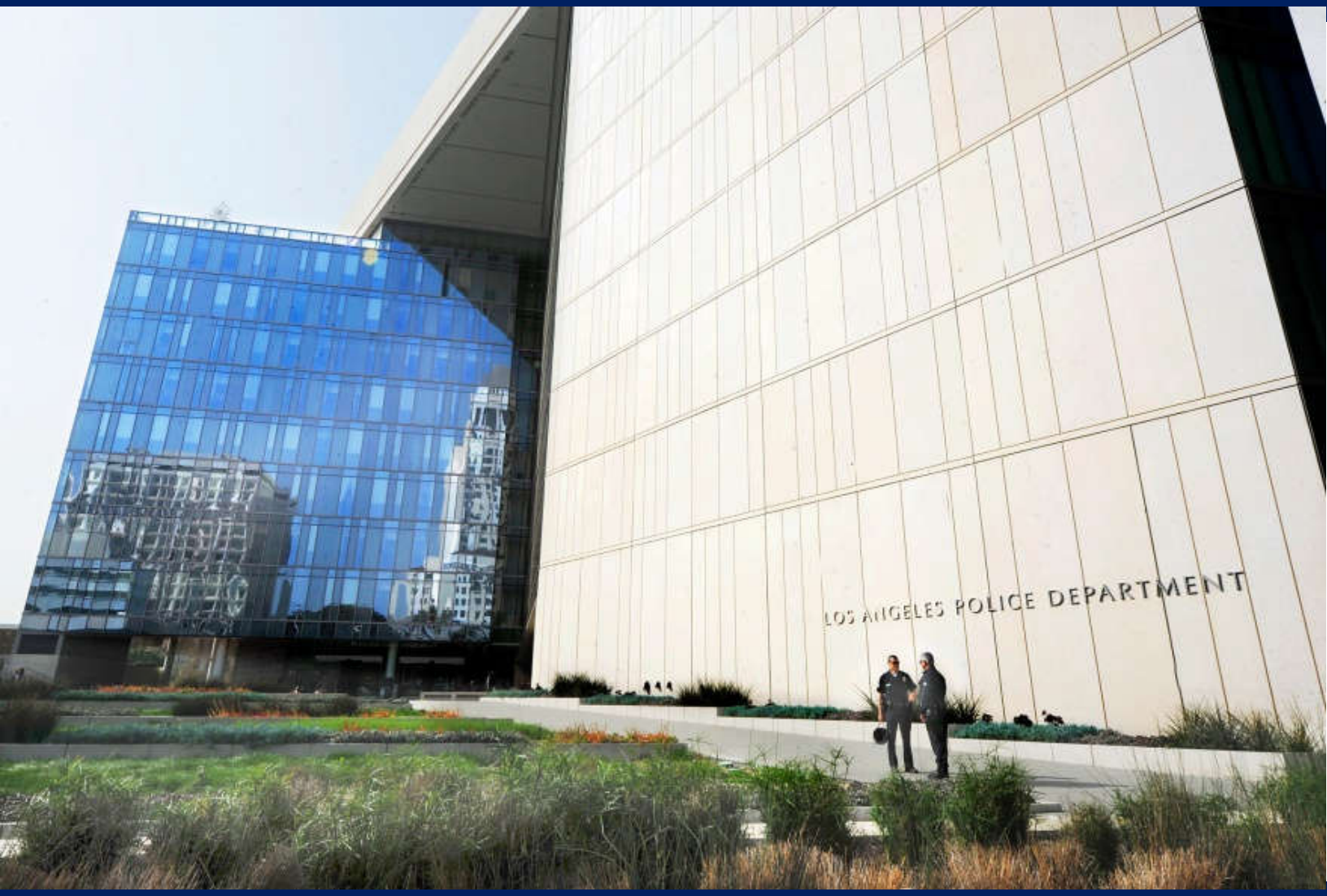
Los Angeles Police Department

Risk Management and Legal Affairs Division



California Public Records Act (CPRA) Manual

V11 – June 2023 revision

Los Angeles Police Department
California Public Records Act
Unit Manual

TABLE OF CONTENTS

1. SUMMARY: CALIFORNIA PUBLIC RECORDS ACT

1.1 Overview

The Los Angeles Police Department (Department) is mandated by law to respond to public requests for access to its records. As described in Department Manual, Vol. II. Section 406.20, the Department is committed to upholding the right of the public to access its records and information under the California Public Records Act (CPRA) which is contained in California Government Code, Sections 7920.005, et seq. The purpose of the CPRA is to provide access to records and information concerning the public's business.

The fundamental precept of the CPRA is that governmental records shall be disclosed to the public, upon request, unless there is a specific reason not to do so. Most of the reasons for withholding disclosure of a record are set forth in specific exemptions contained in the CPRA. However, some confidentiality provisions are incorporated by reference to other state and federal laws. For example, an agency may withhold or redact records or information to protect confidential personnel, medical, financial, or other information the disclosure of which disclosure would cause an unwarranted invasion of personal privacy. Govt. Code § 7927.700. An agency may also withhold or redact information the disclosure of which is exempted or prohibited pursuant to another federal or state law. Govt. Code § 7927.705. A law enforcement agency may also withhold investigatory and security records and files, and peace officer personnel records, subject to certain exceptions. Govt. Code § 7923.600-7923.625&7927.705; Penal Code § 832.7. Additionally, the CPRA provides for a general "catch all" balancing test by which an agency may withhold records from disclosure, if it can establish that the public interest in nondisclosure clearly outweighs the public interest in disclosure. Govt. Code § 7922.00. If a record contains exempt information, the agency generally must segregate or redact the exempt information and disclose the remainder of the record. If an agency improperly withholds records, a member of the public may enforce, in court, his or her right to inspect or copy the records and receive payment for court costs and attorney's fees.

The Department has established a CPRA Unit designated as the "custodian of records" to handle its CPRA requests. The CPRA Unit is part of the Public Records and Subpoena Response Section, Risk Management and Legal Affairs Division.

1.2 The Basics

The CPRA "embodies a strong policy in favor of disclosure of public records." As with any interpretation or construction of legislation, the courts will "first look at the words themselves, giving them their usual and ordinary meaning." Definitions found in the CPRA establish the statute's structure and scope, and guide local agencies, the public, and the courts in achieving the legislative goal of disclosing local agency records while preserving equally legitimate concerns of privacy and government effectiveness. It is these definitions that form the "basics" of the CPRA.

A. What are Public Records?

The CPRA defines "public records" as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Govt. Code § 7920.530. The term "public records" encompasses more than simply those documents that public officials are required by law to keep as official records. Courts have held that a public record is one that is "necessary or convenient to the discharge of [an] official duty[,]" such as a status memorandum provided to the city manager on a pending project.

1. Writings

A writing is defined as "any 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 combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." Govt. Code § 7920.545.

2. Information Relating to the Conduct of Public Business

Public records include "any writing containing information relating to the conduct of the public's business." However, "communications that are primarily personal containing no more than incidental mentions of agency business generally will not constitute public records." Therefore, courts have observed that although a writing is in the possession of the local agency, it is not automatically a public record if it does not also relate to the conduct of the public's business. For example, records containing primarily personal information, such as an employee's personal address list or grocery list, are considered outside the scope of the CPRA.

3. Prepared, Owned, Used, or Retained

Writings containing information "related to the conduct of the public's business" must also be "prepared, owned, used or retained by any state or local agency" to be public records subject to the CPRA. What is meant by "prepared, owned, used or retained" has been the subject of several court decisions.

Writings need not always be in the physical custody of, or accessible to, the Department to be considered public records subject to the CPRA. The obligation to search for, collect, and disclose the material requested can apply to records in the possession of the Department's consultants, if the

circumstances indicate that such records are deemed "owned" by the Department and in its "constructive possession," when the terms of an agreement between the Department and the consultant provide for such ownership. Where the Department has no contractual right to control the subconsultants or their files, the records are not considered to be within their constructive possession.

Likewise, documents that otherwise meet the definition of public records (including emails and text messages) are considered "retained" by the Department even when they are actually "retained" on an employee or official's personal device or account. When the Department receives a request for records that may be held in an employee's personal account, the Department's first step should be to communicate the request not only to the custodian of records but also to any employee or official who may have such information in personal devices or accounts. The Court states that a local agency may then "reasonably rely" on the employees to search their own personal files, accounts, and devices for responsive materials.

Documents that the Department previously possessed but no longer actually or constructively possesses at the time of the request are not public records subject to disclosure.

4. Regardless of Physical Form or Characteristics

A public record is subject to disclosure under the CPRA "regardless of its physical form or characteristics." The CPRA is not limited by the traditional notion of a "writing." As originally defined in 1968, the legislature did not specifically recognize advancing technology as we consider it today. Amendments beginning in 1970 have added references to "photographs," "magnetic or punch cards," "discs," and "drums," with the latest amendments in 2002 providing the current definition of "writing." Records subject to the CPRA include records in any media, including electronic media, in which government agencies may possess records. This is underscored by the definition of "writings" treated as public records under the CPRA, which includes "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 combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." The legislative intent to incorporate future changes in the character of writings has long been recognized by the courts, which have held that the "definition [of writing] is intended to cover every conceivable kind of record that is involved in the

governmental process and will pertain to any new form of record-keeping instrument as it is developed."

5. Metadata

Electronic records may include "metadata," or data about data contained in a record that is not visible in the text. For example, metadata may describe how, when, or by whom particular data was collected, and contain information about document authors, other documents, or commentary or notes. No provision of the CPRA expressly addresses metadata, and there are no reported court opinions in California considering whether or the extent to which metadata is subject to disclosure. Evolving law in other jurisdictions has held that local agency metadata is a public record subject to disclosure unless an exemption applies. There are no reported California court opinions providing guidance on whether agencies have a duty to disclose metadata when an electronic record contains exempt information that cannot be reasonably segregated without compromising the record's integrity. **Agencies that receive requests for metadata or requests for records that include metadata should treat the requests the same way they treat all other requests for electronic information and disclose nonexempt metadata.**

6. Department-developed Software

The CPRA permits government agencies to develop and commercialize computer software and benefit from copyright protections so that such software is not a "public record" under the CPRA. Govt. Code § 7922.585(a). This includes computer mapping systems, computer programs, and computer graphics systems. Govt. Code § 7922.585(b). As a result, the Department is not required to provide copies of Department-developed software pursuant to the CPRA. The CPRA authorizes state and local agencies to sell, lease, or license agency-developed software for commercial or noncommercial use. The exception for agency-developed software does not affect the public record status of information merely because it is stored electronically.

7. Computer Mapping Systems

While computer mapping systems developed by the Department are not public records subject to disclosure, such systems generally include geographic information system (GIS) data. Many local agencies use GIS programs and databases for a broad range of purposes, including the creation and editing of maps depicting property and facilities of importance to the agency and the public. As with metadata, the CPRA does not expressly address GIS information disclosure. However, the California Court of Appeal (*County of Santa Clara v.*

Superior Court, 170 Cal.App.4th 1301 (2009) has held that while GIS software is exempt under the CPRA, the data in a GIS file format is a public record, and data in a GIS database must be produced unless it is subject to a particular exemption.

8. Crime Statistics

When a CPRA analyst receives a request for crime statistics, the analyst may refer requester to lapdonline.org and the Mayor's Open Data website at data.lacity.org/A-Safe-City/Open-Data, as appropriate. The CPRA analyst should check the data and verify that the requested information is available and responsive, prior to referring a requester to lapdonline.org or to the Mayor's Open Data website.

2. PUBLIC ACCESS v. RIGHTS OF PRIVACY

2.1 Right to Monitor Government

In enacting the CPRA, the legislature stated that access to information concerning the conduct of the public's business is a fundamental and necessary right for every person in the State. Cases interpreting the CPRA also have emphasized that its primary purpose is to give the public an opportunity to monitor the functioning of their government. The greater and more unfettered the public official's power, the greater the public's interest in monitoring the governmental action.

2.2 The Right of Privacy

Privacy is a constitutional right and a fundamental interest recognized by the CPRA. The legislature recognized the individual right to privacy in crafting a number of the CPRA's exemptions (7927.700, 7927.705, 7928.300). For example, Government Code Section 7927.700 allows for the withholding of personnel, medical, or similar information if disclosure would invade an individual's personal privacy, and the balance of interests weighs in favor of non-disclosure. Similarly, Section 7928.300 makes confidential a government employee's personal information – such as home addresses, personal telephone numbers, and birth dates. In other cases, agencies must sometimes use the general balancing test to determine whether the right of privacy in a given circumstance outweighs the interests of the public in access to the information. In such circumstances, if personal or intimate information is extracted from a person (e.g., a government employee or appointee, or an applicant for government employment/appointments a precondition for the employment or appointment), a privacy interest in such information is likely to be recognized. However, if information is provided voluntarily in a public setting (i.e., a public meeting) or in order to acquire a benefit, a privacy right is less likely to be

recognized. Sometimes, the question of disclosure depends upon whether the invasion of an individual's privacy is sufficiently invasive so as to outweigh the public interest in disclosure.

3. SCOPE OF COVERAGE

3.1 Public Record

A. Identifiable Information & Duty to Assist Requester

In order to invoke the CPRA, a request for records must be sufficiently specific and focused, such that it reasonably describes an identifiable record or categories of records and enables the agency to determine whether it possesses the records described. Govt. Code § 7922.530(a). However, the requirement of clarity must be tempered by the reality that a requester, having no access to agency files or their scheme of organization, may be unable to precisely identify the documents sought. Thus, writings may be described by their content.

Additionally, the CPRA analyst has a duty to assist requesters by helping them identify records and information responsive to the request, describing the information technology and physical location in which the records exist, and providing suggestions for expediting the production of records and/or overcoming any practical basis for denying access to the records or information sought. Govt. Code § 7922.600.

B. Computer Information

When a person seeks a record in an electronic format, the CPRA analyst shall, upon request, make the information available in any electronic format in which it holds the information or in a format that the agency uses to create copies for itself or for provision to other agencies. Computer software developed by the government is exempt from disclosure. Govt. Code § 7922.570-7922.580.

3.2 Agencies Covered

All state and local government agencies – including cities and their boards, commissions, agencies and legislative bodies – are covered by the CPRA. Govt. Code § 7920.510&7920.525(a). The CPRA also applies to certain local legislative bodies and boards that govern certain government-affiliated or government-funded non-profit and for-profit entities that are subject to the Ralph M. Brown Act. Govt. Code § 7920.510; Govt. Code § 54952(c). However, the CPRA is not applicable to the California Legislature, which is instead covered by the Legislative Open Records Act. The state judicial branch is

also not bound by the CPRA, although most court records are disclosable as a matter of public rights of access to courts. Federal government agencies are covered by the Federal Freedom of Information Act (FOIA).

3.3 Member of The Public

The CPRA entitles natural persons and business entities as "members of the public" who may inspect public records in the possession of government agencies. Govt. Code § 7920.515&7920.520. Persons who have filed claims or litigation against the government, or who are investigating the possibility of so doing, retain their identity as members of the public. Representatives of the news media have no greater rights to public records than members of the public. Government employees acting in their official capacity are not considered to be members of the public. Individuals may have greater access to records about themselves than the general public, generally.

3.4 Right to Inspect and Copy Public Records

Records may be inspected at an agency during its regular office hours. Govt. Code § 7922.525. The CPRA contains no provision for a charge to be imposed in connection with the mere inspection of records. Copies of records may be obtained for the direct cost of duplication. Govt. Code § 7922.530(a). The direct cost of duplication includes the pro rata expense of the duplicating equipment utilized in making a copy of a record and, conceivably, the pro rata expense in terms of staff time (salary/benefits) required to produce the copy. A staff person's time in searching for, retrieving and mailing the record is not included in the direct cost of duplication. By contrast, when an agency must compile records or extract information from an electronic record or undertake programming to satisfy a request, the requester must bear the full cost of producing a copy of the record – including the cost to construct a record, and the cost of programming and computer services, if applicable – and not merely the direct cost of duplication. Govt. Code § 7922.570-7922.580. The right to inspect and copy records does not extend to records and information that are exempt from disclosure.

4. RESPONDING TO REQUESTS FOR RECORDS

4.1 Procedures

The Department accepts CPRA requests in person, by phone, in writing, and via the City's NextRequest portal, a link to which is available on lapdonline.org. If the records requested are not readily accessible or if portions of the records must be redacted to protect exempt material, the Department may take a reasonable period of time to perform these functions. Govt. Code § 7922.535.

The Department is obligated by the CPRA to respond in writing to CPRA requests within 10 days, or 24 days in certain circumstances, and should provide the following information:

- Whether the requested records exist;
- Whether the Department will release any of the requested records, and if so, when and how; and
- The statutory or legal reasons for withholding any requested records or portions thereof;

Note: When the required response date for the CPRA request falls upon a weekend or holiday, the required response date may be moved to the next business day.

A. Extending the Response Time for Responding to a Request

Under Govt. Code § 7922.535, an extension of the 10-day response period is permitted in "unusual circumstances", which are defined by the CPRA as follows:

- The request requires the search and collection of records from multiple physical locations separate from the offices of the CPRA Unit and Department headquarters;
- The request requires the collection of voluminous records separate and distinct from each other;
- The request requires consultation with another agency that has a substantial interest in the processing of the request; or
- The request requires data compilation, writing computer programming, or constructing a computer report to extract data;

No other reasons justify an extension of time to provide a written response to a CPRA request. For example, the Department may not extend the time to respond simply on the basis that it has other pressing business or that the employee most knowledgeable about the records sought is on vacation or is otherwise unavailable.

If the Department exercises its right to extend the response time beyond the 10-day period, it must communicate this to the requester in writing, stating the reason or reasons for the extension and the anticipated date of the response within the 14-day extension period.

The Department may also obtain an extension by consent of the requester. Often a requester will cooperate with the Department on such matters as the timing of the response, particularly if the Department is acting reasonably and conscientiously in processing the request. It is advisable to document in writing any extension agreed to by the requester.

B. Timing of Disclosure

After responding to a public records request in writing, the Department shall "promptly" disclose (provide requester access to or a copy of the record) any responsive and nonexempt records. Govt. Code § 7922.530(a). In some cases, the records can be disclosed at the same time the Department responds in writing to the requester. In other cases, however, immediate disclosure is not possible because of the volume of records encompassed by the request. If the Department is unable to provide records when it transmits the written response, the response shall state the estimated date and time when the records will be made available. Govt. Code § 7922.530(a).

When faced with a voluminous public records request, a CPRA analyst has several options — for example, asking the requester to narrow the request, asking the requester to agree to a later deadline for responding to the request, and providing responsive records (whether redacted or not) on a "rolling" basis, rather than in one complete package. It is sometimes possible for the Department and the requester to work cooperatively to streamline a public records request, with the result that the requester obtains the records or information the requester truly wants, while the burden on the Department in complying with the request is reduced. If any of these options are used, it is advisable that they are documented in writing.

C. Locating Records

The Department must make a reasonable effort to search for and locate requested records, including by asking probing questions of Department staff. No bright-line test exists to determine whether an effort is reasonable. That determination will depend on the facts and circumstances surrounding each request. In general, upon the Department's receipt of a CPRA request, all persons or offices that would most likely be in possession of responsive records should be consulted in an effort to locate the records.

The right to access public records is not without limits. The Department is not required to perform a "needle in a haystack" search to locate the record or records sought by the requester. Nor is it compelled to undergo a search that will produce a huge volume of material in response to the request. On the other hand, the Department typically will endure some burden — at times, a significant burden — in its records search. Usually that burden alone will be insufficient to justify noncompliance with the request. Nevertheless, if the request imposes a substantial enough burden, the Department may decide to deny the records request on the basis that the public interest in nondisclosure clearly outweighs the public interest in disclosure.

A CPRA analyst should disclose the record holding division to the requester if in the course of communications about a CPRA request the requester asks for such information.

D. Types of Responses

After conducting a reasonable search for requested records, the Department has only a limited number of possible responses.

(1) disclose the record;

(2) withhold the record;

(3) disclose the record in redacted form;

(4) denial.

Care should be taken in determining whether a record is non-exempt and disclosable, or whether it (or some of its content) is exempt, requiring withholding or redaction. If an analyst is uncertain as to whether a particular record is exempt, or needs assistance determining what exemptions may apply, it is advisable to consult with a supervisor or the Department's legal counsel before making this decision, if needed.

If a CPRA request is denied because the Department does not have the record or has decided to withhold it, or if the requested record is disclosed in redacted form, the Department's response must be in writing.

If the record is withheld in its entirety or provided to the requester in redacted form, the Department must state the legal basis under the CPRA for its decision not to disclose the record. Statements like "we don't give up those types of records" or "our policy is to keep such records confidential" will not suffice. Rather, the response should identify the specific CPRA exemptions and/or other applicable federal or state law that authorize the withholding or redaction of the record or information.

A denial of a request for records must be in writing and "state the names and titles or positions of each person responsible for the denial." A request can be denied if the records had previously been destroyed by approvals of City Council and City Attorney required by the records retention schedule/policy and are no longer in the Department's possession.

E. No Duty to Create a Record or a Privilege Log

The Department has no duty to create a record that does not exist at the time of the request. There is also no duty to reconstruct a record that was lawfully discarded prior to receipt of the request.

The CPRA does not require that the Department create a list that identifies the specific records being withheld. The response only needs to identify the legal grounds for nondisclosure. If the Department creates a list for its own use, however, that document may be considered a public record and may be subject to disclosure in response to a later public records request.

F. Legal Advice

If a CPRA analyst needs advice, the analyst will go to the CPRA supervisor, who will consult with the Public Records and Subpoena Response Section Detective III Supervisor, Public Records and Subpoena Response Section Assistant Officer in Charge (OIC), or Public Records and Subpoena Response Section OIC if needed. If further legal advice is needed, the Public Records and Subpoena Response Section OIC or Assistant OIC will authorize consultation with the supervisor of Public Safety General Counsel Section of the Los Angeles City Attorney's Office, who may assign the case to a City Attorney. Once a City Attorney is designated, the CPRA analyst will consult directly with the assigned City Attorney. The CPRA analyst is responsible for analyzing the CPRA request and contacting the requester to clarify and assist the requester with the CPRA request.

4.2 Claim of Exemption

The Department may only withhold records if authorized by the CPRA or other state or federal laws. The CPRA itself contains several exemptions from disclosure. There are also numerous state and federal laws outside the CPRA that confer confidentiality or privilege over certain types of records or information, and justify exemptions from disclosure. These exemptions generally include peace officer personnel records, law enforcement investigative records, deliberative drafts, confidential personal information, and material made confidential by other state or federal statutes. In addition, a record may be withheld whenever an agency can show, on the facts of a specific record, that the public interest in nondisclosure clearly outweighs the public interest in disclosure.

Exemptions are either discretionary or mandatory. A discretionary exemption may be waived by the Department, meaning that the Department may elect to disclose the record or information. In contrast, mandatory exemptions cannot be waived, meaning that the Department is legally obligated to keep the record or information confidential.

An example of a discretionary exemption is when the public interest in nondisclosure clearly outweighs the public interest in disclosure. When a CPRA analyst determines that discretionary disclosure of a

record appears appropriate in light of the public interest in disclosure and the absence of countervailing privacy and public safety concerns, the CPRA analyst shall consult with a CPRA supervisor for further instruction.

When the Department withholds a record because it is exempt from disclosure, the Department must notify the requester in writing of the reasons for withholding the record.

4.3 Redaction of Records

When a record contains exempt material, it does not necessarily mean that the entire record may be withheld from disclosure. Rather, the general rule is that the exempt material may be withheld but the remainder of the record must be disclosed. The fact that it is time consuming to segregate exempt material does not obviate the requirement to do it, unless the burden is so onerous as to clearly outweigh the public interest in disclosure. If the information which would remain after exempt material has been redacted would be of little or no value to the requester, the agency may also decline to disclose the record on the grounds that the segregation process is unduly burdensome. The difficulty in segregating exempt from nonexempt information is relevant in determining the amount of time which is reasonable for producing the records in question.

4.4 Waiver of Exemption

Exempt material must not be disclosed to any member of the public if the material is to remain exempt from disclosure. Once material has been disclosed to one member of the public, it generally is available upon request to any and all members of the public. Govt. Code § 7921.505. However, certain disclosures made by an agency – such as confidential disclosures made to another governmental agency in connection with the performance of official duties, or disclosures made in a legal proceeding or otherwise required by law – are not considered disclosures to members of the public under the CPRA, and therefore do not constitute a waiver of exempt material. Govt. Code § 7921.505.

5. EXEMPTION FOR PERSONNEL, MEDICAL OR SIMILAR RECORDS (Gov. Code, § 7927.700)

5.1 Records Covered

A personnel record, medical record or other similar record generally refers to intimate or personal information which an individual is required to provide to a government agency, frequently in connection with employment. However, the mere fact that information is in a personnel file does not necessarily make it exempt information. Information such as an individual's qualifications, training, or employment background, which are generally public in nature, ordinarily are not exempt.

Information submitted by license applicants is not covered by Section 7927.700 but is protected under Section 7925.005 and, under special circumstances, may be withheld under the balancing test in Section 7922.000.

5.2 Disclosure Would Constitute an Unwarranted Invasion of Privacy

If information is intimate or personal in nature and has not been provided to a government agency as part of an attempt to acquire a benefit, disclosure of the information probably would constitute a violation of the individual's privacy. However, the invasion of an individual's privacy must be balanced against the public's need for the information. Only where the invasion of privacy is unwarranted as compared to the public interest in the information does the exemption permit the Department to withhold the record from disclosure. If this balancing test indicates that the privacy interest outweighs the public interest in disclosure, disclosure of the record by the Department would appear to constitute an unwarranted invasion of privacy.

Courts have reached different conclusions regarding whether the investigation or audit of a public employee's performance is disclosable, based on the circumstances of the case. The gross salary and benefits of state and local officials are a matter of public record.

6. EXEMPTION FOR PRELIMINARY NOTES, DRAFTS AND MEMORANDA (Gov. Code, § 7927.500)

Under this exemption, materials must be:

(1) notes, drafts or memoranda;

(2) which are not retained in the ordinary course of business;

(3) where the public interest in nondisclosure clearly outweighs the public interest in disclosure.

This exemption has little or no effect since the deliberative process privilege was clearly established under the balancing test in Section 7922.000 in 1991, but it is mentioned here because it is in the CPRA.

7. EXEMPTION FOR INVESTIGATIVE RECORDS AND INTELLIGENCE INFORMATION (Gov. Code, § 7923.600-7923.625)

7.1 Investigative Records

Records of complaints, preliminary inquiries to determine if a crime has been committed, and full-scale investigations, as well as closure memoranda are investigative records. Govt. Code § 7923.600-7923.625. In addition, records that are not inherently investigatory may be covered by the exemption where they pertain to an enforcement proceeding that has become concrete and definite, and are part of an investigation file. Investigative and security records created for law enforcement, correctional or licensing purposes also are covered by the exemption from disclosure. The term "law enforcement" agency refers to traditional criminal law enforcement agencies such as the Department. Records created in connection with administrative investigations unrelated to licensing are not subject to the exemption. The exemption is permanent and does not terminate once the investigation has been completed.

Even though investigative records themselves may be withheld, Section 7923.610-7923.620(c) mandate that law enforcement agencies disclose specified information about investigative activities. This framework is fundamentally different from the approach followed by other exemptions in the CPRA, in which the records themselves are disclosable once confidential information has been redacted. In addition, certain information from these protected records must be made available to certain people: victims of crime, an authorized representative of a victim, insurance carrier, and any person suffering bodily injury or property damage. The disclosures provided under 7923.610-7923.620(c) are mandatory, not discretionary. The exception is where the disclosure would endanger the successful completion of the investigation or a related investigation, or the safety of a person involved in the investigation. The CPRA analyst would need to contact the investigating officer (I/O) on the matter and obtain specific facts from that person supporting application of this exception.

Specifically, Section 7923.610 requires that basic information must be disclosed by the Department in connection with calls for assistance or arrests, unless to do so would endanger the safety of an individual or interfere with an investigation. With respect to public disclosures concerning calls for assistance and the identification of arrestees, the law restricts disclosure of address information to specified persons. However, Section 7923.600 expressly permits the Department to withhold the analysis and conclusions of investigative personnel. Thus, specified facts may be disclosable pursuant to the statutory directive, but the analysis and recommendations of investigative personnel concerning such facts are exempt.

Certain information from investigatory records must be made available under 7923.610. This applies to arrest reports which require the following information: the full name and occupation, physical

description including date of birth, color of eyes and hair, sex, height and weight, time and date of arrest, time and date of booking, location of arrest, facts surrounding arrest, amount of bail set, time and manner of release or location where individual is currently being held, all charges being held on, any outstanding warrants, parole and probation holds.

The CPRA under 7923.615 provides for the disclosure of certain information from complaints or requests for assistance. Specifically, it requires the disclosure of the date, time, location of occurrence; date and time of report; time and nature of response; name and age of victim; factual circumstances; and general description of injuries, property or weapons involved. The name of the victim of certain crimes may be withheld at victim's request (or parent/guardian where victim is a minor). Also, name and images of victims of human trafficking, and that victim's immediate family may be withheld at the victim's request until investigation or prosecution is complete.

Under Section 7923.620, certain individuals are entitled to address information of arrestees and certain crime victims, if the request is made for certain enumerated purposes. Specifically, under 7923.620, an individual must submit a declaration under penalty of perjury stating that he/she is making their request for a scholarly, journalistic, political or governmental purpose or for investigation purposes by a licensed private investigator and is not going to use address information to sell a product or service. Such a requester is entitled to current address of the arrestee and current address of the victim. However, the address of the victim of certain crimes must remain confidential.

Finally, Section 7923.625 provides for the disclosure of a video or audio recording that relates to a "critical incident," which is defined as a recording that depicts an incident involving the discharge of a firearm at a person by an officer, or the use of force by an officer against a person resulting in death or great bodily injury. Govt. Code § 7923.625. However, an agency may delay disclosure of such recordings for a certain period of time during an active criminal or administrative investigation if disclosure would substantially interfere with the investigation. Govt. Code §7923.625. Additionally, if release of a recording would violate the reasonable expectation of privacy of a subject depicted therein, the agency may redact or blur the recording in a manner to protect the privacy interest. Govt. Code § 7923.625.

7.2 Intelligence Information

Records of intelligence information collected by the Attorney General and state and local police agencies are exempt from disclosure under Section 7923.600. Intelligence information is related to criminal activity but is not focused on a concrete prospect of enforcement.

8. EXEMPTIONS FOR LITIGATION AND ATTORNEY RECORDS (Gov. Code, § 7927.200, 7927.705)

8.1 Pending Claims and Litigation

Section 7927.200 permits documents that are specifically prepared in connection with filed litigation to be withheld from disclosure. The exemption has been interpreted to apply only to documents created after the commencement of the litigation. For example, it does not apply to the claim that initiates the administrative or court process. Once litigation is resolved, this exemption no longer protects records from disclosure, although other applicable exemptions (e.g., attorney-client privilege) may be ongoing.

Nonexempt records pertaining to the litigation are disclosable to requesters, including prospective or actual parties to the litigation. Generally, a request from actual or prospective litigants can be barred only where an independent statutory prohibition or collateral estoppel applies. If the agency believes that providing the record would violate a discovery order, it should bring the matter to the attention of the court that issued the order.

In discovery during civil litigation unrelated to the Public Records Act, Evidence Code Section 1040 (as opposed to the Act's exemptions) governs.

8.2 Attorney-Client Privilege

The attorney-client privilege protects confidential communications between an attorney and his or her client. The privilege applies to communications made in litigation and nonlitigation situations. The privilege appears in Section 954 of the Evidence Code and is incorporated into the CPRA through Section 7927.705. The privilege lasts forever unless waived. However, the privilege is not waived when a confidential communication is provided to an opposing party where to do so is reasonably necessary to assist the parties in finalizing their negotiations.

8.3 Attorney Work Product

The attorney work product rule covers research, analysis, impressions and conclusions of an attorney. This confidentiality rule appears in Section 2018 of the Code of Civil Procedure and is incorporated into the CPRA through Section 7927.705. Records subject to the rule are confidential forever. The rule applies in litigation and nonlitigation circumstances alike.

9. OTHER EXEMPTIONS

9.1 Official Information

Information obtained by a government agency under assurances of confidentiality may be withheld if it is in the public interest to do so. The official information privilege appears in Evidence Code Section 1040 and is incorporated into the CPRA through Section 7927.705. The analysis and balancing of competing interests in withholding versus disclosure is the same under Evidence Code Section 1040 as it is under Section 7922.000. When an agency is in litigation, it may not resist discovery by asserting exemptions under the CPRA; rather, it must rely on the official information privilege.

9.2 Trade Secrets

The Department may withhold confidential trade secret information pursuant to Evidence Code Section 1060 which is incorporated into the CPRA through Section 7927.705. Although the Department has the obligation to initially determine when records are exempt as trade secrets, a person or entity disclosing trade secret information to the Department may be required to assist in the identification of the information to be protected and may be required to litigate any claim of trade secret which exceeds that which the Department has asserted. Relatedly, with respect to government contracts, bids, proposals, and draft agreements generally are exempt from disclosure until the conclusion of the agency's negotiation process; however, the resulting contracts become disclosable after the conclusion of the agency's negotiation process, pursuant to Section 7922.000 and applicable court opinions.

9.3 Other Express Exemptions

Other express exemptions include records relating to: securities and financial institutions (Section 7929.000); utility, market and crop reports (Section 7927.300); testing information (Section 7929.605); appraisals and feasibility reports (Section 7928.705); gubernatorial correspondence (Section 7928.000); legislative counsel records (Section 7928.100); personal financial data used to establish a license applicant's personal qualifications (Section 7925.005); home addresses (Section 7927.700); and election petitions (Section 7924.000).

9.4 The CPRA 7923.800, 7923.805: Concealed Carry Weapon (CCW)

Section 7923.800 exempts from disclosure certain information in applications for licenses to carry a firearm, indicating when and where the applicant is vulnerable to attack; or concerns regarding the applicant or family member's medical or psychological history. Similarly, Section 7923.805 exempts home address and or telephone number of prosecutors, public defenders, peace officers, judges, court commissioners and magistrates in applications for CCWs. Section 7923.805 exempts home address and or telephone number of prosecutors, public defenders, peace officers, judges, court commissioners and magistrates in licenses for CCWs.

10. THE PUBLIC INTEREST EXEMPTION (Gov. Code, § 7922.000)

10.1 The Deliberative Process Privilege

The deliberative process privilege is intended to afford a measure of privacy to decision makers, by protecting from disclosure pre-decisional writings and drafts that reflect the deliberative processes of those decision makers. Section 7922.000 confers a deliberative process protection over records containing or consisting of such decision-making processes, which is intended to cultivate frank and open discussion within an agency. This doctrine permits decision makers to receive recommendatory information from and engage in pre-decisional discussions with their advisors without the fear of publicity. As a general rule, the deliberative process privilege does not protect facts from disclosure but rather protects the process by which policy decisions are made. Records which reflect a final decision and the reasoning which supports that decision are not covered by the deliberative process privilege. If a record contains both factual and deliberative materials, the deliberative materials may be redacted, and the remainder of the record is disclosed, unless the factual material is inextricably intertwined with the deliberative material. Under Section7922.000, a balancing test is applied in each instance to determine whether the public interest in maintaining the deliberative process privilege outweighs the public interest in disclosure of the particular information in question.

10.2 Other Applications of The Public Interest Exemption

In order to withhold a record under Section 7922.000, an agency must demonstrate that the public interest in nondisclosure clearly outweighs the public interest in disclosure. As discussed in Section 4.2 of this Manual, this is a discretionary exemption that may require the CPRA analyst to consult with a CPRA supervisor in some circumstances. The Department's interest in nondisclosure is of little consequence in performing this balancing test; it is the public's interest, not the Department's, that is weighed. This "public interest balancing test" has been the subject of several court decisions.

In a case involving the licensing of concealed weapons, the permits and applications were found to be disclosable in order for the public to properly monitor the government's administration of concealed weapons permits. The court carved out a narrow exemption for information the disclosure of which would render an individual vulnerable to attack at a specific time and place. The court also permitted withholding of psychiatric information on privacy grounds.

In another case, a city sought to maintain the confidentiality of names and addresses of water users who violated the city's water rationing program. The court concluded that the public's interest in disclosure outweighed the public's interest in nondisclosure since disclosure would assist in enforcing the water rationing program. The court rejected arguments that the water users' interests in privacy and maintaining freedom from intimidation justified nondisclosure.

The names, addresses, and telephone numbers of persons who have filed noise complaints concerning the operation of a city airport are protected from disclosure where under the particular facts involved, the court found that there were less burdensome alternatives available to serve the public interest.

In a case involving a request for the names of persons who, as a result of gifts to a public university, had obtained licenses for the use of seats at an athletic arena, and the terms of those licenses, the court found that the university failed to establish its claim of confidentiality by a "clear overbalance." The court found the university's claims that disclosure would chill donations to be unsubstantiated. It further found a substantial public interest in such disclosure to permit public monitoring and avoid favoritism or discrimination in the operation of the arena.

11. LITIGATION UNDER THE CPRA

To enforce compliance with the CPRA's open government mandate, the CPRA provides for the mandatory award of court costs and attorneys' fees to plaintiffs who successfully seek a court ruling ordering disclosure of withheld public records.

A requester, but not a public agency, may bring an action seeking mandamus, injunctive relief or declaratory relief under Sections 7923.000 or 7923.100-7923.115(c). To assist the court in making a decision, the documents in question may be inspected at an in-camera hearing (i.e. a private hearing with a judge). An in-camera hearing is held at the court's discretion, and the parties have no right to such a hearing. Prevailing plaintiffs are awarded court costs and attorney's fees. A plaintiff need not obtain all of the requested records in order to be the prevailing party in litigation. A plaintiff is also considered the prevailing party if the lawsuit ultimately motivated the agency to provide the requested records even absent a court ruling. Prevailing defendants (i.e., agencies) may be awarded court costs and attorney fees only if the requester's claim is clearly frivolous. There is no right of appeal, but the losing party may bring a petition for extraordinary relief to the court of appeal.

12. NEXTREQUEST CPRA PORTAL

A link to the Department's NextRequest CPRA portal is located on lapdonline.org. The portal enables requesters to easily submit a CPRA request, determine the status of a request, and view the Department's response(s) to requests. The portal also enables potential requesters to determine whether the Department has already collected and produced the records they seek in response to a request previously submitted by a member of the public. Documents produced in response to requests are posted to NextRequest so that they may be searched and viewed by the public.

13. SENATE BILL 1421 – SKINNER. PEACE OFFICER: RELEASE RECORDS, APPROVED BY GOVERNOR SEPTEMBER 30, 2018

Effective January 1, 2019, a new California law dramatically altered the ability of the public (including the press) to obtain previously confidential and non-disclosable police personnel records. Senate Bill 1421 amended Penal Code Section 832.7 to allow for the release of records relating to officer use-of-force incidents, sexual assault and acts of dishonesty. Previously, such records were only available through a Pitchess motion and private review by a judge or arbitrator, in a legal proceeding.

Senate Bill 1421 requires the disclosure of records and information, through the CPRA, concerning the following types of incidents and investigations:

- Records relating to the report, investigation or findings of an incident involving the discharge of a firearm at a person by a peace officer or a custodial officer.
- Records relating to the report, investigation or findings of an incident in which the use of force by a peace officer or a custodial officer against a person results in death or great bodily injury.
- Records relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public. "Sexual assault" under Section 832.7 includes the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or any other official favor, or under the color of authority. For purposes of this definition, the propositioning for or commission of any sexual act while on duty is considered a sexual assault.
- Records relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction of evidence or falsifying or concealing of evidence.

The bill requires records disclosed pursuant to this provision to be redacted only to remove personal data or information under specified circumstances. These circumstances include:

(a) to remove personal data or information, including home addresses, telephone numbers and the identities of family members;

(b) to preserve the anonymity of complainants and witnesses;

(c) to protect confidential medical, financial or other information protected by federal law or which would cause "an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct and serious use of force"; and

(d) where there "is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person." (Penal Code § 832.7(b)(5).)

Additionally, the bill authorizes redactions stating that, "an agency may redact a record disclosed pursuant to this section, including personal identifying information, where, on the facts of the particular

case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information." (Penal Code § 832.7(6))

Complaints and any reports or findings relating to above mentioned complaints, including all complaints and any reports currently in the possession of the Department, shall be retained for a period of no less than five years for records where there was not a sustained finding of misconduct and for not less than 15 years where there was a sustained finding of misconduct.

The Public Records and Subpoena Response (PRSR) Section of Risk Management and Legal Affairs Division (RMLAD) is responsible for implementation, maintenance, production and release of SB1421 records and responding to CPRA requests of the same.

14. SENATE BILL 16 – SKINNER. PEACE OFFICER: RELEASE RECORDS, APPROVED BY GOVERNOR SEPTEMBER 20, 2021

On September 2, 2021, the California Senate approved Senate Bill 16 ("SB 16"). Signed into law on September 20, 2021, SB 16 reflects further efforts to increase transparency in law enforcement. In 2018, Governor Brown signed into effect legislation, SB 1421, that significantly changed the confidential status of certain categories of peace officer personnel records. SB 16 expands on that change, making additional categories of peace officer personnel records admissible in court and accessible to the public, as well as making it mandatory for agencies to review a lateral peace officer's personnel file prior to employing that officer.

SB 16 expanded on SB 1421 by making the following additional categories of peace officer personnel records disclosable pursuant to a CPRA request:

- Sustained finding involving unreasonable or excessive force
- Sustained finding that an officer failed to intervene during another officer's use of force that is clearly excessive or unreasonable
- Sustained finding that an officer engaged in conduct (verbal, writing, online posts, recording, or gestures) involving prejudice or discrimination on the basis of a specified protected class
- Sustained finding that an officer made unlawful arrest or conducted an unlawful search

SB 16 further expands the scope of accessible records by increasing the required record retention period from five to fifteen years where misconduct is sustained and requiring the release of records for peace officers who resigned prior to the close of the investigation into their conduct.

SB 16 amends Penal Code Section 832.7 to require law enforcement agencies to release records pursuant to a CPRA request within forty-five (45) days of the request, except as authorized by the section.

SB 16 amends Penal Code section 832.12 making it mandatory for a law enforcement agency to request and review any record of investigation from a previous employing agency involving the lateral officer prior to employing that peace officer.

The bill makes the limitations on delay of disclosure inapplicable until January 1, 2023, for the described records relating to incidents that occurred before January 1, 2022. The bill requires the retention of all complaints and related reports or findings currently in the possession of a department or agency, as specified.

For purposes of releasing peace officer personnel records, the bill exempts the following from protection under the lawyer-client privilege: factual information provided by the public entity to its attorney, or factual information discovered in any investigation conducted by the public entity's attorney; and billing records related to the work done by the attorney, subject to certain conditions.

The bill also expands the authorization to redact records to allow redaction to preserve the anonymity of victims and whistleblowers.

This bill expands the authorization to delay the release of records during an active investigation to include records of incidents involving sexual assault and dishonesty by officers, and the records of incidents involving prejudice or discrimination, wrongful arrests, and wrongful searches that are required to be made public by this bill.

The Public Records and Subpoena Response (PRSR) Section of Risk Management and Legal Affairs Division (RMLAD) is responsible for implementation, maintenance, production and release of SB16 records and responding to CPRA requests of the same.