

December 12, 2024



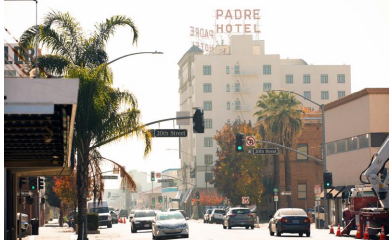
LEAGUE OF
**CALIFORNIA
CITIES**

Strengthening California Cities
through Advocacy and Education

2024 City Clerk New Law and Elections Seminar

Johnnie Pina, Legislative Affairs, Lobbyist
Jpina@calcities.org

2025 Advocacy Priorities



1. Protect local revenues and expand economic development tools.



2. Strengthen climate change resiliency and disaster preparedness.



3. Strengthen and modernize critical infrastructure.



4. Secure investments to prevent and reduce homelessness and increase the supply of affordable housing.

2025 Advocacy Priorities



Protect local revenues and expand economic development tools. Safeguard and modernize revenue streams for local priorities. Pursue new economic development opportunities that bolster local economies and cultivate a strong local workforce, including expanded workforce recruitment and retention tools.

2025 Advocacy Priorities



Strengthen climate change resiliency and disaster preparedness. Support city efforts to prepare, prevent, and adapt to natural disasters and the impacts of climate change, including wildfires, drought, sea level rise, and other extreme weather events. Increase transparency and access to insurance policies, especially following a natural disaster.

2025 Advocacy Priorities



Strengthen and modernize critical infrastructure. Dedicate new resources and protect existing funding to maintain and improve essential infrastructure, including bridges, roads, broadband, and the state's water supply and energy grid.

2025 Advocacy Priorities



Secure investments to prevent and reduce homelessness and increase the supply of affordable housing. Secure dedicated funding to bolster cities' long-term planning efforts to support unhoused residents and accelerate the construction of affordable housing. Strengthen state and regional partnerships to expand access to wraparound services and improve the housing element planning process. Ensure cities have the flexibility and decision-making authority to meet their community and state housing goals and reduce homelessness.

City Clerks Roundtable Schedule



January 2, 2025

February 6, 2025

March 6, 2025

April 3, 2025

May 1, 2025

June 5, 2025

July 3, 2025

August 7, 2025

September 4, 2025



City Clerks Department Legislative Series

Calling all City Clerks!

Make sure you register for the 2025 City Clerks Department Legislative Series!

Hear about the latest legislation impacting the City Clerks from your Cal Cities Lobbyist.

Presented by: Johnnie Pina, Legislative Affairs, Lobbyist for Governance, Transparency, and Labor Relations

Interested? Send an email to **Meghan McKelvey** mmckelvey@calcities.org or **Isaac Black** iblack@calcities.org.



Legislative Meeting Schedule:

- January 30 at 3:00 p.m.
- March 13 at 3:00 p.m.
- May 15 at 3:00 p.m.
- June 26 at 3:00 p.m.
- August 7 at 3:00 p.m.

Lobbyists



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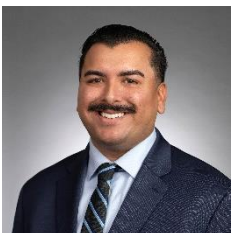
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City Clerks New Law
and Elections Seminar
December 12, 2024

2024 BROWN ACT UPDATE

Osa Wolff
Shute, Mihaly & Weinberger LLP

**Calcities & City Attorneys Department
Brown Act Committee
Open & Public Updated (2024)**

Excellent Guide with Helpful Q & A



Q. The local chamber of commerce sponsors an open and public candidate debate during an election campaign. Three of the five agency members are up for reelection and all three participate. All of the candidates are asked their views on a controversial project scheduled for a meeting to occur just after the election. May the three incumbents answer the question?

A. Yes, because the chamber of commerce, not the city, is organizing the debate. The city should not sponsor the event or assign city staff to help organize or run the event. Also, the Brown Act does not constrain the incumbents from expressing their views regarding important matters facing the local agency as part of the political process the same as any other candidates. Finally, incumbents participating in the event should take care to limit their remarks to the program set by the chamber and safeguard due process by indicating they will keep an open mind regarding specific applications that might come before the council.

Q. May the three incumbents accept an invitation from the editorial board of a local paper to all candidates to meet as a group and answer questions about and/or debate city issues?

A. No, unlike the chamber of commerce event, this would not be allowed under the Brown Act because it is not an open and publicized meeting.

Open & Public VI

A GUIDE TO THE RALPH M. BROWN ACT

REVISED JANUARY 2024



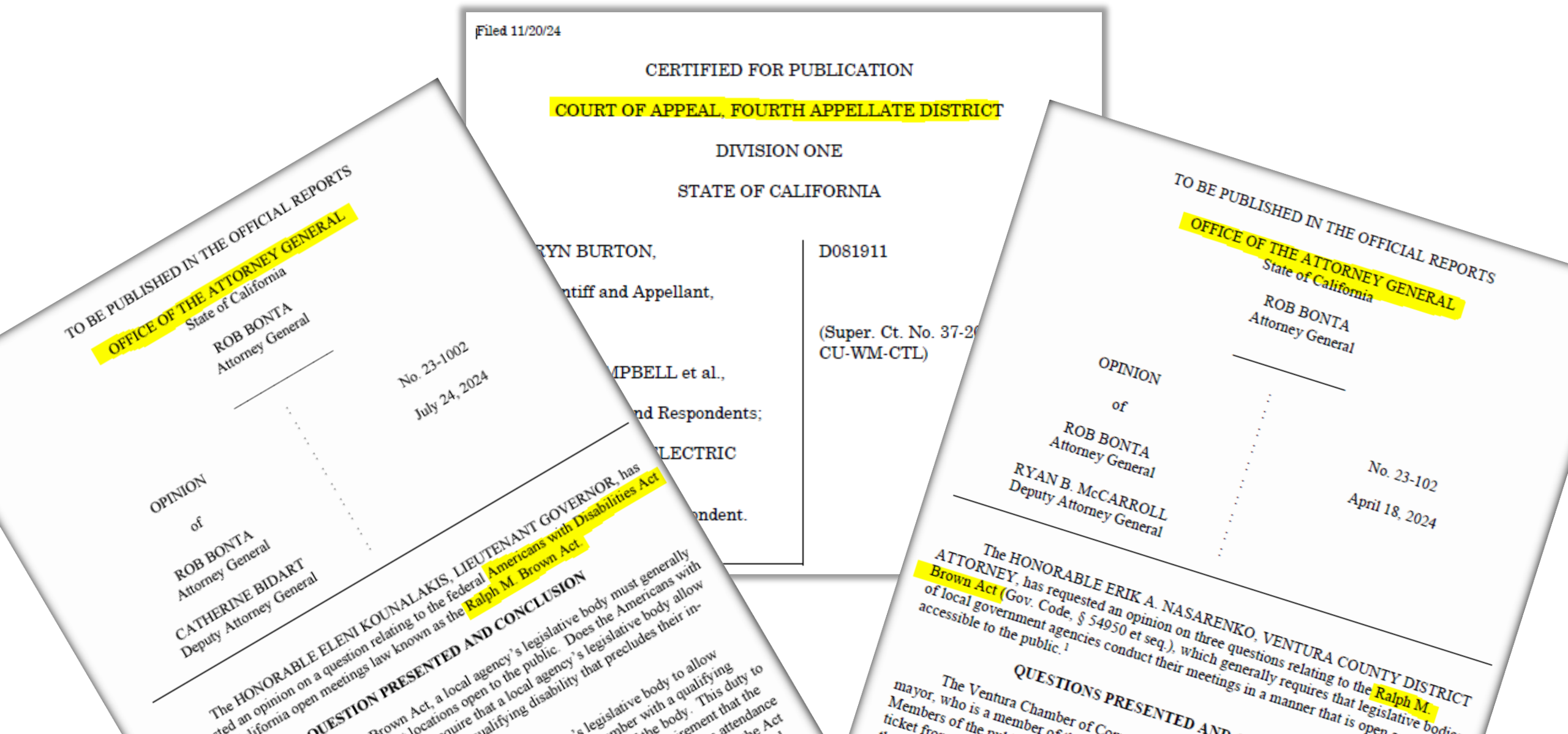
- Q.** The legislative body establishes a standing committee of two of its five members that meets monthly. A third member of the legislative body wants to attend these meetings and participate. May she?
- A.** *She may attend, but only as an observer; she may not participate.*
- Q.** Can the legislative body establish multiple standing committees with partially overlapping jurisdiction?
- A.** *Yes. One result of this overlap in jurisdiction may be that three or more of the members of the legislative body ultimately end up discussing an issue as part of a standing committee meeting. This is allowed under the Brown Act provided each standing committee meeting is publicly noticed and no more than two of the five members discuss the issue at any given standing committee meeting.*



- Q.** The legislative body wants to hold a team-building session to improve relations among its members. May such a session be conducted behind closed doors?
- A.** *No, this is not a proper subject for a closed session, and there is no other basis to exclude the public. Council relations are a matter of public business.*



2024: Two AG opinions/not much from the courts



AG OPINION #1: STATE OF THE CITY EVENT

23 OPS CAL ATTY GEN 102 (2024)

AG opined: Brown Act applied to mayor's "state of the city" address at a breakfast hosted by the chamber of commerce, where majority of council attended and ticket purchase required.

1. If a majority of the members of the city council were to attend ... would that event constitute a "meeting" of the city council within the scope of the Brown Act under Government Code section 54952.2(a)? Yes.
2. Would the Brown Act exception for conferences or similar gatherings set forth in Government Code section 54952.2(c)(2) apply to such an event? No.
3. Would the Brown Act's exception for "community meetings" set forth in Government Code section 54952.2(c)(3) apply to such an event? No.

GOVERNMENT CODE SECTION 54952.2(C)

Check detailed rules governing Brown Act exceptions for:

1. Individual contacts or conversations
2. Conference or similar gathering
3. Open and publicized community meeting
4. Open and noticed meeting of local agency
5. Purely social or ceremonial occasion
6. Standing committee meeting

GOVERNMENT CODE SECTION 54952.2(C)(3)

“The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.”

AG OPINION #2: BROWN ACT & ADA

23 OPS CAL ATTY GEN 1002 (2024)

AG opined: council member may be entitled to participate remotely in meetings as an ADA reasonable accommodation, following various Brown Act teleconference rules.

Q: “Does the Americans with Disabilities Act (ADA)...require that a local agency’s legislative body allow remote participation for a member with a qualifying disability that precludes their in-person attendance at meetings of the body?”

A: “Yes...[t]his duty to reasonably accommodate is subject, however, to the Brown Act’s requirement that the remote participation must be conducted in a manner that simulates in-person attendance at meetings held in person at a location open to the public. [M]embers who participate remotely [must] (1) use two-way video and audio streaming in real time and (2) disclose the identity of any adults who are present with the member at the remote location.”

QUESTIONS?



Osa Wolff

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2024 FPPC UPDATE

Donald Larkin
City Attorney, City of Morgan Hill



AB 1170

- Effective January 1, 2025, the FPPC is the filing officer for all officials required to file a Form 700 under Government Code section 87200
- A public official for whom the Commission is the filing officer must file their Form 700 via the FPPC's Electronic Filing Portal
 - Mayor/Councilmember
 - Treasurer
 - Planning Commissioner
 - City Manager (or Administrator)
 - City Attorney

AB 1170 (Cont)



- Locally designated filers will continue to file with their local agency
- Detailed training available at:
<https://www.californiacityclerks.org/>

AB 1170 (Cont)



- Logistical questions:
 - How will enforcement work (role of City Clerk)?
 - If the FPPC is filing officer for multiple positions, can the official list all positions on one form?
- Detailed training available at:
<https://www.californiacityclerks.org/>

Levine Act Update



Current Law: Officers (or candidates) prohibited from accepting, soliciting or directing a contribution of more than \$250 from a party or participant or their agents (1) while a proceeding involving a license, permit, or other entitlement for use, including most contracts, is pending before the agency and (2) for 12 months after a decision. Government Code section 84308

As of January 1, 2025:

- The amount of a disqualifying contribution goes from from \$250 to \$500
- An official can “cure” a violation by returning the contribution within 30 days (previously 14 days)

Levine Act Update (Cont)



- Defines an item is “pending” when:
 - The item is placed on an agenda for discussion or decision; or
 - The official knows a proceeding is within the official’s agency’s jurisdiction AND it is reasonably foreseeable that the decision will come before the official

Levine Act Update (Cont)



- Applies to decisions involving “license, permit or other entitlements.” Does not apply to general policy-making and legislative actions that are only indirectly related to a party or participant’s financial interests.
- The following are now specifically excluded from the Levine Act:
 - Contracts under \$50,000
 - Contracts between public agencies
 - Contracts without financial compensation
 - Periodic review of Development Agreements where no material modification is proposed

AB 1234 Ethics Training



- AB 2631 Amended Government Code section 53235 to require the FPPC to continue providing mandatory ethics training to public officials.

A GUIDE FOR LOCAL AGENCY COUNSEL:

Providing Conflict of Interest Advice





BBK

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW

CPRA UPDATES

CAL CITIES

NEW LAW AND ELECTIONS SEMINAR 2024

Darren Ziegler
Director of PRA Services
and E-Discovery Counsel
Best Best & Krieger, LLP

Presenter



Darren Ziegler

Director of PRA Services and E-Discovery Counsel

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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.

About Us



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130+

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



- Updates in CPRA Case Law
- Legislation Impacting the CPRA

Updates in CPRA Case Law



Case Spotlight

City of Gilroy v. Superior Ct., 96 Cal. App. 5th 818, 314 Cal. Rptr. 3d 681 (2023), as modified on denial of reh'g (Nov. 20, 2023). Cal Supreme Court Case # S282937

One of the key issues in this case pertains to the **retention of records** that fall under a Public Records Act ("CPRA") request. The requesters in this case argued that *Civil Code* § 338 should necessitate a three-year retention period. In contrast, the local agency and the lower courts maintained that there are various other retention rules in effect, and that **the CPRA does not explicitly mandate records retention**. (See *Government Code* § 34090 and § 34090.6; *Penal Code* § 832.18.) Furthermore, it is important to take into account legal hold rules and the retention schedules established by the local agency.

Updates in CPRA Case Law – (continued)



Case Spotlight

Castanares v. Superior Ct., 98 Cal. App. 5th 295, 316 Cal. Rptr. 3d 422 (2023), review denied (Apr. 10, 2024)

This case concerned a request for **drone footage** from the Chula Vista Police Department made under the California Public Records Act (“CPRA”). The court reviewed the investigatory record exemption specified in *Government Code* § 7923.600 and categorized the footage into three distinct types:

- (1) footage that is part of an investigatory file,
- (2) (2) footage related to an investigation into a possible violation of the law that lacks a corresponding investigatory file, and
- (3) (3) footage that pertains to a factual inquiry.

When it comes to drone footage, content matters.

Updates in CPRA Case Law – (continued)



Case Spotlight

Valenti v. City of San Diego, 94 Cal. App. 5th 218, 311 Cal. Rptr. 3d 335 (2023)

This case discusses the **collaboration required to access records** and highlights a potential pitfall for requesters who do not engage with the local agency.

Best practice: keep PRA correspondence, including “close-out” letters, open and inviting

Updates in CPRA Case Law – (continued)



Case Spotlight

State v. Superior Ct. of Los Angeles Cnty., 101 Cal. App. 5th 214, 320 Cal. Rptr. 3d 154
(2024)

This case involves the **deliberative process** as outlined in Government Code § 7922.000, (see precedent set by *Times Mirror Co. v. Superior Ct.**, 53 Cal. 3d 1325 (1991))

The case pertains to a **request for calendar entries** from the Governor's former senior advisor for energy, specifically involving 10 identified entities.

The court found the request, “sufficiently specific, focused, and limited, and the public interest in disclosure sufficiently compelling when measured against the minimal impact on government decisionmaking, to override the deliberative process privilege.”

Key takeaway: **The context of the records and the request matter** in the application of the deliberative process privilege.

Updates in CPRA Case Law – (continued)



Case Spotlight

First Amend. Coal. v. Superior Ct., 98 Cal. App. 5th 593, 316 Cal. Rptr. 3d 675 (2023)

In this case the court considered whether CPRA exemptions or other confidentiality provisions applied to the **mandated disclosure of police personnel records** under Penal Code § 832.7, subdivision (b).

Does the exemption/provision **directly conflict** with the purpose and scope of PC 832.7?

If no, then it may apply.

If yes, then 832.7 controls.

Consider whether this rationale applies to other mandatory disclosure provisions...

Updates in CPRA Case Law – (continued)



Case Spotlight

Houston v. Maricopa, Cnty. of, Arizona, No. 23-15524, 2024 WL 4048897 (9th Cir. Sept. 5, 2024). (See also AB 994/Penal Code, § 13665.)

In this case the Ninth Circuit ruled that **posting an arrestee's mug shot and biographical information on the Sheriff's website** for three days following an arrest **violated the arrestee's substantive due process rights.**

This case was from Maricopa County, Arizona. Although Arizona has its own Open Records Law, the County did not argue that this law was the basis for the disclosure. It remains **unclear what impact, if any, this case will have on the mandated disclosures under Government Code section § 7923.610.**

Legislation

- Assembly Bill No. 1785
Chaptered by SOS 9/25/24

This bill aims to broaden this provision by **prohibiting state or local agencies from publicly posting**, as defined, not only the home address and telephone number but also the **name and assessor parcel number associated with the home address of any elected or appointed official on the internet**, without obtaining their written permission first.

By expanding the scope of a current provision and thereby increasing the duties of local agencies, the bill would impose a state-mandated local program.



Legislation

- Senate Bill No. 1034
Chaptered by SOS 7/18/24

This bill **revises the “unusual circumstances” under which the time limit may be extended to include** the need to search for, collect, and appropriately examine records during a **state of emergency**, as defined, proclaimed by the Governor in the jurisdiction where the agency is located when the state of emergency currently affects, due to the state of emergency, the agency’s ability to timely respond to requests due to staffing shortages or closure of facilities where the requested records are located, except as specified.



Legislation

- Senate Bill No. 400
Chaptered by SOS 2/29/24



Under existing law, the California Public Records Act, generally requires public records to be open for inspection by the public. Existing law provides numerous exceptions to this requirement. Under existing law, the **personnel records of peace officers and custodial officers are confidential and not subject to public inspection**. Existing law provides **certain exemptions to this confidentiality**, including the reports, investigations, and findings of certain incidents involving the use of force by a peace officer.

This **bill clarifies** that this **confidentiality does not prohibit an agency** that formerly employed a peace officer or custodial officer **from disclosing the termination for cause of that officer, as specified**.

ARC Team

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QUESTIONS?



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through Advocacy and Education

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