CALIFORNIANS AWARE
THE CENTER FOR PUBLIC FORUM RIGHTS

Top 10 Points to Remember about Making a California Public Records Act Request

1. The agency has the burden of justifying the denial of access.

Perhaps the most fundamental rule in the California Public Records Act (CPRA) is the presumption of public access. Requesters do not have to prove or even state a "need to know" to justify access. On the contrary, the government agency must justify *not* providing the information by citing the law: a statute or a case interpreting a statute. "In other words, all public records are subject to disclosure unless the Legislature has expressly provided to the contrary." *Williams v. Superior Court*, 5 Cal. 4th 337 (1993) "It's not our policy" or "We never give that out" is not a legally sufficient response to a public records request, nor is anything else short of citing the law that bars or excuses the agency from providing access.

2. The request need not be in writing.

A written request often has advantages for the requester as well as the agency. Practically, it may be necessary where an oral request has been turned down for what appear to be inadequate or misinformed reasons, or where the kind or number of documents being sought needs detailed description. Legally, a written request sent by e-mail, fax or registered postal mail provably records the date on which certain response deadlines are set, and also entitles the requester to a written response from the agency giving the reasons and legal authority for withholding all or part of the requested records. But, as observed by the California Court of Appeal, "It is clear from the requirements for writings in the same and other provisions of the Act that when the Legislature intended to require a writing, it did so explicitly. The California Public Records Act plainly does not require a written request." *Los Angeles Times v. Alameda Corridor Transportation Authority*, 88 Cal.App.4th 1381 (2001)

3. The request need not identify the requester.

Likewise, nothing in the law precludes an anonymous request, and the CPRA requires identification (by a signed affirmation or declaration, respectively) only when the requester is seeking information about pesticides (Government Code §6254.2) or seeking the addresses of persons arrested or crime victims (Government Code §6254, subd. (f), par. (3)). Practically, it may be mutually convenient for a requester to provide a name and contact information if the request cannot be fulfilled immediately or if copying will take some time, but the requester's option is to keep checking back on his or her own initiative. Legally, apart from the two situations noted above, an agency may not insist that the requester be identified.

4. The request need not state the requester's purpose.

Demanding to know the purpose of the request or the intended use of the information is, again, not something the agency may do, apart from the pesticide and address provisions noted in (2) above. The CPRA states, in Government Code §6257.5: "This chapter does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure."

5. The scope of the request must be reasonably clear.

"Unquestionably, public records must be described clearly enough to permit the agency to determine whether writings of the type described in the request are under its control. (The CPRA) compels an agency to provide a copy of nonexempt records upon a request 'which reasonably describes an identifiable record, or information produced therefrom . . . ' However, the requirement of clarity must be tempered by the reality that a requester, having no access to agency files, may be unable to precisely identify the documents sought. Thus, writings may be described by their content. The agency must then determine whether it has such writings under its control and the applicability of any exemption. An agency is thus obliged to search for records based on criteria set forth in the search request." *California First Amendment Coalition v. Superior Court*, 67 Cal.App.4th 159 (1998)

6. The agency need not compile lists or write reports.

The rights provided in the law are to "inspect" (look at words, symbols or images; listen to sounds) public records and/or to "obtain a copy" of those records, not to compel the agency to create lists or reports in response to questions. In only one instance is the agency required to generate a record that does not already exist, and that is if the information sought is distributed in computerized form in a database or otherwise and must be assembled in a single record. As provided in Government Code §6253.9, if the agency cannot "produce" or "construct" the record sought without special programming, the requester must pay for that work.

7. The agency must do its best to help the requester succeed.

Government Code Section 6253.1 states:

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

These assistance requirements do not apply, obviously, if the agency fully grants the request, or denies access based on one of the exemptions in Government Code §6254. Also, if the agency has an index to its records and makes it available, no further help in refining the request is required.

8. Fees are for the costs of copying, not for those of inspection.

As noted by the Attorney General in an opinion concluding that counties may charge a fee "reasonably necessary" to recover wider costs for copying public records—costs beyond the strict "direct cost of duplication"—inspection is free: "In any event, a 'reasonably necessary' fee for a copy of a public record would have no effect upon the public's right of access to and inspection of public records free of charge." (Opinion No 01-605, November 1, 2002). Moreover, the "direct cost of duplication" that, pursuant to Government Code §6253, subd. (b), may be charged to the requester by agencies other than counties may not include overhead. "The direct cost of duplication is the cost of running the copy machine, and conceivably also the expense of the person operating it. 'Direct cost' does not include the ancillary tasks necessarily associated with the retrieval, inspection and handling of the file from which the copy is extracted." *North County Parents Organization v. Department of Education*, 23 Cal.App.4th 146 (4th Dist. 1994)

9. Prompt access is required for clearly public records.

Delay is allowed only to resolve good faith doubts as to whether all or part of a record is accessible by the public. So, for example, if the requester asks to see the minutes of public meetings, there is no need to make the "determination" as to whether or not they are public, since minutes of public meetings are, without question, public records. That being the case, access is to be provided "promptly," not put off for 10 days (Government Code §6253, subd. (b)); to underscore this point, subd. (d) states that "Nothing in (the CPRA) shall be construed to permit an agency to delay or obstruct the inspection or copying of public records." And while the 10-day period is not a legal deadline for producing the records, the date of production should not lag the 10-day (or, if extended with notice to the requester, up to 14 days more) "determination" point by much, because in most if not all cases, *the person making the determination will have already had to assemble and review the records in order to do so*. Once the determination has been made, in other words, actual release of the records in question should not take much time to accomplish.

10. Journalists and other people have the same rights of access.

Journalists' rights to inspect and copy public records are the same under the CPRA as those of any other person—no worse and, despite the free press guarantees of the state and federal constitutions, no better. "No California or federal judicial decision has ever attributed accessibility to public records upon First Amendment freedoms of speech or press." *Register Division of Freedom Newspapers v. County of Orange*, 158 Cal.App.3d 893 (1984) And while we often speak of "citizens" having the access rights, one need not be a California resident or even a U.S. citizen to inspect or copy state or local public records. "(W)hen section 6253 declares every person has a right to inspect any public record, when section 6257 commands state and local agencies to make records promptly available to any person on request, and when section 6258 expressly states any person may institute proceedings to enforce the right of inspection, they mean what they say." *Connell v. Superior Court*, 56 Cal.App.4th 601 (1997)