

THE CALIFORNIA PUBLIC RECORDS ACT

City of Chula Vista

PURPOSE OF THE CALIFORNIA PUBLIC RECORDS ACT

“The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist they may retain control over the instruments they have created.”

**Preamble to the
- California Public Records Act -**

WHAT IS A PUBLIC RECORD?

Public records include:

“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.”

- Government Code §6252 -

WHAT CONSTITUTES WRITING?

“Writing” means “handwriting, typewriting, printing, photo-stating, photographing and

EVERY OTHER MEANS OF RECORDING

upon any form of communication or representation...

WHAT CONSTITUTES WRITING?

...including letters, words, pictures, sounds, or symbols, or combination thereof, and all maps, magnetic or paper tapes, photographic files and prints, magnetic or punched cards, discs, drums,

AND OTHER DOCUMENTS.”

SO, WHAT IS A PUBLIC RECORD?

Papers

Optical Disks

Maps and Drawings

CDs/DVDs

Books

Computerized Data

Exhibits

Voicemail

Photographs

Email

Microforms

Video and Audio Tapes

SO, WHAT IS A PUBLIC RECORD?

INFORMATION...

No matter what the media.

THE PEOPLE ARE ENTITLED TO ACCESS PUBLIC RECORDS

“Access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.”

- Government Code §6250 -

THE RIGHT TO ACCESS PUBLIC RECORDS

- A public agency must evaluate each request for a public record on its face to determine how to respond.
- The agency must balance the interests of the public in disclosure against privacy, trade secret and expectations of privacy issues in every instance.
- The motive of the requestor is generally irrelevant when balancing the interests.
- Other than routine requests to look at readily accessible records, requests should be forwarded to the City Clerk Department for tracking.

THE RIGHT TO ACCESS PUBLIC RECORDS

- Access to public records does **not** require a written request.
- While not required, a written request is advisable when the party is willing, and the request should be **specific**.

[Submit an online Public Records Request here.](#)

THE RIGHT TO ACCESS PUBLIC RECORDS

- If a request is overly broad in scope, the request may be rejected.

THE RIGHT TO ACCESS PUBLIC RECORDS

TIME FACTOR

- Access must be **immediate** when a record is readily accessible – unless there is a question about whether the record must be made available.
- While delay is prohibited, a public agency may adopt regulations to assure that the business of the agency proceeds unimpeded by the public records requests.

THE RIGHT TO ACCESS PUBLIC RECORDS

Time Factor

- The agency has up to 10 calendar days to determine whether there are responsive records.
- Once the determination has been made that there are responsive records, the agency shall promptly notify the requestor when the records will be available.

THE RIGHT TO ACCESS PUBLIC RECORDS

- In “**unusual circumstances**,” the time limit may be extended up to a maximum of 14 additional days by written notice by the head of the agency, or designee, setting forth the reasons for the extension and the date when the determination will be made.
- “**Unusual circumstances**” means the following, *but only to the extent reasonably necessary to process the request*:
 - The need to search and collect records from field facilities that are separate from the office processing the request.

THE RIGHT TO ACCESS PUBLIC RECORDS

- The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records
- The need for consultation with another agency that has an interest in the documents
- The need to write programming language or write a computer program or to construct a computer report to extract data

THE RIGHT TO ACCESS PUBLIC RECORDS

- The public agency has met its obligation if:
 - It is unable to identify the requested information after making a reasonable effort to elicit additional, clarifying information from the requestor to help identify the records
 - The records are made available
 - The agency determines that an exemption exists
 - The agency provides an index of its records, if available

THE RIGHT TO ACCESS PUBLIC RECORDS – Cost

- Costs associated with constructing documents from electronic sources, including the cost of programming and computer services, may be recovered if:
 - The agency is asked to produce a copy excerpt from a document that is only produced at regular intervals, such as budgets
 - The request requires compilation, extractions or programming to obtain or produce the record

WHAT RECORDS MAY BE EXEMPT FROM DISCLOSURE?

- There are many exemptions to the California Public Records Act that allow public agencies to decline to release public records
- Exemptions are generally based on competing interests such as privacy rights versus the public's right to know
- A public agency may release documents even if they fall within an exemption, if the public interest outweighs the interest in keeping the documents confidential

WHAT RECORDS MAY BE EXEMPT FROM DISCLOSURE?

Drafts

Preliminary drafts, notes and memos are exempt, but only if they are not retained “in the ordinary course of business”

or

if the public interest in withholding clearly outweighs the public interest in disclosure

SPECIFIC EXEMPTIONS – Pending Claims & Litigation

- Documents involving pending claims and litigation may be withheld if the agency is a party
- Claims and litigation documents **must** be released upon request once settled
- Memoranda from legal counsel regarding pending litigation are exempt until the litigation has been finally adjudicated or otherwise settled
- Only documents prepared **during** the litigation are protected
- Documents may not be withheld simply because they “relate” to the litigation if they were public records before the action began

SPECIFIC EXEMPTIONS – Settlement Agreements

- Settlement agreements are public records
- Settlement of personnel matters are also public records unless some other protection exists
- Settlement agreements are only released after all parties have signed

SPECIFIC EXEMPTIONS – Personnel Records

- Personnel, medical or similar files may be withheld if disclosure would constitute an unwarranted invasion of personal privacy
- Salaries, employment contracts and performance bonuses are public records

SPECIFIC EXEMPTIONS – Police Records

- Victim personal information for most sex crime, child endangerment and domestic violence cases is exempt from disclosure because of interference with civil rights
- Security and intelligence information is exempt
- Criminal investigative files are exempt “indefinitely,” even following completion of the investigation

SPECIFIC EXEMPTIONS – Police Records

- Law enforcement records may be withheld except to the extent that the “police log” contains names of arrestees, and crime, arrest and traffic collision summary information
- The type of crime, time, date and location of occurrence and type of police response are public record
- Applicant information for some concealed weapons permits are exempt under some circumstances

ADDITIONAL EXEMPTIONS –

- **Test materials** (questions, scoring keys, etc.) or other examination data used to administer a licensing or employment examination
- **Labor negotiation instructions**
- Certain **taxpayer information**
- **Library circulation records**, including internet access records
- **Real estate appraisals** until the property has been acquired

ADDITIONAL EXEMPTIONS –

- **Engineering or feasibility estimates and evaluations** made for or by the local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired, or all of the contract agreement has been obtained
- **Most voting and voter registration records**
- **Petitions for initiatives, referenda and recall**
- **Identities on bilingual ballots**

ADDITIONAL EXEMPTIONS –

Public officials have rights...

- The deliberative process privilege exempts disclosure of various records based upon a public official's thought process on aspects of their work