

1 Adopt 2 Cal. Code Regs., Section 18329 to read:

2 **§ 18329. Formal Written Advice and Informal Assistance**

3 (a) General. Commission staff provides formal written advice and informal assistance to  
4 persons subject to the Act to facilitate compliance with the requirements of the Act. Advice  
5 provided by Commission staff does not establish legal precedent and is not binding on any party,  
6 except to the extent formal written advice provides the requestor with immunity within the  
7 parameters set forth in Section 83114(b). Written advice is not an Opinion of the Commission  
8 under Section 83114(a), nor a declaration of policy by the Commission. It may be subject to  
9 further review and action by the Commission.

10 (b) Formal Written Advice. Formal written advice is provided pursuant to Section  
11 83114(b) as follows:

12 (1) Request. Any person whose duties under the Act are in question, or that person's  
13 authorized representative, may request formal written advice. A request for advice must include:

14 (A) The name, title, position, and contact information of the person whose duties are in  
15 question and, where applicable, a statement of authorization and contact information for the  
16 authorized representative; and

17 (B) A statement of the material facts. If additional facts are needed, Commission staff  
18 will contact the requestor. If a requestor fails to respond to a request for additional information  
19 within 14 days, Commission staff may decline to provide formal advice under subdivision  
20 (b)(6)(C). The time period for formal written advice begins upon receipt of the additional  
21 information.

22 (2) Acknowledgment of Receipt. Commission staff will provide the requestor with a  
23 written acknowledgement of receipt of the request, and any additional written information.

1           (3) Time for response. Commission staff will provide formal written advice within 21  
2 working days of receiving the request or, where applicable, receiving the additional information  
3 requested by Commission staff. The General Counsel may extend the time for the response upon  
4 a determination of good cause.

5           (4) Immunity. The immunity provided by Section 83114(b) is limited to the person(s)  
6 identified as the subject(s) of the request, and to the specific facts set forth in the formal written  
7 advice.

8           (5) Withdrawal. A requestor may withdraw the request at any time prior to receiving  
9 formal written advice. Commission staff will provide written confirmation of the withdrawal.

10          (6) Decline to give advice. A formal advice request will be declined in writing where the  
11 request:

12           (A) Relates to past conduct.

13           (B) Seeks advice about another person’s duties under the Act without authorization from  
14 that person.

15           (C) Presents material facts that appear inaccurate, incomplete, or in dispute.

16           (D) Presents a question outside the jurisdiction of the Act.

17           (E) Regards an unsettled area of law, or an area of the law susceptible to multiple  
18 reasonable interpretations, and thus presents one or more issues that require an interpretation best  
19 considered through the Commission Opinion process set forth in Regulation 18320, the  
20 regulatory process, or a legislative action.

21           (i) When appropriate, Commission staff will provide the requestor with guidance  
22 regarding making a request for a Commission Opinion.

1 (ii) Where advice may be provided without construing the unsettled law or interpretation  
2 issue, Commission staff may provide advice or assistance to the requestor to facilitate timely  
3 compliance with the Act pending further action by the Commission. Advice or assistance  
4 provided under this provision will be reported to the Commission pursuant to subdivision (d)(1).

5 (F) Presents an overly broad, or hypothetical question that lacks a specific issue or  
6 accompanying facts necessary to evaluate and analyze the required elements of compliance with  
7 the Act. However, if the request presents hypothetical facts that represent an intended course of  
8 conduct, or sufficiently identifies the area of the Act at issue, the General Counsel may treat it as  
9 an informal assistance request under subdivision (c).

10 (G) Concerns a party or a factual scenario that is the subject of a pending Enforcement  
11 action, or other judicial or administrative proceeding, and the requested advice may affect or  
12 determine a question of law relating to the pending proceeding.

13 (H) Presents circumstances where formal written advice would be inappropriate or  
14 otherwise not in the public interest.

15 (7) Reconsideration. General Counsel may amend a formal advice letter, or reconsider a  
16 decision to decline advice, if the requestor provides sufficient additional relevant facts to satisfy  
17 the requirements of this subdivision. The requestor may challenge formal written advice by  
18 seeking a Commission Opinion pursuant to Regulation 18320.

19 (c) Informal Assistance. Commission staff provides informal assistance as follows:

20 (1) Request. A request for informal assistance may be made either orally or in writing and  
21 by any person whose duties under the Act are in question, or that person's authorized  
22 representative, by any person with a duty to advise other persons relating to their duties or

1 actions under the Act, or by any agency whose members or employees are subject to the  
2 provisions of the Act.

3 (2) Response. Commission staff may respond to a request for informal assistance either  
4 orally or in writing.

5 (3) No immunity. Informal assistance does not provide the requestor with the immunity  
6 set forth in Section 83114.

7 (4) Decline assistance. Informal assistance will be declined or limited where the request:

8 (A) Regards past conduct, unless the request regards corrective action to satisfy  
9 requirements of the Act, such as filing delinquent or amended statements or reports.

10 (B) Does not identify the person whose rights and duties are at issue, identify the person  
11 making the request, or state that it is made by an authorized representative of the person.

12 (C) Presents an overly broad or hypothetical question, or presents facts too vague or  
13 insufficient to render informal assistance.

14 (D) Presents an issue outside the jurisdiction of the Act.

15 (E) Presents a question too complex or otherwise inappropriate for resolution by informal  
16 assistance. Where appropriate, Commission staff will notify the requestor that a request may be  
17 made for formal written advice pursuant to subdivision (b), or for a Commission Opinion  
18 pursuant to Regulation 18320.

19 (F) Concerns a party or a factual scenario that is the subject of a pending Enforcement  
20 action, or other judicial or administrative proceeding, and the requested advice may affect or  
21 determine a question of law relating to the pending proceeding.

22 (G) Would be inappropriate or otherwise not in the public interest.

23 (d) Commission Oversight.

1           (1) Reports to the Commission. The Commission may periodically require a report of  
2 formal written advice issued by Commission staff. The report may include assistance or advice  
3 provided pursuant to subdivision (b)(6)(E)(ii). The report will be part of the Commission  
4 meeting agenda as an action item.

5           (2) Action on formal advice. The Commission may rescind or modify any formal written  
6 advice on grounds that it:

7           (A) Substantively misstates the law;

8           (B) Misapplies the law; or

9           (C) Regards an unsettled area of law, or an area of the law susceptible to multiple  
10 reasonable interpretations, and thus presents issues that require an interpretation best considered  
11 through the Commission Opinion process set forth in Regulation 18320, the regulatory process,  
12 or a legislative action.

13           (3) Immunity. If the Commission rescinds or amends formal written advice, then any  
14 immunity conferred under Section 83114(b) is limited to actions prior to the date the requestor  
15 receives notice of such action.

16           (e) Records. Written responses and related requests for advice are public records subject  
17 to public inspection unless protected from disclosure under the Public Records Act.

18 Note: Authority cited: Section 83112, Government Code. Reference: Section 83114(b),  
19 Government Code.