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MUNICIPAL MATTERS

PERSPECTIVE

## Making effective requests for public records

By Derek P. Cole

The California Public Records Act (CPRA) provides a broad right of access to the records of state and local governments. As a contract city attorney who regularly reviews requests for records under this act, I have seen many requests that could have been more quickly handled had the requests been clearer or better stated. While the CPRA's policy of open government usually requires agencies to overlook deficient requests, these can prolong one's ability to obtain needed records. A number of steps can be taken to avoid this problem.

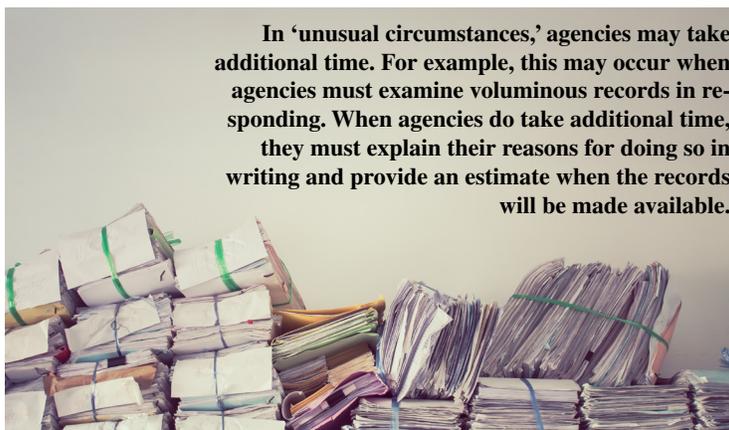
### First, request only records.

The CPRA broadly defines "records" to include all types of writings, regardless of how created (e.g., electronically, typewritten or handwritten), as well as all "recording[s] upon any tangible thing" (such as pictures). Gov. Code Section 6252(e), (g) (all statutory references herein are to the Government Code). But the act does not require agencies to create new records. *Haynie v. Superior Court*, 26 Cal. 4th 1061, 1075 (2001). Consequently, a request should not be phrased as a request for information or as a series of questions. Phrase your request as one that seeks only records.

### Second, be specific in describing the records you want.

The CPRA requires that requests "reasonably describe[] an identifiable record or records." Section 6253(b). Requesters have a duty to describe the records they want "clearly enough to permit the agency to determine whether writings of the type described in the request are under its control." *California First Amendment Coalition v. Superior Court*, 67 Cal. App. 4th 159, 165 (1998). Obviously, the more detail you provide, the better your chances of promptly obtaining desired records.

Courts have recognized, however, that requesters may not have information necessary to precisely identify the records they need. Courts have thus imposed on agencies a duty to make reasonable searches for records whenever requested. *Id.* at 165-66. If agencies believe requests are vague or ambiguous,



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they must assist the requesters to make a "focused and effective request" if "reasonable under the circumstances." Section 6253.1(a). Steps agencies must take include helping requesters better identify available records, describing locations where records might exist, and providing suggestions for "overcoming any practical basis" for denial of access. Section 6253.1(a)(1)-(3). Make sure an agency offers this assistance to you if it informs you of any defect in your request.

### Third, understand the agency's time-frame for responding.

Because obtaining responses to records request can often take several days, you should account for the time it could take to complete the CPRA process.

Agencies have 10 days from receipt of CPRA requests to respond in writing whether they possess disclosable records. Section 6253(c). However, in "unusual circumstances," agencies may take additional time. This may occur when records are kept at facilities other than the offices handling the requests, agencies must examine voluminous records in responding, or agencies must consult with other agencies with a "substantial interest" in the records. Section 6253(c) (1)-(3). When agencies invoke any of these grounds, they must explain their reasons for doing so in writing and provide an estimate when the records will be made available. In no event can extensions exceed 14 days. Section 6253(c).

### Fourth, plan for the time needed to inspect or get copies of the records.

It is also important to factor for the additional time you will need to actually examine or get copies of requested records. The CPRA provides access to records in two ways. It requires an agency to either make records available for inspection or to provide copies.

If inspection is requested, the requester must be permitted to view the records during regular office hours. Section 6253(a). Be prepared that an agency may require you to make an appointment before allowing such access.

When copies are requested, the agency may also need time to duplicate the records and mail or email them to you. If the records are stored electronically, the agency may provide copies to you in the electronic format in which they are stored, which can cut down on the production time. Section 6253.9(a) (1).

### Fifth, be prepared to pay a fee.

Agencies may charge the requesting party a fee before providing copies. Section 6253(b). The fee may only cover the agency's "direct costs of duplication." *Ibid.* Agencies may also charge for providing electronic copies, but they may only recover the direct costs for providing the records in electronic format. Section 6253.9(a)(2).

### Finally, familiarize yourself with the CPRA's exemptions.

Although the CPRA declares that public access to information is a fundamental right (Section 6250), the

bulk of the act addresses situations in which agencies need not disclose public records. Especially if you anticipate opposition, you should account for potential exemptions the agency could assert.

One of the most common exemptions is the protection of records subject to the attorney-client privilege and work-product doctrine. Section 6254(k). Records concerning the investigations of crimes, such as police reports, are exempt from disclosure. Section 6254(f). Medical records are also subject to a broad exemption. Section 6254(c).

Other records are subject to exemptions that are more qualified. For instance, records concerning agency litigation are ordinarily exempt while litigation is pending (Section 6254(b)), but must be disclosed once it has concluded. *City of Los Angeles v. Superior Court*, 41 Cal. App. 4th 1083, 1088 (1996). Similarly, agencies may generally withhold records pertaining to their active negotiations, but must disclose such records once contract discussions have concluded. *Michaelis, Montanari & Johnson v. Superior Court*, 38 Cal. 4th 1065, 1077 (2006).

If an agency relies on these or any of the other CPRA exemptions, it must explain its basis for withholding the records and identify the name and title of each person responsible for the decision to withhold. Sections 6253(d), 6255(b).

If there is a single theme that emerges from the above discussion, it is to plan ahead. An ineffective public-records request will only delay your ability to obtain records when you need them.

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