Guidelines for Access to Public Records

1. Intake

- Any staff person may end up being a recipient of a CPRA request, and due to the relatively strict time guidelines, all staff should be familiar with this procedure.

- Requests can be in any form -- email, telephone, or letter. We need, at a minimum, the following information:
  1. The name of the requestor.
  2. The name of the organization (if any).
  3. A mailing address.
  4. A contact telephone number.
  5. The name of the staff person taking request.
  6. The date the request was received by the agency.
  7. A specific description of the records requested.

- The Legal Division has developed a form that includes spaces for all the information detailed above. The form should be used in any case that a staff person receives a CPRA request.

- Logging/Assigning PRA Case Numbers: Commission staff must forward all intake forms to the Legal Division within 1 day of receiving a request for public records. This means all incoming Public Records Act requests (whether they are in writing, or verbal—such as a voicemail or telephone request—) are to be delivered to the CPRA Coordinator in the Legal Division. The CPRA Coordinator has a CPRA basket in the metal cabinet by her desk.

- The Division Legal Secretary will log these requests and assign a number for tracking purposes. This allows for a more orderly process. It would also make it easier for us to find and keep track of the requests.

- Note -- the Act treats statements filed with us as filing officers differently than other FPPC documents, such as enforcement cases, advice letters, etc. Section 81008 provides:

  “(a) Every report and statement filed pursuant to this title is a public record open for public inspection and reproduction during regular business hours, commencing as soon as practicable, but in any event not later than the second business day following the day on which it was received.” TAD
normally receives these requests directly and has a system to process them. When we get the requests as CPRAs, they are forwarded down to TAD.”

If we get a mixed requests (requests for statements and enforcement files, for example), we bifurcate the request and the SEI portion goes to TAD to process fully under 81008 and the rest is processed as a CPRA.

2. Processing

➢ Generally, CPRA requests will be completed by the CPRA Coordinator. In cases where there are a large number of requests or when the CPRA Coordinator is unavailable, the CPRA request may be assigned to an attorney.

➢ Whoever is assigned a CPRA request needs to have the response and materials reviewed by another attorney in the division.

➢ It may be necessary for the person assigned to request responsive documents from others in legal or other divisions. Each division will have one or more persons designated to receive the requests and locate the public records requested. **The designated person(s) must provide the Legal Division with a response within 2 days of receiving the request.**

➢ In most cases, the designated person should provide all responsive information to legal whether exempt or not. Legal will need to review the document, not only to confirm that the document is exempt, but also to state that we are withholding the document and why we are withholding the document in the response to the requestor. This is required under the CPRA.

➢ All CPRA requests for enforcement materials should be made available to the enforcement division for review prior to mailing.

3. Timing and Delays

➢ Government Code section 6253(a) provides:

> “[U]pon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.”
At a minimum the CPRA requires notice to the requestor that we do or do not have the releasable documents:

“Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefore. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, ‘unusual circumstances’ means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

“(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

“(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

“(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

“(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.”

The practice of the Commission is, rather than send two separate responses to the requestor ((1) the initial 10-day letter required by statute with an estimated date and then (2) a second letter with the disclosable documents), the Commission fully complies with the request in the 10 days allotted by statute. While this is not mandated by the statute, the statute does require documents be provided “promptly.” And, while what is considered “promptly” varies based in the facts, the Attorney General has stated: “[I]f possible, records deemed subject to disclosure should be provided at the time the determination is made. If immediate disclosure is not possible, the agency must
provide the records within a reasonable period of time, along with an estimate of the date the records will be made available.”

- In some cases, the designated persons will be unable to comply due to one of the contingencies set forth above. In that case, the staff person should inform the Legal Division staff person assigned to the public records request of: (1) the availability of records responsive to the request; and (2) the estimated date and time when the records will be provided to Legal Division.

- The ten-day response period starts with the first calendar day after the date of receipt.

- If the request is received after business hours or on a weekend or holiday, the next business day will be considered the date of receipt. The ten-day response period then starts with the first calendar day after the date of receipt.

- If the tenth day falls on a weekend or holiday, the next business day is considered the deadline for responding to the request.

4. Mailing

- The Legal Division will handle final redaction and will issue all response letters.

- **Fax:** Responses can be faxed if not voluminous. Check with Legal before committing to faxing of documents.

- **FedEx:** Documents can be FedExed if the requestor provides their FedEx number to us.

- The Legal Division will make one additional copy of any documents released.

5. Storage

- Completed requests will be stored in the Legal Division for six months, and indexed as to be easily searchable. After that time, only the original request will be retained in accordance with the agency’s retention policy.
## CPRA CHECKLIST: OPEN CASES

<table>
<thead>
<tr>
<th>Documents to Release</th>
<th>Release but.....</th>
<th>Documents Withheld</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ The complaint and attachments. The complainant’s name and personal information is releasable because the complainant voluntarily provides the information and has been placed on notice that the complaint filed is a public record.</td>
<td>✓ We redact</td>
<td>✓ Most contents of case file (other than complaint, attachment, 14 day letters or correspondence to respondent about complaint). Balancing Test Gov. Code § 6255 public’s interest in disclosure does not clearly outweigh FPPC’s ability to prosecute cases; disclosure would compromise an open investigation</td>
</tr>
<tr>
<td>✓ 14-day letter</td>
<td>✓ Personal addresses, phone numbers, email addresses, sensitive financial data of respondents and witnesses. “Personal” would not include business or agency addresses. Disclosure of this information in some cases constitutes an unwarranted invasion of privacy because this information is personal in nature and has not been provided to government in order to acquire a benefit. These items may be withheld using the balancing test under Gov. Code § 6255—the balancing test.</td>
<td>✓ § 6254.5. Waiver: Whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law.</td>
</tr>
<tr>
<td>✓ Information and/or correspondence provided by the Enforcement Division to the respondent informing the respondent that the FPPC is investigating an allegation against him or her.</td>
<td>✓ Account numbers, personal information and charges on personal credit card statements not related to a PRA violation being alleged.</td>
<td>Pursuant to Gov. Code § 6254.5 (e), the “waiver” rule does not apply to disclosure to (1) any governmental agency (2) which agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes which are consistent with existing law. (Rackauckas v. Superior Court (2002) 104 Cal App 4th 169; County of Los Angeles v. Superior Court (2005) 130 Cal App 4th 1099, 1107.) The exception would apply to material we release and material we receive under an agreement of confidentiality.</td>
</tr>
<tr>
<td></td>
<td>✓ Paw-prints at the bottom of documents that reveal where documents are located in the network to prevent tampering.</td>
<td>Gov. Code § 6254.4(e) requires certain safeguards. A document stating there was such an agreement and that the requirements were satisfied should be included in the file and will be treated as confidential. Remember, that even if the document is legitimately withheld, we have to acknowledge its existence and state the basis for withholding it.</td>
</tr>
</tbody>
</table>
## CPRA CHECKLIST: CLOSED CASES

<table>
<thead>
<tr>
<th>Documents to Release</th>
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<th>Documents to be Withheld in their Entirety</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ Complaint and attachments</td>
<td></td>
<td>✓ Documents that contain the impressions, legal conclusions, and analysis of the case attorney. Withhold “In-take case evaluation forms” (Attorney Work Product -- Gov. Code § 6254(k))</td>
</tr>
<tr>
<td>✓ Correspondence with other agencies unless information provided to us with assurances of confidentiality.</td>
<td>✓ Personal addresses, phone numbers, email addresses, sensitive financial data of respondents and witnesses. “Personal” would not include business or agency addresses. Disclosure of this information in some cases constitutes an unwarranted invasion of privacy because this information is personal in nature and has not been provided to government in order to acquire a benefit. These items may be withheld using the balancing test under Gov. Code § 6255—the balancing test.</td>
<td></td>
</tr>
<tr>
<td>✓ Correspondence with the respondent and/or complainant, including warning letters.</td>
<td>✓ Account numbers, personal information and charges on personal credit card statements not related to a PRA violation being alleged.</td>
<td></td>
</tr>
<tr>
<td>✓ Settlement documents</td>
<td>✓ Paw-prints at the bottom of documents that reveal where documents are located in the network to prevent tampering.</td>
<td></td>
</tr>
<tr>
<td>✓ FTB Audit Reports</td>
<td></td>
<td>✓ Communications between attorneys. This is considered attorney work product because it includes mental impressions and legal conclusions of case attorney. See also, Deliberative Process Privilege Gov. Code § 6255</td>
</tr>
<tr>
<td>✓ Tapes, full size newspapers, or like items.</td>
<td></td>
<td>✓ Drafts of documents or notes which are not retained in the normal course of business. (Drafts/Notes exception--Gov. Code § 6254(a).)</td>
</tr>
<tr>
<td>✓ Campaign forms and SEIs (including names, addresses, and phone numbers disclosed therein)</td>
<td></td>
<td>✓ Documents that include names, addresses, and phone numbers generated through special database searches that are not available to the public such as those available only to law enforcement, licensed private investigators, or specified agency personnel.</td>
</tr>
<tr>
<td>✓ Investigator’s notes: Only factual information about the case is disclosed.</td>
<td></td>
<td></td>
</tr>
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</tr>
<tr>
<td>---------------------</td>
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</tr>
<tr>
<td>✓ Official records of other governmental agencies (police reports, county recorder records). Documents that can be obtained unredacted from the other agency by the public.</td>
<td><strong>We redact</strong></td>
<td>✓ Copyrighted and Trade Secret Information: i.e. specialized reports such as credit reports, or database research that compiles public and non-public information about a person. These documents are protected by copyright, and in some cases, trade secret laws. We would withholding this information under Gov. Code 6254(k), which provides an exemption for “Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.”Gov. Code § 6254(k) -- exemption for disclosure of records exempted or prohibited by federal or state law.</td>
</tr>
<tr>
<td>✓ Any information including requests from other government agencies for investigative information in enforcement files unless the requestor requests, and we agree to, confidentiality. (Gov. Code § 6254.4(e); 6254(k).)</td>
<td>✓ Impressions, legal conclusions, and analysis of the investigator to the case attorney, this nonfactual information must be redacted.</td>
<td></td>
</tr>
<tr>
<td>✓ Court Deposition Transcripts, Court pleadings (absent order sealing documents)</td>
<td>✓ Gov. Code § 6254(k) – Official information exception allows information gathered by a government agency under assurances of confidentiality to be withheld if it is in the public interest to withhold this information (i.e. information from confidential informants).</td>
<td></td>
</tr>
</tbody>
</table>
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PUBLIC RECORDS REQUEST INTAKE FORM

REQUESTOR: ____________________________________________

ORGANIZATION (if any): ____________________________________________

ADDRESS: ____________________________________________________

PHONE/FAX NUMBER: __________________________________________

Date of Request: _________

Date Received in Legal Div. _________

Assigned to Legal Div. Attorney: _________

DESCRIBE RECORDS REQUESTED OR ATTACH WRITTEN REQUEST:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Staff Person Taking Request: ________________________________