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High Stakes of the California Public Records Act

League of California Cities

2025 Annual Conference and Expo

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Presenter



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Christine Wood is a partner and member of Best Best & Krieger LLP's (BBK) Special Districts practice group and has investigated and reported on allegations involving high-level appointed and elected officials over the course of her career. She has significant experience providing legal opinions and advice to municipalities on a wide range of issues, conducting investigations that support legal strategy and risk mitigation, and litigating cases involving the California Public Records Act and E-Discovery. Christine was also the first leader of BBK's Advance Record Center, a team of lawyers and paralegals at BBK who focus on advising and assisting California government agencies responding to CPRA requests.

About Us



12

OFFICES

250

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130+

YEARS OF SERVICE

Best Best & Krieger serves as a trusted partner and strategist to public and private sector clients across the nation. With offices spanning from coast to coast, the firm's attorneys provide innovative legal solutions and cost-effective representation, working to protect and advance clients' interests at every turn. BB&K is recognized for decades of groundbreaking successes, loyal service, and a culture of inclusion and respect.

Agenda



- CPRA Refresher
- Common Pitfalls
- CPRA Challenges
- Recognizing Red Flags
- Managing Difficult Requesters
- Stakes Are High
- Strategies for Compliance
- Q&A

California Public Records Act

Refresher

California Public Records Act – History

California Public Records Act

(Government Code § 7920.000 *et seq.*)

- The California Public Records Act (“CPRA”) was first enacted in 1968.
- In 2023, the CPRA was recodified without making any substantive changes to the Act.

Note: Before 2023, the CPRA had been revised numerous times in a piecemeal fashion. This led to a poorly organized statute that was cumbersome for the public to use and understand.



Legal Framework



Purpose

Enacted to ensure transparency in government operations by granting the public the right to access public records.

Scope

Applies to all state and local agencies in California, including departments, boards, commissions, and city councils.

Definition of Public Records

Broadly includes any writing containing information relating to the conduct of the public's business, regardless of physical form or characteristics.

Legal Framework



Access Rights

Grants any person the right to inspect and obtain copies of public records, subject to certain exemptions.

Exemptions

Provides specific exemptions from disclosure, such as personal privacy, ongoing investigations, and attorney-client privilege.

Public Interest Balancing

Courts balance the public's interest in disclosure against the public's interest in withholding certain records.

Legal Framework



Request Process

Requires an agency to respond to requests no matter the format.

Response Requirements

Agencies must respond to requests within the statutory timeframe and make records promptly available

Judicial Remedies

Permits individuals to file a lawsuit

Exemptions to CPRA Disclosure

Public access to information must sometimes yield to personal privacy interests

Common Exemptions

1. Catch-all exemption (Gov Code § 7922.000)
 1. Deliberative Process Privilege
2. Gov Code § 7927.705 exemptions – the pointer exemption.
 1. Attorney Client Privilege & Work Product
 2. Trade Secrets / Copyrighted material

Exemptions to CPRA Disclosure

1. Personnel, Medical Records (Gov Code § 7927.700)
2. Investigatory Records (Gov Code §§ 7923.600-7923.625)
3. Peace Officer Personnel Records (Pen Code § 832.7)
4. Pending Litigation (Gov Code § 7927.200)
5. Voter Information (Gov Code § 7924.000)
6. Tax Payer Information (Gov Code § 7925.000)

Common Pitfalls

Common Pitfalls

- Denial or Delay of Requests
- Excessive Redactions
- Failure to Respond
- Cost Disputes
- Scope of Disclosure
- Public Interest

Denial or Delay of Requests

Agencies deny access to records or delay responses without adequate justification, which can prompt a lawsuit to compel compliance.

Case Spotlight

Haynie v. Superior Ct. (2001) 26 Cal.4th 1061

Rittiman v. Pub. Utilities Com. (2022) 80 Cal.App.5th 1018

Excessive Redactions

Agencies excessively redact documents, withholding information that requesters believe should be accessible under CPRA, leading to disputes over transparency.

Case Spotlight

BondGraham v. Superior Ct. (2023) 95 Cal.App.5th 1006

Long Beach Police Officers Assn. v. City of Long Beach (2014) 59 Cal.4th 59 

Failure to Respond



Agencies might fail to respond to CPRA requests within the statutory timeframe, which can prompt legal action to enforce the requester's rights.

Can no response be considered a response?

If the agency fails to respond within the required timeframe, it may be considered a constructive denial of the request. The requester can treat the lack of response as a denial and can pursue remedies available under the CPRA.

Case Spotlight

County of San Benito v. Superior Court (2023) 96 Cal.App.5th 243 

Cost Disputes



Disputes can arise over fees charged for records retrieval, duplication, or mailing, especially if the requester believes the fees are excessive or not justified under CPRA guidelines.

(Each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so. (Cal. Gov't Code § 7922.530))

CPRA Challenges

CPRA Challenges



Scope of Discovery

Cases involving the California Public Records Act have a unique scope of discovery.

Case Spotlight

City of Los Angeles v. Superior Ct. (Anderson-Barker) (2017) 9 Cal.App.5th 272

CPRA Challenges



Attorney's Fees

Monetary costs to an agency can be unpredictable. Even if a case becomes “moot” after production, a requester prevails (and gets fees) if the suit was the catalyst for disclosure.

Case Spotlight

Sukumar v. City of San Diego (2017) 14 Cal.App.5th 451 📄

CPRA Challenges



Attorney's Fees

In the past, agencies could roughly estimate exposure by looking at the complexity of a request and the scope of litigation. In recent years, several developments have made fee awards far less predictable.

Case Spotlight

Galbiso v. Orosi Pub. Util. Dist. (2008) 167 Cal.App.4th 1063

CPRA Challenges



Technology Advances

Technology has increased the heavy burden of disclosure.

Case Spotlight

City of San Jose v. Superior Court (Smith) (2017) 2 Cal.5th 608 🗺️

CPRA Challenges



Technology Advances

Courts are less Sympathetic to “Voluminous Request.”

In the past agencies argued that a request was overly broad or “too voluminous” to reasonably process.

As technology has evolved, advanced search capabilities, metadata filtering, email threading, deduplication, and automated redaction, are common tool available to most agencies. Courts are increasingly unwilling to accept volume alone as a reason for delay or denial.

Case Spotlight

Getz v. Superior Court (2021) 72 Cal.App.5th 637 

Managing Difficult Requesters

Managing Difficult Requesters



Who are difficult requesters?

- Frequent filers.
- Potential litigants.
- Requesters that use the CPRA to intimidate or punish agencies.
- Mean or aggressive behavior over email or at City Hall/ Council Meetings.

Managing Difficult Requesters



What can you do?

- Respond respectfully and factually.
- Ask for clarification on a request if needed, or note to ask your agency to seek clarification to narrow the scope when requests are ambiguous, overly broad, or duplicative.
- Communicate with requester and inform them of the process and who they should expect to hear from.
- Maintain documentation of all correspondence.
- Coordinate with your agency and provide any records as soon as possible. This will help ensure statutory deadlines are met.

Recognizing Red Flags

Recognizing Red Flags



- Requests marked urgent.
- Repetitive language.
- Legal tone.
- Vague or overly broad requests.
- Requesters who cite the law and demand immediate action.
- Requests from an attorney or law office.
- Requests from the media.
- Buried requests.

The Stakes Are High

The Stakes Are High



There is a **mechanism** under the CPRA to **challenge** an agency's decision to deny **access to records**. A **writ** is a judicial remedy used to enforce the CPRA's mandate of public access to records.

Gov. Code § 7923.000, *et seq.*

“Prevailing” petitioners are entitled to recover attorney fees and costs.

Gov. Code § 7923.115

Courts may order agencies to disclose records in compliance with the CPRA or to affirm exemptions.

Making Headlines

SAN JOSÉ
spotlight

San Jose approves hefty pay out for public records lawsuit

 by Joseph Geha November 29, 2023



San Jose City Hall is pictured in this file photo.

San Jose officials have approved a \$500,000 payout to San José Spotlight and the First Amendment Coalition following a public records lawsuit involving former Mayor Sam Liccardo.

The San Jose City Council unanimously signed off on the agreement Tuesday to cover attorneys' fees and costs for the two organizations, which formally wraps up a more than 20-month legal debate centering on Liccardo's use of personal text message and email accounts to conduct public business. Under the longstanding California Public Records Act, the prevailing party in such lawsuits is entitled to attorneys' fees.

\$500,000

Making Headlines

FAC Attorneys Awarded \$100k For Public Records Win



FAC | October 23, 2018

A Santa Clara Superior Court judge has awarded nearly \$100,000 in attorneys fees to lawyers representing the First Amendment Coalition (FAC) in its successful California Public Records Act lawsuit against the city of Milpitas.

Recognizing that FAC's suit promoted a "significant public interest...in understanding whether high-ranking city officials were acting improperly," Judge Sunil R. Kulkarni ordered Milpitas to pay the organization's lawyers over \$92,000 in attorneys fees and \$1,260 in court costs. Former city manager Tom Williams, who was at the center of the lawsuit, also must pay FAC's attorneys \$7,750 in attorneys fees and costs, for a total of \$99,760.

The order comes after over a year of litigation against both Milpitas and Williams. FAC prevailed in its lawsuit on May 25, when Judge Kulkarni ordered the city to release documents relating to allegations of serious misconduct by Williams. The city originally withheld the documents in part based on a "reverse California Public Record Act" lawsuit filed by Williams in 2017. In that lawsuit, Williams obtained a court order temporarily preventing the city from releasing records about himself.

\$100,000

Making Headlines

San Diego is paying hundreds of thousands of dollars to settle public-records lawsuits



(San Diego Union-Tribune)

By Jeff McDonald
San Diego Union-Tribune

Dec. 27, 2022 5 AM PT

\$240,000

Making Headlines



Los Angeles Times

CALIFORNIA

Long Beach pays Times \$245,000 in attorney fees over disclosure fight

By Victoria Kim

Sept. 6, 2014 7:31 PM PT

The city of Long Beach and its police union have paid The Times \$245,000 in attorney's fees covering a years-long fight that went all the way to the California Supreme Court over the disclosure of names of officers involved in shootings, according to attorneys.

\$245,000

Making Headlines

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California County Hoarding Map Data Ordered to Pay \$500,000

A California county's three-year battle to prevent a nonprofit group from obtaining public mapping data has ended disastrously for the county after it was ordered by a court to pay the group \$500,000 in legal costs. Last February, Santa Clara County, the heart of California's Silicon Valley, was ordered to hand over the public records [...]

\$500,000

Strategies for Compliance

Strategies for Compliance



- Understand CPRA requirements and obligations as they apply to your role in the organization.
- Provide any records to staff that may be held on personal devices to ensure CPRA requests are processed promptly and properly.

Understand CPRA Requirements and Obligations

- Agency Training
 - Attend trainings on CPRA requirements.
- Legal Counsel
 - Consult with legal counsel as needed.

Process CPRA Requests Promptly and Properly

- Designated Custodian
 - Understand how your agency processes incoming requests.
- Response Timeliness
 - Send all requests that you may receive to designated personnel at your agency. CPRA requests have strict statutory timelines.



Questions?

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