

November 1, 2021

From Jay Garfinkle

Condensed presentation of information related to the October 4, 2021
complaint filed with the Open Government Commission by Jay Garfinkle

In order to clarify what is required of agencies responding to Public Records
Act requests I have taken excerpts from various sources. Following these
referenced sources I am giving examples of communications and redactions
which I believe clearly demonstrate that they have been produced in a format
that violates the various relevant laws, regulations, and expert opinions in that
they lack the requisite accompanying explanatory information

From the California Code:

Please, pay special attention to paragraph (b) which indicates that even if only a part of a document is to be redacted the explanation of denial must be in writing.

2011 California Code

Government Code

TITLE 1. GENERAL [100 - 7914]

ARTICLE 1. General Provisions

Section 6255

Universal Citation: [CA Govt Code § 6255 \(through 2012 Leg Sess\)](#)

(a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

(b) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.

(Amended by Stats. 2000, Ch. 982, Sec. 3. Effective January 1, 2001.)

Disclaimer: These codes may not be the most recent version. [California](#) may have more current or accurate information. We make no warranties or guarantees about the accuracy, completeness, or adequacy of the information contained on this site or the information linked to on the state site. Please check official sources.

From the Public Records Act:

California Public Records Act

GOVT. CODE §§ 6250 - 6276.48

THE BASICS

The Public Records Act is designed to give the public access to information in possession of public agencies: "public records are open to inspection at all times during the office hours of the...agency and every person has a right to inspect any public record, except as . . . provided, [and to receive] an exact copy" of an identifiable record unless impracticable. (§ 6253). Specific exceptions to disclosure are listed in sections 6253.2, 6253.5, 6253.6, 6254, 6254.1-6254.22, 6255, 6267, 6268, 6276.02-6276.48; to ensure maximum access, they are read narrowly. **The agency always bears the burden of justifying nondisclosure**, and "any reasonably segregable portion . . . shall be available for inspection...after deletion of the portions which are exempt." (§ 6253(a))

WHO'S COVERED

- **All state and local agencies**, including: (1) any officer, bureau, or department.; (2) any "board, commission or agency" created by the agency (including advisory boards); and (3) nonprofit entities that are legislative bodies of a local agency. (§ 6252(a),(b)). Many state and regional agencies are required to have written public record policies. A list appears in § 6253.4.

WHO'S NOT COVERED

- Courts (except itemized statements of total expenditures and disbursement). (§§ 6252(a), 6261)
- The Legislature. (§ 6252) See Legislative Open Records Act, Govt. Code §§ 9070-9080.
- Private non-profit corporations and entities.
- Federal agencies. See Federal Freedom Of Information Act, 5 U.S.C. § 552.

ACCESS TIP Look to access laws (e.g. Legislative Open Records Act, IRS rules, court cases) that permit inspection and copying of records of agencies not subject to the Public Records Act. Many local jurisdictions also have "Sunshine" laws that grant greater rights of access to records.

WHAT'S COVERED

- "Records" include all communications related to public business "regardless of physical form or characteristics, including any writing, picture, sound, or symbol, whether paper, ..., magnetic or other media." (§ 6252(e)) Electronic records are included, but software may be exempt. (§§ 6253.9(a),(g), 6254.9 (a),(d))

WHAT MUST HAPPEN

- **Access is immediate** and allowed at all times during business hours. (§ 6253(a)) Staff need not disrupt operations to allow immediate access, but a decision whether to grant access must be prompt. An agency may not adopt rules that limit the hours records are open for viewing and inspection. (§§ 6253(d); 6253.4(b))
- **The agency must provide assistance** by helping to identify records and information relevant to the request and **suggesting ways to overcome any practical basis for denying access.** (§ 6253.1)
- **An agency has 10 days to decide if copies will be provided.** In "unusual" cases (request is "voluminous," seeks records held off-site, OR requires consultation with other agencies), the agency may, upon written notice to the requesters, give itself an additional 14 days to respond. (§ 6253(c)) These time periods may not be used solely to delay access to the records. (§ 6253(d))
- **The agency may never make records available only in electronic form.** (§ 6253.9(e))
- **Access is always free.** Fees for "inspection" or "processing" are prohibited. (§ 6253)
- **Copy costs are limited to "statutory fees"** set by the Legislature (not by local ordinance) or the "direct cost of duplication", usually 10 to 25 cents per page. Charges for search, review or deletion are not allowed. (§ 6253(b); North County Parents v. D.O.E., 23 Cal.App.4th 144 (1994)) If a request for electronic records either (1) is for a record normally issued only periodically, or (2) requires data compilation, extraction, or programming, copying costs may include the cost of the programming. (§ 6253.9(a),(b))
- **The agency must justify the withholding of any record by demonstrating that the record is exempt or that the public interest in confidentiality outweighs the public interest in disclosure.** (§ 6255)

ACCESS TIP Always ask for both copies and access; after inspection you can reduce the copy request (and associated costs) to the materials you need.

REQUESTING PUBLIC RECORDS

- Plan your request; know what exemptions may apply.
- Ask informally before invoking the law. If necessary, use this guide to state your rights under the Act.
- Don't ask the agency to create a record or list.
- **A written request is not required, but may help if your request is complex, or you anticipate trouble.**

- Put date limits on any search.
- If the agency claims the records don't exist, ask what files were searched; offer any

Here's a section of the Sunshine Ordinance that requires an explanatory statement.

From the Sunshine Ordinance (Emphasis added)

2-92.12 - Justification for Withholding.

Any withholding of information shall be justified, in writing, as follows:

- A withholding under a permissive exemption in the California Public Records Act or this title shall cite the legal authority and, where the exemption is based on the public interest in favor of not disclosing, explain in practical terms how the public interest would be harmed by disclosure.
- A withholding on the basis that disclosure is prohibited by law shall cite the applicable legal authority.
- A withholding on the basis that disclosure would incur civil or criminal liability shall cite any statutory or case law supporting that position.

Taken from Calaware.org:

Explains that Prop 59 put the right to know what the government is doing into the State Constitution.

"The deliberative process privilege as a basis for withholding records may have been substantially weakened by Proposition 59 of 2004, whose ballot argument included the following:

"What will Proposition 59 do? It will create a new civil right: a constitutional right to know what the government is doing, why it is doing it, and how. It will ensure that public agencies, officials, and courts broadly apply laws that promote public knowledge. It will compel them to narrowly apply laws that limit openness in government—including discretionary privileges and exemptions that are routinely invoked even when there is no need for secrecy. It will create a high hurdle for restrictions on your right to information, requiring a clear demonstration of the need for any new

limitation. It will permit the courts to limit or eliminate laws that don't clear that hurdle. It will allow the public to see and understand the deliberative process through which decisions are made."

An exempt part does not justify withholding the whole.

Pursuant to **Government Code §6253**, subd. (a), **any non-exempt (public) part of a record must be made available after any exempt information has been redacted (removed or obliterated).** This rule applies unless redaction is impossible because the public and confidential material are so tightly interwoven as to be "inextricably intertwined" Northern California Police Practices Project v. Craig, 90 Cal. App. 3d 116 (1979), or unless multiple redactions applied to a large number of requested records would leave them so bereft of substantive information relevant to the requester's purpose that the benefit to him or her would be "marginal and speculative." American Civil Liberties Union Foundation of Northern California Inc. v. Deukmejian, 32 Cal. 3d 440 (1982).

Examples follow below:

In reviewing the exhibits that I reference I see that it's not easy to pick out the redacted pages. So, please, let me direct you to specific documents rather than asking you to scan through entire threads.

FIRST EXAMPLE Let's look at the document dated June 29th:

This appears to show that the City is drafting letters for the Collaborative to use. I doubt that this is appropriate. But the issue for us tonight is that **several pages of the draft letter have been redacted without explanation.**

From: Lisa Maxwell on behalf of Lisa Maxwell <LMaxwell@alamedaca.gov>
To: Rosanna Carvacho Elliott; Joe Lang; Karen M. Tiedemann
Subject: Collaborative SLA Letter
Date: Tuesday, June 29, 2021 5:08:33 PM
Attachments: Collaborative Letter 2021(2).docx
Hi Karen, Rosanna and Joe-
Here's another shot at the letter from the Collaborative. Thoughts? Lisa
Lisa Nelson
Maxwell she / her
Community Development

Director City of Alameda
950 W. Mall Square
Alameda, CA 94501
(510) 747-6899
(510) 872-2686 cell

REDACTED

SECOND EXAMPLE Let's take a look at the document dated July 28th:

This one appears to be a communication between City Staff and the City's lobbyist. Also, with unexplained redacted pages.

From: Sarah Henry on behalf of Sarah Henry <SHenry@alamedaca.gov>
To: "Rosanna Carvacho Elliott"
Subject: RE: California approved guaranteed income program.
Date: Tuesday, July 27, 2021 6:04:35 PM

I saw those - please let me know how I can help with next steps!

From: Rosanna Carvacho Elliott [mailto:Rosanna@clearadvocacy.com]
Sent: Tuesday, July 27, 2021 2:28 PM
To: Sarah Henry <SHenry@alamedaca.gov>
Subject: [EXTERNAL] FW: California approved guaranteed income program.

This is the item I was forgetting to raise on our call this morning. Wanted to make sure it was on your radar. Let me know if you have any questions.

Rosanna Carvacho Elliott
Clear Advocacy,
LLC 916-812-6519
cell
rosanna@clearadvocacy.com

REDACTED

THIRD EXAMPLE Dated July 16th

A communication between the City Manager and the lobbyist. The City Attorney is CC'd, but this is not an attorney-client communication

per se and which would not be entitled to redaction under A-C privilege.

To: Eric Levitt <elevitt@alamedaca.gov>; Gerry Beaudin <gbeaudin@alamedaca.gov>;
Lisa Maxwell

<LMaxwell@alamedaca.gov>; Lois Butler <lbutler@alamedaca.gov>

Cc: Yibin Shen <yshen@alamedacityattorney.org>; Sarah Henry <SHenry@alamedaca.gov>

Subject: [EXTERNAL] RE: California approved guaranteed income

program. Eric,

Based on the budget trailer bill that put this pilot program into statute, here are the requirements for receiving funding. I think the additional funding is probably going to be the biggest hurdle, let me know if you all think this is possible and I can reach out to the Department of Social Services.

- Eligible entities are a City, County or City and County OR a nonprofit organization that provides a letter of support for its pilot from any county or city and county in which the organization will operate its pilot or project.
- If the City applies it must 1) present commitments of additional funding from a nongovernmental source equal to or greater than 50% of the amount of funding to be provided by the state and 2) agree to assist the Department of Social Services in obtaining an exemption or waiver that the guaranteed income payments do not count as income for a household for any of the means-tested public benefits programs.
- There program prioritizes funding for programs that will serve California residents who age out of the extended foster care program or who are pregnant.
- There is also language about working with stakeholders to determine the methodology and manner for distributing the grants and ensuring that they are awarded equitably in both rural and urban counties.

Rosanna Carvacho Elliott

Clear Advocacy,

LLC 916-812-6519

cell

rosanna@clearadvocacy.com

From: Eric Levitt <elevitt@alamedaca.gov>

Sent: Friday, July 16, 2021 4:13 PM

To: Gerry Beaudin <gbeaudin@alamedaca.gov>; Lisa Maxwell
<LMaxwell@alamedaca.gov>; Lois Butler <lbutler@alamedaca.gov>; Rosanna Carvacho
Elliott <Rosanna@clearadvocacy.com>
Cc: Yibin Shen <yshen@alamedacityattorney.org>
Subject: California approved guaranteed income program.

Rosanna:

Can you see if you can find information on the California program and if there is a process for Alameda to partner and receive that funding for our residents?

Also, Gerry & Lisa:

I think there is a desire to move up our implementation of an Alameda program.

I understand that we have 57 homeless students and 13 in Foster care. Once we understand criteria can we set up a program to apply consistent with previous Council direction.

Thanks

Eric

FOURTH EXAMPLE Dated July 28th

Correspondence between the lobbyist and City Staff which happens to include the City Attorney. This is not an Attorney-Client communication which would qualify for A-C redaction privilege.

From: [Rosanna Carvacho Elliott](#) on behalf of [Rosanna Carvacho Elliott <Rosanna@clearadvocacy.com>](#)
To: [Yibin Shen](#); [Eric Levitt](#); [Gerry Beaudin](#); [Lisa Maxwell](#); [Lois Butler](#)
Cc: [Sarah Henry](#)
Subject: RE: California approved guaranteed income program.
Date: Wednesday, July 28, 2021 5:38:09 PM

Quick update on this. I've had communications with the Senate Budget staff who did not know if the intent was to prohibit local governments from using their own money for the match, she said it wasn't discussed. I have also been in contact with the Governor's Department of Finance and the Department of Social Services but some of their team is out until next week so I don't think I will get a response until next week. I will let you all know what I find out.

Rosanna Carvacho Elliott

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