



CALIFORNIA PUBLIC RECORDS ACT

Office of the Long Beach City Attorney

Independent Redistricting Commission

February 17, 2021

Purpose of the California Public Records Act (PRA)

Acknowledge	Explicitly acknowledge the principle that secrecy is directly opposed to a democratic system of “government of the people, by the people and for the people.”
Safeguard	Safeguard the accountability of government to the public
Promote	Promote maximum disclosure of the conduct of governmental operations



ACCESS TO INFORMATION CONCERNING THE CONDUCT OF THE PEOPLE'S BUSINESS IS A FUNDAMENTAL AND NECESSARY RIGHT OF EVERY PERSON IN CALIFORNIA.



IN PROVIDING ACCESS, THE PRA REMAINS MINDFUL OF INDIVIDUAL PRIVACY RIGHTS



CANNOT DENY ACCESS TO DISCLOSABLE RECORDS BASED ON REQUESTER'S INTENDED USAGE



RECORDS MAINTAINED BY THE CITY ARE SUBJECT TO INSPECTION BY THE PUBLIC UPON REQUEST UNLESS A SPECIFIC EXEMPTION FROM DISCLOSURE APPLIES.

Purpose of the California Public Records Act (PRA)

What is a public record?

Public records includes 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





What is a public record?

“Writing” includes:

- ▶ Handwritten, typewritten, emailed
- ▶ Photos or video
- ▶ Electronic documents
- ▶ “or combinations thereof . . . “
- ▶ Regardless of the manner in which the record has been stored

What is a public record?



The PRA provides access only to records existing at the time of the request



Does not require records that may be created in the future to be produced



There is no duty to create a record



No requirement to provide records in a format that the City does not use

- ▶ Memos and emails
- ▶ Documents, photos, files on the computer's hard drive or on the server
- ▶ Recorded voicemails, tapes, calendars
- ▶ Financial records
- ▶ Communications sent over private devices that pertain to City business (i.e. text messages, emails sent on private servers, social media posts)
- ▶ Communications with the public
- ▶ Contracts

Examples of Public Records

What is a public record?



Emails and text messages relating to local agency business on local agency and/or personal accounts and devices are public records.



Can include private social media posts



See *City of San Jose v. Superior Court* (2017) 2 Cal. 5th 608

What is a public record?



If the City receives a Public Records Act request for content that is posted on a private social media page or communications (e.g. texts, emails) regarding content that is potentially related to City business, the City may ask the Commissioner to provide the records.



It is the Commissioner's responsibility to provide the records, if available.



With that in mind, Commissioners posting content related to City business on personal accounts, should archive said content before considering deleting from their account for any reason

What is a public record?

- ▶ Section 2507 of the Charter(d) prohibits Commissioners and staff from communicating or receiving communications about redistricting matters from anyone except at a public meeting or through the process established for accepting written public comment.
- ▶ Limited exceptions:
 - ▶ Communications between Commission members, staff, legal counsel, and consultants retained by the Commission that is otherwise permitted by State and City open meeting requirements; or
 - ▶ For public education and outreach
- ▶ More details to follow about social media communications for education and outreach

What is not a public record?

Subpoenas

General
questions or
inquiries

Who Can Request Records?

- ▶ All “persons” have the right to inspect and copy non-exempt public records
- ▶ “Persons” include corporations, partnerships, limited liability companies, firms, or associations
- ▶ Includes local agencies and their officials
- ▶ Does not need to be a resident of California or US to make a PRA
- ▶ With limited exceptions, neither the media nor a person who is the subject of a public record has any greater right of access to public records than any other person



The screenshot shows the 'Public Records Menu' on the City of Long Beach website. The menu is located on the left side and includes links for Home, FAQs, Submit a Request, My Request Center, Trending Topics, and Submit a PRA to the Long Beach Police Department. Below the menu, there are several tiles for submitting requests: 'Submit a Records Request to the City of Long Beach', 'Submit a Public Records Request for Medical Records', 'Submit a PRA to the Long Beach Police Department', 'My Request Center', and 'Frequently Requested Documents'. Each tile includes a brief description and an icon.

Public Records Menu

- Home
- FAQs
- Submit a Request
- My Request Center
- Trending Topics
- Submit a PRA to the Long Beach Police Department

Submit a Records Request to the City of Long Beach
Submit a Public Records request to the City of Long Beach.

Submit a Public Records Request for Medical Records
Submit a request for medical records, i.e. ambulance billing, medical reports, etc.

Submit a PRA to the Long Beach Police Department
Calls for Service records, 911 audio, and video records.

My Request Center
Track the status of requests, manage account information, and download your records by logging into your account.

Frequently Requested Documents
Browse previously released records

Making a PRA Requests

- ▶ City PRA requests can be at www.longbeach.gov/pr
- ▶ Police Department PRA requests can be made at www.longbeach.gov/pr-lbpd
- ▶ Request can be made orally but the City encourages use of these websites to allow for tracking and to facilitate communication

Making a PRA Request

Need not identify an exact record

May identify records by their general content

Must still be sufficiently precise to permit the agency to locate the records

Should not be unduly burdensome

Be specific and focused. Specific and focused requests help facilitate prompt disclosure

Making a PRA Request



When a request is not specific and focused, the agency has a duty to assist the public in focusing the request:

- ▶ Assist in identifying requested information
- ▶ Describe physical location of the record
- ▶ Help public to overcome any practical barriers to access



Agency Duty to Search

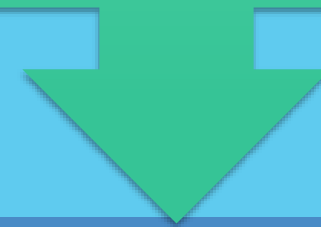
Agency must make reasonable efforts to locate requested records. At a minimum, such efforts should include:

- ▶ Consulting record indexes
- ▶ Consulting knowledgeable people
- ▶ Looking in logical places



Requesting Copies of Records

Generally, agency records may be inspected at any time during regular office hours



In reality, the agency may need to:

Locate the requested records

Gather multiple records for inspection

Redact exempt information prior to inspection.



Agency is required to provide records promptly



Agency has up to 10 days to:

Determine if it will comply with the request
Notify the requester of its determination

Requesting Copies of Records

Requesting Copies of Records



Agency may extend period to make this determination for up to 14 days if there are unusual circumstances, which means that the agency must:


- ▶ Communicate with field offices
- ▶ Examine voluminous records
- ▶ Communicate with others who have an interest in the records
- ▶ Construct computer reports

Requesting Copies of Records

Once the determination to comply with the request has been made, the agency has a reasonable period of time to provide the records



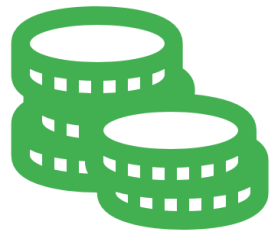
If the agency cannot provide the records during the time for making a determination, it must provide a good faith estimate of when the copies will be available



Records do not have to be produced within 10 (or 24 days with extension). Only notification of whether responsive records exist

Fees for Duplication of Records

- ▶ Agency may charge the direct cost of duplication
- ▶ Direct cost includes:
 - ▶ Pro-rata cost of duplication equipment
 - ▶ Pro-rata cost of equipment operator (salary and benefits)
- ▶ Direct costs do not include:
 - ▶ Research
 - ▶ Retrieval
 - ▶ Redaction



Fees for Duplication of Records

- ▶ Special rules for electronic records
- ▶ Agency may recover full costs where agency is required to:
 - ▶ Extract or compile data
 - ▶ Undertake programming to produce data

Exemptions from Disclosure Under the PRA

Local agencies must identify the specific exemption from disclosing a record

Narrowly construed if limits right to access

Broadly construed if it furthers the people's right of access to records

Exemptions are generally discretionary, not mandatory

Generally, the agency may redact exempt information; remainder of record must be disclosed

Where exemptions render the entire record worthless, the entire record may be withheld

Exemptions from Disclosure Under the PRA

- ▶ If exempt information is disclosed, the exemption is waived
- ▶ The following disclosures are not waivers:
 - ▶ Disclosures made pursuant to discovery requests
 - ▶ Disclosures made pursuant to court order
 - ▶ Disclosures to another government agency when there is a confidentiality agreement, and the head of the agency designates those employees who are permitted to examine the records
- ▶ Most exemptions can be found at Gov. Code § 6254
- ▶ “Catchall” public interest balancing test under Gov. Code § 6255

Examples of Exemptions from Disclosure Under the PRA

- ▶ Attorney-Client Communications
- ▶ Building Plans (may be inspected, but not copied)
- ▶ Certain Law Enforcement Records
- ▶ Certain Library Records
- ▶ Contractor Payroll Records
- ▶ Deliberative Process Documents
- ▶ Draft Documents
- ▶ Election Information (DL number or other identifying information)
- ▶ Financial information on Applications
- ▶ Medical Records
- ▶ Personnel Records
- ▶ Real Estate Appraisals (may be disclosed after acquisition)
- ▶ Recipients of Public Services
- ▶ Response to Proposals and Bids (until the contract is awarded)
- ▶ Test Questions and Exam Data
- ▶ Trade Secrets
- ▶ Utility Customer Information