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CPRA Compliance & Best Practices During an Election

CAL CITIES

NEW LAW AND ELECTIONS SEMINAR 2024

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Darren is the Director of the firm's ARC: Advanced Records Center, which provides clients with comprehensive support for public records and information requests.

Presenter



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Jennifer serves as a Municipal Analyst in Best Best & Krieger LLP's ARC: Advanced Records Center, which provides comprehensive and cost-effective support for records-related matters. Jennifer's background in political science and focus in international politics and policy, along with more than 14 years of municipal government experience, provides her with a wealth of valuable public agency perspective and skills.

Jennifer is a Certified E-Discovery Specialist and accredited as a Master Municipal Clerk by the International Institute of Municipal Clerks, California Professional Municipal Clerk by the University of California, Riverside, and Certified Records Analyst by the Institute of Certified Records Managers.

About Us



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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
 - Legal Framework
 - Strategies for Compliance
 - General Exemptions
 - Best Practices for Responding
- CPRA & Election Data
 - Voter Roll
 - Voter Registration Information
 - Candidate Information
 - Campaign Finance Data
 - Ballot Measures
 - Election Administration Records
 - Absentee & Early Voting Records
 - Election Audit Reports
 - Election/Past Election Results Q&A

California Public Records Act

California Public Records Act

(Government Code § 7921.000 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.



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 – (continued)



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.

Request Process

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

Legal Framework – *(continued)*



Response Requirements

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

Judicial Remedies

Permits individuals to file a lawsuit

Attorneys' Fees

Provides for recovery of attorneys' fees and costs by prevailing parties in CPRA lawsuits, encouraging enforcement and compliance.

Court Orders

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

Strategies for Compliance



- Understand CPRA Requirements and Obligations
- Process CPRA Requests Promptly and Properly
- Document Decision-Making Process

Understand CPRA Requirements and Obligations

- Agency Training
 - Ensure staff are trained on CPRA requirements, including timelines for responding to requests and grounds for exemptions.
- Legal Counsel
 - Consult with legal counsel as needed.
- Assist Requesters in Reformulating Requests
 - Narrow Scope

Process CPRA Requests Promptly and Properly

- Designated Custodian
 - Agency designate a CPRA coordinator to ensure incoming requests are handled promptly and efficiently.
- Response Timeliness
 - Responding to CPRA requests promptly within the statutory timeline, acknowledging receipt
- Exemptions Assessment
 - Consult with legal counsel as needed to evaluate each requested record for potential exemptions under CPRA (e.g., privacy concerns, ongoing investigations) and document reasons for any denials.

Document Decision-Making Process

- Record Keeping
 - Maintain detailed records of all CPRA requests, responses, and reasons for disclosure or denial. Documentation should support exemptions claimed.

General Exemptions



Common Exemptions

- Personnel, Medical Records (Gov Code § 7927.700)
- Investigatory Records (Gov Code §§ 7923.600-7923.625)
- Law Enforcement Records (Pen Code § 832.7)
- Pending Litigation (Gov Code § 7927.200)
- Voter Information (Gov Code § 7924.000)
- Tax Payer Information (Gov Code § 7925.000)
- Gov Code § 7927.705 exemptions – anything exempt anywhere else
 - Attorney Client Privilege & Work Product
 - Trade Secrets / Copyrighted material
- Catch-all exemption (Gov Code § 7922.000)
- Utility Data (§ 7927.410)

Best Practices for Responding



PRA Lifecycle – within 10 days after a request is received, an agency must respond with....

1. **Production letter** – provides the record(s) and identifies any applicable exemptions
2. **Determination letter*** – tells the requester the date on which they will get the record(s)
3. **Extension letter*** – tells the requester that a determination letter will come within 14 days of the date of the letter

***Clarification/Narrowing** – request clarification if request is not clear and voluminous as a result

4. **Denial letter** – tells requester that the records sought do not exist or that they are exempt from disclosure
 - must be in writing and include the name and title of the person making this determination

Election Data - Overview



- Voter Roll
- Voter Registration Information
- Candidate Information
- Campaign Finance Data
- Ballot Measures
- Election Administration Records
- Absentee & Early Voting Records
- Election Audit Reports
- Election/Past Election Results

Voter Registration Information



What is Voter Registration Information?

Elections Code § 2194 & Gov. Code § 7924.000

- Home Street Address
- Telephone Number
- Email
- Voting History
- Identification Number (i.e., Driver's License or Passport ID)
- Social Security Number
- Precinct Number
- A Number Specified by the Secretary of State.

Access to Voter Registration Information



Who has Access to Voter Registration Information?

- Voter registration information Shall be **confidential** and **shall not** appear on any:
 - Computer terminal
 - List
 - Affidavit or duplicate affidavit
 - Other medium routinely available to the public at the county elections official's office
- Shall not be used for any personal, private, or commercial purpose, including, but not limited to:
 - The harassment of any voter or voter's household
 - The advertising, solicitation, sale, or marketing of products or services to any voter or voter's household
- Reproduction in print, broadcast visual or audio, or display on the internet or any computer terminal

Except ...

Access to Voter Registration Information



California Code of Regulations § 19003 et seq. & Elections Code § 2194

Access to Voter Registration Information **shall** be provided with respect to any voter, subject to the provisions of Sections 2166, 2166.5, 2166.7, 2166.8, and 2188, to any:

- Candidate for federal, state, or local office
 - Any committee for or against any initiative or referendum measure for which legal publication is made
 - Any person for
 - Election
 - Scholarly
 - Journalistic
 - Political purposes
 - Governmental purposes
- ... as determined by the Secretary of State.

AND

- May be used by the Secretary of State for the purpose of educating voters per Gov. Code § 12173.

Access to Voter Registration Information – (continued)



There are requirements when requesting a copy of the voter roll:

- Application (provide name, address, DL, Passport ID Number, and reason person wants the data)
- Review for compliance with the Elections Code
 - Remember, **redact** when necessary....
 - Confidential, nondisclosable : Signature, CDL, CA ID number, SS number, or any other unique identifier used by the State of California for purposes of voter identification shown on the affidavit of voter registration of a registered voter, or added to voter registration records to comply with the requirements of the federal Help America Vote Act of 2002 (52 U.S.C. § 20901 et seq.) Elections Code § 2194(b)(1)

100 Year Rule for Voter Registration Information

Elections Code § 2194.1

- The 100 year rule makes voter registration affidavits **fully disclosable** after 100 years of execution..

Accidental Disclosure

Elections Code § 2194(d)

A governmental entity, or officer or employee thereof, shall not be held civilly liable as a result of disclosure of the information referred to in this section, unless by a showing of gross negligence or willfulness.

Bilingual Ballots

- Names of Requesters are confidential and nondisclosable

Bilingual Voter Guides

- Names of Requesters are confidential and nondisclosable

Signatures



- Voter Affidavit Signature- Confidential, not disclosable.

Government Code § 7924.000(c)

- **Challenger Exception** : Signature ***may be released*** whenever the person's vote is challenged pursuant to Elections Code § § 15105 -15108, inclusive, or Article 3 (commencing with Section 14240) of Chapter 3 of Division 14.

... Additionally, it can only be released to the challenger, to elections officials, and to other persons as necessary to make, defend against, or adjudicate the challenge. (Elections Code § 2194(c))

- Can only view signature, not receive a copy. (Elections Code § 2194(c))

Overview – Petition Forms



- Referendum – Electors vote to reject statutes or parts of statutes except urgency statutes, statutes calling elections, and statutes providing for tax levies or appropriations for usual current expenses of the State. Cal. Const. Art. II §9
- Initiative – Electors propose legislation and compel the legislature or the full electorate to vote on the measure. Cal. Const. Art. II, §8(a)
- Recall – Electors vote to remove an elected official from office.
- Candidate Nomination – Electors sign nomination petition of prospective candidates.

Petition Forms –



- Referendum, Recall or Initiative petition - Names, addresses, and signatures of people – confidential, nondisclosable
- They are **viewable only** to the proponents of the petition, if and only if, the petition is found to be insufficient after signatures are verified by the elections official. Request must be made within 21 days of determination of insufficiency.
- Candidate Nomination Form - Names, addresses, and signatures of people who sign a candidate nomination form are viewable, but may not have copies.

Practical Steps



- Step #1: Determine whether the record (info/data) is public
- Step #2: Confirm who the requester is
- Step #3: Determine whether the information/data is confidential
- Step #4: Determine whether there are any redactions to the public information

Updates



- SB 1441 Examination of petitions: time limitations and reimbursement of costs.(2023-2024)
- AB 1785 Protect assessor parcel number for elected or appointed officials (2023-2024)
- SB 1027 Authorizes a campaign committee to redact the bank account number on a copy of a statement of organization filed with a local filing officer, and it would require the Secretary of State to redact the bank account number on a statement of organization filed with the Secretary of State before making the statement available to the public in any form. (2023-2024)

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ARC Team

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QUESTIONS?



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