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MEMORANDUM

TO: Public

RE: Frequently Asked Questions Regarding Public Records Act Requests

A. General Requests.

1. What is the “California Public Records Act?”¹

The California Public Records Act (CPRA) is California state law that gives the public the right to inspect and copy most records retained by governmental agencies in the course of business. In enacting the CPRA, the legislature declared “that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person” in the state.² The purpose of the CPRA is to safeguard the accountability of government to the public.³ The CPRA regulates the public’s access to the records, and contains limited statutory circumstances when records need not be disclosed. The CPRA is modeled on the federal Freedom of Information Act (FOIA) which is often relied on to construe the CPRA.⁴

2. What is a public record?

A public record is 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 characteristic.⁵ “Writing” means 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.⁶

3. Who can make a Public Records Act Request?

Any member of the public can make a Public Records Act request. A “member of the public” includes any person except a “member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.”⁷

¹ Gov. Code §§6252 et seq.

² Gov. Code §6250

³ *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469

⁴ 5 U.S.C. §§552 et. seq.

⁵ Gov. Code §6252(e)

⁶ Gov. Code §6252(g)

⁷ Gov. Code §6252(b)

4. Do I have to specify my reason for making a Public Records Act request?

No. The CPRA specifically provides every person a right to inspect or receive copies of any public record, subject to specified exceptions.⁸

5. Who is Responsible for Responding to California Public Records Act Requests?

City of Fresno Administrative Order No. 8-4, issued on 09-15-2003 and revised on 04-09-2018, establish the procedures for City responses to CPRA requests.

The City Attorney's Office has designated a staff member to coordinate (Central Coordinator) the response to requests. The Central Coordinator logs each PRA request, coordinates responses, and maintains control copies of documents provided in response to requests. Each City Official and City Department has a designated person(s) responsible for responding to requests for records. Each department where records are kept compiles records and forwards them to the Central Coordinator. The Central Coordinator will provide a written response to the requester within ten days of the City's receipt of the request. Once all potentially responsive documents are located, the City Attorney's Office will review the documents to determine whether a privilege or exemption may exclude a document from disclosure or whether the document should be redacted, prior to the Central Coordinator finalizing and providing responsive documents.⁹

Routine requests for Police and Fire Department reports are still handled internally by those departments. Official records in the City Clerk's possession that can be provided "over the counter" are handled by the City Clerk's Office. Such records include resolutions, ordinances, agendas, minutes, and contracts officially approved by Council.¹⁰

6. Are all public records subject to public disclosure?

No. The CPRA expressly exempts particular public records from disclosure. The CPRA also includes a balancing test to determine whether a document is exempt from disclosure on a case by case basis as more fully explained below.

7. Does a request for records have to be in writing?

No. A request need not be in writing, and may be made verbally. Whenever a request is for voluminous or sensitive records, the City may request that it be submitted in writing to protect the requester and to assist the City in making a determination regarding disclosure. However, the City cannot mandate that all requests be in writing.

⁸ Gov. Code §6253(a)

⁹ City of Fresno Admin. Order 8-4 (09-15-2003, revised 04-09-2018)

¹⁰ City of Fresno Admin. Order 8-4 (09-15-2003, revised 04-09-2018)

8. When are records to be made available for inspection?

Public records are open to inspection at all times during the office hours of the City.¹¹ Any reasonably segregable portion of a record will be made available for inspection after deletion of the portions that are exempted by law.¹²

9. If a person wants to inspect or obtain a copy of a public record, but fails to describe a reasonably identifiable record, is City staff required to assist the individual to make a focused and effective request?

Yes, to the extent reasonable under the circumstance. Under legislation effective January 1, 2002, when a member of the public makes a request to inspect or obtain a copy of a public record, City staff, to assist the individual in making a focused and effective request that reasonably describes an identifiable record or records, shall do all of the following to the extent reasonable under the circumstances:

- (i) Assist the individual to identify records and information that are responsive to the request or purpose of the request, if stated;
- (ii) Describe information technology and physical location in which the record exists; and
- (iii) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

If information from more than one department is sought, or the requester is unsure where or how to make the request, the Central Coordinator will assist in identifying the department(s) most likely to have responsive documents and in framing the request.¹³

The requirements are satisfied if City staff is unable to identify the requested information after making a reasonable effort. City staff is not required to provide assistance if the records are made available, the records are expressly exempt from disclosure, or an index of the record is made available.¹⁴

10. What is the time frame for responding to a request for public records?

The City must respond to a CPRA request no later than 10 days from the date of receipt of the request.¹⁵ For this reason, we strongly recommend that requests be date stamped with the date of receipt.

However, the CPRA cannot be used to delay or obstruct the inspection or the copying of records. Thus, the City may not arbitrarily wait until the 10th day to provide easily identifiable and disclosable records. The City should notify the requestor

¹¹ Gov. Code § 6253(a)

¹² Gov. Code § 6253(a)

¹³ City of Fresno Admin. Order 8-4 (09-15-2003, revised 04-09-2018)

¹⁴ Gov. Code § 6253.1

¹⁵ Gov. Code § 6253(c)

immediately if a determination can be made sooner.¹⁶ Within the 10 day period, the City must do all of the following:

- (i) Determine whether the request seeks copies of records subject to disclosure;
- (ii) Promptly notify the person of the City's determination; and
- (iii) State reasons for the City's determination.¹⁷

The response will include an estimated cost of providing copies (if any), and may require a deposit or prior payment.¹⁸

11. Can the time period to respond be extended?

Yes, for unusual circumstances. The time to respond with a determination of whether the request seeks copies of disclosable documents may be extended by no more than 14 days.¹⁹ When the City makes the determination that the request seeks disclosable public records, the City will state the estimated date and time when the records will be made available.²⁰

12. What constitutes "unusual circumstances" for extending the time to respond?

"Unusual circumstances" include the need to search, collect records from other field facilities, review a voluminous amount of records, consult with another agency, compile data, or establish a program to extract data.²¹

13. Is the City required to notify the requesting party in writing of the 14 day extension?

Yes. The Central Coordinator must prepare a written notice setting forth the reasons for the extension and the date on which a determination is expected or dispatched. If the City determines that the request seeks disclosable public records, the written notice shall also include an estimated date and time when the records will be made available.²²

14. What if the records contain both exempt and nonexempt materials?

When the record contains both exempt and nonexempt materials, the nonexempt materials that may be reasonably segregated from the exempt materials are to be

¹⁶ Gov. Code § 6253(d)

¹⁷ Gov. Code § 6253(c)

¹⁸ City of Fresno Admin. Order 8-4 (09-15-2003, revised 04-09-2018)

¹⁹ Gov. Code § 6253(c)

²⁰ Gov. Code 6253(c)

²¹ Gov. Code § 6253

²² Gov. Code § 6253(c); City of Fresno Admin. Order No. 8-4 (09-15-2003, revised 04-09-2018)

disclosed to satisfy the objectives of the CPRA.²³ The City Attorney's Office will review potentially responsive records to determine whether a privilege or exemption may exclude disclosure of the document or whether the document should be redacted prior to disclosure.

15. Can an individual have the records disclosed in electronic format?

Yes, if all of the following conditions are met:

- (i) The record is subject to disclosure;
- (ii) The City holds the information in electronic format; and
- (iii) Its release in electronic format does not compromise the security or integrity of the original record or jeopardize the proprietary software in which it is maintained.²⁴

16. Is the City required to provide a copy of the electronic record in the format requested?

Yes, if the City uses that format to make copies for its own use, or for use by other agencies.

17. Can the City charge a fee for copies of the records being requested?

Yes. The City may charge for direct costs of duplication²⁵ at the rate established in the Master Fee Schedule. Any estimated costs of providing the copies, will be provided in the written response to the request. Any request may require a deposit or prior payment.²⁶ The current Master Fee Schedule may be found on the City of Fresno website, Finance Department, under the subheading of General Government.

When producing electronic records, direct costs of producing the records may be charged, including the cost to construct a record and/or the cost of programming and computer services necessary to produce a copy of the record.²⁷ Such fees may apply when the City would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals²⁸ or the request would require data compilation, extraction, or programming to produce the

²³ Gov. Code § 6253(a); Northern Cal. Police Practices Project v. Craig (1979) 90 Cal.App.3d 116, 123-124; City of Fresno Admin. Order No. 8-4 (09-15-2003, revised 04-09-2018)

²⁴ Gov. Code § 6253.9; City of Fresno Admin. Order 8-4 (09-15-2003, revised 04-09-2018)

²⁵ Gov. Code § 6253(b)

²⁶ City of Fresno Admin. Order No. 8-4 (09-15-2003, revised 04-09-2018)

²⁷ Gov. Code § 6253(b)

²⁸ Gov. Code § 6253(b)(1)

record.²⁹ The California Supreme Court is currently considering whether public entities can charge for redaction of electronic records.³⁰

18. Can the City charge for services in providing copies of records?

Sometimes. Upon the request for a copy of records, the City is limited to payment of fees covering the direct cost of duplication which is the direct cost of making the copies.³¹

Upon the request for electronic records, the requester shall bear the cost of producing a record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy, if:

- (i) The City would be required to produce a copy of an electronic record between regularly scheduled intervals of production, or
- (ii) Compliance with the request for an electronic record would require data compilation, extraction, or programming in order to produce the record.³²

19. What if the City says that it has no records responsive to my request?

The City has no duty to create a record that does not exist at the time of the request nor does the City have a duty to reconstruct a record that was lawfully discarded prior to the receipt of the request.³³ Additionally, the City is not required to create a privilege log or a list that identifies the specific records being withheld.³⁴

20. How long must the City of Fresno maintain records?

Generally, records must be maintained by local agencies for two years.³⁵ However, some records may be destroyed sooner or may be kept long. For the specific time period the City will maintain a specified type of record, please refer to the Records Retention Policy.

²⁹ Gov. Code § 6253(b)(2); *National Lawyers Guild, San Francisco Bay Area Chapter v. City of Hayward et al.* (2018) 27 Cal.App.5th 937.

³⁰ *National Lawyers Guild, San Francisco Bay Area Chapter v. City of Hayward et al.* (2018) 27 Cal.App.5th 937 on appeal in Supreme Court of California, 2019 WL 669862.

³¹ Gov. Code § 6253(b); *North Carolina Parents Organization for Children with Special Needs v. Department of Education* (1994) 23 Cal.App.4th 144.

³² Gov. Code § 6253.9(b); *National Lawyers Guild, San Francisco Bay Area Chapter v. City of Hayward et al.* (2018) 27 Cal.App.5th 937. The Supreme Court of California has granted review of the Court of Appeals decision in the above matter. This section will be updated to reflect the decision of the Supreme Court of California regarding the lower court rulings.

³³ Gov. Code §6252(e)

³⁴ *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1075

³⁵ Gov. Code §34090(d)

21. Where can I find the records retention policy?

Fresno City Council Resolution No. 2008-243 lays out the Citywide records retention policy. The policy may be found online at the City of Fresno's website through the City Clerk's Office.³⁶

22. On what grounds may a request for public records be denied?

A request for public records may be denied if the CPRA expressly exempts those records from disclosure. The request may also be denied under the balancing test, referred to as the catchall exception.³⁷ Under this test, the City Attorney's Office must determine on a case by case basis, whether the public interest in disclosure is outweighed by the public interest in nondisclosure.

23. Does the CPRA contain a list of state laws that expressly exempts information contained in a record from disclosure?

Yes. The state legislature has declared that after January 1, 1999, each addition or amendment to a statute that exempts any information contained in a public record from disclosure shall be listed in the CRPA. The list is located in Government Code Sections 6275-6276.03. See attachment "Relevant Examples of Statutes that Exempt Information Contained in a Public Record from Disclosure".

24. Is the City required to respond to a request for public record in writing?

Yes, if the request for records was in writing, and the City is denying the request in whole or in part.³⁸

25. Is the City required to state reasons for denying a request for records?

Yes. The City must demonstrate that the record is exempt under express provisions of law, or that based on the facts, the public interest served by withholding the record clearly outweighs the public interest served by disclosure of the record.³⁹

26. Can the City deny a request based on the purpose of the request?

No. If the records are subject to disclosure, the records must be released.⁴⁰

³⁶<https://www.fresno.gov/cityclerk/wpcontent/uploads/sites/9/2016/10/CitywideRecordsRetentionSchedule.pdf>

³⁷ Gov. Code § 6255

³⁸ Gov. Code § 6255

³⁹ *Ibid*

⁴⁰ Gov. Code § 6257.5

27. Can the City file an action for declaratory relief to ask the court to determine whether the records must be disclosed?

No. Pursuant to a recent California Supreme Court decision, the City cannot file a declaratory relief action to ask the court to determine whether the City must disclose the records.⁴¹ The exclusive means for litigating the issue is for the person making the request to institute a court proceeding for injunctive or declaratory relief or writ of mandate to enforce his or her right to inspect or receive a copy of any public record.

28. What if the City unjustifiably denies a request for a record?

The individual requesting the records may seek a court order. If the court finds the City improperly withheld disclosure of the records, the requestor may be entitled to court costs and reasonable attorney's fees.⁴²

29. What if the person making the request files a lawsuit that is clearly frivolous?

The court may award the City costs and reasonable attorney's fees for clearly frivolous lawsuits.⁴³

30. Is a written communication with the City Attorney's Office subject to disclosure?

No, if the written communication falls within any exemption or privilege. Communications that are exempt from disclosure include the following:

- (i) Materials relating to proposed or pending litigation;
- (ii) Communications in furtherance of an attorney-client relationship; and
- (iii) Communications that are part of the attorney work product embodying the attorney's thought processes and strategies.

Communications between the City Attorney's Office and City employees and agents should be considered as presumptively privileged unless the City Attorney's Office advises otherwise.⁴⁴

B. Requests for Police Records.

1. Are sections from the Fresno Police Department Procedure Manual exempt from disclosure?

⁴¹ *Filarsky v. Superior Court* (2002) 28 Cal.4th 419

⁴² Gov. Code § 6258

⁴³ Gov. Code § 6259(d)

⁴⁴ For "pending litigation" see Gov. Code § 6254(b); for attorney-client privilege see Evid. Code § 954; for official records privilege see Evid. Code § 1040; for work product see Code. Civ. Proc. § 2018.

Yes. Sections of the Manual that may compromise officer safety or criminal investigations, or reveal investigatory tactics are exempt from disclosure.⁴⁵ However, the Fresno Police Department Police Manual is available on the Fresno Police Department website under the Records & Reports tab.⁴⁶

2. Is a police report subject to disclosure?

Generally, a police report by number and incident is subject to disclosure.⁴⁷ However, such disclosure is subject to exemptions and/or potential redactions. Such exemptions and/or potential redactions include records of complaints to, or investigations conducted by the Fresno Police Department, of intelligence information or security procedures of the Fresno Police Department, investigatory or security files compiled by any other local or state police agency, customer lists provided by an alarm or security company and investigatory or security files compiled by any state or local agency for correctional, law enforcement, or licensing.⁴⁸ Records will also be subject to potential redactions if disclosure would constitute an unwarranted right of personal privacy.⁴⁹ Additionally, a general request for all police reports on a particular individual is not disclosable.⁵⁰

3. Is a report of an ongoing investigation subject to disclosure?

Yes, the City must disclose certain information related to ongoing investigations. The City must disclose information regarding each individual arrested by the agency, unless the disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation. The City must also disclose certain information regarding the time, substance, and location of an incident as well as the crimes alleged against an individual and the name and ages of victims, unless, in the case of certain defined crimes, the victim or victim's parent or guardian has requested the victim's information not be disclosed.⁵¹

4. Is a report regarding juvenile subject to disclosure?

Reports regarding a juvenile which could potentially make the juvenile a ward of the court are not to be disclosed for any reason.⁵² However, the party making the request may file a petition with the Juvenile Court pursuant to Welfare and Institutions

⁴⁵ Gov. Code §§ 6254(f) and 6255

⁴⁶ <https://www.fresno.gov/police/records-reports/>

⁴⁷ Gov. Code § 6254(f)

⁴⁸ Gov. Code § 6254(f)

⁴⁹ Gov. Code §6254

⁵⁰ Pen. Code §§ 13300 et seq.

⁵¹ Gov. Code § 6254(f)

⁵² T.N.G. v. Superior Court of the City and County of San Francisco (1971) 4 Cal.3d 767; Wescott v. County of Yuba (1980) 104 Cal.App.3d 103

Code Section 827. The court may order disclosure of some or all of the requested information.

5. Could a police report contain any information that must be redacted before it is disclosed?

Yes. Certain information such as the addresses, telephone numbers, and names of sexual assault victims, or victims of domestic violence must be redacted from the report before it is disclosed.⁵³ Additionally, if the disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation, the information will be redacted.⁵⁴ The address and telephone number of the victim or witness of a crime cannot be disclosed to the defendant or a suspect of the crime, except to the defendant's attorney through normal discovery procedures.⁵⁵ Information related to minors may be withheld at the request of the minor's parent or guardian.⁵⁶ Juvenile records or information relating to the detention of, or taking of, a minor into custody are subject to release only under certain circumstances.⁵⁷ Information that would violate a person's right to privacy in their medical information is also exempt from disclosure.⁵⁸

6. Are police bodycam videos subject to disclosure?

Sometimes. Bodycam video is considered a "writing" under the CPRA and thus subject to the same potential redactions as other "writings." Additionally, bodycam video is considered evidence. The release of any video captured by the AXON camera system will be processed in a manner consistent with Government Code sections 6254, City of Fresno Police Department Policy Manual section 810, and City of Fresno Administrative Order No. 8-4.

Absent a valid court order or other statutory authority, body cam videos are subject to the same restrictions as crime reports and other "writings". Such restrictions include, but are not limited to, information such as the addresses, telephone numbers, and names of sexual assault victims, or victims of domestic violence and victims who have requested their information not be disclosed.⁵⁹ Additionally, if the disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation, the information will be redacted.⁶⁰ The address and telephone number of the victim or witness of a crime cannot be disclosed to the defendant or a

⁵³ Gov. Code § 6254(f)(2)

⁵⁴ Gov. Code § 6254(f)

⁵⁵ Penal Code § 841.5

⁵⁶ Gov. Code § 6254

⁵⁷ Welf. & Inst. Code §§827 and 828.

⁵⁸ Gov. Code § 6254

⁵⁹ Gov. Code § 6254(f)(2)

⁶⁰ Gov. Code § 6254(f)

suspect of the crime, except to the defendant's attorney through normal discovery procedures.⁶¹ Information related to minors may be withheld at the request of the minor's parent or guardian.⁶² Juvenile records or information relating to the detention of, or taking of, a minor into custody are subject to release only under certain circumstances.⁶³ Information that would violate a person's right to privacy in their medical information is also exempt from disclosure.⁶⁴ Records will also be subject to potential redactions if disclosure would constitute an unwarranted right of personal privacy.⁶⁵

Assembly Bill 748, which amended certain parts of Government Code section 6254, becomes effective on July 1, 2019. Beginning on July 1, 2019, video and audio recordings that relate to an incident⁶⁶ involving the discharge of a firearm at a person⁶⁷ or an incident involving the use of force which resulted in great bodily injury or death⁶⁸, by a peace or custodial officer⁶⁹, will be released except in certain circumstances. These circumstances include:

- During an active criminal or administrative investigation, disclosure may be delayed for no longer than 45 calendar days after the agency knew or reasonably should have known about the incident, if disclosure would substantially interfere with the investigation.⁷⁰
- If the public interest in withholding a video or audio recording clearly outweighs the public interest in disclosure because disclosure would violate the reasonable expectation of privacy of someone depicted in the recording. The City may use redaction technology to obscure those portions of the recording to protect the interest.⁷¹
- The recording will be released, either redacted or unredacted,⁷² to the subject whose privacy is to be protected, his or her representative,⁷³ parent or guardian (in the case of a minor),⁷⁴ or the heir, beneficiary, designated immediate family member, or authorized legal representative (in the case of a

⁶¹ Penal Code § 841.5

⁶² Gov. Code § 6254

⁶³ Welf. & Inst. Code §§827 and 828.

⁶⁴ Gov. Code § 6254

⁶⁵ Gov. Code §6254

⁶⁶ Government Code §6254(f)(4)

⁶⁷ Government Code §6254(f)(4)(C)(i)

⁶⁸ Government Code §6254(f)(4)(C)(ii)

⁶⁹ Government Code §§6254(f)(4)(C)(i) and 6254(f)(4)(C)(ii)

⁷⁰ Government Code §6254(f)(4)(A)(i)

⁷¹ Government Code §6254(f)(4)(B)(i)

⁷² Government Code §6254(f)(4)(B)(ii)

⁷³ Government Code §6254(f)(4)(B)(ii)(I)

⁷⁴ Government Code §6254(f)(4)(B)(ii)(II)

deceased subject).⁷⁵ The recording may be withheld if disclosure would interfere with an active criminal or administrative investigation.⁷⁶

7. Is a traffic accident report subject to disclosure?

Traffic accident reports are generally only released to people who were involved in the accident or who have other legitimate interests in the information provided, such as insurance companies.⁷⁷

8. Can information regarding people who hold concealed weapons permits be disclosed?

In general, information relating to individuals who hold Carry Concealed Weapons (C.C.W.) permits is disclosable. However, information that may place the permit holder at risk of being a victim of a crime is not to be disclosed, such as the address and reason for the permit. Additionally, information that concerns the applicant's medical or psychological history, or that of members of his or her family, will not be disclosed.⁷⁸

9. Is information in a peace officer's personnel file subject to disclosure?

Sometimes, in specific situations. A record relating to the report, investigation, or findings of an incident involving a peace or custodial officer, where they discharged a firearm at a person or used force against a person that resulted in death or great bodily injury, will be released.⁷⁹ During an active investigation, disclosure may be delayed for up to 60 days from the occurrence or until the district attorney determines whether to file criminal charges related to the use of force, whichever comes first.⁸⁰ After 60 days, records may be continued to be delayed if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against the officer who used force. If such delay takes place, a writing with the specific basis for the delay in disclosure will be provided, at 180-day intervals. The writing will include an estimated date for disclosure of withheld information.⁸¹ If criminal charges are filed related to the use of force, disclosure may be delayed until a verdict is returned, or, if a plea of guilty or no contest is entered, until the time to withdraw the plea.⁸² During an administrative investigation, the records may be delayed until it is determined whether the use of force violated a law or agency policy, but no longer than 180 days after the employing

⁷⁵ Government Code §6254(f)(4)(B)(ii)(III)

⁷⁶ Government Code §6254(f)(4)(B)(iii)

⁷⁷ Veh. Code § 16005

⁷⁸ Gov. Code § 6254(u)(1)

⁷⁹ Pen. Code § 832.7(b)

⁸⁰ Pen. Code § 832.7(b)(7)(A)

⁸¹ Pen. Code § 832.7(b)(7)(A)

⁸² Pen. Code § 832.7(b)(7)(B)

agency's discovery of the use of force or 30 days after the close of any criminal investigation, whichever is later.⁸³

Additionally, records of a sustained finding made by a law enforcement agency or oversight agency, of an officer engaging in sexual assault involving a member of the public will be disclosed.⁸⁴ A sustained finding against a peace or custodial officer for dishonesty 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 or custodial officer, will be disclosed.⁸⁵ Records from a separate or prior investigation will not be released unless it is independently subject to disclosure.⁸⁶

The City will redact from disclosed records, personal information of the officers, information to preserve the anonymity of complainants and witnesses, medical, financial, or other information wherein disclosure is prohibited by federal law or would cause an unwarranted invasion of privacy that clearly outweighs public interest, or where there is a specific, articulable, and particularized reason to believe that disclosure would pose a significant danger to the physical safety of the officer, or another person.⁸⁷ The City will also redact 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 the disclosure of the information.⁸⁸

The City will not release the records of a civilian complaint, the investigation, findings or disposition, if the complaint is frivolous or unfounded⁸⁹ but release to the complaining party a copy of his or her own statements at the time the complaint is filed.⁹⁰

While the City will respond to requests as noted above, the amendments to Penal Code section 832.7 created by Senate Bill 1421 are currently being challenged in court, including the issue of retroactive application of the statute, and this section will be updated to reflect those decisions.

In two of those cases, the courts have directed local law enforcement agencies not to disclose documents until further proceedings on the issue.⁹¹ Therefore, until these cases have been resolved, and the legal question of retroactive application of the statute has been decided, the public interest in accessing these records is clearly

⁸³ Pen. Code § 832.7(b)(7)(C)

⁸⁴ Pen. Code § 832.7(b)(1)(B)(i)

⁸⁵ Pen. Code § 832.7(b)(1)(C)

⁸⁶ Pen. Code § 832.7(b)(3)

⁸⁷ Pen. Code § 832.7(b)(5)

⁸⁸ Pen. Code § 832.7(b)(6)

⁸⁹ Pen. Code § 832.7(b)(8)

⁹⁰ Pen. Code § 832.7(c)

⁹¹ *Los Angeles Police Protective League v. City of Los Angeles* (Super. Ct. Los Angeles County, 2018, No. 18-STCP-03495); *Richmond Police Officers' Association v. City of Richmond* (Super. Ct. Contra Costa County, 2019, No. 19-0169)

outweighed by the public's interest in protecting privacy rights.⁹² The City will not disclose any records that pre-date January 1, 2019, at this time.

10. Is a request for premises history information disclosable (i.e., information regarding criminal activity at a particular address or addresses)?

As a general rule, this information is subject to disclosure.⁹³ However, just as in police reports, certain information will be redacted. That information includes certain information such as the addresses, telephone numbers, and names of sexual assault victims, or victims of domestic violence.⁹⁴ Additionally, if the disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation, the information will be redacted.⁹⁵ The address and telephone number of the victim or witness of a crime cannot be disclosed to the defendant or a suspect of the crime, except to the defendant's attorney through normal discovery procedures.⁹⁶ Information related to minors may be withheld at the request of the minor's parent or guardian.⁹⁷ Juvenile records or information relating to the detention of, or taking of, a minor into custody are subject to release only under certain circumstances.⁹⁸ Information that would violate a person's right to privacy in their medical information is also exempt from disclosure.⁹⁹

11. Is an individual's criminal history disclosable?

No. This information is not subject to disclosure. It is a misdemeanor to release such information.¹⁰⁰

12. Are materials used in training police officers subject to disclosure?

Such requests must be handled on a case by case basis. The facts must be evaluated on the basis of whether disclosure of the materials may compromise officer safety or tactics and interfere with law enforcement. If it would do either, the materials are not disclosable.¹⁰¹

⁹² Government Code §6255

⁹³ Gov. Code § 6254

⁹⁴ Gov. Code § 6254(f)(2)

⁹⁵ Gov. Code § 6254(f)

⁹⁶ Penal Code § 841.5

⁹⁷ Gov. Code § 6254

⁹⁸ Welf. & Inst. Code §§827 and 828.

⁹⁹ Gov. Code § 6254

¹⁰⁰ Pen. Code §§ 13300 et seq.; Pen. Code §§ 11105 et seq.

¹⁰¹ Gov. Code § 6254(p)(2)

13. Is information regarding juveniles who are accused of criminal behavior disclosable to their victims or others?

No. A court order from Juvenile Court or Superior Court under Welfare and Institutions Code Section 827 is necessary to release such information, except in rare circumstances involving missing or wanted juveniles or juveniles who have committed specified, serious felony crimes.¹⁰²

14. Is the Arrest Log Information of people who have been arrested by the Police Department subject to disclosure?

This information is disclosable for scholarly, journalistic, political, governmental, or investigatory purposes only. The person making the request must sign a declaration that the request is for one of those reasons and not for commercial purposes.¹⁰³ Additionally, victim information may be redacted¹⁰⁴ and at no time is victim or witness address or telephone number information available to an arrested person or a person who may be a defendant in a criminal action.¹⁰⁵

C. Personnel Matters.

1. Is data used to administer an examination for employment subject to disclosure?

No. Test questions, scoring keys, and other examination data used to administer an examination for employment are exempt from disclosure.¹⁰⁶

2. Are written recommendations of interview panel members subject to disclosure?

No. Staff evaluations and recommendations discussing an applicant's fitness or suitability for appointment are considered communications to the decision maker and are protected from disclosure under the "deliberative process privilege" before a hiring decision is made.¹⁰⁷

3. Are communications after a hiring decision is made privileged?

No. Communications after a hiring decision is made and explaining such a decision are not privileged.

¹⁰² T.N.G. v. Superior Court of the City and County of San Francisco, supra; Wescott v. County of Yuba, supra; Exceptions Wel. & Inst. Code §§ 827.2-830.1

¹⁰³ Gov. Code § 6254(f)(3)

¹⁰⁴ Gov. Code § 6254(f)(3)

¹⁰⁵ Pen. Code § 841.5

¹⁰⁶ Gov. Code § 6254(g)

¹⁰⁷ California First Amendment Coalition v. Superior Court of Sacramento County (1998) 67 Cal.App.4th 159; Rogers v. Superior Court of Los Angeles County (City of Burbank) (1993) 19 Cal.App.4th 469.

4. Are employees entitled to their personnel files with a request under the CPRA?

Yes, with certain exceptions. Employees may have access to most of their personnel records based simply on their status as employees. Under Labor Code Section 1198.5, an employer must allow employees to inspect their personnel records, including records that were used to determine the qualification for employment, promotion, additional compensation or termination, or other disciplinary action.¹⁰⁸

5. Are employees entitled to inspect records relating to possible criminal investigation or letters of reference?

No. Employees do not have a right to inspect (i) records relating to the investigation of a possible criminal offense, and (ii) letters of reference.¹⁰⁹

6. Are personnel records subject to disclosure to individuals other than an employee?

Generally not. The “personnel exemption” to the CPRA exempts personnel, medical, or similar records from public inspection where disclosure would constitute an unwarranted invasion of privacy.¹¹⁰

7. Is salary information of City employees subject to disclosure?

Yes. In a recent published case the court upheld an order to release the salaries of all City employees without personal identifying information.¹¹¹ That case was limited to a request for indiscriminate mass disclosure of employee names and salaries. Individual employment contracts for high level local officials are public records pursuant to Government Code Section 6254.8. For all other requests, the City will be required to weigh privacy interests against the public’s right to disclosure on a case by case basis.¹¹²

8. Are workplace investigations (i.e., sexual harassment investigations) considered public records that are subject to inspection under the CPRA?

Workplace investigations constitute personnel records and are potentially exempted from disclosure under the personnel exemption, depending on who is requesting the documents. In order to protect the privacy rights of the accused and witnesses, no part of the investigation file – the investigation notes, witness statements, or notice of action taken against the accused – should be disclosed to the complainant. Likewise, the accused should not be provided with the investigation file in order to

¹⁰⁸ Labor Code § 1198.5 applies to charter cities after the enactment of Gov. Code § 31011.

¹⁰⁹ Labor Code §1198.5(d)(1) and (2)

¹¹⁰ Gov. Code § 6254(c)

¹¹¹ Teamsters Local 856 v. Priceless (2003) 112 Cal.App.4th 1500 – California Supreme Court denied review and order of depublication on January 22, 2004.

¹¹² Gov. Code § 6255; Teamsters Local 856 v. Priceless, supra.

protect the privacy rights of the complainant and witnesses. However, if the investigation is the basis of discipline against the accused employee, then due process entitles the accused to a copy of the investigation. The public interest in protecting the privacy of the complainant, the accused, and the witnesses, and in preventing a chilling effect on future complaints, outweighs the public interest in disclosure of the investigation report and other related documents to third parties.¹¹³

D. City Contracts.

1. Are requests for financial information provided by vendors, contractors, or developers in the course of bidding on City projects or negotiating contracts with the City subject to disclosure?

No. Financial information submitted in confidence by third parties responsive to advertised bid solicitations or during contract negotiations is generally not subject to disclosure under corporate privacy trade secret and/or deliberative process privilege, and as a part of pre-contract negotiations.¹¹⁴

2. If the award of the bid or contract is final, do the financial records become public records subject to disclosure?

No. Not necessarily. After final Council action on a bid solicitation, financial information retained by the City as a public record may continue to be protected from disclosure to the following extent:

- (i) The financial information is categorically exempt from disclosure.¹¹⁵
- (ii) The financial information is not otherwise in the public domain and is within a constitutionally premised zone of privacy protection for confidential/personal financial information of persons and/or entities,¹¹⁶
- (iii) The financial information involves tax return documents or information privileged from disclosure by state law; or¹¹⁷
- (iv) The financial information is protected as a trade secret pursuant to Evidence Code Section 1060; and/or
- (v) Upon application of the balancing test, non-disclosure clearly outweighs the public interest served by disclosure.¹¹⁸

¹¹³ City of San Jose v. Superior Court of Santa Clara County (1999) 74 Cal.App.4th 1008.

¹¹⁴ Gov. Code §§ 6254(a) and (h); Gov. Code § 6255

¹¹⁵ Gov. Code § 6254.15

¹¹⁶ Gov. Code § 6254(k); Schnabel v. Superior Court of Orange County (1993) 5 Cal.4th

704, 718.

¹¹⁷ Rev. & Tax Code § 19542; Webb v. Standard Oil Co. (1957) 49 Cal.2d 509, 513-514

¹¹⁸ Gov. Code § 6255

3. Are bid proposals from bidders in response to advertised, competitively bid procurement subject to disclosure before the Council awards the contract?

Yes, except to the extent the bid proposal contains information/material otherwise exempt, privileged, or not subject to disclosure under the balancing test, as discussed in sections E 1 and 2 above.

4. When Council takes final action on a bid, are bid proposals subject to disclosure?

Bid proposals that are retained by the City as public records are subject to disclosure, unless the information is otherwise categorically exempt, privileged, or the public interest served by non-disclosure clearly outweighs the public interest served by disclosure.¹¹⁹ A bid proposal should be reviewed prior to its release, to ensure that it does not contain protected information that must be redacted prior to its release.

Respectfully submitted,



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¹¹⁹ Gov. Code 6255