG completed its office cleanup by purging its paper and physical data after the information was entered into the computer and the computer program updated. He did not recall receiving any request for "everything in your files." RSG did not believe it needed to ascertain if it could provide that 2007 raw data.

At trial, Knobbe testified that the three-year chart she prepared included crime statistics of particular offenses, not crime rates. Crime rates were prepared City-wide

twice a year. Once she sent off the three-year chart as requested, she would not normally have sent to the City Attorney any backup data she had used to create the three-year chart, because she did not think anyone else could make sense of it. However, she still had that backup data in her file cabinet in August 2007, and could have sent it if anyone asked for it.

D. Special Considerations: Possession and Control of Public Records

Generally, public records must be described clearly enough to permit the agency to determine whether the writings or information of the type described in the request are under its control. (*California First Amendment Coalition, supra*, 67 Cal.App.4th 159, 165-166.) "However, the requirement of clarity must be tempered by the reality that a requester, having no access to agency files, may be unable to precisely identify the documents sought. Thus, writings may be described by their content. The agency must then determine whether it has such writings under its control and the applicability of any exemption. An agency is thus obliged to search for records based on criteria set forth in the search request." (*Ibid.*)

"Records requests, however, inevitably impose some burden on government agencies. An agency is obliged to comply so long as the record can be located with reasonable effort." (*California First Amendment Coalition, supra*, 67 Cal.App.4th 159, 166.) An agency may legitimately raise an objection that a request is overbroad or unduly burdensome. (*Ibid.*) However, the courts need not take literally a request's language to deem it clearly excessive, but instead should construe the request reasonably,

in light of its clear purposes: "Feigned confusion based on a literal interpretation of the request is not grounds for denial." (*Id.* at pp. 166-167.)

Certainly, there was confusion here, some genuine and perhaps some that was feigned. The City is not claiming that the requested information was exempt from disclosure, but instead that it could not reasonably have been expected to locate it or produce it, either because the requests were confusing, its consultant was to blame, or the crime data was incomprehensible. The effect of the City's inability or unwillingness to locate the records had the same effect as withholding requested information from the public. (*ACLU, supra*, 202 Cal.App.4th 55, 85.) "[I]f an agency's claim that information is beyond *the scope of the request* can be sustained without the detailed justification necessary to sustain a claim that information is exempt or not segregable, agencies could use such claims to relieve themselves of the need to provide the 'detailed justification' ordinarily required to withhold information." (*Ibid.*) The focus should be on the criteria in the request and the description of the information, as reasonably construed, and the search should be broad enough to account for the problem that the requester may not know what documents or information of interest an agency possesses. Without certain knowledge of the nature of the documents, the requester may be unable to provide the specificity an agency may require. (*Ibid.*)

In construing a disclosure request, the policy of the PRA requires the courts to consider the information that is being requested, not only the precise type of records that must be provided. (*Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1072 (*Haynie*).) For example, an agency may be required to produce the "substance" of complaints and

the " 'factual circumstances surrounding the crime or incident,' " even if a requested arrest record is exempt from disclosure. In enacting exemption provisions, "the Legislature 'required the disclosure of information derived from the records while, in most cases, preserving the exemption for the records themselves.' " (*Ibid.*; italics omitted.)

"It is well-settled that if an agency has reason to know that certain places may contain responsive documents, it is obligated under FOIA to search barring an undue burden. [Citations.]" (*Valencia-Lucena v. U.S. Coast Guard* (D.C. Cir. 1999) 180 F.3d 321, 327; compare *Iturralde v. Comptroller of Currency* (D.C. Cir. 2003) 315 F.3d 311, 315 (*Iturralde*) ["[I]t is long settled that the failure of an agency to turn up one specific document in its search does not alone render a search inadequate. [Citations.] Rather, the adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search. [Citation.] After all, particular documents may have been accidentally lost or destroyed, or a reasonable and thorough search may have missed them."].)[20]

In *ACLU, supra*, 202 Cal.App.4th 55, the court relied on FOIA legal standards as persuasive: " '[W]hether the requestor has been specific enough so that a professional employee of the agency, familiar with the general subject area, could reasonably be expected to find the desired documents.' " (*Id.* at p. 85, fn. 16; see *Sierra Club v.*

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20 In *Citizens Commission on Human Rights v. FDA* (9th Cir. 1995) 45 F.3d 1325, 1327, an agency's search for requested documents was considered to be reasonable, even though it was unable to produce all of the requested documents, because of the complexity of the 1,000-volume file that had to be searched, having an index of 482 pages, and referring to over 300,000 pages of undisclosed documents, some of which were privileged.

*Superior Court* (2013) 57 Cal. 4th 157 [Supreme Court decided that a PRA statutory exemption for "computer software" in § 6254.9, subd. (a) (a term which included computer mapping systems under § 6254.9, subd. (b)), did not also apply to the mapping database in a certain file format; the underlying database material had to be disclosed, while the computer software required to manipulate the database remained properly exempt from disclosure].)

In *Consolidated Irrigation Dist. v. Superior Court* (2012) 205 Cal.App.4th 697, 709 (*Consolidated Irrigation Dist.*), the appellate court addressed the issue of whether, under the PRA, " 'the files of consultants retained to prepare an EIR for the City are "public records" that the City has a duty to seek [and] obtain to respond to a public records request.' " In that case, there were two levels of consultants whose files were sought, the primary consultant and the subconsultants. The court was not required to address any issue concerning the primary consultant's files( those issues were moot due to access granted). With respect to the subconsultants' files, the court looked to the nature of the contractual relationship between the public entity and the subconsultants, to decide the PRA issues of (1) whether the files of the subconsultants were " 'in the [actual or constructive] possession of the agency' for purposes of Government Code section 6253, subdivision (c)"; and (2) the nature of the agency's right, if any, to control the files and records of the subconsultants. (*Consolidated Irrigation Dist., supra,* at p. 710.)

In *Consolidated Irrigation Dist.*, the record substantially supported a finding that the agency lacked control over the subconsultants' records. The operative contract stated the primary consultant, Land Use Associates, was an independent contractor, and there

was an implied finding that the City agency did not control the subconsultants or their files, and could not be required to produce them. (*Consolidated Irrigation Dist., supra,* 205 Cal.App.4th at p. 711.) The case is distinguishable on its facts, but it indicates that the contractual relationship of a public agency and its private consultant is important in determining the agency's duty of disclosure.[21]

E. Extent of City's PRA Obligations to Communicate with Custodians

In its related federal due process findings, the trial court said the City had failed to respond promptly to PRA requests for crime data and property survey information, and it unjustifiably claimed the survey data were not public records, and it had failed to secure that information during litigation to prevent it from being destroyed. (See pt. IV, *post.*) We next examine those factual conclusions, but in the PRA context.

Under Government Code section 6253.1, the City had the duty to assist a requester such as CYAC to formulate reasonable requests and to respond accordingly, by communicating the scope of the public information requested to the custodians of its records. Reasonableness goes both ways, and we disagree with CYAC that only a very few of its requests need be evaluated: July 27 regarding field survey data, and June 15 and July 27 with regard to crime data. The facts are otherwise, because the May 23 request included "all blight studies" and the June 15 requests included not only crime data, but also all materials provided to RSG regarding hazardous materials and building

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21 With reference to its fees motion, CYAC claims the case before us represents the first California PRA trial court ruling about a third party consultant's custody of public records, and the PRA obligation to disclose such records.

code violations (physical blight). Even if the precise "field survey" term did not appear in the requests until July 27, it had become clear after the May 23 request that CYAC was seeking information backing up the field surveys, as they had been referred to in the RTC as source material. CYAC cannot now claim that its July 27 request was the only operative one and the others were irrelevant, since the July 27 request clarified the earlier ones. (See *Galbiso v. Orosi Public Utility Dist.* (2008) 167 Cal.App.4th 1063, 1088 (*Galbiso*) ["[A] person who seeks public records must present a reasonably focused and specific request, so that the public agency will have an opportunity to promptly identify and locate such records and to determine whether any exemption to disclosure applies."].)

The record also shows that the trial court previously denied CYAC's motion for sanctions for alleged spoliation of such "critical evidence." The court found no evidence from which it could reasonably infer intentional or willful conduct by City agents or employees that was directed toward destroying either the raw data used by the consultant (field surveys) or any data compiled by the City police department (crime statistics). Accordingly, the whole picture should be examined: Were these public records or information about the people's business, when were they reasonably identifiable, and when were they in the possession or constructive possession of the City? (Gov. Code, §§ 6252, subd. (e); 6253, subd. (c).) The rules of review for statutory interpretation issues apply to questions of law (independent review), but we should accept as true any trial court findings of the "facts of the particular case," if supported by substantial evidence. (*ACLU, supra*, 202 Cal.App.4th 55, 66.)

*1. Records of Consultant RSG*

The court correctly concluded these were public records within the meaning of Government Code section 6252, subdivision (e), concerning the people's business. Although CYAC originally designated its requests as seeking "blight studies," that was not an unreasonable approach in light of the original language of the RTC. It was not enough for the City to respond that the RTC "was" the blight study. The City then appropriately took further action by contacting RSG in an attempt to obtain the underlying data, the field surveys.

Based on the contractual language between RSG and the City's Commission, the City had an ownership interest in the field survey material and it had the right to possess and control it, even though it did not enforce its contractual right. We agree with the trial court that the City did not act reasonably in protecting its contractual rights to retain this material, even if its staff did not intentionally conceal the data. No bad faith finding was required to support the finding there was a PRA violation. (*Iturralde, supra,* 315 F.3d at p. 315.) When the City staff requested that RSG produce all of its files, but without defining the material actually being sought, it failed to take into account that "field surveys" are a term of art in the redevelopment context. (See *Blue, supra*, 137 Cal.App.4th at pp. 1140-1142.) The City gave up too soon and did not press the matter sufficiently, to a reasonable extent, at a time when most of the field surveys, which it owned, still existed.

We are mindful of the press of business of public agencies, particularly in these difficult fiscal times, and do not hold the City to an impossible standard, merely a

reasonable one. The City is not justified in arguing that it did everything it could or should have to do, nor that all the fault lay with its contractor RSG. Moreover, since 2008 (after the requests in this case were made), Government Code section 6253.3 has provided that a public agency "may not allow another party to control the disclosure of information that is otherwise subject to disclosure pursuant to this chapter," showing the trend in the law is toward promoting such disclosure. (See fn. 21, *ante.*)

Notwithstanding the above, the trial court's reasoning or implied ruling that the City had the statutory obligation to forward the PRA request it received, verbatim, to its consultant as a custodian of public records, is not justifiable as an interpretation of this statutory scheme. Instead, the City had the obligation to interpret the request as received, as made by a member of the public that was presumably not familiar with the underlying data, and then to make reasonable efforts to facilitate the location and release of the information. The trial court's declaratory relief that there had been violations of the PRA was justified, but we decline to issue a rule that PRA requests must be passed on exactly as received to the custodians of public records, even those who are private consultants.

*2. Records of City's Police Department*

The record shows that the property-by-property crime reports, requested by CYAC as of June 15, were existing crime data located at the City's police department's crime analyst's office, that were supplied to the City's consultant RSG on May 8, 2007 as transformed into the three-year chart. However, the RSG-created crime table was apparently omitted from the RTC, and the backup crime data was not transferred to the City attorney's office upon request, since the individual crime analyst did not understand

the request to include it. Since the RTC had stated that police records were among the source material relied upon, CYAC had a legitimate basis to request that information.

In response, the City Attorney's office first claimed that it was unclear about what map was being used to identify the information sought, even though only one map had yet been made available (the boundary parcel map; this may have been a stalling tactic). In any case, the City's attorneys eventually sought clarification of the requests, and received the June 29, 2007 response by CYAC that a response to requests 1 and 2 would probably suffice as a response to requests 3 and 4. Next, CYAC's July 27, 2007 letter stating the City had satisfied requests 1 and 2, but requests 3 and 4 were still outstanding.

As of that time, the City's attorneys were already in possession, or should reasonably have been in possession, of knowledge that its own crime analyst Knobbe had used the underlying crime data to create the three-year chart she sent to RSG, and which RSG used to create a table of crime as referred to in the RTC, to serve as a basis for the RTC's conclusions. When the City Attorney's office requested that Knobbe provide it with "any of the data you provided below to this company [RSG]," it mistakenly accepted the same information (three-year chart) she had already provided to RSG on May 8, 2007, and also apparently accepted her interpretation that the data would not have made sense to anyone else. The City could have asked her what raw statistical information underlay the three-year chart or the table, but it did not, and we have no adequate basis to say the data was in fact unintelligible. (See *ACLU, supra*, 202 Cal.App.4th at p. 86, fn. 17 [public data should be produced if possible, even if the court wonders why anyone would want it].)

Even without any bad faith showing, the record discloses that the City did not ask the right questions, even though it presumably had the ability to do so. In the course of its normal PRA response procedure, the City's responding attorneys had actual or constructive knowledge of both the information relevant to the redevelopment proceedings, and the police department's type of data, and how they could have been related. To comply with its existing obligations under Government Code section 6253.1, the City staff would not have been required to create a new set of public records nor to take other action that would have exceeded the duties imposed by the PRA. (*Haynie, supra,* 26 Cal.4th at p. 1072.) This is not a case in which multiple governmental departments and agencies are involved in an exceedingly complex fact pattern, in which an extensive search may be deemed reasonable, even where it did not produce the desired results. In such distinguishable cases, requiring additional work over the efforts made by the public agency would unfairly place an undue burden on it. (See *Citizens Comm. on Human Rights, supra*, 45 F.3d at p. 1327.)

Even though the City was not found to be intentionally obstructionist, neither was it sufficiently proactive or diligent in making a reasonable effort to identify and locate the raw crime data. The trial court was justified in concluding the City failed to meet its disclosure duties under the PRA. However, the trial court's ruling imposed more than a statutory obligation on the City, by ruling or implying that the City had the obligation to forward the same PRA request language to its custodian of records, the police department staff. Instead, the City had the obligation to interpret the request, as made by a member of the public that was not presumably as familiar with the underlying data, and to

facilitate a reasonable effort to locate and release the information. (Gov. Code, § 6253.1.)

The declaratory relief finding that there had been violations of the PRA was justified, but we decline to endorse or establish any rule that PRA requests must be passed on verbatim to the custodians of records, whether they are public employees or private consultants.

## IV

## *FEDERAL PROCEDURAL DUE PROCESS RULING*

### A. Applicable Guidelines

"The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' " (*Mathews, supra*, 424 U.S. 319, 333.) There the Supreme Court said, " ' "[d]ue process," unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.' [Citation.] '[D]ue process is flexible and calls for such procedural protections as the particular situation demands.' [Citation.] Accordingly, resolution of the issue whether the administrative procedures provided here are constitutionally sufficient requires analysis of the governmental and private interests that are affected." (*Id.* at pp. 334-335 [statement preceding the three-part test elements].)

"[T]he Due Process Clause provides that certain substantive rights--life, liberty, and property--cannot be deprived except pursuant to constitutionally adequate procedures. The categories of substance and procedure are distinct. Were the rule otherwise, the Clause would be reduced to a mere tautology. 'Property' cannot be defined

by the procedures provided for its deprivation any more than can life or liberty." (*Cleveland Bd. of Educ. v. Loudermill* (1985) 470 U.S. 532, 541-542 [holding the federal due process clause requires a dismissed employee to receive a pretermination opportunity to respond to charges at a meaningful time; however, mere allegation that nine months was too long to wait to respond failed to state another separate claim for constitutional deprivation of process].) Once it is determined that the due process clause applies, federal standards, not state standards, govern the decision on what process is due. (*Id.* at p. 541.)

"The procedural component of the Due Process Clause does not protect everything that might be described as a 'benefit': 'To have a property interest in a benefit, a person clearly must have more than an abstract need or desire' and 'more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.' " (*Town of Castle Rock v. Gonzales* (2005) 545 U.S. 748, 756 (*Castle Rock*).) "Such entitlements are, ' "of course, . . . not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." ' " (*Ibid.*)

In *Castle Rock*, as here, "the ultimate issue" was whether state law gave to the plaintiff a protectable property interest, for purposes of Fourteenth Amendment remedies. "That determination, despite its state-law underpinnings, is ultimately one of federal constitutional law. 'Although the underlying substantive interest is created by "an independent source such as state law," federal constitutional law determines whether that interest rises to the level of a "legitimate claim of entitlement" protected by the Due

Process Clause.' [Citations.] Resolution of the federal issue begins, however, with a determination of what it is that state law provides." (*Castle Rock, supra*, 545 U.S. 748, 756-757; italics omitted.) There, the court also expressed and explained "our continuing reluctance to treat the Fourteenth Amendment as ' "a font of tort law" ' " (*id.* at p. 768), while recognizing that the states have the power to provide plaintiff-victims with personally enforceable remedies. (*Id.* at pp. 765-768 [but noting there was no existing statutory right of a "protected person" to enforce a domestic violence restraining order].)

In *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152 (*Clark*), the court explained that a violation of state administrative hearing protections does not always give rise to liability under the federal Constitution: "Obviously, this is not the first time a plaintiff has attempted to convert a state law claim into a federal case of constitutional proportions. [Citation.] However, we conclude that while the City violated state law by failing to provide a fair hearing, it did not offend the federal Constitution, on either procedural or substantive due process grounds." (*Id.* at p. 1178.) Thus, a "state law requirement that a public entity conduct hearings in a fair manner does not automatically implicate the federal due process clause. . . . [B]efore reaching any question about the fairness of a particular proceeding under the federal Constitution, we must first address whether a protected interest--life, liberty, or property--is implicated. If no such interest is involved, then the procedural protections of the due process clause do not come into play." (*Ibid.*, citing *Board of Regents v. Roth* (1972) 408 U.S. 564, 569-578.)

B. Issues Now Presented

As already explained, the trial court ruled the City had violated "CYAC's right to procedural due process under the Fourteenth Amendment with respect to its failure to timely provide the maps with the RTC, *which were required by statute*." (Italics added.) The court also referred to the lack of "other blight condition information" in the RTC. In a related ruling, the court concluded that "at a minimum, a continuance of the public hearing upon request was required."

However, since the City had met all the basic notice requirements of section 33452, and CYAC had been given notice by late April-early May of the June 19, 2007 hearing on the Amendment, the court ruled that CYAC had "sufficient time to undertake its own investigation to present evidence to the City Council."[22] Thus, the court declined to issue a broader procedural due process ruling that would have imposed any additional specific time requirements on the City to make the RTC available to the public, "prior to the public hearing," such as by impliedly adding to the language of section 33457.1. (*Blue, supra,* 137 Cal.App.4th 1131, 1142-1144.)[23] Since CYAC had been able to prepare and present extensive opposition, the court restricted its ruling to a finding that CYAC was not afforded the requisite due process with respect to the failure

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22 The RTC and agenda items were made available three business days before the public hearing, pursuant to the standards of the Brown Act. (Gov. Code, § 54954.2, subd. (a).)

23 CYAC seeks imposition of a rule for 60-90 days' mandatory notice under the PRL. This would in effect require this court to act as a legislative body making policy decisions, and we shall reject that claim *post*. (*Glendora, supra*, 185 Cal.App.4th at p. 831.)

to timely provide the maps and other statutorily required blight condition information with the RTC. (§ 33352, subd. (b).)

In its earlier denial of summary adjudication to the City of the CYAC constitutional claims, the court had identified remaining factual issues about whether, on this record, the statutory requirements satisfy due process requirements. Later at trial, the court heard expert testimony from CYAC's land use consultants about their estimates of the time it would take to prepare adequate responses to the RTC, as well as other testimony about the nature of CYAC's property interest within the proposed Amendment area.

To examine this ruling, we emphasize that CYAC did not plead and prove these were substantive due process violations, such as arbitrary and irrational governmental decision-making. (*Clark, supra*, 48 Cal.App.4th 1152, 1183.)[24] The trial court explained that the arguments being made by CYAC possibly included a facial challenge or an as applied challenge to the terms of section 33457.1, which required provision of the RTC to the legislative body and the public "prior to" the hearing.[25] As noted,

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24 For illustration, compare *County of Sacramento v. Lewis* (1998) 523 U.S. 833, 845 stating "[s]ubstantive due process protects against arbitrary government action"; *Galland v. City of Clovis* (2001) 24 Cal.4th 1003, 1032 (substantive due process violation requires some form of outrageous or egregious conduct constituting "a true abuse of power").

25 " 'A facial challenge to the constitutional validity of a statute or ordinance considers only the text of the measure itself, not its application to the particular circumstances of an individual. [Citation.] " 'To support a determination of facial unconstitutionality, voiding the statute as a whole, petitioners cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular application of the statute . . . . Rather, petitioners must

however, the court rejected any such facial or as applied challenge, which it considered to be broader than the essential procedural due process claim before it, related to the lack of the timely provision of statutorily required maps and "other blight condition information." (§ 33352, subd. (b).)

Accordingly, we are required to address a fairly narrow ruling by the trial court, which found that each element of the test set forth in *Mathews, supra*, 424 U.S. 319, was violated here, due to the lack of timely provision of maps or "other blight condition information." Identification and balancing of the competing interests at stake are required to determine if this procedural scheme for the protection of CYAC's property interest was adequate to ensure a meaningful hearing that met minimum overall standards of fairness in this particular context. (*California Teachers Assn. v. State of California, supra*, 20 Cal.4th 327, 347-348.)

C. Application of Legal Principles: Type of Protectable Property Interest

CYAC chiefly argues that if it had failed to follow its remedies under section 33500, to promptly pursue a cause of action for reverse validation of the Amendment, its property interests would have been immediately harmed by the blight designation.[26] It

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demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions.' " [Citations.]' " (*California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 338.)

26 Section 33500 now provides: "(a) Notwithstanding any other provision of law, including Section 33501, an action may be brought to review the validity of the adoption or amendment of a redevelopment plan at any time within 90 days after the date of the adoption of the ordinance adopting or amending the plan, if the adoption of the ordinance

claims that under section 33368, an unchallenged decision of the City would have been final and conclusive, allowing a conclusive presumption that the project area is a blighted area as defined by section 33031. However, the reverse validation ruling prevented this section 33368 presumption from going into effect to allow any later land acquisition based on blight. (§ 33391.)

More generally, CYAC seems to argue its ownership of property in the Amendment area should give it a protected, heightened interest in participating in an amendment procedure that is in strict compliance with the CRL, in which the City would guarantee the public received only a timely and complete RTC. (§ 33457.1.) We must consider the nature of CYAC's private property interest to be affected by the enacted Amendment, and "the precise nature of the government function involved." (*Cafeteria & Restaurant Workers Union v. McElroy* (1961) 367 U.S. 886, 895.) As we will show, even in light of the statutory limitations period of only 90 days to challenge the blight designation, the record did not show that as a matter of law, an imminent blight designation was so harmful or personalized to CYAC's property interests as to invoke federal procedural due process protections that would go beyond state law. (§§ 33500 or 33501.)

*1. Redevelopment Law and Blight Designation*

Generally, a land use application invokes procedural due process protections only if the owner has a legitimate claim of entitlement to the approval. (*Breneric Associates v.*

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occurred prior to January 1, 2011." Subdivision (b) is similar on agency findings. The Validation Act applies to such an action. (§ 33501; Code Civ. Proc., § 860 et seq.)

*City of Del Mar* (1998) 69 Cal.App.4th 166, 181-184.) "An ownership interest alone does not cloak the prospect of developing the property with the protections of procedural due process." (*Las Lomas Land Co., LLC v. City of Los Angeles* (2009) 177 Cal.App.4th 837, 853 (*Las Lomas Land*).)

In *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 614-615 (*Horn*), it was held that procedural due process protections apply to adjoining property owners, if their property interests are substantially affected by adjudicatory land use decisions on an adjacent property. However, "*Horn* does not support the proposition that the denial of a development application constitutes a deprivation of property for purposes of procedural due process." (*Las Lomas Land, supra*, 177 Cal.App.4th 837, 853-854.) Constitutional notice and hearing requirements are triggered by governmental action that will result in significant or substantial deprivations of property, and this category does not include an agency decision having only a de minimis effect on land. (*Horn, supra,* at p. 616; *Robinson v. City and County of San Francisco* (2012) 208 Cal.App.4th 950, 963 (*Robinson*).)

In the context of redevelopment law, the eminent domain power was only one of the avenues that the City's (former) redevelopment agency could take in fighting urban blight. (See fn. 11, *ante*.) In *Cambria Spring Co., supra,* 171 Cal.App.3d 1080, the appellate court distinguished between the eminent domain power and an amendment of a redevelopment plan relating to eminent domain. In rejecting a landowner's claim of inverse condemnation damages based on redevelopment decisions, the court noted:

> "The adoption of a redevelopment plan closely resembles the general planning which . . . has been held not to constitute an announcement of intent to condemn. The adoption of a redevelopment plan goes further than the adoption of a general plan (Gov. Code, § 65300 et seq.). As held in *Selby Realty Company v. City of San Buenaventura* [1973] 10 Cal.3d 110 [(*Selby Realty*)], the adoption of a general plan does not amount to an announcement of intent to condemn, and a general plan is prerequisite to a redevelopment plan [citation]. However, the adoption of a redevelopment plan still falls 'several leagues short of a firm declaration of an intention to condemn property.' (*Selby Realty*[, *supra*], 10 Cal.3d at p. 119.) This is so because the redevelopment plan still does not provide the 'special and direct interference with plaintiff's property' required by *Selby Realty*. [Citation.] Moreover, a redevelopment plan, like a general plan, may be amended [citation] before plaintiff's property is taken. [Citation.] . . . Thus, adoption of a redevelopment plan does not have the finality required to give rise to liability for damages." (*Cambria Spring Co.*, *supra,* at p. 1097.)

In *Cambria Spring Co., supra*, 171 Cal.App.3d at page 1098 the court further concluded, "As there was no official action amounting to an announcement of intent to condemn, there could be no liability based upon unreasonable delay following such an announcement. The evidence was substantial and convincing that [the City's] activities never went beyond the planning stage, and did not reach the 'acquiring stage.' "

In *Card v. Community Redevelopment Agency* (1976) 61 Cal.App.3d 570, 578-579, the reviewing court distinguished between procedural due process protections and substantive due process protections, in the context of redevelopment. There, the agency had failed to follow the correct statutory scheme for amending a redevelopment plan, but had given constitutionally adequate notice and hearing in doing so, and constitutional *procedural* due process of law was not denied. (Accord, *National City Business Assn. v. City of National City* (1983) 146 Cal.App.3d 1060, 1069 [wrong type of agency making

the correct decision did not prejudice the landowners].) Instead, in *Card*, the failure to use the correct procedures served to effectively deny the affected persons *substantive* due process of law, by making them ineligible for certain statutory relocation protections they would have received, had proper redevelopment procedures been followed. (*Card, supra,* at pp. 580-582.)

In the case before us, the City sought to impose a blight designation on CYAC's property, through the redevelopment amendment, at a time when the City had not initiated any eminent domain action. Neither had CYAC brought any inverse condemnation action. (See *City of Ripon v. Sweetin* (2002) 100 Cal.App.4th 887, 897 ["[I]nverse condemnation damages for precondemnation conduct must be claimed in a pending eminent domain action" and " '[t]he basic measure of damages in inverse condemnation actions, as in all eminent domain proceedings, is "market value." ' "; see 29 Cal.Jur.3d (2011) Eminent Domain, § 345, p. 457 ["a planning designation is not the functional equivalent of an announced intent to condemn"].) Section 33390 et seq. outlines the means of acquiring real property for redevelopment purposes. Under section 33398, an eminent domain statute (Code of Civ. Proc., § 1245.260), that authorizes inverse condemnation claims alleging harm from an undue delay after a resolution of necessity to take, *shall not apply to approvals of redevelopment plans or amendments*. These are different bodies of law.

CYAC nevertheless seems to be importing concepts from the realms of eminent domain (just compensation), or inverse condemnation (precondemnation damages), to assert that from the RTC defects, it suffered such an injury to its protected property

interests (whether in value or legal status) that additional procedural due process requirements should have been imposed.[27] However, in this early stage proceeding in the redevelopment context, CYAC cannot show that the enactment of the Amendment creating a potentially unsupported blight designation was so harmful that it resulted in significant or substantial deprivations of its procedural rights to protect its property. (*Horn, supra,* 24 Cal.3d at p. 616; *Robinson, supra*, 208 Cal.App.4th 950, 963.)

We acknowledge that a blight designation amendment might potentially have more than a de minimis effect upon a property interest. Here, however, the procedural protections imposed by the CRL statutory scheme, combined with the eminent domain statutory scheme, were constitutionally sufficient state law measures to safeguard the interests of a landowner within a proposed Amendment area. (*Horn, supra,* 24 Cal.3d at p. 616; *Mathews, supra*, 424 U.S. at pp. 334-335.) Under *Cambria Spring Co., supra,* 171 Cal.App.3d 1080, the Amendment to the redevelopment plan did not amount to a " 'special and direct interference with plaintiff's property,' " because it preceded any actual taking of property: "[A]doption of a redevelopment plan does not have the finality required to give rise to liability for damages." (*Id.* at p. 1097.) The same is true of an amendment. Moreover, the lack of adequate supporting data for the Amendment, regarding blight conditions, was already addressed through the 2006 changes in the CRL provisions (§§ 33352, subd. (b); 33457.1), and in the PRA procedures followed.

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27 With respect to the value of the CYAC real property, it claims the City was trying to force it to sell to a developer, so it gave it an inflated $1.2 million sales offer to make the developer go away, but CYAC does not claim the property is worth that much. The City denies that it was pressuring CYAC.

In considering "the precise nature of the government function involved," and the nature of CYAC's interest in its property (as potentially affected by the public Amendment proceedings), we conclude the CRL statutory protections against an unsupported blight designation were not so inadequate as to require or invoke greater constitutional procedural due process protections. (§§ 33500, 33501, 33368; *Cafeteria & Restaurant Workers Union v. McElroy, supra*, 367 U.S. 886, 895.) We next test this conclusion against the cases relied on by CYAC and the trial court in support of the procedural due process finding.

*2. Comparison of Cases Cited*

The trial court's ruling relied on *United States v. James Daniel Good Real Property* (1993) 510 U.S. 43, 53-55 (*Good*), to state that "[t]he right of Californians to be secure in their real property constitutes a valid protectable property interest." That case arose in the context of ex parte preseizure proceedings, after Good had pleaded guilty to promoting a harmful drug in violation of Hawaii law. The federal government subsequently declared a forfeiture, seizing his house and land without prior notice or an adversary proceeding, on the ground that the property had been used to commit or facilitate federal drug offenses. (21 U.S.C. § 881(a)(7).) The high court accepted Good's assertion that this ex parte proceeding deprived him of his home and property without due process of law, because the purpose of a due process requirement is " 'not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment--to minimize substantively

unfair or mistaken deprivations of property. . . .' [Citation.]" (*Good, supra*, at p. 53.)

Thus:

> "The constitutional limitations we enforce in this case apply to real property in general, not simply to residences. That said, the case before us well illustrates an essential principle: Individual freedom finds tangible expression in property rights. At stake in this and many other forfeiture cases are the security and privacy of the home and those who take shelter within it." (*Good, supra*, 510 U.S. 43, 61.)

Although those principles cannot be disputed, the degree of the invasion of CYAC's commercial property interests by these redevelopment amendment proceedings, through the City's provision of a late and incomplete RTC, is simply not fairly comparable to the magnitude of an ex parte seizure of residential property as a civil forfeiture. (See *Ginns v. Savage* (1964) 61 Cal.2d 520, 524, fn. 2 ["Language used in any opinion is of course to be understood in the light of the facts and the issue then before the court, and an opinion is not authority for a proposition not therein considered."].)

Here, CYAC's business property was the subject, among 691 other parcels, of CRL notice and hearing procedures for the amendment of the redevelopment plan, and CYAC had the opportunity to present opposition and to seek additional data for preparing further opposition. CYAC cannot persuasively now argue that it had a general "interest in protecting its real property" that should have precluded the City from pursuing its statutorily controlled, noticed redevelopment procedures, or punished the City for doing so defectively, in light of otherwise available state remedies under the CRL. Nor can we give any particular policy weight to CYAC's commendable use of its property to serve the youthful public.

CYAC places great reliance on the case of *Brody v. Village of Port Chester* (2d Cir. 2005) 434 F.3d 121 (*Brody*), in which a condemnee sued the Village as condemnor, alleging it had violated his federal procedural due process rights, by failing to provide him with adequate notice of his statutory right to challenge its public use determination (as well as the procedures to implement the right). State law provided him with an opportunity for a predeprivation review hearing, before the title acquisition process was concluded. The court held in the eminent domain context that due process requires the condemnor to give as much notice as is practicable in attempting to inform an affected property owner of a proceeding that threatens to deprive the owner of that property interest, and such "reasonable notice" must include mention of the commencement of the statutory 30-day challenge period. However, no notice of the implementing procedures was constitutionally required. This case is distinguishable, as farther along in the condemnation process, with a greater taking at stake.

In *Brody,* the court referred to the principle in *Kelo v. City of New London* (2005) 545 U.S. 469, that " '[f]or more than a century, [the Supreme Court's] public use jurisprudence has widely eschewed rigid formulas and intrusive scrutiny in favor of affording legislatures broad latitude in determining what public needs justify the use of the takings power.' " (*Brody, supra*, 434 F.3d at p. 134.) Although the court in *Brody* set aside an order allowing the condemnation to proceed, it also noted that the state law review procedure was appropriate "given the narrow role that the courts play in ensuring that the condemnation is for a public use." (*Ibid.*) It thus ruled that "from a constitutional perspective, *Brody has no constitutional right to participate in the Village's*

*initial decision to exercise its power of eminent domain*, and the post-determination review procedure set forth in [N.Y. law] is sufficient under the test articulated by *Mathews, [supra]*, 424 U.S. 319, 335 []. Due process does not require New York to furnish a procedure to challenge public use beyond that which it already provides." (*Brody, supra*, at p. 133; italics added.)

Here too, the CRL statutory scheme allowed the City and its Commission to pursue the Amendment to authorize a public use determination, and thus to enable some future exercise of the eminent domain power, by following the prescribed procedures, and it further provided for reverse validation challenges. (See *National City Business Assn. v. City of National City, supra*, 146 Cal.App.3d 1060, 1065 [federal and state constitutions "guarantee the right to not have one's property taken without just compensation; there is no *fundamental* right to not have one's property taken *at all*;" original italics.) As we have found previously in this opinion, the City did not pursue the Amendment entirely properly, and CYAC was entitled to the remedy of reverse validation, as well as a declaration that the PRA procedures had not been followed. That relief was comprehensive in nature and sufficiently vindicated the actual, existing interests that CYAC, as well as other interested parties, had at stake in successfully resisting the blight designation.

A "state law requirement that a public entity conduct hearings in a fair manner does not automatically implicate the federal due process clause." (*Clark, supra*, 48 Cal.App.4th 1152, 1178.) CYAC did not show any separate and additional, cognizable procedural due process deprivation that occurred due to these statutory duty violations,

which all took place before any "taking" was actually initiated. Here, as in *Cambria Spring Co.,* "Under the facts of this case, the Constitution does not require that [CYAC] be given relief beyond that provided by the statute." (*Cambria Spring Co., supra*, 171 Cal.App.3d at p. 1099.)

D. Risk of Erroneous Deprivation of Rights; Burden on Public Entity

"[P]rocedural due process rules are shaped by the risk of error inherent in the truthfinding process as applied to the generality of cases, not the rare exceptions." (*Mathews, supra,* 424 U.S. 319, 344-345.) At trial, the court heard expert opinion testimony about how much more time the opponents of the Amendment should have been given to fight this redevelopment blight designation. The court's ruling acknowledged that CYAC had nevertheless been given adequate notice of the public hearing and had had an opportunity to prepare opposition.

The trial court correctly declined to issue any ruling adding to the statutory requirements of section 33457.1, that the RTC and related information of blight conditions must be given "prior to the hearing." The Legislature did not designate any time frame for how far in advance that disclosure should be made, and it was not required to do so; we leave such policy decisions to the Legislature. (*Glendora, supra,* 185 Cal.App.4th at p. 831.)

Further, we need not weigh in upon whether the City should have granted a continuance of the public hearing for purposes of allowing further opposition to be filed. The City took six volumes and more of posthearing written opposition, as shown in the administrative record. The record also shows that the City was under some self-imposed

time pressure because the previous ordinance allowing the exercise of the eminent domain power was about to expire, but the City had not noticed the hearing earlier because the November 2006 election ballot had created some uncertainty, due to a measure on it about redevelopment. In any case, and especially since the reverse validation order was properly granted, this record does not show there was a serious risk of erroneous deprivation of rights of property owners within the Amendment area, that would have justified imposing additional federal procedural due process protections or sanctions.

In view of the recent abolition of redevelopment agencies, and for all of the above reasons, it would serve no purpose for this court to additionally examine the portions of the *Mathews* test that address the "probable value, if any, of additional or substitute procedural safeguards" and the "fiscal and administrative burdens that the additional or substitute procedural requirement would entail." (*Mathews, supra,* 424 U.S. at p. 335.)

We conclude that CYAC's asserted interest in property protection against any potentially unsupported blight designation, by receiving strict CRL compliance, is not a protectable property interest for procedural due process purposes. There is no federal constitutional law principle currently establishing that such a claimed interest " 'rises to the level of a "legitimate claim of entitlement" protected by the Due Process Clause.' " (*Castle Rock, supra*, 545 U.S. 748, 756-757.) The declaratory relief and nominal damages order and judgment on CYAC's claim of federal procedural due process deprivations must be reversed.

V

*ATTORNEY FEES*

After trial, the court ordered the City to pay substantial attorney fees to CYAC ($1,906,516.75) and to the Interested Parties ($84,652.50). (42 U.S.C. § 1988; Gov. Code, § 6259; Code Civ. Proc., § 1021.5.) The court made those awards after determining that discretionary relief from late filing of the motions should be granted under Code of Civil Procedure section 473, and then hearing the respective fees motions. (Rule 3.1702.)

Despite the abolition of redevelopment agencies and the overhaul of the CRL that occurred in 2011, the trial court's substantive rulings in the validation context, as well as the PRA claims, continue to serve as the basis for an attorney fees award. Particularly as to the relief granted to CYAC on the federal due process claim, our reversal of that part of the judgment removes in large part the legal basis for the attorney fees award against the City, insofar as it was based on Title 42 United States Code section 1988. (*Law Offices of Dixon R. Howell v. Valley* (2005) 129 Cal.App.4th 1076, 1105 [when a judgment is reversed, the fee award based on the judgment falls].)

However, the fees awards to CYAC and the Interested Parties were also based on another provision of law with respect to the validation and CRL relief, Code of Civil Procedure section 1021.5 (private attorney general theory). CYAC alone received an attorney fee award based on the PRA (Gov. Code, § 6259, subd. (d)), as the court determined that it applied, and that if it did not, Code of Civil Procedure section 1021.5 would fill the gap and allow such fees.

Before we can address the merits of the City's appeal of those fee awards under the PRA (Gov. Code, § 6259, subd. (d)) or Code of Civil Procedure section 1021.5, or the fees cross-appeal by CYAC, we must resolve several procedural problems presented by this record. First, we will discuss the propriety of the discretionary relief granted by the trial court from alleged untimely filing of the fees motions under the provisions of rule 3.1702. (See *Russell v. Trans Pacific Group* (1993) 19 Cal.App.4th 1717, 1728-1729 [even though procedural requirements for obtaining costs are mandatory, trial court retains jurisdiction to grant relief upon proper showing of mistake, inadvertence, surprise or excusable neglect].)

We shall determine that the trial court had jurisdiction to grant relief from any late filing, and did not abuse its discretion in doing so, and accordingly, we proceed to examine the legal basis for the attorney fees awards under both the two remaining statutory theories, the PRA and Code of Civil Procedure section 1021.5. As explained in *Bell v. Vista Unified School Dist.* (2000) 82 Cal.App.4th 672, 689-690 (*Bell*), Code of Civil Procedure section 1021.5 will not provide an independent basis for an attorney fees award, when there are already existing specific statutory fee provisions that apply, such as Government Code section 6259, subdivision (d). " 'Code of Civil Procedure section 1021.5 was intended to provide specific guidelines for the exercise of inherent judicial power to award fees *not specifically authorized by statute*.' " (*Bell, supra*, at pp. 689-690; italics added.) We address whether the court correctly concluded that fees on CYAC's PRA claim were specifically authorized by the PRA statute.

Having given guidance to the trial court in those respects, we shall reverse the orders awarding attorney fees and return those remaining issues to the trial court for its exercise of discretion in evaluating the factors set out in Code of Civil Procedure section 1021.5 (and the PRA, as to CYAC only). This will include both the entitlement issues and an apportionment of any fees awards among the various successful and unsuccessful claims.

A. Discretionary Relief From "Untimely" Filing

To assess the soundness of the relief allowed from late filing of the fees motions, we outline the terms of rule 3.1702(a). It states, "*Except as otherwise provided by statute*, this rule applies in civil cases to claims for statutory attorney's fees and claims for attorney's fees provided for in a contract. Subdivisions (b) and (c) of rule 3.1702 apply when the court determines entitlement to the fees, the amount of the fees, or both, whether the court makes that determination because the statute or contract refers to 'reasonable' fees, because it requires a determination of the prevailing party, or for other reasons." (Italics added.) Turning to rule 3.1702(b)(1), "A notice of motion to claim attorney's fees for services up to and including the rendition of judgment in the trial court--including attorney's fees on an appeal before the rendition of judgment in the trial court--*must be served and filed within the time for filing a notice of appeal under rules 8.104* and 8.108 in an unlimited civil case . . . ." (Italics added.) At the outset, it seems rule 8.104(a)(1)(B) would therefore apply, stating "Unless a statute or rule 8.108 provides otherwise, a notice of appeal must be filed on or before the earliest of: [¶] (B) *60 days after the party filing the notice of appeal serves or is served by a party with a document*

*entitled 'Notice of Entry' of judgment* or a file-stamped copy of the judgment, accompanied by proof of service . . . ." (Italics added; rule 8.108(a) [would allow an extension of time only in certain cases not present here, e.g., motion for new trial, etc.].)

The text of rule 3.1702(d) clearly allows for "Extensions[:] For good cause, the trial judge may extend the time for filing a motion for attorney's fees in the absence of a stipulation or for a longer period than allowed by stipulation."

As relevant here, major confusion arose from the parallel terms of Code of Civil Procedure section 870, subdivision (b), the Validation Act appeals deadline: "(b) Notwithstanding any other provision of law including . . . any rule of court, no appeal shall be allowed from any judgment entered pursuant to this chapter *unless a notice of appeal is filed within 30 days after the notice of entry of the judgment*, or, within 30 days after the entry of the judgment if there is no answering party." (Italics added; see *Planning and Conservation League v. Department of Water Resources* (1998) 17 Cal.4th 264, 269, 273-274 ["The legislative history indicates the intent of the amendments to section 870, adding the shortened period, was simply to reduce the period of uncertainty before finality of a validation action . . . . Moreover, the provision of a longer period for appealing collateral orders would be inconsistent with the legislative purpose of ensuring prompt finality."].)

With reference to rule 3.1702(d), the court in *Lewow v. Surfside III Condominium Owners Assn., Inc.* (2012) 203 Cal.App.4th 128, 135 said the provision allowing a trial judge to extend the time for filing a motion for attorney fees is remedial and should be given a liberal, not a strict interpretation. While an attorney fees motion should be timely

filed, the rule provisions are mandatory but not jurisdictional, and on a proper showing under section 473, the trial court may grant relief for such mistake, inadvertence, surprise, or excusable neglect. (*Russell v. Trans Pacific Group, supra*, 19 Cal.App.4th 1717, 1728-1729.)

In a previous order, we granted in part the City's judicial notice request, to permit additional materials on the attorney fee questions to be considered on appeal. They show the same basic history of the enactment of the predecessor rule (rule 870.2) that was outlined in *Sanabria v. Embrey* (2001) 92 Cal.App.4th 422, 428, as follows. That predecessor rule incorporated other stated time periods for filing a notice of appeal and a fees motion, as shown in Administrative Office of the Courts memoranda. From this history, the appellate court concluded, "It is therefore clear that . . . rule 870.2 provides time limits for motions for attorney fees in all civil cases, and its 60-day time limit commences to run at notice of entry of judgment or dismissal." (*Sanabria, supra*, at p. 429.)

From its rulemaking history materials, of which judicial notice has been taken, the City now argues the trial court should not have heard the fees motion of either CYAC or the Interested Parties, because they were not filed according to the 30-day deadline of Code of Civil Procedure section 870, but were filed within 60 days, under the alternative rule provisions. The City claims that there was no excusable neglect, because the portion of rule 3.1702(a) referring to "except as otherwise provided by statute" should have been easily interpreted to apply the 30-day deadline of Code of Civil Procedure section 870.

In its October 2011 opposition to the motion for section 473 relief, the City further argued it would be prejudiced if such relief were granted, due to its imminent financial obligations under the recent legislation dissolving all redevelopment agencies and requiring the successor agencies to wind down their operations. The City referred to then-pending litigation about the legislation, which might affect the City's liability for a fee award as a judgment.

In granting relief under Code of Civil Procedure section 473 and rule 3.1702(d), the trial court correctly stated it was empowered to relieve a party from the failure to meet a procedural time limit, upon a proper showing, and that the applications were timely and accompanied by the proposed pleading. The court ruled that CYAC's counsel, and by joinder, counsel for the Interested Parties, had shown there was a reasonable and honest mistake of law in the late filing, so that the fees applications should be heard on their merits. We agree that this was a proper resolution of these inconsistent rules and provisions, and there was no inexcusable neglect by counsel in interpreting them.

To reach this conclusion, we need not answer the precise question posed by the appeal and the cross-appeal, of whether the 30- or 60-day deadline properly applies, but instead, we rule only that the court was justified in granting relief under Code of Civil Procedure section 473 and rule 3.1702(d), and therefore the fees motions were properly heard on their merits. We next turn to the legal foundations of the awards themselves.

B. PRA, Government Code section 6259, Subdivision (d)
Requirements for Fees Awards

"The [PRA] sets forth specific procedures for seeking a judicial determination of a public agency's obligation to disclose records in the event the agency denies a request by a member of the public." (*Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 426 (*Filarsky*).) Under Government Code section 6258, "[a]ny person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter."

Under Government Code section 6259, subdivision (a), "if it appears from the plaintiff's verified petition that 'certain public records are being improperly withheld from a member of the public . . . ,' the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so. . . . 'If the Court finds that the public official's decision to refuse disclosure was not justified under Section 6254 or 6255, he or she shall order the public official to make the record public.' (§ 6259, subd. (b).)" (*Galbiso, supra,* 167 Cal.App.4th 1063, 1084.)[28] "[T]he standard test for determining if a plaintiff has prevailed under the Public

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28 In *Galbiso, supra*, 167 Cal.App.4th 1063, 1089, there were "highly unique circumstances presented" that justified an award of fees. The public agency had unjustifiably denied the plaintiff any "access to all public records by means of making Galbiso leave the premises if and when she sought to inspect documents, [and] Galbiso's success in the lawsuit was adequately demonstrated by her vindication of her basic right of access under the [PRA, and thus,] Galbiso was a prevailing party entitled to an award of attorney fees under section 6259, subdivision (d) . . . ." (*Galbiso, supra,* at p. 1089; italics omitted.)

Records Act is whether or not the litigation caused a previously withheld document to be released." (*Id.* at p. 1088.) In the case before us, such remedies were never obtained.

Government Code section 6259, subdivision (d) provides: " 'The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed *pursuant to this section.*' " (*Filarsky, supra,* 28 Cal.4th at p. 427; italics added.) If the plaintiff pursued more than one legal theory, apportionment of fees is required by statute.

The case before us is somewhat anomalous in that the subject requested records were never produced, i.e., the lost field survey data and the missing police department property-to-property crime reports from the past three years. The question then arises whether CYAC has actually "prevailed" within the meaning of section 6259, subdivision (d), by suing and causing the agency to release previously withheld documents. (*Belth v. Garamendi* (1991) 232 Cal.App.3d 896, 898 [Gov. Code, § 6259, subd. (d), mandates an award of attorney fees "to a plaintiff who prevails in litigation filed under the [PRA]"].) "An action under the [PRA] results in the release of previously withheld documents if the lawsuit motivated the defendants to produce the documents." (*Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 482.) Not so here. Accordingly, these observations in *Galbiso, supra*, 167 Cal.App.4th 1063, 1087, are well taken here:

> "[Government Code] Section 6259 expressly applies '[w]henever it is made to appear by verified petition . . . that certain public records are being improperly withheld from a member of the public,' and a judicial determination is necessary to resolve the issue. [Citation.] We believe the language of [Government Code] section 6259 is sufficiently broad to include the present lawsuit. That is, where a means is employed by a public agency to effectively deny access to

> all public records and a lawsuit is filed to remedy the problem, that lawsuit would constitute a claim that 'certain public records are being improperly withheld from a member of the public' within the scope of section 6259." (Italics omitted.)

Government Code section 6259 should be interpreted in light of "the overall remedial purpose of the Public Records Act to broaden access to public records." (*Galbiso, supra*, 167 Cal.App.4th 1063, 1088; *Filarsky, supra*, 28 Cal.4th at p. 427.) "Indeed, the very purpose of the attorney fees provision is to provide 'protections and incentives for members of the public to seek judicial enforcement of their right to inspect public records subject to disclosure.' " (*Galbiso, supra,* at p. 1088.)

In light of these statutory policies, we conclude that CYAC may qualify as a "prevailing" party, since CYAC sought and obtained declaratory relief that there had been PRA violations, and we have found the record supports that conclusion by the trial court. It would not be a practical or reasonable interpretation of Government Code section 6259, subdivision (d), to say that a public agency is protected from liability for an attorney fee award, because it cannot or will not produce the documents due to its internal logistical problems or general neglect of duties. However, we do not decide the entitlement issues on this record, but remand for the trial court to determine all the fee issues, upon remand. Along with the Code of Civil Procedure section 1021.5 fee issues, next to be discussed, the CYAC fee motion must be returned to the trial court to determine any reasonable

attorney fees or apportionment regarding the PRA claim (only one of CYAC's seven causes of action).[29]

C. Code of Civil Procedure section 1021.5; Remand for Discretion of Trial Court

The principles for considering an award of fees under Code of Civil Procedure section 1021.5 are now well settled. The statute seeks to address the problem of "inherent unaffordability of legal services for public interest cases yielding primarily nonpecuniary benefits." (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1225 (*Whitley*).) Eligibility for such attorney fees awards is established when " '(1) plaintiffs' action "has resulted in the enforcement of an important right affecting the public interest," (2) "a significant benefit, whether pecuniary or nonpecuniary has been conferred on the general public or a large class of persons" and (3) "the necessity and financial burden of private enforcement are such as to make the award appropriate." ' " (*Id.* at p. 1214.) Each requirement must be met, and the trial court's award is evaluated de novo for its consistency with these applicable legal principles, on the available record. (*Id.* at p. 1213; *In re Vitamin Cases* (2003) 110 Cal.App.4th 1041, 1052.)

In *Whitley*, *supra*, 50 Cal.4th 1206, 1221, the Supreme Court made it clear that for purposes of applying these requirements, the court should assess the criterion of the

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29 Although we have found CYAC may qualify as a prevailing party on the PRA claims, we feel compelled to observe that CYAC only prevailed with regard to two classes of documents. The record clearly shows that CYAC received a very large number of documents from the City without the necessity of declaratory relief. Thus, on remand, the court in determining reasonable attorney fees should focus on the amount of effort reasonably related to the limited scope of the PRA declaratory relief that was granted, and the relationship of the relief to the CRL orders. (See *Bell, supra,* 82 Cal.App.4th at pp. 689-690.)

financial burden of litigation not with attention to the subjective motives of the litigant, but must consider the "objective financial incentives" for litigation, in deciding the third element for eligibility for fees, whether " 'the necessity and financial burden of private enforcement are such as to make the award appropriate.' " (*Id.* at p. 1214.) Even if that element is met, the trial court must also decide the remaining issues about any resulting enforcement of an important right affecting the public interest, or any significant benefit conferred in that respect. (*Ibid.*) If those tests are met, the trial court "may legitimately restrict the award to only that portion of the attorneys' efforts that furthered the litigation of issues of public importance." (*Whitley, supra,* 50 Cal.4th at p. 1226.)[30]

In this case, we cannot determine what proportion of the existing attorney fee awards were attributable to the federal due process theories. As CYAC already recognized, by deleting its fee requests regarding its unsuccessful state constitutional claims, no award on them would be proper. Although all the basic issues were closely intertwined at trial, the specific statutory claims under the CRL (and as to CYAC, the limited PRA issues) were dispositive. The trial court's substantive ruling on the procedural due process claims went too far, and accordingly, neither of its attorney fee awards was fully supported by the applicable legal principles. On remand, "further

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30 The City's judicial notice request, as granted, included two sets of 2012 bill history and veto messages for two pieces of legislation that the Governor vetoed, that would have restored some of the redevelopment powers that were taken away from municipalities in 2011. The City argues this material shows there was no significant public interest in the subject matter of this lawsuit and no support for any awards of private attorney general fees. (Code Civ. Proc., § 1021.5.) We need not decide that issue and return the entire set of attorney fee entitlement issues to the trial court.

consideration and amplification of reasoning" will be required to determine the extent to which fees awards are proper regarding the remaining statutory theories, the CRL as to both prevailing parties, and the PRA as to CYAC only. (See *In re Vitamin Cases, supra,* 110 Cal.App.4th 1041, 1052.)

DISPOSITION

The judgment is affirmed in part with respect to the declaratory relief issued on the CRL and PRA issues; the declaratory relief granted on the claim of federal procedural due process violations is reversed, with directions to enter a different order denying that claim, and to conduct further proceedings in accordance with the views expressed in this opinion on the attorney fee issues.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

HALLER, J.


# Summary of the California Public Records Act 2004

*California Attorney General's Office*

**SUMMARY**
**CALIFORNIA PUBLIC RECORDS ACT**
**GOVERNMENT CODE SECTION[1] 6250 ET SEQ.**
**August, 2004**

I

## OVERVIEW

Legislation enacting the California Public Records Act (hereinafter, "CPRA") was signed in 1968, culminating a 15-year-long effort to create a general records law for California. Previously, one was required to look at the law governing the specific type of record in question in order to determine its disclosability. When the CPRA was enacted, an attempt was made to remove a number of these specific laws from the books. However, preexisting privileges such as the attorney-client privilege have been incorporated by reference into the provisions of the CPRA.

The fundamental precept of the CPRA is that governmental records shall be disclosed to the public, upon request, unless there is a specific reason not to do so. Most of the reasons for withholding disclosure of a record are set forth in specific exemptions contained in the CPRA. However, some confidentiality provisions are incorporated by reference to other laws. Also, the CPRA provides for a general balancing test by which an agency may withhold records from disclosure, if it can establish that the public interest in nondisclosure clearly outweighs the public interest in disclosure.

There are two recurring interests that justify most of the exemptions from disclosure. First, several CPRA exemptions are based on a recognition of the individual's right to privacy (e.g., privacy in certain personnel, medical or similar records). Second, a number of disclosure exemptions are based on the government's need to perform its assigned functions in a reasonably efficient manner (e.g., maintaining confidentiality of investigative records, official information, records related to pending litigation, and preliminary notes or memoranda).

If a record contains exempt information, the agency generally must segregate or redact the exempt information and disclose the remainder of the record. If an agency improperly withholds records, a member of the public may enforce, in court, his or her right to inspect or copy the records and receive payment for court costs and attorney's fees.

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1. All section references are to the Government Code unless otherwise indicated.

II

## PUBLIC ACCESS v. RIGHTS OF PRIVACY

### A. Right To Monitor Government

In enacting the CPRA, the Legislature stated that access to information concerning the conduct of the public's business is a fundamental and necessary right for every person in the State.[1] Cases interpreting the CPRA also have emphasized that its primary purpose is to give the public an opportunity to monitor the functioning of their government.[2] The greater and more unfettered the public official's power, the greater the public's interest in monitoring the governmental action.[3]

### B. The Right Of Privacy

Privacy is a constitutional right and a fundamental interest recognized by the CPRA.[4] Although there is no general right to privacy articulated in the CPRA, the Legislature recognized the individual right to privacy in crafting a number of its exemptions. Thus, in administering the provisions of the CPRA, agencies must sometimes use the general balancing test to determine whether the right of privacy in a given circumstance outweighs the interests of the public in access to the information. If personal or intimate information is extracted from a person (e.g., a government employee or appointee, or an applicant for government employment/appointments a precondition for the employment or appointment), a privacy interest in such information is likely to be recognized.[5] However, if information is provided voluntarily in order to acquire a benefit, a privacy right is less likely to be recognized.[6] Sometimes, the question of disclosure depends upon whether the invasion of an individual's privacy is sufficiently invasive so as to outweigh the public interest in disclosure.

III

## SCOPE OF COVERAGE

### A. Public Record Defined

#### 1. Identifiable Information

The public may inspect or obtain a copy of identifiable public records.[7] Writings held by state or local government are public records.[8] A writing includes all forms of recorded information that currently exist or that may exist in the future.[9] The essence of the CPRA is to provide access to information, not merely documents and files.[10] However, it is not enough to provide extracted information to the requestor, the document containing the information must be provided. In order to invoke the CPRA, the request for records must be both specific and focused. The requirement of clarity must be tempered by the reality that

a requester, having no access to agency files or their scheme of organization, may be unable to precisely identify the documents sought. Thus, writings may be described by their content.[11]

To the extent reasonable, agencies are generally required to assist members of the public in making focused and effective requests for identifiable records.[12] One legislatively-approved method of providing assistance is to make available an index of the agency's records.[13] A request for records may be made orally or in writing.[14] When an oral request is received, the agency may wish to consider confirming the request in writing in order to eliminate any confusion regarding the request.

### 2. Computer Information

When a person seeks a record in an electronic format, the agency shall, upon request, make the information available in any electronic format in which it holds the information.[15] Computer software developed by the government is exempt from disclosure.[16]

## B. Agencies Covered

All state and local government agencies are covered by the CPRA.[17] Non-profit and for-profit entities subject to the Ralph M. Brown Act are covered as well.[18] The CPRA is not applicable to the Legislature, which is instead covered by the Legislative Open Records Act.[19] The judicial branch is not bound by the CPRA, although most court records are disclosable as a matter of public rights of access to courts.[20] Federal government agencies are covered by the Federal Freedom of Information Act.[21]

## C. Member Of The Public

The CPRA entitles natural persons and business entities as members of the public to inspect public records in the possession of government agencies.[22] Persons who have filed claims or litigation against the government, or who are investigating the possibility of so doing, generally retain their identity as members of the public.[23] Representatives of the news media have no greater rights than members of the public.[24] Government employees acting in their official capacity are not considered to be members of the public.[25] Individuals may have greater access to records about themselves than public records, generally. [26]

## D. Right To Inspect And Copy Public Records

Records may be inspected at an agency during its regular office hours.[27] The CPRA contains no provision for a charge to be imposed in connection with the mere inspection of records. Copies of records may be obtained for the direct cost of duplication, unless the Legislature has established a statutory fee.[28] The direct cost of duplication includes the pro rata expense of the duplicating equipment utilized in making a copy of a record and, conceivably, the pro rata expense in terms of staff time (salary/benefits) required to produce the copy. [29] A staff

person's time in researching, retrieving and mailing the record is not included in the direct cost of duplication. By contrast, when an agency must compile records or extract information from an electronic record or undertake programming to satisfy a request, the requestor must bear the full cost, not merely the direct cost of duplication.[30] The right to inspect and copy records does not extend to records that are exempt from disclosure.

## IV

## REQUEST FOR RECORDS AND AGENCY RESPONSE

### A. Procedures

A person need not give notice in order to inspect public records at an agency's offices during normal working hours. However, if the records are not readily accessible or if portions of the records must be redacted in order to protect exempt material, the agency must be given a reasonable period of time to perform these functions.

When a copy of a record is requested, the agency shall determine within ten days whether to comply with the request, and shall promptly inform the requester of its decision and the reasons therefor.[31] Where necessary, because either the records or the personnel that need to be consulted regarding the records are not readily available, the initial ten-day period to make a determination may be extended for up to fourteen days.[32] If possible, records deemed subject to disclosure should be provided at the time the determination is made. If immediate disclosure is not possible, the agency must provide the records within a reasonable period of time, along with an estimate of the date that the records will be available. The Public Records Act does not permit an agency to delay or obstruct the inspection or copying of public records.[33] Finally, when a written request is denied, it must be denied in writing. [34]

### B. Claim Of Exemption

Under specified circumstances, the CPRA affords agencies a variety of discretionary exemptions which they may utilize as a basis for withholding records from disclosure. These exemptions generally include personnel records, investigative records, drafts, and material made confidential by other state or federal statutes. In addition, a record may be withheld whenever the public interest in nondisclosure clearly outweighs the public interest in disclosure. When an agency withholds a record because it is exempt from disclosure, the agency must notify the requester of the reasons for withholding the record. However, the agency is not required to provide a list identifying each record withheld and the specific justification for withholding the record.[35]

### C. Segregation Of Exempt From Nonexempt Material

When a record contains exempt material, it does not necessarily mean that the entire record may be withheld from disclosure. Rather, the general rule is that the exempt material may be withheld but the remainder of the record must be disclosed.[36] The fact that it is time consuming to segregate exempt material does not obviate the requirement to do it, unless the burden is so onerous as to clearly outweigh the public interest in disclosure.[37] If the information which would remain after exempt material has been redacted would be of little or no value to the requester, the agency may refuse to disclose the record on the grounds that the segregation process is unduly burdensome.[38] The difficulty in segregating exempt from nonexempt information is relevant in determining the amount of time which is reasonable for producing the records in question.

### D. Waiver Of Exemption

Exempt material must not be disclosed to any member of the public if the material is to remain exempt from disclosure.[39] Once material has been disclosed to a member of the public, it generally is available upon request to any and all members of the public. Confidential disclosures to another governmental agency in connection with the performance of its official duties, or disclosures in a legal proceeding are not disclosures to members of the public under the CPRA and do not constitute a waiver of exempt material.[40]

## V

## EXEMPTION FOR PERSONNEL, MEDICAL OR SIMILAR RECORDS
(Gov. Code, § 6254(c))

### A. Records Covered

A personnel, medical or similar record generally refers to intimate or personal information which an individual is required to provide to a government agency frequently in connection with employment.[41] The fact that information is in a personnel file does not necessarily make it exempt information.[42] Information such as an individual's qualifications, training, or employment background, which are generally public in nature, ordinarily are not exempt.[43]

Information submitted by license applicants is not covered by section 6254(c) but is protected under section 6254(n) and, under special circumstances, may be withheld under the balancing test in section 6255.[44]

### B. Disclosure Would Constitute An Unwarranted Invasion Of Privacy

If information is intimate or personal in nature and has not been provided to a government agency as part of an attempt to acquire a benefit, disclosure of the information probably would constitute a violation of the individual's privacy. However, the invasion of an individual's privacy must be balanced against the public's need for the information. Only where the invasion of privacy is unwarranted as compared to the public interest in the information does the exemption permit the agency to withhold the record from disclosure. If this balancing test indicates that the privacy interest outweighs the public interest in disclosure, disclosure of the record by the government would appear to constitute an unwarranted invasion of privacy.

Courts have reached different conclusions regarding whether the investigation or audit of a public employee's performance is disclosable.[45] The gross salary and benefits of high-level state and local officials are a matter of public record. However, a recent case indicated that absent a showing that the name of a particular civil service employee is important in monitoring government performance, civil service employees have an expectation of privacy in individually identifiable salary information.[46]

## VI

## EXEMPTION FOR PRELIMINARY NOTES, DRAFTS AND MEMORANDA
(Gov. Code, § 6254(a))

Under this exemption, materials must be (1) notes, drafts or memoranda (2) which are not retained in the ordinary course of business (3) where the public interest in nondisclosure clearly outweighs the public interest in disclosure. This exemption has little or no effect since the deliberative process privilege was clearly established under the balancing test in section 6255 in 1991, but is mentioned here because it is in the Act.[47]

## VII

## EXEMPTION FOR INVESTIGATIVE RECORDS AND INTELLIGENCE INFORMATION
(Gov. Code, § 6254(f))

### A. Investigative Records

Records of complaints, preliminary inquiries to determine if a crime has been committed, and full-scale investigations, as well as closure memoranda are investigative records.[48] In addition, records that are not inherently investigatory may be covered by the exemption where they pertain to an enforcement proceeding that has become concrete and definite.[49]

Investigative and security records created for law enforcement, correctional or licensing purposes also are covered by the exemption from disclosure. The term "law enforcement" agency refers to traditional criminal law enforcement agencies.[50] Records created in connection with administrative investigations unrelated to licensing are not subject to the exemption. The exemption is permanent and does not terminate once the investigation has been completed.[51]

Even though investigative records themselves may be withheld, section 6254(f) mandates that law enforcement agencies disclose specified information about investigative activities.[52] However, the agency's duty to disclose information pursuant to section 6254(f) only applies if the request is made contemporaneously with the creation of the record in which the requested information is contained.[53] This framework is fundamentally different from the approach followed by other exemptions in the Public Records Act and in federal law, in which the records themselves are disclosable once confidential information has been redacted.

Specifically, section 6254(f) requires that basic information must be disclosed by law enforcement agencies in connection with calls for assistance or arrests, unless to do so would endanger the safety of an individual or interfere with an investigation.[54] With respect to public disclosures concerning calls for assistance and the identification of arrestees, the law restricts disclosure of address information to specified persons.[55] However, section 6254(f) expressly permits agencies to withhold the analysis and conclusions of investigative personnel. Thus, specified facts may be disclosable pursuant to the statutory directive, but the analysis and recommendations of investigative personnel concerning such facts are exempt.

### B. Intelligence Information

Records of intelligence information collected by the Attorney General and state and local police agencies are exempt from disclosure. Intelligence information is related to criminal activity but is not focused on a concrete prospect of enforcement.

## VIII

## EXEMPTIONS FOR LITIGATION AND ATTORNEY RECORDS

(Gov. Code, § 6254 (b), (k))

### A. Pending Claims And Litigation

Section 6254(b) permits documents specifically prepared in connection with filed litigation to be withheld from disclosure.[56] The exemption has been interpreted to apply only to documents created after the commencement of the litigation.[57] For example, it does not apply to the claim that initiates the administrative or court process. Once litigation is

resolved, this exemption no longer protects records from disclosure, although other exemptions (e.g., attorney-client privilege) may be ongoing.[58]

Nonexempt records pertaining to the litigation are disclosable to requestors, including prospective or actual parties to the litigation.[59] Generally, a request from actual or prospective litigants can be barred only where an independent statutory prohibition or collateral estoppel applies. If the agency believes that providing the record would violate a discovery order, it should bring the matter to the attention of the court that issued the order.[60]

In discovery during civil litigation unrelated to the Public Records Act, Evidence Code section 1040 (as opposed to the Act's exemptions) governs.[61]

### B. Attorney-Client Privilege

The attorney-client privilege covers confidential communications between an attorney and his or her client. The privilege applies to litigation and nonlitigation situations.[62] The privilege appears in section 954 of the Evidence Code and is incorporated into the CPRA through section 6254(k). The privilege lasts forever unless waived. However, the privilege is not waived when a confidential communication is provided to an opposing party where to do so is reasonably necessary to assist the parties in finalizing their negotiations.[63]

### C. Attorney Work Product

The attorney work product rule covers research, analysis, impressions and conclusions of an attorney. This confidentiality rule appears in section 2018 of the Code of Civil Procedure and is incorporated into the CPRA through section 6254(k). Records subject to the rule are confidential forever. The rule applies in litigation and nonlitigation circumstances alike.[64]

## IX

## OTHER EXEMPTIONS

### A. Official Information

Information gathered by a government agency under assurances of confidentiality may be withheld if it is in the public interest to do so. The official information privilege appears in Evidence Code section 1040 and is incorporated into the CPRA through section 6254(k). The analysis and balancing of competing interests in withholding versus disclosure is the same under Evidence Code section 1040 as it is under section 6255.[65] When an agency is in litigation, it may not resist discovery by asserting exemptions under the CPRA; rather, it must rely on the official information privilege.[66]

## B. Trade Secrets

Agencies may withhold confidential trade secret information pursuant to Evidence Code section 1060 which is incorporated into the CPRA through section 6254(k). However, with respect to state contracts, bids and their resulting contracts generally are disclosable after bids have been opened or the contracts awarded.[67] Although the agency has the obligation to initially determine when records are exempt as trade secrets, a person or entity disclosing trade secret information to an agency may be required to assist in the identification of the information to be protected and may be required to litigate any claim of trade secret which exceeds that which the agency has asserted.

## C. Other Express Exemptions

Other express exemptions include records relating to: securities and financial institutions;[68] utility, market and crop reports;[69] testing information;[70] appraisals and feasibility reports;[71] gubernatorial correspondence;[72] legislative counsel records;[73] personal financial data used to establish a license applicant's personal qualifications;[74] home addresses;[75] and election petitions.[76]

The exemptions for testing information and personal financial data are of particular interest to licensing boards which must determine the competence and character of applicants in order to protect the public welfare.

# X

# THE PUBLIC INTEREST EXEMPTION
(Gov. Code, § 6255)

## A. The Deliberative Process Privilege

The deliberative process privilege is intended to afford a measure of privacy to decision makers. This doctrine permits decision makers to receive recommendatory information from and engage in general discussions with their advisors without the fear of publicity. As a general rule, the deliberative process privilege does not protect facts from disclosure but rather protects the process by which policy decisions are made.[77] Records which reflect a final decision and the reasoning which supports that decision are not covered by the deliberative process privilege. If a record contains both factual and deliberative materials, the deliberative materials may be redacted and the remainder of the record must be disclosed, unless the factual material is inextricably intertwined with the deliberative material. Under section 6255, a balancing test is applied in each instance to determine whether the public interest in maintaining the deliberative process privilege outweighs the public interest in disclosure of the particular information in question.[78]

## B. Other Applications Of The Public Interest Exemption

In order to withhold a record under section 6255, an agency must demonstrate that the public's interest in nondisclosure clearly outweighs the public's interest in disclosure. A particular agency's interest in nondisclosure is of little consequence in performing this balancing test; it is the public's interest, not the agency's that is weighed. This "public interest balancing test" has been the subject of several court decisions.

In a case involving the licensing of concealed weapons, the permits and applications were found to be disclosable in order for the public to properly monitor the government's administration of concealed weapons permits.[79] The court carved out a narrow exemption where disclosure would render an individual vulnerable to attack at a specific time and place. The court also permitted withholding of psychiatric information on privacy grounds.

In another case, a city sought to maintain the confidentiality of names and addresses of water users who violated the city's water rationing program. The court concluded that the public's interest in disclosure outweighed the public's interest in nondisclosure since disclosure would assist in enforcing the water rationing program.[80] The court rejected arguments that the water users' interests in privacy and maintaining freedom from intimidation justified nondisclosure.

The names, addresses, and telephone numbers of persons who have filed noise complaints concerning the operation of a city airport are protected from disclosure where under the particular facts involved, the court found that there were less burdensome alternatives available to serve the public interest.[81]

In a case involving a request for the names of persons who, as a result of gifts to a public university, had obtained licenses for the use of seats at an athletic arena, and the terms of those licenses, the court found that the university failed to establish its claim of confidentiality by a "clear overbalance." The court found the university's claims that disclosure would chill donations to be unsubstantiated. It further found a substantial public interest in such disclosure to permit public monitoring and avoid favoritism or discrimination in the operation of the arena.[82]

XI

## LITIGATION UNDER THE ACT

A requester, but not a public agency, may bring an action seeking mandamus, injunctive relief or declaratory relief under sections 6258 or 6259.[83] To assist the court in making a decision, the documents in question may be inspected at an in-camera hearing (i.e. a private hearing with a judge). An in-camera hearing is held at the court's discretion, and the parties have no right to such a hearing. Prevailing plaintiffs shall be awarded court costs and attorney's fees. A plaintiff need not obtain all of the requested records in order to be the prevailing party in litigation.[84] A plaintiff is also considered the prevailing party if the lawsuit ultimately motivated the agency to provide the requested records.[85] Prevailing defendants may be awarded court costs and attorney fees only if the requestor's claim is clearly frivolous. There is no right of appeal, but the losing party may bring a petition for extraordinary relief to the court of appeal.

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Deputy Attorney General Ted Prim, Editor
Special thanks to Neil Gould, Senior Staff Counsel, Department of Water Resources, for his assistance.

1. Government Code section 6250.

2. *U.S. Dept. of Justice v. Reporters Committee for Freedom of Press* (1989) 489 U.S. 749; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325; *CBS, Inc. v. Block* (1986) 42 Cal.3d 646.

3. *New York Times Co. v. Superior Court* (1997) 52 Cal.App.4th 97, involving public's rights to acquire names of officers using deadly force; *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, involving public's right to monitor Sheriff's unfettered power to award concealed weapons permits.

4. Article 1, section 1 of the California Constitution; Government Code sections 6254(c), 6254(k), and 6255; *New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579.

5. *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136; *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, but see *Braun v. City of Taft, supra*, 154 Cal.App.3d at p. 344, where disclosure of personal information was not found to constitute invasion of privacy; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 777.

6. *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, where information provided to government in order to obtain concealed weapon permit; *Register Div. Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 902, where litigant submitted medical information to induce settlement of law suit; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 781, where contractor sought to modify existing contract.

7. Government Code section 6253.

8. Government Code section 6252(e).

9. Government Code section 6252(f); 71 Ops.Cal.Atty.Gen. 235, 236 (1988).

10. *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 774; *Cook v. Craig* (1976) 55 Cal.App.3d 773, 782.

11. *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159; *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469.

12. Government Code section 6253.1.

13. Government Code section 6253.1(d)(3).

14. *Los Angeles Times v. Alameda Corridor Transp. Auth.* (2001) 88 Cal.App.4th 1381, 1392.

15. Government Code section 6253.9.

16. Government Code section 6254.9.

17. Government Code section 6252(a) and (b); *Michael J. Mack v. State Bar of California* (2001) 92 Cal.App.4th 957, 962, CPRA inapplicable to State Bar.

18. Government Code section 6252(b) as amended by AB 2937, Stats. 2002, Ch. 1073. A nongovernmental auxiliary association is not a state agency; *California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 829; 85 Ops.Cal.Atty.Gen. 55 (2002). A nonprofit corporation designated by a city to provide programming to a cable television channel set aside for educational purposes is subject to the Public Records Act because it qualifies as a local legislative body under the Brown Act.

19. Government Code section 9071.

20. *Estate of Hearst v. Leland Lubinski, et al.* (1977) 67 Cal.App.3d 777.

21. 5 U.S.C. 552.

22. Government Code sections 6252(c), (e) and 6253; *Connell v. Superior Court* (1997) 56 Cal.App.4th 601.

23. *Wilder v. Superior Court* (1998) 66 Cal.App.4th 77; *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414.

24. *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 774.

25. Government Code section 6252(g).

26. Civil Code section 1798 (Information Practices Act), which applies to persons referenced in state government records.

27. Government Code section 6253(a).

28. Government Code section 6253(b).

29. *North County Parents Organization v. Department of Education* (1994) 23 Cal.App.4th 144, 148; Informal opinion from Attorney General to Senator Gary K. Hart, dated April 11, 1991.

30. Government Code section 6253.9(b)(2).

31. Government Code section 6253(c).

32. Government Code section 6253(c).

33. Government Code section 6253(c).

34. Government Code section 6255(b).

35. *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1074-1075.

36. Government Code section 6253(a); *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 447; *Connell v. Superior Court* (1997) 56 Cal.App.4th 601; *State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1187.

37. *State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1190, fn. 14.

38. *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 447.

39. Government Code section 6254.5; *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645.

40. Government Code section 6254.5(b) and (e).

41. *Register Div. of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d, 893; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762.

42. *New York Times Co. v. Superior Court* (1997) 52 Cal.App.4th 97, 103.

43. *Eskaton Monterey Hospital v. Myers* (1982) 134 Cal.App.3d 788.

44. *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, applied the balancing test to protect certain privacy information in concealed weapons permits from disclosure. Protection for the particular information exempted by the Court in that decision was later codified in section 6254, subdivision (u).

45. *Bakersfield City School District v. Superior Court* 2004 WL 1120036 (Cal.App. 5 Dist.); *Payton v. City of Santa Clara* (1982) 132 Cal.App.3d 152, disciplinary records were not disclosable unless the state could demonstrate a compelling interest in disclosure; *AFSCME v. Regents of University of California* (1978) 80 Cal.App.3d 913, performance audit was disclosable unless charges were found to be groundless.

46. Government Code section 6254.8; *Teamsters Local 856 v. Priceless, LLC* (2003) 112 Cal.App.4th 1500; 68 Ops.Cal.Atty.Gen.73 (1985).

47. *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.

48. *Haynie v. Superior Court* (2001) 26 Cal.4th 1061; *Rackauckas v. Superior Court* (2002) 104 Cal.App.4th 169.

49. *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1068-1072.

50. *State of California ex rel. Division of Industrial Safety v. Superior Court* (1974) 43 Cal.App.3d 778.

51. *Dick Williams v. Superior Court* (1993) 5 Cal.4th 337, 354-362.

52. *Dick Williams* v. *Superior Court* (1993) 5 Cal.4th 337, 348-354.

53. *County of Los Angeles* v. *Superior Court (Kusar)* (1993) 18 Cal.App.4th 588.

54. 86 Ops.Cal.Atty.Gen. 132 (2003), release of mug shot is one way for a law enforcement agency to fulfill its obligation to provide information.

55. *Los Angeles Police Dept.* v. *United Reporting Publishing Corp.*, 528 U.S. 32 (1999).

56. *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414; *City of Hemet v. Superior Court (Press-Enterprise)* (1995) 37 Cal.App.4th 1411.

57. *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414; 71 Ops.Cal.Atty.Gen. 235 (1988).

58. *City of Los Angeles v. Superior Court (Axelrad)* (1996) 41 Cal.App.4th 1083.

59. *County of Los Angeles v. Superior Court (Axelrad II)* (2000) 82 Cal.App.4th 819, 826; *Wilder v. Superior Court* (1998) 66 Cal.App.4th 77; *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414; *City of Hemet v. Superior Court (Press-Enterprise)* (1995) 37 Cal.App.4th 1411, 1420-1421, fn. 11; but see dicta in *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 372.

60. *County of Los Angeles v. Superior Court (Axelrad II)* (2000) 82 Cal.App.4th 819, 830.

61. *Marylander v. Superior Court* (2000) 81 Cal.App.4th 1119, 1124-25.

62. *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 371.

63. *STI Outdoor v. Superior Court* (2001) 91 Cal.App.4th 334, 341.

64. *County of Los Angeles v. Superior Court (Axelrad II)* (2000) 82 Cal.App.4th 819, 833.

65. *California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 832.

66. *Michael P. v. Superior Court* (2001) 92 Cal.App.4th 1036, 1042; *Marylander v. Superior Court* (2000) 81 Cal.App.4th 1119, 1125.

67. Public Contract Code sections 10305 and 10342.

68. Government Code section 6254(d).

69. Government Code section 6254(e).

70. Government Code section 6254(g).

71. Government Code section 6254(h).

72. Government Code section 6254(l); *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.

73. Government Code section 6254(m).

74. Government Code section 6254(n).

75. State employees, Government Code section 6254.3; Registered voters, Government Code section 6254.4; Persons appearing in records of DMV, Government Code section 6254.1(b).

76. Government Code section 6253.5.

77. *Times Mirror* and *First Amendment Coalition*, established this general principle but, in light of special circumstances, an agency may withhold information that is essentially factual in nature.

78. The California Supreme Court's decision in *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325 is the source of the above information concerning deliberative process privilege. See also *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469.

79. *CBS, Inc. v. Block* (1986) 42 Cal.3d 646.

80. *New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579; but see Government Code section 6254.16 adopted subsequently.

81. *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008.

82. *California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 834-835.

83. *Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 423.

84. *Los Angeles Times v. Alameda Corridor Transp. Auth.* (2001) 88 Cal.App.4th 1381, 1391-1392.

85. *Roberts v. City of Palmdale* (1993) 19 Cal.App.4th 469, 482; *Belth v. Garamendi* (1991) 232 Cal.App.3d 896, 898.

## APPENDIX

## CALIFORNIA PUBLIC RECORDS ACT

### Government Code Sections 6250-6276.48
### (January 2004)

**6250.** In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

**6251.** This chapter shall be known and may be cited as the California Public Records Act.

**6252.** As used in this chapter:

(a) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) "Local agency" includes 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; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

(c) "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.

(d) "Public agency" means any state or local agency.

(e) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(f) "Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

(g) "Member of the public" means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.

**6252.5.** Notwithstanding the definition of "member of the public" in Section 6252, an elected member or officer of any state or local agency is entitled to access to public records of that agency on the same basis as any other person. Nothing in this section shall limit the ability of elected members or officers to access public records permitted by law in the administration of their duties.

This section does not constitute a change in, but is declaratory of, existing law.

**6252.6.** Notwithstanding paragraph (2) of subdivision (a) of Section 827 of the Welfare and Institutions Code, after the death of a foster child who is a minor, the name, date of birth, and date of death of the child shall be subject to disclosure by the county child welfare agency pursuant to this chapter.

**6253.** (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

**6253.1.** (a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do all of the following, to the extent reasonable under the circumstances:

(1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.

(2) Describe the information technology and physical location in which the records exist.

(3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

(b) The requirements of paragraph (1) of subdivision (a) shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records.

(c) The requirements of subdivision (a) are in addition to any action required of a public agency by Section 6253.

(d) This section shall not apply to a request for public records if any of the following applies:

(1) The public agency makes available the requested records pursuant to Section 6253.

(2) The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Section 6254.

(3) The public agency makes available an index of its records.

**6253.2.** (a) Notwithstanding any other provision of this chapter to the contrary, information regarding persons paid by the state to provide in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code or personal care services pursuant to Section 14132.95 of the Welfare and Institutions Code, shall not be subject to public disclosure pursuant to this chapter, except as provided in subdivision (b).

(b) Copies of names, addresses, and telephone numbers of persons described in subdivision (a) shall be made available, upon request, to an exclusive bargaining agent and to any labor organization seeking representation rights pursuant to subdivision (c) of Section 12301.6 or Section 12302 of the Welfare and Institutions Code or Chapter 10 (commencing with Section 3500) of Division 4 of Title 1. This information shall not be used by the receiving entity for any purpose other than the employee organizing, representation, and assistance activities of the labor organization.

(c) This section shall apply solely to individuals who provide services under the In-Home Supportive Services Program (Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code) or the Personal Care Services Program pursuant to Section 14132.95 of the Welfare and Institutions Code.

(d) Nothing in this section is intended to alter or shall be interpreted to alter the rights of parties under the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4) or any other labor relations law.

**6253.4.** (a) Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section.

The following state and local bodies shall establish written guidelines for accessibility of records. A copy of these guidelines shall be posted in a conspicuous public place at the offices of these bodies, and a copy of the guidelines shall be available upon request free of charge to any person requesting that body's records:

Department of Motor Vehicles
Department of Consumer Affairs
Department of Transportation
Department of Real Estate
Department of Corrections
Department of the Youth Authority
Department of Justice
Department of Insurance
Department of Corporations
Department of Managed Health Care
Secretary of State

State Air Resources Board
Department of Water Resources
Department of Parks and Recreation
San Francisco Bay Conservation and Development Commission
State Board of Equalization
State Department of Health Services
Employment Development Department
State Department of Social Services
State Department of Mental Health
State Department of Developmental Services
State Department of Alcohol and Drug Abuse
Office of Statewide Health Planning and Development
Public Employees' Retirement System
Teachers' Retirement Board
Department of Industrial Relations
Department of General Services
Department of Veterans Affairs
Public Utilities Commission
California Coastal Commission
State Water Resources Control Board
San Francisco Bay Area Rapid Transit District
All regional water quality control boards
Los Angeles County Air Pollution Control District
Bay Area Air Pollution Control District
Golden Gate Bridge, Highway and Transportation District
Department of Toxic Substances Control
Office of Environmental Health Hazard Assessment

(b) Guidelines and regulations adopted pursuant to this section shall be consistent with all other sections of this chapter and shall reflect the intention of the Legislature to make the records accessible to the public. The guidelines and regulations adopted pursuant to this section shall not operate to limit the hours public records are open for inspection as prescribed in Section 6253.

**6253.5.** Notwithstanding Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions, petitions circulated pursuant to Section 5091 of the Education Code, petitions for the reorganization of school districts submitted pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, petitions for the reorganization of community college districts submitted pursuant to Part 46 (commencing with Section 74000) of the Education Code and all memoranda prepared by the county elections officials in the examination of the petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving the petitions or who are responsible for the preparation of that memoranda and, if

the petition is found to be insufficient, by the proponents of the petition and the representatives of the proponents as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor. However, the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a school district or a community college district attorney, and a city attorney shall be permitted to examine the material upon approval of the appropriate superior court.

If the proponents of a petition are permitted to examine the petition and memoranda, the examination shall commence not later than 21 days after certification of insufficiency.

(a) As used in this section, "petition" shall mean any petition to which a registered voter has affixed his or her signature.

(b) As used in this section "proponents of the petition" means the following:

(1) For statewide initiative and referendum measures, the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he or she prepare a title and summary of the chief purpose and points of the proposed measure.

(2) For other initiative and referenda on measures, the person or persons who publish a notice of intention to circulate petitions, or, where publication is not required, who file petitions with the elections official.

(3) For recall measures, the person or persons defined in Section 343 of the Elections Code.

(4) For petitions circulated pursuant to Section 5091 of the Education Code, the person or persons having charge of the petition who submit the petition to the county superintendent of schools.

(5) For petitions circulated pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, the person or persons designated as chief petitioners under Section 35701 of the Education Code.

(6) For petitions circulated pursuant to Part 46 (commencing with Section 74000) of the Education Code, the person or persons designated as chief petitioners under Sections 74102, 74133, and 74152 of the Education Code.

**6253.6.** (a) Notwithstanding the provisions of Sections 6252 and 6253, information compiled by public officers or public employees revealing the identity of persons who have requested bilingual ballots or ballot pamphlets, made in accordance with any federal or state law, or other data that would reveal the identity of the requester, shall not be deemed to be public records and shall not be provided to any person other than public officers or public employees who are responsible for receiving those requests and processing the same.

(b) Nothing contained in subdivision (a) shall be construed as prohibiting any person who is otherwise authorized by law from examining election materials, including, but not limited to, affidavits of registration, provided that requests for bilingual ballots or ballot pamphlets shall be subject to the restrictions contained in subdivision (a).

**6253.8.** (a) Every final enforcement order issued by an agency listed in subdivision (b) under any provision of law that is administered by an entity listed in subdivision (b), shall be displayed on the entity's Internet website, if the final enforcement order is a public record that is not exempt from disclosure pursuant to this chapter.

(b) This section applies to the California Environmental Protection Agency and to all of the following entities within the agency:

(1) The State Air Resources Board.

(2) The California Integrated Waste Management Board.

(3) The State Water Resources Control Board, and each California regional water quality control board.

(4) The Department of Pesticide Regulation.

(5) The Department of Toxic Substances Control.

(c) (1) Except as provided in paragraph (2), for purposes of this section, an enforcement order is final when the time for judicial review has expired on or after January 1, 2001, or when all means of judicial review have been exhausted on or after January 1, 2001.

(2) In addition to the requirements of paragraph (1), with regard to a final enforcement order issued by the State Water Resources Control Board or a California regional water quality control board, this section shall apply only to a final enforcement order adopted by that board or a regional board at a public meeting.

(d) An order posted pursuant to this section shall be posted for not less than one year.

(e) The California Environmental Protection Agency shall oversee the implementation of this section.

(f) This section shall become operative April 1, 2001.

**6253.9.** (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.

(c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

(d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.

(e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

**6254.** Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to any of the following:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful

completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflect the analysis or conclusions of the investigating officer.

Customer lists provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision.

Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code, except that the address of the victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall

remain confidential. Address information obtained pursuant to this paragraph shall not be used directly or indirectly to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(l) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor' s Legal Affairs Secretary, provided that public records shall not be transferred to the custody of the Governor's Legal Affairs Secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel, except those records in the public database maintained by the Legislative Counsel that are described in Section 10248.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under

this section and for making available to the public those portions of an application that are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under these chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Article 2.6 (commencing with Section 14081), Article 2.8 (commencing with Section 14087.5), and Article 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee and the Legislative Analyst's office. The committee and the office shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) (1) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(2) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(3) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(v) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695) and Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695) or Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

(y) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, on or after January 1, 1998, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).

(5) The exemption from disclosure provided pursuant to this subdivision for the contracts, deliberative processes, discussions, communications, negotiations with health plans, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff shall also apply to the contracts, deliberative processes, discussions, communications, negotiations with health plans, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of applicants pursuant to Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code.

(z) Records obtained pursuant to paragraph (2) of subdivision (c) of Section 2891.1 of the Public Utilities Code.

(aa) A document prepared by or for a state or local agency that assesses its vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency's operations and that is for distribution or consideration in a closed session.

(bb) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code on or after January 1, 2004, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract entered into pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

**6254.1.** (a) Except as provided in Section 6254.7, nothing in this chapter requires disclosure of records that are the residence address of any person contained in the records of the Department of Housing and Community Development, if the person has requested confidentiality of that information, in accordance with Section 18081 of the Health and Safety Code.

(b) Nothing in this chapter requires the disclosure of the residence or mailing address of any person in any record of the Department of Motor Vehicles except in accordance with Section 1808.21 of the Vehicle Code.

(c) Nothing in this chapter requires the disclosure of the results of a test undertaken pursuant to Section 12804.8 of the Vehicle Code.

**6254.2.** (a) Nothing in this chapter exempts from public disclosure the same categories of pesticide safety and efficacy information that are disclosable under paragraph (1) of subsection (d) of Section 10 of the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136h(d)(1)), if the individual requesting the information is not an officer, employee, or agent specified in subdivision (h) and signs the affirmation specified in subdivision (h).

(b) The Director of Pesticide Regulation, upon his or her initiative, or upon receipt of a request pursuant to this chapter for the release of data submitted and designated as a trade secret by a registrant or applicant, shall determine whether any or all of the data so submitted is a properly designated trade secret. In order to assure that the interested public has an opportunity to obtain and review pesticide safety and efficacy data and to comment prior to the expiration of the public comment period on a proposed pesticide registration, the director shall provide notice to interested persons when an application for registration enters the registration evaluation process.

(c) If the director determines that the data is not a trade secret, the director shall notify the registrant or applicant by certified mail.

(d) The registrant or applicant shall have 30 days after receipt of this notification to provide the director with a complete justification and statement of the grounds on which the trade secret privilege is claimed. This justification and statement shall be submitted by certified mail.

(e) The director shall determine whether the data is protected as a trade secret within 15 days after receipt of the justification and statement or, if no justification and statement is filed, within 45 days of the original notice. The director shall notify the registrant or applicant and any party who has requested the data pursuant to this chapter of that determination by certified mail. If the director determines that the data is not protected as a trade secret, the final notice shall also specify a date, not sooner than 15 days after the date of mailing of the final notice, when the data shall be available to any person requesting information pursuant to subdivision (a).

(f) "Trade secret" means data that is nondisclosable under paragraph (1) of subsection (d) of Section 10 of the federal Insecticide, Fungicide, and Rodenticide Act.

(g) This section shall be operative only so long as, and to the extent that, enforcement of paragraph (1) of subsection (d) of Section 10 of the federal Insecticide, Fungicide, and Rodenticide Act has not been enjoined by federal court order, and shall become inoperative if an unappealable federal court judgment or decision becomes final that holds that paragraph invalid, to the extent of the invalidity.

(h) The director shall not knowingly disclose information submitted to the state by an applicant or registrant pursuant to Article 4 (commencing with Section 12811) of Chapter 2 of Division 7 of the Food and Agricultural Code to any officer, employee, or agent of any business or other entity engaged in the production, sale, or distribution of pesticides in countries other than the United States or in countries in addition to the United States, or to any other person who intends to deliver this information to any foreign or multi-national business or entity, unless the applicant or registrant consents to the disclosure. To implement this subdivision, the director shall require the following affirmation to be signed by the person who requests such information:

AFFIRMATION OF STATUS

This affirmation is required by Section 6254.2 of the Government Code.

I have requested access to information submitted to the Department of Pesticide Regulation (or previously submitted to the Department of Food and Agriculture) by a pesticide applicant or registrant pursuant to the California Food and Agricultural Code. I hereby affirm all of the following statements:

(1) I do not seek access to the information for purposes of delivering it or offering it for sale to any business or other entity, including the business or entity of which I am an officer, employee, or agent engaged in the production, sale, or distribution of pesticides in countries other than the United States or in countries in addition to the United States, or to the officers, employees, or agents of such a business or entity.

(2) I will not purposefully deliver or negligently cause the data to be delivered to a business or entity specified in paragraph (1) or its officers, employees, or agents.

I am aware that I may be subject to criminal penalties under Section 118 of the Penal Code if I make any statement of material facts knowing that the statement is false or if I willfully conceal any material fact.

| | |
|---|---|
| Name of Requester | Name of Requester's Organization |
| Signature of Requester | Address of Requester |
| Date / Request No. | Telephone Number of Requester |

Name, Address, and Telephone Number of Requester's Client, if the requester has requested access to the information on behalf of someone other than the requester or the requester's organization listed above.

(i) Notwithstanding any other provision of this section, the director may disclose information submitted by an applicant or registrant to any person in connection with a public proceeding conducted under law or regulation, if the director determines that the information is needed to determine whether a pesticide, or any ingredient of any pesticide, causes unreasonable adverse effects on health or the environment.

(j) The director shall maintain records of the names of persons to whom data is disclosed pursuant to this section and the persons or organizations they represent and shall inform the applicant or registrant of the names and the affiliation of these persons.

(k) Section 118 of the Penal Code applies to any affirmation made pursuant to this section.

(l) Any officer or employee of the state or former officer or employee of the state who, because of this employment or official position, obtains possession of, or has access to, material which is prohibited from disclosure by this section, and who, knowing that disclosure of this material is prohibited by this section, willfully discloses the material in any manner to any person not entitled to receive it, shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000), or by imprisonment in the county jail for not more than one year, or by both fine and imprisonment.

For purposes of this subdivision, any contractor with the state who is furnished information pursuant to this section, or any employee of any contractor, shall be considered an employee of the state.

(m) This section does not prohibit any person from maintaining a civil action for wrongful disclosure of trade secrets.

(n) The director may limit an individual to one request per month pursuant to this section if the director determines that a person has made a frivolous request within the past 12-month period.

**6254.20.** Nothing in this chapter shall be construed to require the disclosure of records that relate to electronically collected personal information, as defined by Section 11015.5, received, collected, or compiled by a state agency.

**6254.21.** (a) No state or local agency shall post the home address or telephone number of any elected or appointed official on the Internet without first obtaining the written permission of that individual.

(b) No person shall knowingly post the home address or telephone number of any elected or appointed official, or of the official's residing spouse or child on the Internet knowing that person is an elected or appointed official and intending to cause imminent great bodily harm that is likely to occur or threatening to cause imminent great bodily harm to that individual. A violation of this subdivision is a misdemeanor. A violation of this subdivision that leads to the bodily injury of the official, or his or her residing spouse or child, is a misdemeanor or a felony.

(c) For purposes of this section "elected or appointed official" includes, but is not limited to, all of the following:

(1) State constitutional officers.

(2) Members of the Legislature.

(3) Judges and court commissioners.

(4) District attorneys.

(5) Public defenders.

(6) Members of a city council.

(7) Members of a board of supervisors.

(8) Appointees of the Governor.

(9) Appointees of the Legislature.

(10) Mayors.

(11) City attorneys.

(12) Police chiefs and sheriffs.

(13) A public safety official as defined in Section 6254.24.

(d) Nothing in this section is intended to preclude punishment instead under Sections 69, 76, or 422 of the Penal Code, or any other provision of law.

**6254.22.** Nothing in this chapter or any other provision of law shall require the disclosure of records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors, whether paper records, records maintained in the management information system, or records in any other form, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulae or calculations for these payments, and contract negotiations with providers of health care for alternative rates for a period of three years after the contract is fully executed. The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the board of supervisors shall be subject to this same exemption. The provisions of this section shall not prevent access to any records by the Joint Legislative Audit Committee in the exercise of its powers pursuant to Article 1 (commencing with Section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The provisions of this section also shall not prevent access to any records by the Department of Corporations in the exercise of its powers pursuant to Article 1 (commencing with Section 1340) of Chapter 2.2 of Division 2 of the Health and Safety Code.

**6254.24.** As used in this chapter, "public safety official" means the following:

(a) An active or retired peace officer as defined in Sections 830 and 830.1 of the Penal Code.

(b) An active or retired public officer or other person listed in Sections 1808.2 and 1808.6 of the Vehicle Code.

(c) An "elected or appointed official" as defined in subdivision (c) of Section 6254.21.

(d) Attorneys employed by the Department of Justice, the State Public Defender, or a county office of the district attorney or public defender.

(e) City attorneys and attorneys who represent cities in criminal matters.

(f) Specified employees of the Department of Corrections, the California Youth Authority, and the Prison Industry Authority who supervise inmates or are required to have a prisoner in their care or custody.

(g) Nonsworn employees who supervise inmates in a city police department, a county sheriff's office, the Department of the California Highway Patrol, federal, state, and local detention facilities, and local juvenile halls, camps, ranches, and homes.

(h) Federal prosecutors and criminal investigators and National Park Service Rangers working in California.

(i) The surviving spouse or child of a peace officer defined in Section 830 of the Penal Code, if the peace officer died in the line of duty.

**6254.25.** Nothing in this chapter or any other provision of law shall require the disclosure of a memorandum submitted to a state body or to the legislative body of a local agency by its legal counsel pursuant to subdivision (q) of Section 11126 or Section 54956.9 until the pending litigation has been finally adjudicated or otherwise settled. The memorandum shall be protected by the attorney work-product privilege until the pending litigation has been finally adjudicated or otherwise settled.

**6254.3.** (a) The home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

(1) To an agent, or a family member of the individual to whom the information pertains.

(2) To an officer or employee of another state agency, school district, or county office of education when necessary for the performance of its official duties.

(3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed.

(4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to state, school districts, and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

(b) Upon written request of any employee, a state agency, school district, or county office of education shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and an agency shall remove the employee's home address and

home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee.

**6254.4.** (a) The home address, telephone number, e-mail address, precinct number, or other number specified by the Secretary of State for voter registration purposes, and prior registration information shown on the voter registration card for all registered voters is confidential, and shall not be disclosed to any person, except pursuant to Section 2194 of the Elections Code.

(b) For purposes of this section, "home address" means street address only, and does not include an individual's city or post office address.

(c) The California driver's license number, the California identification card number, the social security number, and any other unique identifier used by the State of California for purposes of voter identification shown on a voter registration card of a registered voter, or added to the voter registration records to comply with the requirements of the Help America Vote Act of 2002 (P.L. 107-252), are confidential and shall not be disclosed to any person.

**6254.5.** Notwithstanding any other provisions of the law, whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law. For purposes of this section, "agency" includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment.

This section, however, shall not apply to disclosures:

(a) Made pursuant to the Information Practices Act (commencing with Section 1798 of the Civil Code) or discovery proceedings.

(b) Made through other legal proceedings or as otherwise required by law.

(c) Within the scope of disclosure of a statute which limits disclosure of specified writings to certain purposes.

(d) Not required by law, and prohibited by formal action of an elected legislative body of the local agency which retains the writings.

(e) Made to any governmental agency which agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes which are consistent with existing law.

(f) Of records relating to a financial institution or an affiliate thereof, if the disclosures are made to the financial institution or affiliate by a state agency responsible for the regulation or supervision of the financial institution or affiliate.

(g) Of records relating to any person that is subject to the jurisdiction of the Department of Corporations, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Corporations.

(h) Made by the Commissioner of Financial Institutions under Section 1909, 8009, or 18396 of the Financial Code.

(i) Of records relating to any person that is subject to the jurisdiction of the Department of Managed Health Care, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Managed Health Care.

**6254.6.** 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.

**6254.7.** (a) All information, analyses, plans, or specifications that disclose the nature, extent, quantity, or degree of air contaminants or other pollution which any article, machine, equipment, or other contrivance will produce, which any air pollution control district or air quality management district, or any other state or local agency or district, requires any applicant to provide before the applicant builds, erects, alters, replaces, operates, sells, rents, or uses the article, machine, equipment, or other contrivance, are public records.

(b) All air or other pollution monitoring data, including data compiled from stationary sources, are public records.

(c) All records of notices and orders directed to the owner of any building of violations of housing or building codes, ordinances, statutes, or regulations which constitute violations of standards provided in Section 1941.1 of the Civil Code, and records of subsequent action with respect to those notices and orders, are public records.

(d) Except as otherwise provided in subdivision (e) and Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code, trade secrets are not public records under this section. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

(e) Notwithstanding any other provision of law, all air pollution emission data, including those emission data which constitute trade secrets as defined in subdivision (d), are public records. Data used to calculate emission data are not emission data for the purposes of this subdivision and data which constitute trade secrets and which are used to calculate emission data are not public records.

(f) Data used to calculate the costs of obtaining emissions offsets are not public records. At the time that an air pollution control district or air quality management district issues a permit to construct to an applicant who is required to obtain offsets pursuant to district rules and regulations, data obtained from the applicant consisting of the year the offset transaction occurred, the amount of offsets purchased, by pollutant, and the total cost, by pollutant, of the offsets purchased is a public record. If an application is denied, the data shall not be a public record.

**6254.8.** Every employment contract between a state or local agency and any public official or public employee is a public record which is not subject to the provisions of Sections 6254 and 6255.

**6254.9.** (a) Computer software developed by a state or local agency is not itself a public record under this chapter. The agency may sell, lease, or license the software for commercial or noncommercial use.

(b) As used in this section, "computer software" includes computer mapping systems, computer programs, and computer graphics systems.

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

(d) 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 as required by this chapter.

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

**6254.10.** Nothing in this chapter requires disclosure of records that relate to archeological site information maintained by the Department of Parks and Recreation, the State Historical Resources Commission, or the State Lands Commission.

**6254.11.** Nothing in this chapter requires the disclosure of records that relate to volatile organic compounds or chemical substances information received or compiled by an air pollution control officer pursuant to Section 42303.2 of the Health and Safety Code.

**6254.12.** Any information reported to the North American Securities Administrators Association/National Association of Securities Dealers' Central Registration Depository and compiled as disciplinary records which are made available to the Department of Corporations through a computer system, shall constitute a public record. Notwithstanding any other provision of law, the Department of Corporations may disclose that information and the current license status and the year of issuance of the license of a broker-dealer upon written or oral request pursuant to Section 25247 of the Corporations Code.

**6254.13.** Notwithstanding Section 6254, upon the request of any Member of the Legislature or upon request of the Governor or his or her designee, test questions or materials that would be used to administer an examination and are provided by the State Department of Education and administered as part of a statewide testing program of pupils enrolled in the public schools shall be disclosed to the requester. These questions or materials may not include an individual examination that has been administered to a pupil and scored. The requester may not take physical possession of the questions or materials, but may view the questions or materials at a location selected by the department. Upon viewing this information, the requester shall keep the materials that he or she has seen confidential.

**6254.14.** (a) Except as provided in Sections 6254 and 6254.7, nothing in this chapter shall be construed to require disclosure of records of the Department of Corrections that relate to health care services contract negotiations, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations, including, but not limited to, records related to those negotiations such as meeting minutes, research, work product, theories, or strategy of the department, or its staff, or members of the California Medical Assistance Commission, or its staff, who act in consultation with, or on behalf of, the department.

Except for the portion of a contract that contains the rates of payment, contracts for health services entered into by the Department of Corrections or the California Medical Assistance Commission on or after July 1, 1993, shall be open to inspection one year after they are fully executed. In the event that a contract for health services that is entered into prior to July 1, 1993, is amended on or after July 1, 1993, the amendment, except for any portion containing rates of payment, shall be open to inspection one year after it is fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee and the Bureau of State Audits. The Joint Legislative Audit Committee and the Bureau of State Audits shall maintain the confidentiality of the contracts and amendments until the contract or amendment is fully open to inspection by the public.

It is the intent of the Legislature that confidentiality of health care provider contracts, and of the contracting process as provided in this subdivision, is intended to protect the competitive nature of the negotiation process, and shall not affect public access to other information relating to the delivery of health care services.

(b) The inspection authority and confidentiality requirements established in subdivisions (q), (v), and (w) of Section 6254 for the Legislative Audit Committee shall also apply to the Bureau of State Audits.

**6254.15.** Nothing in this chapter shall be construed to require 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. Except as provided below, incentives offered by state or local government agencies, 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.

The agency shall delete, prior to disclosure to the public, information that is exempt pursuant to this section from any record describing state or local incentives offered by an agency to a private business to retain, locate, relocate, or expand the business within California.

**6254.16.** Nothing in this chapter shall be construed to require the disclosure of the name, credit history, utility usage data, home address, or telephone number of utility customers of local agencies, except that disclosure of name, utility usage data, and the home address of utility customers of local agencies shall be made available upon request as follows:

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

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

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

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

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

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

**6254.17.** (a) Nothing in this chapter shall be construed to require disclosure of records of the State Board of Control that relate to a request for assistance under Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2.

(b) This section shall not apply to a disclosure of the following information, if no information is disclosed that connects the information to a specific victim, derivative victim, or applicant under Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2:

(1) The amount of money paid to a specific provider of services.

(2) Summary data concerning the types of crimes for which assistance is provided.

**6255.** (a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

(b) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.

**6257.5.** This chapter does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure.

**6258.** Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter. The times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.

**6259.** (a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person

charged with withholding the records to disclose the public record or show cause why he or she should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

(c) In an action filed on or after January 1, 1991, an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

**6260.** The provisions of this chapter shall not be deemed in any manner to affect the status of judicial records as it existed immediately prior to the effective date of this section, nor to affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state, nor to limit or impair any rights of discovery in a criminal case.

**6261.** Notwithstanding Section 6252, an itemized statement of the total expenditures and disbursement of any agency provided for in Article VI of the California Constitution shall be open for inspection.

**6262.** The exemption of records of complaints to, or investigations conducted by, any state or local agency for licensing purposes under subdivision (f) of Section 6254 shall not apply when a request for inspection of such records is made by a district attorney.

**6263.** A state or local agency shall allow an inspection or copying of any public record or class of public records not exempted by this chapter when requested by a district attorney.

**6264.** The district attorney may petition a court of competent jurisdiction to require a state or local agency to allow him to inspect or receive a copy of any public record or class of public records not exempted by this chapter when the agency fails or refuses to allow inspection or copying within 10 working days of a request. The court may require a public agency to permit inspection or copying by the district attorney unless the public interest or good cause in withholding such records clearly outweighs the public interest in disclosure.

**6265.** Disclosure of records to a district attorney under the provisions of this chapter shall effect no change in the status of the records under any other provision of law.

**6267.** All registration and circulation records of any library which is in whole or in part supported by public funds shall remain confidential and shall not be disclosed to any person, local agency, or state agency except as follows:

(a) By a person acting within the scope of his or her duties within the administration of the library.

(b) By a person authorized, in writing, by the individual to whom the records pertain, to inspect the records.

(c) By order of the appropriate superior court.

As used in this section, the term "registration records" includes any information which a library requires a patron to provide in order to become eligible to borrow books and other materials, and the term "circulation records" includes any information which identifies the patrons borrowing particular books and other material.

This section shall not apply to statistical reports of registration and circulation nor to records of fines collected by the library.

**6268.** Public records, as defined in Section 6252, in the custody or control of the Governor when he or she leaves office, either voluntarily or involuntarily, shall, as soon as is practical, be transferred to the State Archives. Notwithstanding any other provision of law, the Governor, by written instrument, the terms of which shall be made public, may restrict public access to any of the transferred public records, or any other writings he or she may transfer, which have not already been made accessible to the public. With respect to public records, public access, as otherwise provided for by this chapter, shall not be restricted for a period greater than 50 years or the death of the Governor, whichever is later, nor shall there be any restriction whatsoever with respect to enrolled bill files, press releases, speech files, or writings relating to applications for clemency or extradition in cases which have been closed for a period of at least 25 years. Subject to any restrictions permitted by this section, the Secretary of State, as custodian of the

State Archives, shall make all such public records and other writings available to the public as otherwise provided for in this chapter.

Except as to enrolled bill files, press releases, speech files, or writings relating to applications for clemency or extradition, this section shall not apply to public records or other writings in the direct custody or control of any Governor who held office between 1974 and 1988 at the time of leaving office, except to the extent that that Governor may voluntarily transfer those records or other writings to the State Archives.

Notwithstanding any other provision of law, the public records and other writings of any Governor who held office between 1974 and 1988 may be transferred to any educational or research institution in California provided that with respect to public records, public access, as otherwise provided for by this chapter, shall not be restricted for a period greater than 50 years or the death of the Governor, whichever is later. No records or writings may be transferred pursuant to this paragraph unless the institution receiving them agrees to maintain, and does maintain, the materials according to commonly accepted archival standards. No public records transferred shall be destroyed by that institution without first receiving the written approval of the Secretary of State, as custodian of the State Archives, who may require that the records be placed in the State Archives rather than being destroyed. An institution receiving those records or writings shall allow the Secretary of State, as custodian of the State Archives, to copy, at state expense, and to make available to the public, any and all public records, and inventories, indices, or finding aids relating to those records, which the institution makes available to the public generally. Copies of those records in the custody of the State Archives shall be given the same legal effect as is given to the originals.

**6270.** (a) Notwithstanding any other provision of law, no state or local agency shall sell, exchange, furnish, or otherwise provide a public record subject to disclosure pursuant to this chapter to a private entity in a manner that prevents a state or local agency from providing the record directly pursuant to this chapter. Nothing in this section requires a state or local agency to use the State Printer to print public records. Nothing in this section prevents the destruction of records pursuant to law.

(b) This section shall not apply to contracts entered into prior to January 1, 1996, between the County of Santa Clara and a private entity for the provision of public records subject to disclosure under this chapter.

**6275.** It is the intent of the Legislature to assist members of the public and state and local agencies in identifying exemptions to the California Public Records Act. It is the intent of the Legislature that, after January 1, 1999, each addition or amendment to a statute that exempts any information contained in a public record from disclosure pursuant to subdivision (k) of Section 6254 shall be listed and described in this article. The statutes listed in this article may operate to exempt certain records, or portions thereof, from disclosure. The statutes listed and described may not be inclusive of all exemptions. The listing of a statute in this article does not itself create an exemption. Requesters of public records and public agencies are cautioned to review

the applicable statute to determine the extent to which the statute, in light of the circumstances surrounding the request, exempts public records from disclosure.

**6276.** Records or information not required to be disclosed pursuant to subdivision (k) of Section 6254 may include, but shall not be limited to, records or information identified in statutes listed in this article.

**6276.02.** Accident Reports, Admissibility as Evidence, Section 315, Public Utilities Code.

Acquired Immune Deficiency Syndrome, blood test results, written authorization not necessary for disclosure, Section 121010, Health and Safety Code.

Acquired Immune Deficiency Syndrome, blood test subject, compelling identity of, Section 120975, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of personal data of patients in State Department of Health Services programs, Section 120820, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of research records, Sections 121090, 121095, 121115, and 121120, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of vaccine volunteers, Section 121280, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of information obtained in prevention programs at correctional facilities and law enforcement agencies, Sections 7552 and 7554, Penal Code.

Acquired Immune Deficiency Syndrome, confidentiality of test results of person convicted of prostitution, Section 1202.6, Penal Code.

Acquired Immune Deficiency Syndrome, disclosure of results of HIV test, penalties, Section 120980, Health and Safety Code.

Acquired Immune Deficiency Syndrome, personal information, insurers tests, confidentiality of, Section 799, Insurance Code.

Acquired Immune Deficiency Syndrome, public safety and testing disclosure, Sections 121065 and 121070, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, production or discovery of records for use in criminal or civil proceedings against subject prohibited, Section 121100, Health and Safety Code.

Acquired Immune Deficiency Syndrome Public Health Records Confidentiality Act, personally identifying information confidentiality, Section 121025, Health and Safety Code.

Acquired Immune Deficiency Syndrome, test of criminal defendant pursuant to search warrant requested by victim, confidentiality of, Section 1524.1, Penal Code.

Acquired Immune Deficiency Syndrome, test results, disclosure to patient's spouse and others, Section 121015, Health and Safety Code.

Acquired Immune Deficiency Syndrome, test of person under Youth Authority, disclosure of results, Section 1768.9, Welfare and Institutions Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, definitions, Section 121125, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, financial audits or program evaluations, Section 121085, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, violations, Section 121100, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, personally identifying research records not to be disclosed, Section 121075, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, permittee disclosure, Section 121080, Health and Safety Code.

Administrative procedure, adjudicatory hearings, disclosure of ex parte communication to administrative law judge, Section 11430.40, Government Code.

Administrative procedure, adjudicatory hearings, interpreters, Section 11513, Government Code.

Adoption records, confidentiality of, Section 102730, Health and Safety Code.

**6276.04.** Aeronautics Act, reports of investigations and hearings, Section 21693, Public Utilities Code.

Agricultural producers marketing, access to records, Section 59616, Food and Agricultural Code.

Aiding disabled voters, Section 14282, Elections Code.

Air pollution data, confidentiality of trade secrets, Section 6254.7, Government Code, and Sections 42303.2 and 43206, Health and Safety Code.

Air toxics emissions inventory plans, protection of trade secrets, Section 44346, Health and Safety Code.

Alcohol and drug abuse records and records of communicable diseases, confidentiality of, Section 123125, Health and Safety Code.

Apiary registration information, confidentiality of, Section 29041, Food and Agricultural Code.

Arrest not resulting in conviction, disclosure or use of records, Sections 432.7 and 432.8, Labor Code.

Arsonists, registered, confidentiality of certain information, Section 457.1, Penal Code.

Artificial insemination, donor not natural father, confidentiality of records, Section 7613, Family Code.

Assessor's records, confidentiality of information in, Section 408, Revenue and Taxation Code.

Assessor's records, confidentiality of information in, Section 451, Revenue and Taxation Code.

Assessor's records, display of documents relating to business affairs or property of another, Section 408.2, Revenue and Taxation Code.

Assigned risk plans, rejected applicants, confidentiality of information, Section 11624, Insurance Code.

Attorney applicant, investigation by State Bar, confidentiality of, Section 6060.2, Business and Professions Code.

Attorney-client confidential communication, Section 6068, Business and Professions Code and Sections 952, 954, 956, 956.5, 957, 958, 959, 960, 961, and 962, Evidence Code.

Attorney, disciplinary proceedings, confidentiality prior to formal proceedings, Section 6086.1, Business and Professions Code.

Attorney, disciplinary proceeding, State Bar access to nonpublic court records, Section 6090.6, Business and Professions Code.

Attorney, investigation by State Bar, confidentiality of, Section 6168, Business and Professions Code.

Attorney, law corporation, investigation by State Bar, confidentiality of, Section 6168, Business and Professions Code.

Attorney, State Bar survey information, confidentiality of, Section 6033, Business and Professions Code.

Attorney work product confidentiality in administrative adjudication, Section 11507.6, Government Code.

Attorney, work product, confidentiality of, Section 6202, Business and Professions Code.

Attorney work product, discovery, Section 2018, Code of Civil Procedure.

Auditor General, access to records for audit purposes, Sections 10527 and 10527.1, Government Code.

Auditor General, disclosure of audit records, Section 10525, Government Code.

Automobile Insurance Claims Depository, confidentiality of information, Section 1876.3, Insurance Code.

Automobile insurance, investigation of fraudulent claims, confidential information, Section 1872.8, Insurance Code.

Automotive repair facility, fact of certification or decertification, Section 9889.47, Business and Professions Code.

Automotive repair facility, notice of intent to seek certification, Section 9889.33, Business and Professions Code.

Avocado handler transaction records, confidentiality of, Sections 44982 and 44984, Food and Agricultural Code.

**6276.06.** Bank and Corporation Tax, disclosure of information, Article 2 (commencing with Section 19542), Chapter 7, Part 10.2, Division 2, Revenue and Taxation Code.

Bank employees, confidentiality of criminal history information, Sections 777.5 and 4990, Financial Code.

Bank reports, confidentiality of, Section 1939, Financial Code.

Basic Property Insurance Inspection and Placement Plan, confidential reports, Section 10097, Insurance Code.

Beef Council of California, confidentiality of fee transactions information, Section 64691.1, Food and Agricultural Code.

Bids, confidentiality of, Section 10304, Public Contract Code.

Birth, death, and marriage licenses, confidential information contained in, Sections 102100 and 102110, Health and Safety Code.

Birth defects, monitoring, confidentiality of information collected, Section 103850, Health and Safety Code.

Birth, live, confidential portion of certificate, Sections 102430, 102475, 103525, and 103590, Health and Safety Code.

Blood tests, confidentiality of hepatitis and AIDS carriers, Section 1603.1, Health and Safety Code.

Blood-alcohol percentage test results, vehicular offenses, confidentiality of, Section 1804, Vehicle Code.

Bureau of Fraudulent Claims, investigations or publication of information, Section 12991, Insurance Code.

Business and professions licensee exemption for social security number, Section 30, Business and Professions Code.

**6276.08.** Cable television subscriber information, confidentiality of, Section 637.5, Penal Code.

California AIDS Program, personal data, confidentiality, Section 120820, Health and Safety Code.

California Apple Commission, confidentiality of lists of persons, Section 75598, Food and Agricultural Code.

California Apple Commission, confidentiality of proprietary information from producers or handlers, Section 75633, Food and Agricultural Code.

California Asparagus Commission, confidentiality of lists of producers, Section 78262, Food and Agricultural Code.

California Asparagus Commission, confidentiality of proprietary information from producers, Section 78288, Food and Agricultural Code.

California Avocado Commission, confidentiality of information from handlers, Section 67094, Food and Agricultural Code.

California Avocado Commission, confidentiality of proprietary information from handlers, Section 67104, Food and Agricultural Code.

California Cherry Commission, confidentiality of proprietary information from producers, processors, shippers, or grower-handlers, Section 76144, Food and Agricultural Code.

California Cut Flower Commission, confidentiality of lists of producers, Section 77963, Food and Agricultural Code.

California Cut Flower Commission, confidentiality of proprietary information from producers, Section 77988, Food and Agricultural Code.

California Date Commission, confidentiality of proprietary information from producers and grower-handlers, Section 77843, Food and Agricultural Code.

California Egg Commission, confidentiality of proprietary information from handlers or distributors, Section 75134, Food and Agricultural Code.

California Forest Products Commission, confidentiality of lists of persons, Section 77589, Food and Agricultural Code.

California Forest Products Commission, confidentiality of proprietary information from producers, Section 77624, Food and Agricultural Code.

California Iceberg Lettuce Commission, confidentiality of information from handlers, Section 66624, Food and Agricultural Code.

California Kiwifruit Commission, confidentiality of proprietary information from producers or handlers, Section 68104, Food and Agricultural Code.

California Navel Orange Commission, confidentiality of proprietary information from producers or handlers and lists of producers and handlers, Section 73257, Food and Agricultural Code.

California Pepper Commission, confidentiality of lists of producers and handlers, Section 77298, Food and Agricultural Code.

California Pepper Commission, confidentiality of proprietary information from producers or handlers, Section 77334, Food and Agricultural Code.

California Pistachio Commission, confidentiality of proprietary information from producers or processors, Section 69045, Food and Agricultural Code.

California Salmon Commission, confidentiality of fee transactions records, Section 76901.5, Food and Agricultural Code.

California Salmon Commission, confidentiality of request for list of commercial salmon vessel operators, Section 76950, Food and Agricultural Code.

California Seafood Council, confidentiality of fee transaction records, Section 78553, Food and Agricultural Code.

California Seafood Council, confidentiality of information on volume of fish landed, Section 78575, Food and Agricultural Code.

California Sheep Commission, confidentiality of proprietary information from producers or handlers and lists of producers, Section 76343, Food and Agricultural Code.

California State University contract law, bids, questionnaires and financial statements, Section 10763, Public Contract Code.

California Table Grape Commission, confidentiality of information from shippers, Section 65603, Food and Agricultural Code.

California Tomato Commission, confidentiality of lists of producers, handlers, and others, Section 78679, Food and Agricultural Code.

California Tomato Commission, confidentiality of proprietary information, Section 78704, Food and Agricultural Code.

California Walnut Commission, confidentiality of lists of producers, Section 77101, Food and Agricultural Code.

California Walnut Commission, confidentiality of proprietary information from producers or handlers, Section 77154, Food and Agricultural Code.

California Wheat Commission, confidentiality of proprietary information from handlers and lists of producers, Section 72104, Food and Agricultural Code.

California Wheat Commission, confidentiality of requests for assessment refund, Section 72109, Food and Agricultural Code.

California Wine Commission, confidentiality of proprietary information from producers or vintners, Section 74655, Food and Agricultural Code.

California Wine Grape Commission, confidentiality of proprietary information from producers and vintners, Section 74955, Food and Agricultural Code.

**6276.10.** Cancer registries, confidentiality of information, Section 103885, Health and Safety Code.

Candidate for local nonpartisan elective office, confidentiality of ballot statement, Section 13311, Elections Code.

Charter-Party Carriers, unauthorized disclosures by commission, Section 5412.5, Public Utilities Code.

Child abuse information, exchange by multidisciplinary personnel teams, Section 830, Welfare and Institutions Code.

Child abuse information reported to Department of Justice, confidentiality of, Sections 11107.5 and 11169, Penal Code.

Child abuse report and those making report, confidentiality of, Sections 11167, 11167.5, and 11174.3, Penal Code.

Child care liability insurance, confidentiality of information, Section 1864, Insurance Code.

Child concealer, confidentiality of address, Section 277, Penal Code.

Child custody investigation report, confidentiality of, Section 3111, Family Code.

Child day care facility, nondisclosure of complaint, Section 1596.853, Health and Safety Code.

Child health and disability prevention, confidentiality of health screening and evaluation results, Section 124110, Health and Safety Code.

Child support, confidentiality of income tax return, Section 3552, Family Code.

Child support, promise to pay, confidentiality of, Section 7614, Family Code.

Childhood lead poisoning prevention, confidentiality of blood lead findings, Section 124130, Health and Safety Code.

Children and families commission, local, confidentiality of individually identifiable information, Section 130140.1, Health and Safety Code.

Cigarette tax, confidential information, Section 30455, Revenue and Taxation Code.

Civil actions, delayed disclosure for 30 days after complaint filed, Section 482.050, Code of Civil Procedure.

Closed sessions, meetings of local governments, pending litigation, Section 54956.9, Government Code.

Closed sessions, multijurisdictional drug enforcement agencies, Section 54957.8, Government Code.

Colorado River Board, confidential information and records, Section 12519, Water Code.

Commercial fishing licensee, confidentiality of records, Section 7923, Fish and Game Code.

Commercial fishing reports, Section 8022, Fish and Game Code.

Community care facilities, confidentiality of client information, Section 1557.5, Health and Safety Code.

Community college employee, candidate examination records, confidentiality of, Section 88093, Education Code.

Community college employee, notice and reasons for nonreemployment, confidentiality, Section 87740, Education Code.

**6276.12.** Conservatee, confidentiality of the conservatee's report, Section 1826, Probate Code.

Conservatee, estate plan of, confidentiality of, Section 2586, Probate Code.

Conservatee with disability, confidentiality of report, Section 1827.5, Probate Code.

Conservator, confidentiality of conservator's birthdate and driver's license number, Section 1834, Probate Code.

Conservator, supplemental information, confidentiality of, Section 1821, Probate Code.

Conservatorship, court review of, confidentiality of report, Section 1851, Probate Code.

Consumer credit report information prohibited from being furnished for employment purposes, Section 1785.18, Civil Code.

Consumer fraud investigations, access to complaints and investigations, Section 26509, Government Code.

Consumption or utilization of mineral materials, disclosure of, Section 2207.1, Public Resources Code.

Contractor, evaluations and contractor responses, confidentiality of, Section 10370, Public Contract Code.

Contractor, license applicants, evidence of financial solvency, confidentiality of, Section 7067.5, Business and Professions Code.

Controlled Substance Law violations, confidential information, Section 818.7, Government Code.

Controlled substance offenders, confidentiality of registration information, Section 11594, Health and Safety Code.

Cooperative Marketing Association, confidential information disclosed to conciliator, Sections 54453 and 54457, Food and Agricultural Code.

Coroner, inquests, subpoena duces tecum, Sections 27491.8 and 27498, Government Code.

Corporations, commissioner, publication of information filed with commissioner, Section 25605, Corporations Code.

County alcohol programs, confidential information and records, Section 11812, Health and Safety Code.

County Employees' Retirement, confidential statements and records, Section 31532, Government Code.

County mental health system, confidentiality of client information, Section 5610, Welfare and Institutions Code.

County social services, investigation of applicant, confidentiality, Section 18491, Welfare and Institutions Code.

County social services rendered by volunteers, confidentiality of records of recipients, Section 10810, Welfare and Institutions Code.

Court files, access to, restricted for 60 days, Section 1161.2, Code of Civil Procedure.

Court reporters, confidentiality of records and reporters, Section 68525, Government Code.

Court-appointed special advocates, confidentiality of information acquired or reviewed, Section 105, Welfare and Institutions Code.

Crane employers, previous business identities, confidentiality of, Section 7383, Labor Code.

Credit unions, confidentiality of investigation and examination reports, Section 14257, Financial Code.

Credit unions, confidentiality of employee criminal history information, Section 14409.2, Financial Code.

Credit unions, confidentiality of financial reports, Section 16120, Financial Code.

Criminal defendant, indigent, confidentiality of request for funds for investigators and experts, Section 987.9, Penal Code.

Criminal felon placed in diagnostic facility, confidentiality of report of diagnosis and recommendation, Sections 1203.3 and 1543, Penal Code.

Criminal offender record information, access to, Sections 11076, 11077, 11081, 13201, and 13202, Penal Code.

Criminal records information, disclosure by vendor, Section 11149.4, Penal Code.

Criminal statistics, confidentiality of information, Section 13013, Penal Code.

Crop reports, confidential, subdivision (e), Section 6254, Government Code.

Customer list of employment agency, trade secret, Section 16607, Business and Professions Code.

Customer list of telephone answering service, trade secret, Section 16606, Business and Professions Code.

6276.14. Dairy Council of California, confidentiality of ballots, Section 64155, Food and Agricultural Code.

Data processing systems contracts with state agencies, confidentiality of information, Section 11772, Government Code.

Death, report that physician's or podiatrist's negligence or incompetence may be cause, confidentiality of, Section 802.5, Business and Professions Code.

Dentist advertising and referral contract exemption, Section 650.2, Business and Professions Code.

Dentist, alcohol or dangerous drug rehabilitation and diversion, confidentiality of records, Section 1698, Business and Professions Code.

Department of Consumer Affairs licensee exemption for alcohol or dangerous drug treatment and rehabilitation records, Section 156.1, Business and Professions Code.

Developmentally disabled conservatee confidentiality of reports and records, Sections 416.8 and 416.18, Health and Safety Code.

Developmentally disabled or mentally disordered person as victim of crime, information in report filed with law enforcement agency, Section 5004.5, Welfare and Institutions Code.

Developmentally disabled person, access to information provided by family member, Section 4727, Welfare and Institutions Code.

Developmentally disabled person and person with mental illness, access to and release of information about, by protection and advocacy agency, Section 4903, Welfare and Institutions Code.

Developmentally disabled person, confidentiality of patient records, state agencies, Section 4553, Welfare and Institutions Code.

Developmentally disabled person, confidentiality of records and information, Sections 4514 and 4518, Welfare and Institutions Code.

Diesel Fuel Tax information, disclosure prohibited, Section 60609, Revenue and Taxation Code.

Disability compensation, confidential medical records, Section 2714, Unemployment Insurance Code.

Disability insurance, access to registered information, Section 789.7, Insurance Code.

Discrimination complaint to Division of Labor Standards Enforcement, confidentiality of witnesses, Section 98.7, Labor Code.

Dispute resolution participants confidentiality, Section 471.5, Business and Professions Code.

District Agricultural Association Board, records, public inspection, Section 3968, Food and Agricultural Code.

Domestic violence counselor and victim, confidentiality of communication, Sections 1037.2 and 1037.5, Evidence Code.

Driver arrested for traffic violation, notice of reexamination for evidence of incapacity, confidentiality of, Section 40313, Vehicle Code.

Driver's license file information, sale or inspection, Section 1810, Vehicle Code.

Driving school and driving instructor licensee records, confidentiality of, Section 11108, Vehicle Code.

**6276.16.** Educational psychologist-patient, privileged communication, Section 1010.5, Evidence Code.

Electronic and appliance repair dealer, service contractor, financial data in applications, subdivision (x), Section 6254, Government Code.

Electronic data processing, data security and confidentiality, Sections 11771 and 11772, Government Code.

Emergency Medical Services Fund, patient named, Section 1797.98c, Health and Safety Code.

Eminent domain proceedings, use of state tax returns, Section 1263.520, Code of Civil Procedure.

Employee personnel file, confidential preemployment information, Section 1198.5, Labor Code.

Employment agency, confidentiality of customer list, Section 16607, Business and Professions Code.

Employment application, nondisclosure of arrest record or certain convictions, Sections 432.7 and 432.8, Labor Code.

Employment Development Department, furnishing materials, Section 307, Unemployment Insurance Code.

Equal wage rate violation, confidentiality of complaint, Section 1197.5, Labor Code.

Equalization, State Board of, prohibition against divulging information, Section 15619, Government Code.

Escrow Agents' Fidelity Corporation, confidentiality of examination and investigation reports, Section 17336, Financial Code.

Escrow agents' confidentiality of reports on violations, Section 17414, Financial Code.

Escrow agents' confidentiality of state summary criminal history information, Section 17414.1, Financial Code.

Estate tax, confidential records and information, Sections 14251 and 14252, Revenue and Taxation Code.

Excessive rates or complaints, reports, Section 1857.9, Insurance Code.

Executive Department, closed sessions and the record of topics discussed, Sections 11126 and 11126.1, Government Code.

Executive Department, investigations and hearings, confidential nature of information acquired, Section 11183, Government Code.

**6276.18.** Family counselor and client, confidential information, Section 4982, Business and Professions Code.

Family Court, records, Section 1818, Family Law Code.

Farm product processor license, confidentiality of financial statements, Section 55523.6, Food and Agricultural Code.

Farm product processor licensee, confidentiality of grape purchases, Section 55601.5, Food and Agricultural Code.

Fee payer information, prohibition against disclosure by Board of Equalization and others, Section 55381, Revenue and Taxation Code.

Financial institutions, issuance of securities, reports and records of state agencies, subdivision (d), Section 6254, Government Code.

Financial records, confidentiality of, Sections 7470, 7471, and 7473, Government Code.

Financial statements of insurers, confidentiality of information received, Section 925.3, Insurance Code.

Financial statements and questionnaires, of prospective bidders for the state, confidentiality of, Section 10165, Public Contract Code.

Financial statements and questionnaires, of prospective bidders for California State University contracts, confidentiality of, Section 10763, Public Contract Code.

Firearm license applications, subdivision (u), Section 6254, Government Code.

Firearm sale or transfer, confidentiality of records, Section 12082, Penal Code.

Firefighters Service Award, confidentiality of data filed with the Board of Administration of the Public Employees' Retirement System, Section 50955, Government Code.

Fish and wildlife law enforcement agreements with other states, confidentiality of information, Section 391, Fish and Game Code.

Fish and wildlife taken illegally, public record status of records of case, Section 2584, Fish and Game Code.

Food stamps, disclosure of information, Section 18909, Welfare and Institutions Code.

Foreign marketing of agricultural products, confidentiality of financial information, Section 58577, Food and Agricultural Code.

Forest fires, anonymity of informants, Section 4417, Public Resources Code.

Foster homes, identifying information, Section 1536, Health and Safety Code.

Franchise Tax Board, access to Franchise Tax Board information by the State Department of Social Services, Section 11025, Welfare and Institutions Code.

Franchise Tax Board, auditing, confidentiality of, Section 90005, Government Code.

Franchises, applications, and reports filed with Commissioner of Corporations, disclosure and withholding from public inspection, Section 31504, Corporations Code.

Fur dealer licensee, confidentiality of records, Section 4041, Fish and Game Code.

**6276.22.** Genetic test results in medical record of applicant or enrollee of specified insurance plans, Sections 10123.35 and 10140.1, Insurance Code.

Governor, correspondence of and to Governor and Governor's office, subdivision (l), Section 6254, Government Code.

Governor, transfer of public records in control of, restrictions on public access, Section 6268, Government Code.

Grand juror, disclosure of information or indictment, Section 924, Penal Code.

Grand jury, confidentiality of request for special counsel, Section 936.7, Penal Code.

Grand jury, confidentiality of transcription of indictment or accusation, Section 938.1, Penal Code.

Group Insurance, Public Employees, Section 53202.25, Government Code.

Guardian, confidentiality of report used to check ability, Section 2342, Probate Code.

Guardianship, confidentiality of report regarding the suitability of the proposed guardian, Section 1543, Probate Code.

Guardianship, disclosure of report and recommendation concerning proposed guardianship of person or estate, Section 1513, Probate Code.

**6276.24.** Harmful matter, distribution, confidentiality of certain recipients, Section 313.1, Penal Code.

Hazardous substance tax information, prohibition against disclosure, Section 43651, Revenue and Taxation Code.

Hazardous waste control, business plans, public inspection, Section 25506, Health and Safety Code.

Hazardous waste control, notice of unlawful hazardous waste disposal, Section 25180.5, Health and Safety Code.

Hazardous waste control, trade secrets, disclosure of information, Sections 25511 and 25538, Health and Safety Code.

Hazardous waste control, trade secrets, procedures for release of information, Section 25358.2, Health and Safety Code.

Hazardous waste generator report, protection of trade secrets, Sections 25244.21 and 25244.23, Health and Safety Code.

Hazardous waste licenseholder disclosure statement, confidentiality of, Section 25186.5, Health and Safety Code.

Hazardous waste management facilities on Indian lands, confidentiality of privileged or trade secret information, Section 25198.4, Health and Safety Code.

Hazardous waste recycling, duties of department, Section 25170, Health and Safety Code.

Hazardous waste recycling, list of specified hazardous wastes, trade secrets, Section 25175, Health and Safety Code.

Hazardous waste recycling, trade secrets, confidential nature, Sections 25173 and 25180.5, Health and Safety Code.

Healing arts licensees, central files, confidentiality, Section 800, Business and Professions Code.

Health authorities, special county, protection of trade secrets, Sections 14087.35, 14087.36, and 14087.38, Welfare and Institutions Code.

Health Care Provider Central Files, confidentiality of, Section 800, Business and Professions Code.

Health care provider disciplinary proceeding, confidentiality of documents, Section 805.1, Business and Professions Code.

Health care service plans, review of quality of care, privileged communications, Sections 1370 and 1380, Health and Safety Code.

Health commissions, special county, protection of trade secrets, Section 14087.31, Welfare and Institutions Code.

Health facilities, patient's rights of confidentiality, Sections 128735, 128755, and 128765, Health and Safety Code.

Health facility and clinic, consolidated data and reports, confidentiality of, Section 128730, Health and Safety Code.

Health personnel, data collection by the Office of Statewide Health Planning and Development, confidentiality of information on individual licentiates, Sections 127775 and 127780, Health and Safety Code.

Health planning and development pilot projects, confidentiality of data collected, Section 128165, Health and Safety Code.

Hereditary Disorders Act, legislative finding and declaration, confidential information, Sections 124975 and 124980, Health and Safety Code.

Hereditary Disorders Act, rules, regulations, and standards, breach of confidentiality, Section 124980, Health and Safety Code.

Higher Education Employee-Employer Relations, findings of fact and recommended terms of settlement, Section 3593, Government Code.

Higher Education Employee-Employer Relations, access by Public Employment Relations Board to employer's or employee organization's records, Section 3563, Government Code.

HIV, disclosures to blood banks by department or county health officers, Section 1603.1, Health and Safety Code.

Home address of public employees and officers in Department of Motor Vehicles, records, confidentiality of, Sections 1808.2 and 1808.4, Vehicle Code.

Horse racing, horses, blood or urine test sample, confidentiality, Section 19577, Business and Professions Code.

Hospital district and municipal hospital records relating to contracts with insurers and service plans, subdivision (t), Section 6254, Government Code.

Hospital final accreditation report, subdivision (s), Section 6254, Government Code.

Housing authorities, confidentiality of rosters of tenants, Section 34283, Health and Safety Code.

Housing authorities, confidentiality of applications by prospective or current tenants, Section 34332, Health and Safety Code.

**6276.26.** Improper obtaining or distributing of information from Department of Motor Vehicles, Sections 1808.46 and 1808.47, Vehicle Code.

Improper governmental activities reporting, confidentiality of identity of person providing information, Section 8547.5, Government Code.

Improper governmental activities reporting, disclosure of information, Section 8547.6, Government Code.

Industrial accident reports, confidentiality of information, Section 129, Labor Code.

Industrial loan companies, confidentiality of financial information, Section 18496, Financial Code.

Industrial loan companies, confidentiality of investigation and examination reports, Section 18394, Financial Code.

In forma pauperis litigant, rules governing confidentiality of financial information, Section 68511.3, Government Code.

Initiative, referendum, recall, and other petitions, confidentiality of names of signers, Section 6253.5, Government Code.

Inspector General, Youth and Adult Correctional Agency, confidentiality of records of employee interviews, Section 6127, Penal Code.

Insurance claims analysis, confidentiality of information, Section 1875.16, Insurance Code.

Insurance Commissioner, confidential information, Sections 735.5, 1077.3, and 12919, Insurance Code.

Insurance Commissioner, informal conciliation of complaints, confidential communications, Section 1858.02, Insurance Code.

Insurance Commissioner, information from examination or investigation, confidentiality of, Sections 1215.7, 1433, and 1759.3, Insurance Code.

Insurance Commissioner, report to Legislature, confidential information, Section 12961, Insurance Code.

Insurance Commissioner, writings filed with nondisclosure, Section 855, Insurance Code.

Insurance fraud reporting, information acquired not part of public record, Section 1873.1, Insurance Code.

Insurance Holding Company System Regulatory Act, examinations, Section 1215.7, Insurance Code.

Insurance licensee, confidential information, Section 1666.5, Insurance Code.

Insurer application information, confidentiality of, Section 925.3, Insurance Code.

Insurer financial analysis ratios and examination synopses, confidentiality of, Section 933, Insurance Code.

Insurer, request for examination of, confidentiality of, Section 1067.11, Insurance Code.

Integrated Waste Management Board information, prohibition against disclosure, Section 45982, Revenue and Taxation Code.

Intervention in regulatory and ratemaking proceedings, audit of customer seeking and award, Section 1804, Public Utilities Code.

Investigative consumer reporting agency, limitations on furnishing an investigative consumer report, Section 1786.12, Civil Code.

**6276.28.** Joint Legislative Ethics Committee, confidentiality of reports and records, Section 8953, Government Code.

Judicial candidates, confidentiality of communications concerning, Section 12011.5, Government Code.

Jurors' lists, lists of registered voters and licensed drivers as source for, Section 197, Code of Civil Procedure.

Juvenile court proceedings to adjudge a person a dependent child of court, sealing records of, Section 389, Welfare and Institutions Code.

Juvenile criminal records, dissemination to schools, Section 828.1, Welfare and Institutions Code.

Juvenile delinquents, notification of chief of police or sheriff of escape of minor from secure detention facility, Section 1155, Welfare and Institutions Code.

Labor dispute, investigation and mediation records, confidentiality of, Section 65, Labor Code.

Lanterman-Petris-Short Act, mental health services recipients, confidentiality of information and records, mental health advocate, Sections 5540, 5541, 5542, and 5550, Welfare and Institutions Code.

Law enforcement vehicles, registration disclosure, Section 5003, Vehicle Code.

Legislative Counsel records, subdivision (m), Section 6254, Government Code.

Library circulation records and other materials, subdivision (i), Section 6254 and Section 6267, Government Code.

Life and disability insurers, actuarial information, confidentiality of, Section 10489.15, Insurance Code.

Litigation, confidentiality of settlement information, Section 68513, Government Code.

Local agency legislative body, closed sessions, disclosure of materials, Section 54956.9, Government Code.

Local government employees, confidentiality of records and claims relating to group insurance, Section 53202.25, Government Code.

Local summary criminal history information, confidentiality of, Sections 13300 and 13305, Penal Code.

Local agency legislative body, closed session, nondisclosure of minute book, Section 54957.2, Government Code.

Local agency legislative body, meeting, disclosure of agenda, Section 54957.5, Government Code.

Long-term health facilities, confidentiality of complaints against, Section 1419, Health and Safety Code.

Long-term health facilities, confidentiality of records retained by State Department of Health Services, Section 1439, Health and Safety Code.

**6276.30.** Major Risk Medical Insurance Program, negotiations with health plans, subdivisions (v) and (w) of Section 6254, Government Code.

Mandated blood testing and confidentiality to protect public health, prohibition against compelling identification of test subjects, Section 120975, Health and Safety Code.

Mandated blood testing and confidentiality to protect public health, unauthorized disclosures of identification of test subjects, Section 120980, Health and Safety Code.

Mandated blood testing and confidentiality to protect public health, disclosure to patient's spouse, sexual partner, needle sharer, or county health officer, Section 121015, Health and Safety
Code.

Manufactured home, mobilehome, floating home, confidentiality of home address of registered owner, Section 18081, Health and Safety Code.

Marital confidential communications, Sections 980, 981, 982, 983, 984, 985, 986, and 987, Evidence Code.

Market reports, confidential, subdivision (e), Section 6254, Government Code.

Marketing of commodities, confidentiality of financial information, Section 58781, Food and Agricultural Code.

Marketing orders, confidentiality of processors or distributors' information, Section 59202, Food and Agricultural Code.

Marriage, confidential, certificate, Section 511, Family Code.

Medi-Cal Benefits Program, confidentiality of information, Section 14100.2, Welfare and Institutions Code.

Medi-Cal Benefits Program, Evaluation Committee, confidentiality of information, Section 14132.6, Welfare and Institutions Code.

Medi-Cal Benefits Program, Request of Department for Records of Information, Section 14124.89, Welfare and Institutions Code.

Medi-Cal Fraud Bureau, confidentiality of complaints, Section 12528, Government Code.

Medical information, disclosure by provider unless prohibited by patient in writing, Section 56.16, Civil Code.

Medical information, types of information not subject to patient prohibition of disclosure, Section 56.30, Civil Code.

Medical and other hospital committees and peer review bodies, confidentiality of records, Section 1157, Evidence Code.

Medical or dental licensee, action for revocation or suspension due to illness, report, confidentiality of, Section 828, Business and Professions Code.

Medical or dental licensee, disciplinary action, denial or termination of staff privileges, report, confidentiality of, Sections 805, 805.1, and 805.5, Business and Professions Code.

Meetings of state agencies, disclosure of agenda, Section 11125.1, Government Code.

Mental institution patient, notification to peace officers of escape, Section 7325.5, Welfare and Institutions Code.

Mentally abnormal sex offender committed to state hospital, confidentiality of records, Section 4135, Welfare and Institutions Code.

Mentally disordered and developmentally disabled offenders, access to criminal histories of, Section 1620, Penal Code.

Mentally disordered persons, court-ordered evaluation, confidentiality of reports, Section 5202, Welfare and Institutions Code.

Mentally disordered or mentally ill person, confidentiality of written consent to detainment, Section 5326.4, Welfare and Institutions Code.

Mentally disordered or mentally ill person, voluntarily or involuntarily detained and receiving services, confidentiality of records and information, Sections 5328, 5328.01, 5328.02, 5328.05, 5328.1, 5328.15, 5328.2, 5328.3, 5328.4, 5328.5, 5328.7, 5328.8, 5328.9, and 5330, Welfare and Institutions Code.

Mentally disordered or mentally ill person, weapons restrictions, confidentiality of information about, Section 8103, Welfare and Institutions Code.

Milk marketing, confidentiality of records, Section 61443, Food and Agricultural Code.

Milk product certification, confidentiality of, Section 62121, Food and Agricultural Code.

Milk, market milk, confidential records and reports, Section 62243, Food and Agricultural Code.

Milk product registration, confidentiality of information, Section 38946, Food and Agricultural Code.

Milk equalization pool plan, confidentiality of producers' voting, Section 62716, Food and Agricultural Code.

Mining report, confidentiality of report containing information relating to mineral production, reserves, or rate of depletion of mining operation, Section 2207, Public Resources Code.

Minor, criminal proceeding testimony closed to public, Section 859.1, Penal Code.

Minority and women's business data possessed by state agencies, confidentiality of, Section 15339.30, Government Code.

Minors, material depicting sexual conduct, records of suppliers to be kept and made available to law enforcement, Section 1309.5, Labor Code.

Misdemeanor and felony reports by police chiefs and sheriffs to Department of Justice, confidentiality of, Sections 11107 and 11107.5, Penal Code.

Monetary instrument transaction records, confidentiality of, Section 14167, Penal Code.

Missing persons' information, disclosure of, Sections 14201 and 14203, Penal Code.

Morbidity and mortality studies, confidentiality of records, Section 100330, Health and Safety Code.

Motor vehicle accident reports, disclosure, Sections 16005, 20012, and 20014, Vehicle Code.

Motor vehicles, department of, public records, exceptions, Sections 1808 to 1808.7, inclusive, Vehicle Code.

Motor vehicle insurance fraud reporting, confidentiality of information acquired, Section 1874.3, Insurance Code.

Motor vehicle liability insurer, data reported to Department of Insurance, confidentiality of, Section 11628, Insurance Code.

Multijurisdictional drug law enforcement agency, closed sessions to discuss criminal investigation, Section 54957.8, Government Code.

**6276.32.** Narcotic addict outpatient revocation proceeding, confidentiality of reports, Section 3152.5, Welfare and Institutions Code.

Narcotic and drug abuse patients, confidentiality of records, Section 11977, Health and Safety Code.

Native American graves, cemeteries and sacred places, records of, subdivision (r), Section 6254, Government Code.

Newspaper, radio, or television employee, nondisclosure of source of information, Section 1070, Evidence Code.

Notary public, confidentiality of application for appointment and commission, Section 8201.5, Government Code.

Nurse, alcohol or dangerous drug diversion and rehabilitation records, confidentiality of, Section 2770.12, Business and Professions Code.

Obscene matter, defense of scientific or other purpose, confidentiality of recipients, Section 311.8, Penal Code.

Occupational safety and health investigations, confidentiality of complaints and complainants, Section 6309, Labor Code.

Occupational safety and health investigations, confidentiality of trade secrets, Section 6322, Labor Code.

Official information acquired in confidence by public employee, disclosure of, Sections 1040 and 1041, Evidence Code.

Oil and gas, confidentiality of proposals for the drilling of a well, Section 3724.4, Public Resources Code.

Oil and gas, disclosure of onshore and offshore exploratory well records, Section 3234, Public Resources Code.

Oil and gas, disclosure of well records, Section 3752, Public Resources Code.

Oil and gas leases, surveys for permits, confidentiality of information, Section 6826, Public Resources Code.

Oil spill feepayer information, prohibition against disclosure, Section 46751, Revenue and Taxation Code.

Older adults receiving county services, providing information between county agencies, confidentiality of, Section 9401, Welfare and Institutions Code.

Organic food certification organization records, release of, Section 110845, Health and Safety Code, and Section 46009, Food and Agricultural Code.

Osteopathic physician and surgeon, rehabilitation and diversion records, confidentiality of, Section 2369, Business and Professions Code.

**6276.34.** Parole revocation proceedings, confidentiality of information in reports, Section 3063.5, Penal Code.

Passenger fishing boat licenses, records, Section 7923, Fish and Game Code.

Paternity, acknowledgement, confidentiality of records, Section 102760, Health and Safety Code.

Patient-physician confidential communication, Sections 992 and 994, Evidence Code.

Patient records, confidentiality of, Section 123135, Health and Safety Code.

Payment instrument licensee records, inspection of, Section 33206, Financial Code.

Payroll records, confidentiality of, Section 1776, Labor Code.

Peace officer personnel records, confidentiality of, Sections 832.7 and 832.8, Penal Code.

Penitential communication between penitent and clergy, Sections 1032 and 1033, Evidence Code.

Personal Income Tax, disclosure of information, Article 2 (commencing with Section 19542), Chapter 7, Part 10.2, Division 2, Revenue and Taxation Code.

Personal information, information practices act, prohibitions against disclosure by state agencies, Sections 1798.24 and 1798.75, Civil Code.

Personal information, subpoena of records containing, Section 1985.4, Code of Civil Procedure.

Personal representative, confidentiality of personal representative's birth date and driver's license number, Section 8404, Probate Code.

Personnel Administration, Department of, confidentiality of pay data furnished to, Section 19826.5, Government Code.

Petition signatures, Section 18650, Elections Code.

Petroleum supply and pricing, confidential information, Sections 25364 and 25366, Public Resources Code.

Pharmacist, alcohol or dangerous drug diversion and rehabilitation records, confidentiality of, Section 4436, Business and Professions Code.

Physical therapist or assistant, records of dangerous drug or alcohol diversion and rehabilitation, confidentiality of, Section 2667, Business and Professions Code.

Physical or mental condition or conviction of controlled substance offense, records in Department of Motor Vehicles, confidentiality of, Section 1808.5, Vehicle Code.

Physician and surgeon, rehabilitation and diversion records, confidentiality of, Section 2355, Business and Professions Code.

Physician assistant, alcohol or dangerous drug diversion and rehabilitation records, confidentiality of, Section 3534.7, Business and Professions Code.

Physician competency examination, confidentiality of reports, Section 2294, Business and Professions Code.

Physicians and surgeons, confidentiality of reports of patients with a lapse of consciousness disorder, Section 103900, Health and Safety Code.

Physician Services Account, confidentiality of patient names in claims, Section 16956, Welfare and Institutions Code.

Podiatrist, alcohol or drug diversion and rehabilitation records, confidentiality of, Section 2497.1, Business and Professions Code.

Pollution Control Financing Authority, financial data submitted to, subdivision (o), Section 6254, Government Code.

Postmortem or autopsy photos, Section 129, Code of Civil Procedure.

**6276.36.** Pregnancy tests by local public health agencies, confidentiality of, Section 123380, Health and Safety Code.

Pregnant women, confidentiality of blood tests, Section 125105, Health and Safety Code.

Prehospital emergency medical care, release of information, Sections 1797.188 and 1797.189, Health and Safety Code.

Prenatal syphilis tests, confidentiality of, Section 120705, Health and Safety Code.

Presiding Officer, Section 11430.40, Government Code.

Prisoners, behavioral research on, confidential personal information, Section 3515, Penal Code.

Prisoners, confidentiality of blood tests, Section 7530, Penal Code.

Prisoners, medical testing, confidentiality of records, Sections 7517 and 7540, Penal Code.

Prisoners, transfer from county facility for mental treatment and evaluation, confidentiality of written reasons, Section 4011.6, Penal Code.

Private industry wage data collected by public entity, confidentiality of, Section 6254.6, Government Code.

Private railroad car tax, confidentiality of information, Section 11655, Revenue and Taxation Code.

Probate referee, disclosure of materials, Section 8908, Probate Code.

Probation officer reports, inspection of, Section 1203.05, Penal Code.

Produce dealer, confidentiality of financial statements, Section 56254, Food and Agricultural Code.

Products liability insurers, transmission of information, Sections 1857.7 and 1857.9, Insurance Code.

Professional corporations, financial statements, confidentiality of, Section 13406, Corporations Code.

Property on loan to museum, notice of intent to preserve an interest in, not subject to disclosure, Section 1899.5, Civil Code.

Property taxation, confidentiality of change of ownership, Section 481, Revenue and Taxation Code.

Property taxation, confidentiality of property information, Section 15641, Government Code and Section 833, Revenue and Taxation Code.

Proprietary information, availability only to the director and other persons authorized by the operator and the owner, Section 2778, Public Resources Code.

Psychologist and client, confidential relations and communications, Section 2918, Business and Professions Code.

Psychotherapist-patient confidential communication, Sections 1012 and 1014, Evidence Code.

Public employees' home addresses and telephone numbers, confidentiality of, Section 6254.3, Government Code.

Public Employees' Retirement System, confidentiality of data filed by member or beneficiary with board of administration, Section 20134, Government Code.

Public school employees organization, confidentiality of proof of majority support submitted to Public Employment Relations Board, Sections 3544, 3544.1, and 3544.5, Government Code.

Public social services, confidentiality of digest of decisions, Section 10964, Welfare and Institutions Code.

Public social services, confidentiality of information regarding child abuse or elder or dependent persons abuse, Section 10850.1, Welfare and Institutions Code.

Public social services, confidentiality of information regarding eligibility, Section 10850.2, Welfare and Institutions Code.

Public social services, confidentiality of records, Section 10850, Welfare and Institutions Code.

Public social services, disclosure of information to law enforcement agencies, Section 10850.3, Welfare and Institutions Code.

Public social services, disclosure of information to law enforcement agencies regarding deceased applicant or recipient, Section 10850.7, Welfare and Institutions Code.

Public utilities, confidentiality of information, Section 583, Public Utilities Code.

Pupil, confidentiality of personal information, Section 45345, Education Code.

Pupil drug and alcohol use questionnaires, confidentiality of, Section 11605, Health and Safety Code.

Pupil, expulsion hearing, disclosure of testimony of witness and closed session of district board, Section 48918, Education Code.

Pupil, personal information disclosed to school counselor, confidentiality of, Section 49602, Education Code.

Pupil record contents, records of administrative hearing to change contents, confidentiality of, Section 49070, Education Code.

Pupil records, access authorized for specified parties, Section 49076, Education Code.

Pupil records, disclosure in hearing to dismiss or suspend school employee, Section 44944.1, Education Code.

Pupil records, release of directory information to private entities, Sections 49073 and 49073.5, Education Code.

**6276.38.** Radioactive materials, dissemination of information about transportation of, Section 33002, Vehicle Code.

Real estate broker, annual report to Department of Real Estate of financial information, confidentiality of, Section 10232.2, Business and Professions Code.

Real property, acquisition by state or local government, information relating to feasibility, subdivision (h), Section 6254, Government Code.

Real property, change in ownership statement, confidentiality of, Section 27280, Government Code.

Reciprocal agreements with adjoining states, Section 391, Fish and Game Code.

Records of contract purchasers, inspection by public prohibited, Section 85, Military and Veterans Code.

Registered public obligations, inspection of records of security interests in, Section 5060, Government Code.

Registration of exempt vehicles, nondisclosure of name of person involved in alleged violation, Section 5003, Vehicle Code.

Rehabilitation, Department of, confidential information, Section 19016, Welfare and Institutions Code.

Reinsurance intermediary-broker license information, confidentiality of, Section 1781.3, Insurance Code.

Rent control ordinance, confidentiality of information concerning accommodations sought to be withdrawn from, Section 7060.4, Government Code.

Report of probation officer, inspection, copies, Section 1203.05, Penal Code.

Repossession agency licensee application, confidentiality of information, Sections 7503, 7504, and 7506.5, Business and Professions Code.

Residence address in any record of Department of Housing and Community Development, confidentiality of, Section 6254.1, Government Code.

Residence address in any record of Department of Motor Vehicles, confidentiality of, Section 6254.1, Government Code, and Section 1808.21, Vehicle Code.

Residence and mailing addresses in records of Department of Motor Vehicles, confidentiality of, Section 1810.7, Vehicle Code.

Residential care facilities, confidentiality of resident information, Section 1568.08, Health and Safety Code.

Residential care facilities for the elderly, confidentiality of client information, Section 1569.315, Health and Safety Code.

Respiratory care practitioner, professional competency examination reports, confidentiality of, Section 3756, Business and Professions Code.

Restraint of trade, civil action by district attorney, confidential memorandum, Section 16750, Business and Professions Code.

Reward by governor for information leading to arrest and conviction, confidentiality of person supplying information, Section 1547, Penal Code.

**6276.40.** Sales and use tax, disclosure of information, Section 7056, Revenue and Taxation Code.

Savings association employees, disclosure of criminal history information, Sections 6525 and 8012, Financial Code.

Savings associations, inspection of records by shareholders, Section 6050, Financial Code.

School district governing board, disciplinary action, disclosure of pupil information, Section 35146, Education Code.

School employee, merit system examination records, confidentiality of, Section 45274, Education Code.

School employee, notice and reasons for hearing on nonreemployment of employee, confidentiality of, Sections 44948.5 and 44949, Education Code.

School meals for needy pupils, confidentiality of records, Section 49558, Education Code.

Sealed records, arrest for misdemeanor, Section 851.7, Penal Code.

Sealed records, misdemeanor convictions, Section 1203.45, Penal Code.

Sealing and destruction of arrest records, determination of innocence, Section 851.8, Penal Code.

Search warrants, special master, Section 1524, Penal Code.

Sex change, confidentiality of birth certificate, Section 103440, Health and Safety Code.

Sex offenders, registration form, Section 290, Penal Code.

Sex offenders, specimen and other information, unauthorized disclosure, Section 290.2, Penal Code.

Sexual assault forms, confidentiality of, Section 13823.5, Penal Code.

Sexual assault victim counselor and victim, confidential communication, Sections 1035.2, 1035.4, and 1035.8, Evidence Code.

Shorthand reporter's complaint, Section 8010, Business and Professions Code.

Small business information compiled by state agencies, confidentiality of, Section 15331.2, Government Code.

Small family day care homes, identifying information, Section 1596.86, Health and Safety Code.

Social security number, applicant for driver's license or identification card, disclosure of, Section 1653.5, Vehicle Code.

**6276.42.** State agency activities relating to unrepresented employees, subdivision (p) of Section 6254, Government Code.

State agency activities relating to providers of health care, subdivision (a) of Section 6254, Government Code.

State Auditor, access to barred records, Section 8545.2, Government Code.

State Auditor, confidentiality of records, Sections 8545, 8545.1, and 8545.3, Government Code.

State civil service employee, confidentiality of appeal to state personnel board, Section 18952, Government Code.

State civil service employees, confidentiality of reports, Section 18573, Government Code.

State civil service examination, confidentiality of application and examination materials, Section 18934, Government Code.

State Contract Act, bids, questionnaires and financial statements, Section 10165, Public Contract Code.

State Contract Act, bids, sealing, opening and reading bids, Section 10304, Public Contract Code.

State Energy Resources Conservation and Development Commission, confidentiality of proprietary information submitted to, Sections 25223 and 25321, Public Resources Code.

State hospital patients, information and records in possession of Superintendent of Public Instruction, confidentiality of, Section 56863, Education Code.

State information security officer, implementation of confidentiality policies, Section 11771, Government Code.

State Long-Term Care Ombudsman, access to government agency records, Section 9723, Welfare and Institutions Code.

State Long-Term Care Ombudsman office, confidentiality of records and files, Section 9725, Welfare and Institutions Code.

State Long-Term Care Ombudsman office, disclosure of information or communications, Section 9715, Welfare and Institutions Code.

State Lottery Evaluation Report, disclosure, Section 8880.46, Government Code.

State summary criminal history information, confidentiality of information, Sections 11105, 11105.1, 11105.3, and 11105.4, Penal Code.

Sterilization of disabled, confidentiality of evaluation report, Section 1955, Probate Code.

Strawberry marketing information, confidentiality of, Section 63124, Food and Agricultural Code.

Structural pest control licensee records relating to pesticide use, confidentiality of, Section 15205, Food and Agricultural Code.

Student driver, records of physical or mental condition, confidentiality of, Section 12661, Vehicle Code.

Student, community college, information received by school counselor, confidentiality of, Section 72621, Education Code.

Student, community college, records, limitations on release, Section 76243, Education Code.

Student, community college, record contents, records of administrative hearing to change contents, confidentiality of, Section 76232, Education Code.

Student, sexual assault on private higher education institution campus, confidentiality of information, Section 94385, Education Code.

Student, sexual assault on public college or university, confidentiality of information, Section 67385, Education Code.

Student in public college or university, record of disciplinary action for sexual assault or physical abuse, access by alleged victim, Section 67134, Education Code.

Student, release of directory information by public college or university, Section 67140, Education Code.

Sturgeon egg processors, records, Section 10004, Fish and Game Code.

**6276.44.** Taxpayer information, confidentiality, local taxes, subdivision (i), Section 6254, Government Code.

Tax preparer, disclosure of information obtained in business of preparing tax returns, Section 17530.5, Business and Professions Code.

Teacher, credential holder or applicant, information provided to Commission on Teacher Credentialing, confidentiality of, Section 44341, Education Code.

Teacher, certified school personnel examination results, confidentiality of, Section 44289, Education Code.

Teacher, information filed with Teachers' Retirement Board, confidentiality of, Section 22221, Education Code.

Telephone answering service customer list, trade secret, Section 16606, Business and Professions Code.

Timber yield tax, disclosure to county assessor, Section 38706, Revenue and Taxation Code.

Timber yield tax, disclosure of information, Section 38705, Revenue and Taxation Code.

Title insurers, confidentiality of notice of noncompliance, Section 12414.14, Insurance Code.

Tow truck driver, information in records of California Highway Patrol, Department of Motor Vehicles, or other agencies, confidentiality of, Sections 2431 and 2432.3, Vehicle Code.

Toxic substances, Department of, inspection of records of, Section 25152.5, Health and Safety Code.

Trade secrets, Section 1060, Evidence Code.

Trade secrets, confidentiality of, occupational safety and health inspections, Section 6322, Labor Code.

Trade secrets, disclosure of public records, Section 3426.7, Civil Code.

Trade secrets, food, drugs, cosmetics, nondisclosure, Sections 110165 and 110370, Health and Safety Code.

Trade secrets, protection by Director of the Department of Pesticide Regulation, Section 6254.2, Government Code.

Trade secrets and proprietary information relating to pesticides, confidentiality of, Sections 14022 and 14023, Food and Agricultural Code.

Trade secrets, protection by Director of Industrial Relations, Section 6396, Labor Code.

Trade secrets relating to hazardous substances, disclosure of, Sections 25358.2 and 25358.7, Health and Safety Code.

Traffic violator school licensee records, confidentiality of, Section 11212, Vehicle Code.

Traffic offense, dismissed for participation in driving school or program, record of, confidentiality of, Section 1808.7, Vehicle Code.

Transit districts, questionnaire and financial statement information in bids, Section 99154, Public Utilities Code.

Trust companies, disclosure of private trust confidential information, Section 1582, Financial Code.

**6276.46.** Unclaimed property, Controller records of, disclosure, Section 1582, Code of Civil Procedure.

Unemployment compensation, disclosure of confidential information, Section 2111, Unemployment Insurance Code.

Unemployment compensation, information obtained in administration of code, Section 1094, Unemployment Insurance Code.

Unemployment compensation, purposes for which use of information may be authorized, Section 1095, Unemployment Insurance Code.

Unemployment fund contributions, publication of annual tax rate, Section 989, Unemployment Insurance Code.

Unsafe working condition, confidentiality of complainant, Section 6309, Labor Code.

Use fuel tax information, disclosure prohibited, Section 9255, Revenue and Taxation Code.

Utility systems development, confidential information, subdivision (e), Section 6254, Government Code.

Vehicle registration, financial responsibility verification study, confidentiality of information, Sections 4750.2 and 4750.4, Vehicle Code.

Vehicle accident reports, disclosure of, Sections 16005, 20012, and 20014, Vehicle Code and Section 27177, Streets and Highways Code.

Vehicular offense, record of, confidentiality five years after conviction, Section 1807.5, Vehicle Code.

Veterans Affairs, Department of, confidentiality of records of contract purchasers, Section 85, Military and Veterans Code.

Veterinarian or animal health technician, alcohol or dangerous drugs diversion and rehabilitation records, confidentiality of, Section 4871, Business and Professions Code.

Victim, statements at sentencing, Section 1191.15, Penal Code.

Victims' Legal Resource Center, confidentiality of information and records retained, Section 13897.2, Penal Code.

Victims of crimes compensation program, confidentiality of records, subdivision (d), Section 13968, Government Code.

Voter, registration by confidential affidavit, Section 2194, Elections Code.

Voter registration card, confidentiality of information contained in, Section 6254.4, Government Code.

Voting, secrecy, Section 1050, Evidence Code.

Wards and dependent children, inspection of juvenile court documents, Section 827, Welfare and Institutions Code.

**6276.48.** Wards and dependent children, release of description information about minor escapees, Section 828, Welfare and Institutions Code.

Wards, petition for sealing records, Section 781, Welfare and Institutions Code.

Welfare, statewide automated system work plan, confidentiality of data on individuals, Section 10818, Welfare and Institutions Code.

Wills, confidentiality of, Section 6389, Probate Code.

Winegrowers of California commission, confidentiality of producers' or vintners' proprietary information, Sections 74655 and 74955, Food and Agricultural Code.

Workers' Compensation Appeals Board, injury or illness report, confidentiality of, Section 6412, Labor Code.

Workers' compensation insurance, dividend payment to policyholder, confidentiality of information, Section 11739, Insurance Code.

Workers' compensation insurance fraud reporting, confidentiality of information, Sections 1877.3 and 1877.4, Insurance Code.

Workers' compensation insurer or rating organization, confidentiality of notice of noncompliance, Section 11754, Insurance Code.

Workers' compensation insurer, rating information, confidentiality of, Section 11752.7, Insurance Code.

Workers' compensation, notice to correct noncompliance, Section 11754, Insurance Code.

Workers' compensation, release of information to other governmental agencies, Section 11752.5, Insurance Code.

Workers' compensation, self-insured employers, confidentiality of financial information, Section 3742, Labor Code.

Workplace inspection photographs, confidentiality of, Section 6314, Labor Code.

Youth Authority, parole revocation proceedings, confidentiality of, Section 1767.6, Welfare and Institutions Code.

Youth Authority, release of information in possession of Youth Authority for offenses under Sections 676, 1764.1, and 1764.2, Welfare and Institutions Code.

Youth Authority, records, policies, and procedures, Section 1905, Welfare and Institutions Code.

Youth Authority, records, disclosure, Section 1764, Welfare and Institutions Code.

Youth Authority parolee, disclosure of personal information in revocation proceedings, Section 1767.6, Welfare and Institutions Code.

Youth service bureau, confidentiality of client records, Section 1905, Welfare and Institutions Code.