

File No. N/A

Item No. 10

SUNSHINE ORDINANCE TASK FORCE  
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: January 31, 2024

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Government Transparency Act

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Completed by: C. Leger Date 1/25/24

\*An asterisked item represents the cover sheet to a document that exceeds 25 pages.  
The complete document is in the file.



Initiative 23-0015 Amdt. 1

September 6, 2023

**VIA HAND DELIVERY**

Anabel Renteria  
Initiative Coordinator  
Office of the Attorney General  
1300 "I" Street, 17th Floor  
Sacramento, CA 95814

Re: Submission of Text Amendment & Request for Title and Summary: "Government Transparency Act" (Initiative 23-0015) – First Amendment

Dear Ms. Renteria,

Pursuant to Elections Code section 9002(b), enclosed please find an amended version of the initiative number 23-0015, also known as the "Government Transparency Act." The amendments are reasonably germane to the theme, purpose, or subject of the initiative measure as originally proposed.

I am the proponent of the measure and request that the Attorney General prepare a circulating title and summary of the chief purpose and points of the initiative as provided by law using the amended language. Should you have any questions or require additional information, please direct any inquiries or correspondence to:

Jerry Flanagan  
Consumer Watchdog  
6330 San Vicente Blvd., Suite 250  
Los Angeles, CA 90048  
Phone: (310) 392-2632  
jerry@consumerwatchdog.org

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Flanagan", is written over a printed name and title.

Jerry Flanagan  
Initiative Proponent

Enclosures

EXPOSE

CHANGE

6330 San Vicente Blvd., Suite 250 Los Angeles, CA 90048  
Tel: (310) 392-2632 • Fax: (310) 392-8675  
JERRY.FLANAGAN@CONSUMERWATCHDOG.ORG

## **SECTION 1. Title.**

This measure shall be known as the "Government Transparency Act."

## **SECTION 2. Findings and Declarations.**

The people of California find and declare the following:

The California Public Records Act and the Legislative Open Records Act reflect the principle enshrined in our state constitution that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

However, those laws and principles have been abused or weakened by Legislators and government officials.

1. Legislators are often hosted in exotic places by special interest groups and collect money from special interest donors behind closed doors at exclusive events, which often coincide with official work. The public is entitled to a full accounting of Legislators' fundraising events and special interest junkets, as well as investigations into Legislators' misconduct.

2. To avoid providing documents to the public that could expose government wrongdoing, government agencies unreasonably limit their searches for records. Agencies must fully perform their duty to provide public records by thoroughly responding to requests from the public.

3. There is no clear minimum retention period for public records that applies to state agencies, and records may be deleted or destroyed before the public or journalists are able to access them. Although there are some exceptions, local agencies generally are only required to retain public records for a minimum of two years. All government agencies must be required to retain public documents for sufficient time to allow the public and the press to request copies of them.

4. Government agencies frequently delay producing records until long past the time that the records are relevant to the public debate. There should be clear time limits for agencies to provide records to the public.

5. Currently, there is little to disincentivize public agencies from adopting practices that limit the public's access to records. The public should be empowered to enforce the laws that protect our democracy.

6. When a member of the public sues a public agency for violating the Public Records Act, they often cannot get the information they need to prove their case, and then must appeal a bad decision in a very short time period, which discourages

public access. The legal process should support the public's right to know and right to challenge an agency's violations of law.

7. When government agencies contract with private companies to support public services, agencies refuse to provide records to the public related to the work of the private companies. The public should have access to documents reflecting work done on their behalf by private companies.

8. Private companies, including those with lucrative contracts with state agencies, bring lawsuits to prevent the release of records they have an interest in, sometimes before the person who originally requested the records has a chance to contest them. The public should have the opportunity to be heard and to resolve these lawsuits quickly.

9. Public agencies commonly refuse to provide records to the public simply because the public records reflect an agency's decision-making process, or because a government lawyer was involved in producing them. The public has a right to know how and why the government makes policy and who is influencing that policy.

10. Some government agencies are serial offenders when it comes to obstructing access to public records, yet there is no way to globally assess the delays and address the problem. Government action, as well as inaction, should be transparent to the public.

### **SECTION 3. Intent.**

The people find that the Government Transparency Act is necessary to protect and expand the public's right to access public records as enshrined in article I, section 3 of the California Constitution, while preserving the broad protections for personal privacy provided for by statute and the California Constitution.

The Government Transparency Act:

1. Requires Legislators to disclose lobbying meetings, fundraising events, and public events. Requires that records relating to investigations into Legislators' misconduct be provided to the public upon request. Requires all Legislative records be retained for a minimum of five years and subjects those records to laws providing for the archiving of public records.

2. Establishes standards to ensure government agencies conduct thorough searches for public records and disclose details about what they did to comply with the law.

3. Prohibits agencies from deleting or destroying public records for a minimum of five years after a record is created.

4. Requires agencies to provide requested public records within 30 calendar days of a request, unless extraordinary circumstances prevent the agency from doing so, and requires agencies to automatically post certain records on their websites, including contracts with vendors and contractors.
5. Allows the public to bring legal actions to address past violations of the law and to prevent threatened future actions that would undermine access to public records.
6. Confirms that members of the public who sue public agencies to enforce the Public Records Act have the same access to discovery as in any civil lawsuit and makes the appeal process less onerous on the public.
7. Clarifies that the definition of public records includes documents maintained by private contractors relating to their work on behalf of public agencies.
8. Limits the ability of companies to file preemptive lawsuits to deny access to public records. Makes legal challenges seeking to prevent disclosure of public records subject to California law prohibiting Strategic Lawsuits Against Public Participation ("Anti-SLAPP"). Requires companies who bring those challenges to post a bond.
9. Makes communications and other records exchanged between government employees and entities outside of government about policy decisions available to the public, and limits public agencies' use of the attorney-client privilege and the attorney work product doctrine to bar access to public records.
10. Requires public agencies to publish annual reports that provide information about delays in access to public records.

#### **SECTION 4. Require Legislators to Disclose Lobbying Meetings, Fundraising Events and Other Events Hosted by Special Interest Groups.**

Section 9077.5 of the Government Code is added to read:

9077.5. Disclosure of meetings with lobbyists and fundraising and public events  
(a) Notwithstanding Section 9075 or any other provision of law, each individual Member of the Legislature shall disclose on their official internet website a schedule of all of the following events and meetings, as defined in Section 9072: public events or fundraising events attended or organized by the Member of the Legislature or their staff, and lobbying meetings attended by the Member of the Legislature.  
(b) The disclosures required by subdivision (a) shall include the corresponding location, date, time, and purpose of each event. For lobbying meetings, in addition to the location, date, time, and purpose of each meeting, the required disclosure shall include the names and affiliations of each attendee, except that names and



residential addresses of private citizens shall not be disclosed. If a meeting reflects several matters, only the topics that meet the definition of a lobbying meeting provided in Section 9072, subdivision (g) shall be subject to the disclosure requirements of this section.

(c) The schedule of events and meetings required in this section shall be conspicuously posted on the individual Members of the Legislature's official internet websites on a web page linked to the websites' homepages under the heading "Schedule of Public Events, Fundraising Events, and Lobbying Meetings."

(d) The disclosures required in this section shall be posted on the Member's official internet website no later than 5 calendar days after the events and meetings listed in subdivision (a) occur.

## **SECTION 5. Require the Legislature to Make Legislative Records Open to the Public.**

Section 9073 of the Government Code is amended to read:

9073. Right to inspection; and copy, and deadline to provide legislative records  
time; memoranda or abstracts; copy; fee

(a) Legislative records are open to inspection at all times during the normal office hours of the Legislature and any person has a right to inspect or copy any legislative record, except as hereafter provided. Any person shall be furnished reasonable opportunities and reasonable facilities for inspection and copying of legislative records, and reasonable facilities for making memoranda or abstracts therefrom.

(b) Any person may also receive a copy of a legislative record, if such record is of a nature permitting such copying. Upon a request from any person, legislative records shall be provided to the person making the request at the earliest possible time, but in no event more than 30 calendar days from receipt of the request, unless the legislative staff person most knowledgeable about the search for and review of records provides a specific factual showing in writing to the person requesting the legislative records, supported by a declaration under penalty of perjury by the same staff person, of "extraordinary circumstances," as defined in Section 7922.535, subdivisions (b) and (c), that necessitate additional time to complete the production of disclosable legislative records. In that event, the requested legislative records shall be provided to the person requesting the records on a rolling basis as the records are identified.

(c) In no circumstance shall disclosable records be provided later than 90 calendar days from the date of the request, regardless of any "extraordinary circumstances."

(d) The Legislature may establish fees reasonably calculated to reimburse it for its actual direct cost in making such copies available, provided such fee shall not exceed ten cents (\$0.10) per page. No other fees or costs may be assessed by the Legislature for providing copies of legislative records to any person.

Section 9074 of the Government Code is amended to read:

9074. Requesting legislative records ~~Rules committees; requests; availability of records; withholding of records; guidelines stating procedure~~

(a) All requests to inspect ~~or obtain a copy of~~ any legislative record shall be made to the appropriate Rules Committee of each house of the Legislature or the Joint Rules Committee, except that all requests to inspect or obtain a copy of any legislative record in the possession of the Auditor General shall be made to the Joint Legislative Audit Committee, and all requests to inspect or obtain a copy of legislative records defined in Section 9075.5 in the possession of the Workplace Conduct Unit of the Office of Legislative Counsel shall be made to the Workplace Conduct Unit. Such committees and the Workplace Conduct Unit shall be considered to have custody of all their respective legislative records and shall be responsible for making all their respective legislative records available for inspection or providing copies of the records to the person requesting them.

(b) Within 10 calendar days from receipt of the request, the committees or Workplace Conduct Unit referenced in subdivision (a) shall preliminarily determine whether the request, in whole or in part, seeks copies of legislative records that are subject to public disclosure pursuant to this article, and shall promptly notify, in writing, the person making the request of the determination and the reasons therefor as required in subdivision (c). In extraordinary circumstances, as defined in Section 7922.535, subdivisions (b) and (c), the time limit prescribed in this section may be extended in a written notice to the person who made the request. The notice shall include a specific factual showing, supported by a declaration made under penalty of perjury from the legislative staff person most knowledgeable about the search for and review of records, to the person making the request, specifying the extraordinary circumstances for the extension and the date on which the determination shall be dispatched. No notice shall specify a date that would result in an extension of more than 14 calendar days. ~~Such committees shall promptly inform any person whether any legislative record shall be made available for inspection. Such legislative records shall be made available for inspection promptly and without unnecessary delay.~~

(c) Whenever such committee or Workplace Conduct Unit withholds or redacts any legislative record that it has custody of as provided for in subdivision (a) from inspection, ~~within four working days of the request to inspect such record,~~ the committee or Workplace Conduct Unit shall, when providing a response or notice required by subdivision (b) of this section or subdivision (b) of Section 9073, justify in writing the withholding or redaction of such record by demonstrating with clear and convincing evidence that the record, or portion thereof, in question is exempt under the express provisions of this article, or that on the facts of the particular case, a compelling public interest served by nondisclosure clearly outweighs the public interest served by disclosing the record. ~~the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record, provided that when the Legislature is not in session, such committee~~

shall furnish such written justification within 10 working days of the request to inspect such record.

(d) The Rules Committee of each house, the Joint Rules Committee, and the Joint Legislative Audit Committee, ~~and, for purposes of legislative records pursuant to Section 9075.5, the Workplace Conduct Unit of the Office of Legislative Counsel,~~ shall adopt written guidelines ~~stating providing~~ the procedures to be followed when making legislative records available for inspection. The guidelines shall provide for the time, place, and other conditions under which legislative records may be inspected and copied. The guidelines shall also provide procedures for compliance with all the requirements of this chapter, including Section 9072.5 and 9074.5. Each committee and the Workplace Conduct Unit shall make copies of its written procedures available to the public free of charge.

The amendment of this section made at the 1981-82 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the existing law.

Section 9080 of the Government Code is amended to read:

9080. Records concerning legislative intent ~~Legislative records; retention; public inspection; procedures; findings and declarations~~

(a) The Legislature finds and declares that legislative records relating to bills, resolutions, or proposed constitutional amendments, ~~or regulatory issues before the Legislature as defined in Section 9072, subdivision (k),~~ provide evidence of legislative intent that may be important in the subsequent interpretation of laws enacted in the Legislature, ~~or regulations adopted by public agencies. Consistent with Section 9074.5,~~ The Rules Committee of each house of the Legislature and the Joint Rules Committee shall inform each committee of the Senate and Assembly, and each joint committee of the Legislature, and each individual Member of the Legislature, of their responsibility to preserve legislative records and make them available to the public. The Rules Committee of each house of the Legislature and the Joint Rules Committee shall also inform each committee of the Senate and Assembly, and each joint committee of the Legislature, of their responsibility to make legislative records available to the public. Members of the public seeking legislative records in the possession of an individual Member of the Legislature shall make their request in accordance with the guidelines developed pursuant to subdivision (d) of Section 9074.

(b) Each committee of the Senate or Assembly, and each joint committee of the Legislature, ~~and each individual Member of the Legislature~~ having custody of legislative records relating to a bill, resolution, or proposed constitutional amendment, ~~or any regulatory issue assigned to that committee,~~ shall maintain the legislative records described in subdivision (d) in an official committee ~~or~~ officeholder file. ~~Consistent with Section 9074.5, The committee or Member of the Legislature shall preserve those records in its their custody, or, in the alternative, may and~~ arrange with the State Archives to lodge some or all of the records there as



required by Section 9074.5 and the State Records Management Act, Government Code section 12270 et seq. under the condition that the records be preserved.

(c) "Committee" for purposes of this section includes any entity of the Senate or Assembly responsible for preparing analyses of bills, resolutions, or proposed constitutional amendments that are to be put to a vote by a quorum of the members of the Senate or Assembly.

(d) "Legislative records," for purposes of this section, means records contained in an official committee file, or records in the custody of individual Members of the Legislature, including, but not limited to, all of the following:

(1) Committee staff analyses.

(2) Written testimony.

(3) Background material submitted to the committee or to a Member of the Legislature.

(4) Press releases.

(5) Written commentary submitted to the committee or to a Member of the Legislature on a bill, resolution, or proposed constitutional amendment. For purposes of this paragraph, "written commentary" does not include the following:

(A) Material not utilized by the staff of a fiscal committee in the preparation of any analysis for the members of that committee.

(B) Communications determined by the committee or its staff to be confidential.

(6) Versions of bills, resolutions, or proposed constitutional amendments assigned to the committee.

(7) Relevant interim hearing materials and other records relating to bills, resolutions, or proposed constitutional amendments including, but not limited to, studies, background materials, case materials, and articles.

(8) Any written correspondence to or from public agencies or other records regarding regulatory issues.

(e) Legislative records contained in an official committee file or officeholder file shall be open to inspection and copying, or for obtaining copies thereof, by the public, pursuant to Sections 9073 and 9074. ~~Each committee of the Senate or Assembly, and each joint committee of the Legislature, shall adopt and implement written procedures consistent with Sections 9073 and 9074 for the public's access to official committee files maintained in the committee's office. The procedures shall provide for the time, place, and other conditions under which committee files may be inspected and copied. Each committee shall make copies of its written procedures available to the public.~~

(f) The Rules Committee of each house of the Legislature or, alternatively, the Joint Rules Committee shall provide for the storage of any official committee file that is not maintained in the office of the committee that created the file or lodged with the State Archives: as required by Section 9074.5 and the State Records Management Act, Government Code section 12270 et seq. The Rules Committee of each house of the Legislature or, alternatively, the Joint Rules Committee, ~~as the case may be,~~ shall provide for the storage of any legislative records previously in the custody of individual Members of the Legislature once those Members leave office until there is

a determination to lodge such records with the State Archives as required by Section 9074.5 and the State Records Management Act, Government Code section 12270 et seq. or as otherwise required by this article. adopt and implement written procedures consistent with Section 9073 and 9074 for the public's access to official committee files so stored in its custody. The procedures shall provide for the time, place, and other conditions under which committee files may be inspected and copied, and the committee shall make copies of its written procedures available to the public.

(g) Nothing in this section requires making any legislative record available for inspection that relates to any unchaptered bill, resolution, or proposed constitutional amendment introduced in the current legislative session, except in accordance with the requirements and limitations specified in Sections 9073, 9074, and 9075, 9077.5, and 9080.

## **SECTION 6. Require the Legislature to Retain Records for a Minimum of Five Years.**

Section 9072.5 of the Government Code is added to read:

### 9072.5. Retention of legislative records

Unless a longer retention period is required by statute, or established pursuant to the State Records Management Act (Article 7 (commencing with Government Code section 12270) of Chapter 3 of Part 2 of Division 3 of Title 2), legislative records, as defined in Section 9072, shall be retained and preserved for at least five years regardless of physical form or characteristics.

## **SECTION 7. Mandate that Legislative Records Belong to the People and Are Subject to State Archiving Laws.**

Section 9074.5 of the Government Code is added to read:

### 9074.5. Legislative records are subject to the State Records Management Act

(a) Legislative records belong to the people and are not the private property of individual Members of the Legislature.

(b) In order to ensure preservation of and public access to legislative records, all legislative records shall be subject to the State Records Management Act,

Government Code section 12270 et seq., and shall be included in the State Records Management Act's definition of "record" found in Government Code section 12271.

(c) The Speaker of the Assembly, the Senate Pro Tem, and the Legislative Counsel for purpose of legislative records defined in Section 9075.5, shall respectively be considered the "Head of the State Agency," under the State Records Management Act, for purposes of the state Assembly, Senate, and Workplace Conduct Unit, and each shall appoint a Records Management Coordinator as described by Government Code section 12274.5.

(d) The state Assembly and Senate, and the Legislative Counsel for purpose of legislative records defined in Section 9075.5, shall be considered the relevant "agency" for purposes of the State Records Management Act.

## **SECTION 8. Require the Legislature to Provide the Public Access to Records Concerning Misconduct of Legislators.**

Section 9075.5 of the Government Code is added to read:

### 9075.5. Records concerning misconduct

(a) Notwithstanding Section 9075, subdivisions (a), (c), (f), (g), (h), (i), (j) and (k), or any other provision of law, all records of complaints to, or investigations conducted by, the Legislature relating to well-founded allegations of misconduct against a Member of the Legislature or a Legislative employee, including, but not limited to, complaints, records of investigations, findings, or dispositions of complaints or investigations:

(1) shall not be confidential;

(2) are legislative records as defined in Section 9072; and

(3) shall be made available for public inspection and provided to the public as required by Section 9073 and Section 9074, 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. If the release of any legislative records, or any portion thereof that the Legislature seeks to redact, is delayed on this basis, the staff person most knowledgeable about the investigation shall give a written notice to the person requesting the records that provides a specific factual basis, supported by a declaration under penalty of perjury by the same staff person, demonstrating that disclosure would endanger (A) the safety of a person involved in an investigation or (B) the successful completion of an investigation.

(b) Notwithstanding the limitation in subdivision (a)(3), at the conclusion of any investigation, all records must be provided to any person upon request. For any person who requested records during an investigation, at the conclusion of the investigation, the agency shall give written notice to such person that the records are available, and provide the records within 30 calendar days upon confirmation that the person still seeks the records.

(c) A record of a complaint, or the investigations, findings, or dispositions of that complaint, shall not be released pursuant to this section if the complaint, as determined by the Workplace Conduct Unit of the Office of Legislative Counsel, is frivolous, as defined in Section 128.5, subdivision (b)(2) of the Code of Civil Procedure, or if the complaint is unfounded, as defined in Section 832.8, subdivision (c) of the Penal Code. At any time prior to this determination any person may request, and the Workplace Conduct Unit shall provide, a summary of complaints and pending investigations that does not disclose the name or identifying information of the accused, whistleblowers, complainants, victims, or witnesses.



(d) A legislative record disclosed pursuant to this section shall be redacted only for the following purposes, and any decision to do so must be communicated in writing to the person requesting the record as required in Section 9074, subdivision (c):

(1) To remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of the accused.

(2) To preserve the anonymity of whistleblowers, complainants, victims, and witnesses.

(3) To protect confidential medical information when disclosure (A) is specifically prohibited by federal or state law or (B) would cause, as determined by the Workplace Conduct Unit of the Office of Legislative Counsel, an unwarranted invasion of personal privacy that clearly outweighs the compelling public interest in disclosing records about possible misconduct.

(4) Where there is a specific, articulable, and particularized reason, as determined by the Workplace Conduct Unit of the Office of Legislative Counsel, to believe that disclosure would pose a significant danger to the physical safety of the accused.

## **SECTION 9. Allow Courts to Compel Disclosure of Legislative Records.**

Section 9076 of the Government Code is amended to read:

9076. Legal action ~~Injunctive or declaratory relief; times for responsive pleadings and hearings in proceedings~~

Any person may institute proceedings for injunctive or declarative relief, or for a writ of mandate, in any court of competent jurisdiction to enforce his any of the provisions of this article, including, but not limited to, that person's right to inspect or receive a copy of any legislative record or class of legislative records under this article, or to determine the applicability of this article to past actions or threatened future action. The times for responsive pleadings and for hearings in such proceedings shall be set by the judge of the court with the object of securing a decision as to such matters at the earliest possible time.

Section 9077 of the Government Code is amended to read:

9077. Courts may compel production ~~Order of court; contempt~~

(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 legislative records are being improperly withheld from a member of the public or improperly redacted, the court shall order the committee, individual Member of the Legislature, or the Workplace Conduct Unit of the Office of Legislative Counsel, as provided for in Section 9075.5, charged with withholding or redacting the records to disclose the legislative record without redactions, or show cause why the committee, individual Member, or the Workplace Conduct Unit should not do so. Notwithstanding Section 915 of the Evidence Code, the court shall may decide the case after examining any



the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and such oral argument and additional evidence as the court may allow. The court need not review in camera, before ordering disclosure, any record for which the committee, individual Member of the Legislature, or Workplace Conduct Unit has failed to meet their initial burden to demonstrate that a stated exemption applies. In reviewing legislative records in camera, the court shall proceed in the manner that causes the least procedural prejudice, including, but not limited to, by not allowing parties or counsel to be present during in camera review. (b) If in exercising its independent judgment, the court finds that the committee's, the individual Member of the Legislature's, or, for purposes of Section 9075.5, the Workplace Conduct Unit's decision to refuse disclosure withhold or redact a legislative record is not justified under the provisions of Section 9074 or 9075 this article, he the court shall order the committee, individual Member, or the Workplace Conduct Unit to provide the record to the person that requested it make the record available for inspection. If the judge determines that the committee, individual Member, or the Workplace Conduct Unit was justified in refusing to make the withholding or redacting the record available for inspection, the judge he shall return the item to the committee, the individual Member, or the Workplace Conduct Unit without disclosing its content with an order supporting the decision refusing disclosure. 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.

Section 9078 of the Government Code is amended to read:

9078. Court costs and attorney fees to plaintiff prevailing in litigation  
The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to Sections 9076 or 9077.

## **SECTION 10. Right to Obtain Public Records from Government Agencies.**

Section 7921.500 of the Government Code is amended to read:

### **7921.500. Opening of records by agency**

Unless disclosure is otherwise prohibited by law, ~~the provisions listed in Section 7920.505 do not~~ nothing in this division shall prevent any agency from opening its records concerning the administration of the agency to public inspection.

Section 7922.000 of the Government Code is amended to read:

### **7922.000. Justification for withholding or redacting of records**

(a) As required by Section 7922.540, a public agency shall justify withholding or redacting any public record by demonstrating with a specific factual showing in writing providing clear and convincing evidence that: the record in question is exempt under express provisions of this division, 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.~~

(1) disclosure is prohibited by law; or

(2) (A) the record, or the portion thereof that the agency seeks to redact, is exempt under an express provision of this division that includes a balancing test, including, but not limited to, Section 7921.705, Section 7922.720, and Section 7927.700; (B) the disclosure would foreseeably harm the interest protected by the exemption; and (C) pursuant to the applicable balancing test, the record, or portion thereof, should not be disclosed; or

(3) (A) the record, or the portion thereof that the agency seeks to redact, is exempt under an express provision of this division that does not include a balancing test, including Section 7927.705; (B) the disclosure would foreseeably harm the interest protected by the exemption; and (C) on the facts of the particular case, the public interest served by withholding or redacting the record is not clearly outweighed by the public interest served by disclosing the record; or

(4) (A) disclosure would undermine a compelling public interest in nondisclosure; (B) the interest in nondisclosure has not been addressed by an express exemption of this division; and (C) the interest in nondisclosure clearly outweighs the public's interest in disclosure.

(b) All records or information related to the conduct of the public's business are presumptively matters of public interest.

(c) To the extent a public record contains both exempt material and other material that is not exempt, the public agency shall redact only the exempt material, and provide the record to the requester in redacted form.

(d) Public agencies shall not redact a record on the grounds that it contains material that is non-responsive to a request.

Section 7922.525 of the Government Code is amended to read:

7922.525. Inspection of public records during office hours

(a) Public records are open to inspection at all times during the office hours of a state or local agency and every person has a right to inspect any public record, exempted as otherwise provided.

~~(b) 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.~~

Section 7922.530 of the Government Code is amended to read:

7922.530. Prompt availability of records upon request; inspection and safety of records

(a) 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, as set forth in Section 7922.536, upon payment of the fees described in subdivision (b) of this section. However, a public agency has the discretion to waive fees, covering direct costs of duplication, or a statutory fee if applicable. Upon request, a An exact copy of each record shall be provided unless impracticable to do so the record is no longer available.

(b) Notwithstanding Government Code section 54985, Vehicle Code section 1811, Business and Professions Code section 161, Government Code section 27366 or any other similar law allowing any public agency to charge additional fees, no public agency shall assess any fee upon a requester that exceeds the direct cost of duplication of the public record, or a fee of \$0.10 per page, whichever is less, as well as the actual cost of any digital storage media or device provided by an agency, the actual cost of any container or envelope used to mail the copies to the requester, and the actual postage or delivery charge. No other fee shall be charged, including, but not limited to, a fee for searching for records, reviewing records, or redacting records.

(c) Unless otherwise specified by the requester, agencies shall provide records by utilizing the lowest cost method for the requester that is available to the agency as part of its normal operations.

(d) A requester may ask an agency to provide, and if requested an agency shall provide, a summary of the applicable charges before any copies are made and the requester may revise the request to reduce the number of copies to be made and reduce the applicable charges. An agency may also provide a summary of the applicable charges on its own accord.

(e) A requester who inspects a disclosable record on the premises of the agency has the right to use the requester's equipment on those premises, without being charged any fees or costs, to photograph or otherwise copy or reproduce the record in a manner that does not require the equipment to make physical contact with the record, unless the means of copy or reproduction would result in either of the following:

(1) Damage to the record.

(2) Unauthorized access to the agency's computer systems or secured networks by using software, equipment, or any other technology capable of accessing, altering, or compromising the agency's electronic records.

(f) The agency may impose any reasonable limits on the use of the requester's equipment that are necessary to protect the safety of the records or to prevent the copying of records from being an unreasonable burden to the orderly function of the agency and its employees. In addition, the agency may impose any limit that is necessary to maintain the integrity of, or ensure the long-term preservation of, historic or high-value records.

Section 7922.531 of the Government Code is added to read:

7922.531. Preliminary investigation

(a) Upon a request for a copy of records, a public agency must conduct a preliminary investigation to determine which agency personnel are most knowledgeable about



potentially responsive records. Search terms and search parameters used to identify responsive records shall (1) be developed in consultation with those agency personnel, and (2) include, but not be limited to, locations to be searched, the identity and titles of custodians potentially in possession of responsive records, the time-period associated with potentially responsive records, and any other term or parameter necessary to comply with the provisions and purposes of this division.

(b) The search terms and search parameters shall be disclosed in writing by the public agency to the person requesting the records along with the notice required in Section 7922.535. The requester may request changes to the search terms and search parameters. Any revisions to the search terms and search parameters adopted by the public agency shall be disclosed to the requester in writing within 10 calendar days of the date of the revision.

Section 7922.532 of the Government Code is added to read:

7922.532. Thorough search

(a) Following the consultation with agency staff required by Section 7922.531, public agencies must conduct an adequate search for records that is reasonably calculated to locate all responsive records. In the event of a legal action in which a requester challenges the sufficiency of the public agency's search for records, the court shall independently evaluate the reasonableness of an agency's search for records based on what the agency personnel knew or should have known at the conclusion of its search for records. As part of conducting a search for records, public agencies must pursue leads that arise during the course of a search that suggest the probable existence of other responsive records.

(b) The agency bears the burden of demonstrating beyond a material doubt the adequacy and reasonableness of its search.

(c) For the purposes of this section, "conclusion of its search for records" means the last date on which a public agency provides records to the requester pursuant to Section 7922.536, or the last date that an agency provides a written justification for withholding or redacting records pursuant to Section 7922.540, whichever is later.

Section 7922.535 of the Government Code is amended to read:

7922.535. Preliminary ~~D~~determination whether requested records are disclosable; time limits

(a) Each agency, upon a request for a copy of records, shall, within 10 *calendar* days from receipt of the request, *preliminarily* determine whether the request, in whole or in part, seeks copies of disclosable ~~public~~ records *that are* (1) in the possession of the agency and (2) *subject to public disclosure pursuant to this division, and* shall promptly notify the person making the request of the determination and the reasons therefor. If the agency determines that the request seeks disclosable public records, the agency shall also state the estimated date and time when the records will be made available *in compliance with Section 7922.536.*



(b) In ~~unusual~~ extraordinary circumstances, the time limit prescribed in this article and Article 1 (commencing with Section 7922.500) may be extended by a public agency in a written notice to the person who made the request. The notice shall include a specific factual showing, supported by a declaration made under penalty of perjury from the agency staff person most knowledgeable about the search for and review of records, from the head of the agency or a designee, to the person making the request, setting forth specifying the reasons extraordinary circumstances for the extension and the date on which a ~~the~~ determination is ~~expected to~~ shall be dispatched. No notice shall specify a date that would result in an extension ~~for~~ of more than 14 calendar days.

(c) As used in this section, "~~unusual~~ extraordinary circumstances" means the following, but only to the extent reasonably necessary to comply with the requirements of this division: the proper processing of the particular request:

(1) The ~~need~~ request requires the agency to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request. Notwithstanding this subsection, regarding public records that are electronically stored, including emails and other documents maintained on computer hard drives, servers, and online file storage, public agencies shall not justify an extension of time described in subdivision (b) or Section 7922.536 on the basis that the request requires the agency to search for and collect a voluminous amount of separate and distinct records.

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

(3) The ~~need for~~ request requires 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~~ request requires the agency to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

Section 7922.536 of the Government Code is added to read:

7922.536. Deadline to provide records

(a) Each agency, upon a request for a copy of records, shall provide the requested public records to the person making the request at the earliest possible time, but in no event more than 30 calendar days from receipt of the request unless the agency makes a specific factual showing in writing, supported by a declaration made under penalty of perjury from the agency staff person most knowledgeable about the search for and review of records, of "extraordinary circumstances," as defined in Section 7922.535, subdivisions (b) and (c), that necessitate additional time to complete the production of disclosable records. In that event, the public agency shall provide the requested public records on a rolling basis as the records are identified.

(b) In no circumstance shall disclosable records be provided later than 90 calendar days from the date of the request, regardless of any "extraordinary circumstances."

Section 7922.546 of the Government Code is added to read:

7922.546. Post certain records to website

(a) While complying with the requirements of Section 7922.680, Section 7927.200, or any other applicable law, including the Constitutional right to privacy, public agencies shall post the following records on their official internet website, if any, within 10 calendar days of the records becoming final, or for records not created by the agency, within 10 calendar days of the records becoming available to the agency:

(1) Records of court and administrative proceedings where the agency is a party, intervenor, or amicus curiae participant, limited to any initial and amended complaints, filings in support of intervenor status, amicus curiae briefs, and any final order, judgment, or final determination in the matter. Complaints filed pursuant to Code of Civil Procedure section 482.050, subdivision (a) shall be posted within 10 calendar days of the complaint becoming publicly available.

(2) Contracts entered into by the public agency.

(3) Government tort claims received by the public agency.

(4) Settlement agreements entered into by the public agency.

(5) Annual budgets of the public agency.

(6) Proposed regulations submitted by the public agency to the Office of Administrative Law, comments received by and responses provided by the public agency or the Office of Administrative Law regarding proposed regulations, and final regulations submitted to the Office of Administrative Law.

(7) Budget and cost estimates prepared by the public agency for proposed legislation, which shall be posted to the official internet website as required by this section, notwithstanding the deliberative process privilege or any other exemptions or privileges otherwise permitted pursuant to this division.

(8) Any guidelines and revisions to guidelines created pursuant to Section 7922.635.

(b) The records listed in subdivision (a) shall be conspicuously posted on the public agency's official internet website, if any, on a webpage linked to the website's homepage under the heading "Public Records Available for Review," or a substantially similar heading, in a manner allowing the records to be downloaded in text-searchable portable document format while maintaining the original document formatting.

Section 7922.575 of the Government Code is amended to read:

7922.575. Costs of duplication of an electronic record

(a) Consistent with Section 7922.530, the cost of duplication of an electronic record pursuant to paragraph (2) of subdivision (b) of Section 7922.570 shall be limited to the direct cost of producing a copy of a record in an electronic format.

~~(b) Notwithstanding 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 subdivisions (a) and (b) of Section 7922.570, 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.~~

Section 7922.635 of the Government Code is amended to read:

7922.635. Establishment of written guidelines for accessibility of records; state and local bodies

*(a) As required by Section 7922.546, each public agency shall establish and post on its official internet website, if any, written guidelines, along with any updates or revisions to those guidelines, for accessing public records that shall include, at a minimum, the following information:*

*(1) A description of the agency's central and field organization and the established places at which public records are maintained.*

*(2) A description of the record locator systems employed by the agency to search for public records.*

*(3) All formal and informal procedures available to the public to inspect or obtain copies of public records.*

~~(a) The following state and local bodies shall establish written guidelines for accessibility of records:~~

~~(1) All regional water quality control boards.~~

~~(2) Bay Area Air Pollution Control District.~~

~~(3) California Coastal Commission.~~

~~(4) Department of Financial Protection and Innovation.~~

~~(5) Department of Consumer Affairs.~~

~~(6) Department of Corrections and Rehabilitation.~~

~~(7) Department of General Services.~~

~~(8) Department of Industrial Relations.~~

~~(9) Department of Insurance.~~

~~(10) Department of Justice.~~

~~(11) Department of Managed Health Care.~~

~~(12) Department of Motor Vehicles.~~

~~(13) Department of Parks and Recreation.~~

~~(14) Department of Real Estate.~~

~~(15) Department of Toxic Substances Control.~~

~~(16) Department of Veterans Affairs.~~

~~(17) Department of Water Resources.~~

~~(18) Division of Juvenile Justice.~~



- ~~(19) Employment Development Department.~~
- ~~(20) Golden Gate Bridge, Highway and Transportation District.~~
- ~~(21) Los Angeles County Air Pollution Control District.~~
- ~~(22) Office of Environmental Health Hazard Assessment.~~
- ~~(23) Public Employees' Retirement System.~~
- ~~(24) Public Utilities Commission.~~
- ~~(25) San Francisco Bay Area Rapid Transit District.~~
- ~~(26) San Francisco Bay Conservation and Development Commission.~~
- ~~(27) Secretary of State.~~
- ~~(28) State Air Resources Board.~~
- ~~(29) State Board of Equalization.~~
- ~~(30) State Department of Developmental Services.~~
- ~~(31) State Department of Health Care Services.~~
- ~~(32) State Department of Public Health.~~
- ~~(33) State Department of Social Services.~~
- ~~(34) State Department of State Hospitals.~~
- ~~(35) State Water Resources Control Board.~~
- ~~(36) Teachers' Retirement Board.~~
- ~~(37) Transportation Agency.~~

(b) 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.

(c) Nothing in this section shall be construed to require a requester to submit a request (1) in any particular format; (2) to any particular person; or (3) to any specific department or agency unit.

## **SECTION 11. Public Agencies Must Retain Records for a Minimum of Five Years.**

Section 7922.745 of the Government Code is added to read:

### 7922.745. Retention of public records

Unless a longer retention period is required by statute or regulation, or established pursuant to the State Records Management Act (Article 7 (commencing with Section 12270) of Chapter 3 of Part 2 of Division 3 of Title 2), a public agency shall, for purposes of this division, retain and preserve for at least five years every public record, as defined in Section 7920.530, regardless of physical form or characteristics.

## **SECTION 12. Public Has a Right to Know Why Public Records Are Withheld and Redacted.**

Section 7922.540 of the Government Code is amended to read:



7922.540. Written response to request for inspection or copies of public records

(a) 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.

(b) The notification of denial shall set forth the names and titles or positions of each person responsible for the denial, *including whether they are an attorney.*

*(c) Pursuant to subdivision (a) and Section 7922.000, ~~At~~ a public agency shall justify withholding or redacting any record. by complying with Section 7922.000.*

*(d) A public agency's failure to identify a specific basis for withholding or redacting a public record pursuant to this section shall be deemed a waiver of any unstated exemption or privilege. In the event of a legal action, a public agency shall not justify its decision to withhold or redact records on the basis of any previously unstated exemption or privilege. Where an agency asserted inapplicable exemptions without a reasonable factual basis for believing the exemptions applied at the time the exemptions were asserted, the court, in its discretion, may impose any sanctions it deems appropriate.*

*(e) Upon written request from the requester, a public agency shall also provide all of the following information in writing—*

*(1) A detailed description of how the search for records was conducted.*

*(2) A general description of the withheld and redacted records by subject matter along with the corresponding basis of the agency's decision to withhold or redact the records by subject matter category, and the estimated number of withheld and redacted records by subject matter category. For clarity, this subsection requires a public agency to group withheld and redacted records by subject matter, rather than to separately identify each withheld and redacted record.*

Section 7922.541 of the Government Code is added to read:

**7922.541. Privilege log**

*In the event of legal action, a public agency shall provide a "privilege log" to the person bringing the action, and in the case of a reverse-CPRA suit, also to the requester named as a real party in interest, within 30 calendar days of service of the complaint on the public agency that does all of the following: (a) individually identifies each record withheld or redacted; (b) provides the date each communication or record was created, if known; (c) identifies the sender(s) and recipient(s) of each communication, as well as anyone copied on the communication, including email addresses if applicable; (d) describes each document or portion thereof withheld or redacted; (e) identifies the claimed privilege or exemption at issue for each withheld or redacted record; and (f) provides an explanation of the specific legal and factual basis for the claimed privilege or exemption for each withheld or redacted record.*

### **SECTION 13. Public May Bring Legal Actions and Obtain Discovery Concerning an Agency's Efforts to Comply with the Public Records Act.**

Section 7923.000 of the Government Code is amended to read:

7923.000. Proceedings to enforce right to inspect or to receive copy of record  
Any person may institute a proceeding for injunctive or declarative relief, or for a writ of mandate, in any court of competent jurisdiction, to enforce any of the provisions of this division, including, but not limited to, that person's right under this division to inspect or receive a copy of any public record or class of public records, or to determine the applicability of this division to past actions or threatened future action by public agencies. Judicial review of all agency actions taken or challenged under this division shall be de novo.

Section 7923.105 of the Government Code is amended to read:

7923.105. Examination and considerations prior to court decision  
The court shall decide the case after the court does all of the following:  
(a) Allow the requester all discovery permitted under the Civil Discovery Act, Code of Civil Procedure section 2016.010 et seq. This section is intended to limit or override City of Los Angeles v. Superior Court (2017) 9 Cal.App.5th 272 to the extent that that case implies a more limited scope of discovery is appropriate in California Public Records Act cases, or as otherwise inconsistent with this division. An agency is entitled to discovery only upon a showing of extraordinary circumstances.  
(ba) Examine the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code. Notwithstanding Evidence Code section 915, the court may review in camera any public record withheld or redacted under any claims of exemption or privilege to determine whether the public record, or portion thereof, is in fact exempt from production. The court need not review in camera, before ordering disclosure, any record for which the agency has failed to meet its initial burden to demonstrate that a stated exemption applies. In reviewing public records in camera, the court shall give no deference to the agency's determination, and shall proceed in the manner that causes the least procedural prejudice, including, but not limited to, by not allowing parties or counsel to be present during in camera review.  
(cb) Examine any papers filed by the parties.  
(de) Consider any oral argument and additional evidence as the court may allow.

### **SECTION 14. Provide Fair Appeals for the Public and Prompt Resolution When Government Agencies Challenge a Court Order to Produce Records.**

Section 7923.500 of the Government Code is amended to read:

## Article 2. Writ Judicial Review and Contempt

7923.500. Finality of order; review by appellate court; time to petition for review; granting of stay

(a) ~~Any order of the court, either directing disclosure by a public official or supporting the decision of the public official~~ agency 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.~~ A requester may challenge the final judgment or order through a standard appeal or through a writ action. If the requester chooses to proceed by writ, the right of appeal shall not be considered an adequate alternative remedy.

(b) An order of the court directing disclosure of a public record by a public agency 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 chapter, a ~~party~~ public agency shall, in order to obtain review of the order, file a petition within 20 calendar days after service upon the ~~party~~ public agency of a written notice of entry of the order, ~~or within a 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 calendar days.

(c) In acknowledgment that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state, as provided for in article I, section 3 of the California Constitution, any appeal shall be scheduled by the clerk of the court for a hearing not more than 120 calendar days after the service of the opening brief or petition for writ unless the docket conditions of the court require a later hearing. This time period may be extended pursuant to a motion for continuance filed by the person who requested the public records, where a continuance is necessary in the interests of justice. A public agency shall be entitled to a continuance only upon a showing of extraordinary circumstances.

(e) ~~If the notice is served by mail, the period within which to file the petition shall be increased by five days.~~

(d) A stay of an order or judgment shall not be granted unless the petitioning party demonstrates that the party will otherwise sustain irreparable damage and probable success on the merits.

(e) Any person who fails to obey the order of the court shall be cited to show cause why that person is not in contempt of court.

(f) Judicial review pursuant to this section shall be de novo.

## SECTION 15. Clarify Application to Vendors and Contractors.

Section 7927.610 of the Government Code is added to read:



7927.610. Clarification of applicability to vendors and contractors

(a) This division shall apply to records concerning work or services performed by any vendor or contractor on behalf of public agencies. All records requests pursuant to this section shall be made to the public agency on behalf of which the vendor or contractor is providing work or services.

(b) Records subject to this division include records created or maintained by vendors and contractors that relate to work performed on behalf of public agencies, including, but not limited to, records over which the agency has constructive possession or which the agency has a legal right to access.

(c) Independent of any records request, public agencies shall regularly obtain and maintain actual possession and control of copies of all records covered by this section created after the effective date of the Government Transparency Act, including the contract itself.

**SECTION 16. Limit Companies from Blocking Access to Government Records (aka “Reverse-CPRA Lawsuits”).**

Section 7921.005 of the Government Code is amended to read:

7921.005. No control or interference with ~~of~~ the disclosure of information

(a) A state or local agency may not allow another party to control or interfere with the disclosure of information that is otherwise subject to disclosure pursuant to this division.

(b) An agency has no duty to notify another party of the filing of a records request. If the agency chooses to do so, the agency must notify the requester of the agency's communication with the other party, and provide to the requester copies of any communications to the other party, and any communications from the other party, regarding the records request within 3 calendar days of the date of the communication(s).

Section 7921.006 of the Government Code is added to read:

7921.006. Limits on reverse-CPRA lawsuits

(a) No person shall file any legal action, commonly known as a “reverse-CPRA lawsuit,” to prevent the disclosure of public records until a public agency makes a decision to provide documents to a requester pursuant to Section 7922.535 and communicates the decision in writing to the requester.

(b) A reverse-CPRA lawsuit may not seek to force any public agency defendant to assert discretionary exemptions or other provisions of this division, and may be filed only to challenge disclosures otherwise prohibited by law.

(c) A reverse-CPRA lawsuit may be filed only by a person with a direct interest in the nondisclosure of the records.



(d) An agency may not delay the decision to disclose records, or delay the disclosure of records, due to the filing of any legal challenge or threatened legal challenge to disclosure without a court order.

(e) Any action filed pursuant to this section shall name the requester as a real party in interest and shall be served on the requester.

(f) A party bringing a reverse-CPRA lawsuit shall secure a surety bond in the amount of \$50,000, and provide filing evidence of the bond, as provided for in Code of Civil Procedure section 995.260, within 10 court days of the date the reverse-CPRA lawsuit is filed. The beneficiary of the bond shall be the person who requested the public records and shall be for the purpose of paying the requester's reasonable costs and attorneys' fees in defending the reverse-CPRA lawsuit. The amount of the bond may be increased upon noticed motion or ex parte application. The moving party has the burden of demonstrating that the requester's reasonable attorneys' fees and costs are reasonably expected to exceed \$50,000.

(g) A party bringing a reverse-CPRA lawsuit may file a noticed motion or ex parte application with the court seeking a waiver of the bond requirement in subdivision (f). The court may waive the requirement on the grounds permitted in Code of Civil Procedure section 995.240. The party seeking the waiver has the burden of proof to establish that the party is indigent or unable to obtain sufficient sureties, whether personal or provided by admitted surety insurers.

(h) The people find that a reverse-CPRA lawsuit is subject to a special motion to strike pursuant to Code of Civil Procedure section 425.16 because it arises from an act in furtherance of the requester's right to petition the government and right to free speech under the United States Constitution and the California Constitution in connection with a public issue.

(i) The requester who submitted the request at issue in the reverse-CPRA lawsuit shall have standing to challenge the action pursuant to Code of Civil Procedure section 425.16.

(j) A requester who prevails in a reverse-CPRA lawsuit shall be considered to have met the standards described in, and be entitled to attorney's fees pursuant to, Code of Civil Procedure section 1021.5.

## **SECTION 17. Limit a Public Agency's Ability to Withhold Records on the Basis of the Deliberative Process Privilege, Attorney-Client Privilege, Attorney Work Product Doctrine, and Official Information Privilege.**

Section 7927.706 of the Government Code is added to read:

7927.706. Limitation on government's use of the deliberative process privilege

(a) Notwithstanding Section 7922.000, Section 7927.705, or any other provision of law, public agencies shall not withhold or redact any public record on the basis of, or upon any of the grounds reflected in, the so-called "deliberative process privilege" or "executive privilege" as set forth in Times Mirror Co. v. Superior Court (1991) 53

Cal.3d 1525, or pursuant to Section 7927.500, unless all of the following conditions are met:

(1) the public record consists of intra-agency communications or other writings solely created by and/or exchanged within a single public agency;

(2) the public record contains conversations, discussions, debates, or deliberations that constitute advice, opinions, or recommendations pertaining to a specific government policy, and the record was considered or relied upon by the public agency;

(3) the public record is predecisional; and,

(4) on the facts of the particular case, the public interest served by withholding or redacting the record clearly outweighs the public interest served by disclosure of the record.

(b)(1) For purposes of this section, a public record is "predecisional" if it pertains to and was created during the active consideration of a specific government policy.

Accordingly, to establish the application of the deliberative process privilege, a public agency must identify a specific government policy, or an agency decision making process pertaining to a specific government policy, and establish that the record was created during the active consideration of that specific government policy. A record is not predecisional if it sets forth the reasons for a government policy that has already been established. A public record is not predecisional if it is adopted, formally or informally, as the agency position, or is utilized by the agency as guidance in explaining, implementing, or enforcing a specific government policy.

(2) For purposes of this section, "government policy" means a set of principles, guidelines, and actions established or taken by a governing body to guide and shape its approach towards specific issues, sectors, or objectives within society. Unlike a more general government "decision" on a given topic, which may be made on an individual basis without a formal framework, government policy involves a structured approach and a formal process, planning, and implementation.

(c) Notwithstanding subdivisions (a) and (b), a claim of deliberative process privilege, or of exemption pursuant to Section 7927.500, shall not provide a basis for the nondisclosure or redaction of (1) factual information; or (2) agency policies, procedures, or working law, including, but not limited to, any manuals on compliance with the California Public Records Act, Brown Act, Bagley-Keene Act, or other transparency laws.

(d) Public agencies shall not withhold or redact a public record pursuant to the deliberative process privilege set forth in this section, or pursuant to Section 7927.500, if the record no longer meets the requirements of subdivision (a), or if more than 3 years have elapsed since the record was created.

(e) The people find that this section is necessary to protect and expand the public's right to access public records as set forth in article I, section 3 of the California Constitution by limiting the ability of a public agency to withhold or redact public records essential to understanding how the people's business is being conducted.

Section 7927.707 of the Government Code is added to read:

7927.707. Limitation on government's use of attorney-client privilege and work product doctrine

(a) Notwithstanding Section 7922.000, Section 7927.705, Code of Civil Procedure section 2018.030, Evidence Code section 954, or any other provision of law, for purposes of this division, public agencies shall not withhold or redact any public record on the basis of the attorney-client privilege unless the public record reflects all of the following: (1) a confidential communication between an attorney and a client, (2) that is made in the course of an attorney-client relationship, and (3) that contains the attorney's legal opinion and/or legal advice.

(b) Notwithstanding Section 7922.000, Section 7927.705, Code of Civil Procedure section 2018.030, Evidence Code section 954, or any other provision of law, for purposes of this division, public agencies shall not withhold or redact any public record on the basis of the attorney work product doctrine unless the public record reflects both of the following: (1) a confidential writing containing an attorney's impressions, conclusions, opinions, or legal research or theories, (2) that is made in the course of an attorney-client relationship.

(c) The fact that a record was transmitted from the agency to its attorney or by an attorney to the agency shall not alone form the basis for withholding or redacting a public record. The discovery or creation of a record by an attorney is also insufficient to support a claim of attorney-client privilege or attorney work product.

(d) Notwithstanding subdivision (a) or subdivision (b), a claim of attorney-client privilege or attorney work product doctrine shall not provide a basis for nondisclosure or redaction of any of the following:

(1) Factual information.

(2) Hourly rates, billing charges, and fee totals of an attorney including during the course of pending litigation, as defined by Government Code section 54956.9.

(3) Descriptions of work done by an attorney upon the conclusion of pending litigation, as defined by Government Code section 54956.9.

(4) Notwithstanding Business and Professions Code section 6149, contracts between a public agency and any attorney or law firm, including, but not limited to, retainer and engagement agreements.

(5) Any record created by or at the direction of an attorney if the record reflects a duty the agency is required to perform by statute, including responding to a records request made pursuant to this division.

(6) Agency policies, procedures, or working law, including, but not limited to, any manuals on compliance with the California Public Records Act, Brown Act, Bagley-Keene Act, or other transparency laws.

(e) This section is intended to limit the applicability of Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 725 and Los Angeles County Board of Supervisors v. Superior Court (2016) 2 Cal.5th 282 in the context of public agencies.

(f) The people find that this section is necessary to protect and expand the public's right to access public records as set forth in article I, section 3 of the California



Constitution by limiting the ability of a public agency to withhold or redact public records essential to understanding how the people's business is being conducted.

Section 7927.708 of the Government Code is added to read:

7927.708. No reliance on official information privilege  
Notwithstanding Section 7927.705, Evidence Code section 1040, or any other provision of law, no public agency shall withhold or redact records or information pursuant to the "official information privilege" as codified in Evidence Code section 1040. This section does not preclude an agency from arguing that confidential information should be withheld or redacted pursuant to Section 7922.000, subdivisions (a)(1) or (a)(4).

## **SECTION 18. Require Government Agencies to Provide Annual Reports of Timeliness of Responses to Records Requests.**

Section 7922.547 of the Government Code is added to read:

7922.547. Annual reports  
(a) On or before February 28 of each year, but not including the year the Government Transparency Act is adopted, each public agency shall publish a report that shall cover the preceding calendar year and shall state all of the following:  
(1) the number of records requests received by the agency.  
(2) the number of determinations made by the agency not to comply with requests, in whole or part, for records made to such agency.  
(3) the number of requests—  
(A) responded to within 10 calendar days from receipt of the request as required by Section 7922.535, subdivision (a).  
(B) not responded to within 10 calendar days from receipt of the request as required by Section 7922.535, subdivision (a), due to an "extraordinary circumstance" as defined in Section 7922.535, subdivisions (b) and (c), in 10 calendar day increments up to and including 200 calendar days, and the number of requests to which the agency has not responded to within a period greater than 200 calendar days.  
(C) for which records were provided within 30 calendar days from receipt of the request as required by Section 7922.536.  
(D) for which records were not provided within 30 calendar days from receipt of the request as required by Section 7922.536 due to an "extraordinary circumstance," as defined in Section 7922.535, subdivisions (b) and (c), in 10 calendar day increments up to and including 200 calendar days, and the number of requests for records to which the agency has not responded to within a period greater than 200 calendar days.  
(4) the 10 pending requests with the earliest filing dates, with a corresponding summary of the nature of the records requested, including the amount of time that has elapsed since each request was originally received by the agency.

(5) the number of agency staff, and their corresponding job titles, primarily responsible for responding to requests for records under this division, including whether an identified staff person is an attorney.

(b) The report published pursuant to subdivision (a) shall be conspicuously posted on the public agency's internet website, if any, on a web page linked to the website's homepage under the heading "Public Records Available for Review" or a substantially similar heading.

(c) A copy of this report shall be available from any agency upon request, free of charge.

## **SECTION 19. Legislative Open Records Act Definitions.**

Section 9072 of the Government Code is amended to read:

### **9072. Definitions**

As used in this article:

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

(b) "Legislature" includes any Member of the Legislature, any legislative officer, any standing, joint, or select committee or subcommittee of the Senate and Assembly, and any other agency or employee of the Legislature.

(c) "Legislative records" means any writing prepared on or after December 2, 1974, which contains information relating to the conduct of the public's business prepared, owned, used, or retained by the Legislature.

(d) "Writing" means 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 combination thereof, and all papers, maps, ~~magnetic or paper tapes~~, photographic films and prints, magnetic or punched cards, discs, drums, and other documents. any record thereby created, regardless of the manner in which the record has been stored.

(e) A "public event" is any event with a political, legislative, or governmental purpose, and any other event for any purpose that is paid for in whole or part by a campaign committee or officeholder committee as defined by Government Code section 89511, subdivision (b)(2) and section 85316, or any event related to income reportable in a Statement of Economic Interest pursuant to Government Code section 87200 et seq. "Public events" do not include committee hearings or floor sessions of the Legislature.

(f) A "fundraising event" is any gathering or activity organized for the purpose of raising money for (1) a Member of the Legislature's campaign for election to any local, state, or national office, including any elective office as defined in Government Code section 82023, or (2) any recipient committee, as defined by subdivision (a) of Section 82013, controlled by a Member of the Legislature.

(g) A "lobbying meeting" is any meeting, regardless of whether such meeting is held in person, by telephonic conference, by videoconference, or any other means, relating to a bill, resolution, or proposed constitutional amendment or an administrative action as defined in Government Code sections 82037 and 82002, or for the purpose of influencing a state administrative agency, including any judicial or quasi-judicial proceeding as defined in Section 87400 or any proceeding identified in California Code of Regulations, title 2, section 18202, that is attended by a Member of the Legislature and at least one other individual who is not (1) another Member of the Legislature, (2) staff of any Member of the Legislature, (3) staff of a committee, (4) the Legislative Counsel or staff of the Legislative Counsel, (5) the Governor or a member of the Governor's staff, or (6) a private citizen. The meetings that must be disclosed shall include, but not be limited to, meetings involving individuals who have filed a lobbyist certification pursuant to Government Code section 86103.

(h) "Misconduct" means any alleged wrongful or improper behavior, action, or inaction that, if true, would violate the standards of conduct expected of a Member of the Legislature and/or would be unlawful. This includes, but is not limited to, actions such as: allegedly accepting bribes; engaging in conflicts of interest; abusing his or her power; fraud; sexual misconduct; engaging in any other illegal or unethical behavior that undermines the integrity of the legislative process; and any conduct investigated by the Workplace Conduct Unit of the Office of Legislative Counsel.

(i) "Legislative employee" means an individual, other than a Member of either house of the Legislature, employed by either house of the Legislature. "Legislative employee" includes volunteers, interns, and fellows.

(j) "Private citizen" means an individual who is not employed or compensated in any manner to represent another person, organization, company, or interest group. A private citizen is an individual who acts independently, without any financial or other vested interest, and solely represents their personal views, opinions, or interests in matters of public concern. This definition explicitly excludes lobbyists, consultants, agents, or any person who receives financial or material compensation for advocating or influencing on behalf of others.

(k) "Regulatory issues" means the adoption, implementation, or enforcement of regulations, including but not limited to advocating for or against the adoption, implementation, or enforcement of regulations.

## **SECTION 20. Effective Date.**

The provisions of the Government Transparency Act shall be effective on January 1 of the year following its enactment.

## **SECTION 21. Severability.**

If any provision of the Government Transparency Act, or the application of any provision or part to any person or circumstances, is for any reason held to be invalid or unconstitutional, the remaining provisions, or applications of provisions, shall



not be affected, but shall remain in full force and effect, and to this end the provisions of this Act are severable. It is the intent of the voters that the Government Transparency Act would have been enacted regardless of whether any invalid provision had been included or any invalid application had been made.

## **SECTION 22. Conflicting Initiatives.**

(a) In the event that this measure and another measure addressing the rights of the people with regard to access to public records or legislative records appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their entirety, and the other measure or measures shall be null and void.

(b) If this measure is approved by the voters but superseded by law by any other conflicting measure approved by voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force and effect.

## **SECTION 23. Savings Clause.**

The Government Transparency Act is intended to supplement federal and state law, where permissible. In the event that a court determines that there exists a conflict between the Government Transparency Act and the California Public Records Act, the Legislative Open Records Act or any other state law, the Government Transparency Act shall supersede the California Public Records Act, the Legislative Open Records Act or other state law, but the Government Transparency Act shall not apply where such application is preempted by, or in conflict with, federal law or the California Constitution.

## **SECTION 24. Amendment.**

The provisions of the Government Transparency Act may be amended after its approval by the voters by a statute that is passed by a vote of two-thirds of the members of each house of the Legislature and signed by the Governor, provided that such amendments are consistent with and further the intent of this Act, and the bill containing the amendments is in print in its final form for at least 12 calendar days before final passage by the Legislature.

## **SECTION 25. Liberal Construction.**

The provisions of the Government Transparency Act shall be liberally construed in order to effectuate its purposes.



September 21, 2023

Hon. Rob Bonta  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Anabel Renteria  
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to public access to state and local government records (A.G. File No. 23-0015, Amendment #1).

## BACKGROUND

### California Public Records Act (CPRA)

**Overview of CPRA.** The State Constitution guarantees the public the right to access information related to the government doing business. The CPRA provides a statutory framework for this constitutional right to inspect and obtain copies of government records (“public records”) from more than 5,500 state and local government entities, excluding the Legislature and the judicial branch which are subject to other state laws. Such public records include written documents, photographs, audio, or videos prepared or retained by a government entity. Under existing law, government entities generally are not specifically required to obtain and retain copies of records from third-party contractors or vendors.

**Records Exempt From CPRA.** The CPRA allows for certain public records, or specific information in them, to not be disclosed. Specifically, some information must be withheld or redacted (such as Social Security numbers) while other information may be withheld or redacted. In such cases, state law requires entities to justify the withholding of any disclosable public record.

**Process for Providing Records.** The law requires (1) state and local government entities to make public records available for inspection and provide copies of such records when requested, (2) some state and local entities to develop and publicly post written guidelines for accessing

  
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public records, and (3) state and local government entities to work with requestors to scope their request. In addition, the law specifies other requirements, including:

- ***Time Line.*** Upon receiving a request for records, the government entity generally is required to determine within ten days whether it possesses records that are eligible to be disclosed as well as the estimated date those records will be made available. This deadline may be extended by up to 14 days under certain circumstances. Depending on the complexity of the request (for example, whether a large amount of documents need to be gathered, withheld, or redacted), it can take a government entity days or months to provide the requested records.
- ***Records Provided.*** The law requires government entities to provide (1) exact copies of records, to the extent possible, and (2) upon request, electronic records in an electronic format. In certain cases, a government entity may be required to post certain information online.
- ***Fees.*** Government entities are permitted to charge fees to cover the direct costs of physically or electronically duplicating records. Such direct costs generally do not include staff time. The extent to which such fees are charged varies by state and local government entity.

***Retention of Records.*** The length of time a record is kept by a government entity differs by entity and type of record. Most state government entities are required to comply with the State Records Management Act, which requires (1) the Secretary of State (SOS)—and its State Archives Division (State Archives)—to approve record retention and destruction policies for each entity (which also incorporates any specific retention periods required by state law) and to determine which records have archival value and (2) each state entity to appoint a staff member to be trained by the SOS to coordinate record management within the entity. While local governments are not subject to this act, state law generally requires local governments to retain records for at least two years unless otherwise specified in law. Records may be stored physically or electronically on-site in government facilities or on government equipment, or off-site in leased or other private facilities.

***Judicial Process for Disputes.*** The law authorizes people to ask the courts to enforce their right to access public records. The trial courts are required to decide if records were improperly withheld. Parties may seek expedited review—but not a standard appeal—by the appellate courts. This means that the appellate courts may choose not to review it. Additionally, people who believe they will suffer harm from a government entity disclosing public records may seek court intervention to prevent disclosure of their information.

## **Legislative Open Records Act (LORA)**

***Overview of LORA.*** The LORA—rather than the CPRA—provides public access to legislative records. The law requires legislative committees to keep and make public certain information for all bills and resolutions—for example, committee staff analyses, written testimony or commentary, and background material. Other legislative records—such as certain preliminary drafts and notes, correspondence to individual members and their staff, and records



of complaints to or investigations conducted by the Legislature—may be withheld. Records may also be withheld if the Legislature is able to demonstrate that the public interest is better served by not disclosing the record. In addition to LORA, another state law requires the electronic and public posting of key legislative information—including the legislative hearing schedules; the text, committee analyses, and history of all bills; and video recordings of legislative proceedings for up to 20 years.

***Process for Providing Records.*** The law requires the Legislature to make legislative records available for inspection. Each legislative committee also is required to develop written guidelines for accessing the records in their possession. Upon receiving a request for records, the Legislature must provide written justification if any records are being withheld within (1) four working days if the Legislature is in session and (2) ten working days if the Legislature is not in session. Actual provision of all requested records depends on the breadth and complexity of the request. Finally, LORA authorizes the Legislature to charge fees, up to \$0.10 per page, to reimburse its actual costs for making copies of records.

***Retention of Records.*** The Legislature is not subject to the State Records Management Act. However, state law requires the Legislature to provide for the retention and storage of committee and other specific records that are not sent to the State Archives for preservation.

***Judicial Process for Disputes.*** The law authorizes people to ask the courts to enforce their right to access legislative records. The trial courts are required to decide if records were improperly withheld. Parties may ask the appellate courts to review the trial court decision.

## PROPOSAL

### CPRA

***Increases Records Available to Public.*** The measure increases the amount and types of records eligible to be disclosed to the public in several ways, including by (1) limiting the ability of a state or local government entity to withhold or redact certain information; (2) defining public record to include information from private contractors and vendors relating to their work on behalf of, or services provided to, public agencies; (3) requiring that government entities regularly obtain and keep copies of public records generated by their contractors and vendors; and (4) requiring that government entities justify the withholding or redaction of any records by providing clear and convincing evidence of all of the reasons why the information is not subject to disclosure. In addition, upon written request, the measure requires government entities to provide a detailed description of how the entity searched its records and the estimated number of records withheld or redacted by specific categories.

***Requires Provision of Records Within Certain Time Frames and Limits Charging of Fees.*** The measure requires all government entities to establish and publicly post written guidelines for accessing public records—including a description of where public records are stored and the system used to search for records. The measure also requires government entities to provide a requestor with details of how records will be searched in order to allow the requestor to modify their request. In addition, the measure changes the time lines and fees associated with a request, including:

- ***Time Line.*** Requiring all government entities to (1) determine whether they possess disclosable records within ten calendar days or 14 calendar days under “extraordinary” circumstances that the measure specifies does not include a search of a large number of electronic files (including e-mails) and (2) provide public records within 30 calendar days or on a rolling basis but no later than 90 days under “extraordinary” circumstances (such as requiring programming to extract data).
- ***Fees.*** The measure limits the fees charged by government entities to the direct cost of providing the record or \$0.10 per page (whichever is less), the actual cost of any digital storage device, and the actual costs of mailing or delivery. The measure prohibits government entities from charging requestors any other fees.

***Requires Public Posting of Certain Information.*** The measure requires government entities to post various records on their website within ten calendar days of the records becoming final or available to the entity. Examples of such records include: records of certain court and administrative proceedings, claims and settlements, proposed regulations, and cost estimates for proposed legislation. The measure also requires government entities to post an annual report providing data on the number of record requests received, the timeliness of responses, and the number of staff primarily responsible for responding to such requests.

***Requires Retention of Records for Specified Period.*** The measure requires all government entities to retain all public records for at least five years, unless a longer retention period is specified by state law.

***Changes Judicial Process for Disputes.*** The measure changes the judicial processes for resolving public records disputes including by allowing people challenging a trial court order supporting the non-disclosure of records by a government entity to seek appellate court review through a standard appeal.

## LORA

***Requires Legislative Members Publicly Disclose Certain Meetings and Events.*** No later than five calendar days after occurrence, the measure requires each legislative member to post on their website the date, time, location, and purpose of (1) public or fundraising events that they or their staff attended or organized and (2) lobbying meetings they attended. In the case of lobbying meetings, the measure also generally requires the disclosure of the names and affiliations of those attending a meeting.

***Increases Records Available to Public.*** The measure increases the amount and type of legislative records eligible to be disclosed to the public in several ways, including by requiring (1) legislative committees to maintain additional records (such as written correspondences related to regulatory issues), (2) individual Members of the Legislature to keep similar information as legislative committees, and (3) certain records related to legislative member or staff misconduct complaints and investigations be subject to disclosure. The measure requires the Legislature to justify the withholding or redaction of records with clear and convincing evidence that the information is not subject to disclosure.

***Requires Provision of Records Within Certain Time Frames and Limits Charging of Fees.***

Upon the filing of a legislative records request, the measure requires the Legislature to (1) determine whether there are disclosable records within ten calendar days or 14 calendar days for extraordinary circumstances, and (2) provide records within 30 calendar days or on a rolling basis but no more than 90 days if there are extraordinary circumstances (such as requiring programming to extract data). The measure limits the fees that the Legislature can charge a requestor to the direct cost of providing the record or \$0.10 per page (whichever is less). The measure prohibits the Legislature from charging requestors any other fees.

***Requires Retention of Legislative Records for Specified Period.*** The measure requires the Legislature to retain legislative records for at least five years, unless a longer retention period is specified by state law. The measure also makes legislative records subject to the State Records Management Act. This means that SOS would oversee the Legislature's record retention policies and that the Legislature would need to appoint records management coordinators.

**FISCAL EFFECTS**

***Increased State and Local Government Costs.*** This measure would increase costs across the more than 5,500 state and local government entities in California. Much of the costs would be associated with staff time to comply with the measure. Additionally, government entities would incur technology and storage costs to retain public and legislative records for five years, as well as to manage and search such records. A portion of these costs could be higher in the short run. In addition, the measure's provisions related to records created by private contractors and vendors potentially could result in fewer contractors and vendors doing business with government entities, which could increase government contracting costs. The increased costs resulting from the measure could partially be offset by charging fees for the direct costs of providing copies of records, fewer or less complex record requests being submitted to government entities (for instance, due to online posting requirements), fewer court cases arising, or increased efficiencies in processing requests. In part due to the increase in the amount and types of records subject to disclosure and the new time lines, many state and local entities would require additional staff. As a result, we estimate that this measure would result in net increased costs on state and local governments—likely reaching over \$1 billion annually depending on how this measure is implemented. The specific impact on individual state and local government entities will depend on existing policies and systems for providing access to records and for retaining and managing records, as well as how the entity chooses to implement this measure. Specifically related to the Legislature, the California Constitution limits how much the Legislature can spend on its own operations. The measure's effect on the Legislature's operations would depend on how the Legislature decides to meet these new requirements, but could be in the tens of millions of dollars. Because of the constitutional limit on the Legislature's expenditures, these increased costs could displace existing operations or services of the Legislature.



***Summary of Major Fiscal Effects.*** This measure would have the following major fiscal effects:

- Increased net state and local government costs, likely reaching over \$1 billion annually, to meet new time frames and requirements for providing public access to government and legislative records and to retain such records for five years.

Sincerely,

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for Gabriel Petek  
Legislative Analyst

---

for Joe Stephenshaw  
Director of Finance

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

**INCREASES REQUIREMENTS ON GOVERNMENT AGENCIES AND LEGISLATURE**

**WHEN RESPONDING TO RECORDS REQUESTS. INITIATIVE STATUTE.** Amends

California Public Records Act and Legislative Open Records Act to:

- Increase types of records subject to public disclosure;
- Restrict agencies' use of existing legal privileges and justifications to withhold records;
- Limit private parties' ability to prevent disclosure of records concerning them, including requiring a \$50,000 bond to pay requestors' litigation costs;
- Authorize new lawsuits and appeals by requestors, and court sanctions, against agencies;
- Set new deadlines to disclose records, regardless of number requested;
- Require retention of records for five years;
- Require legislators to disclose public events, fundraising events, and lobbyist meetings.

Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: **Increased net state and local government costs, likely reaching over \$1 billion annually, to meet new time frames and requirements for providing public access to government and legislative records and to retain such records for five years.**

(23-0015A1.)