

# THE 2023 CALIFORNIA PUBLIC RECORDS ACT TRAINING

Presented by:  
Office of Tulare County Counsel

TULARE COUNTY COUNSEL



# Today's Agenda



**Law and Policy**

**What is a Public Record?**

**Responding to a Request**

**Exemptions**

**Tying it Together**

**Other Statutes & New Legislation**

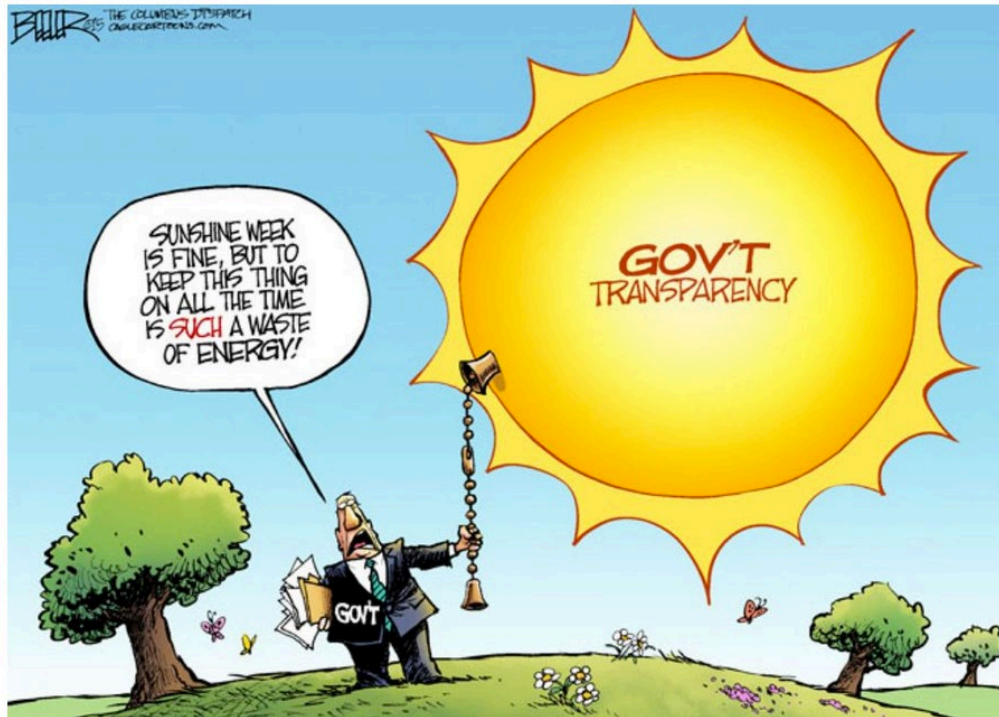




**Law and Policy**

# The Public Records Act

A law that requires the government to provide access to its records upon request.



Sunshine Week is March 12-18, 2023



# Legislative Intent

- Safeguard the accountability of government to the public
- Promote maximum disclosure of the conduct of governmental operations
- Explicitly acknowledge the principle that secrecy is inconsistent with a democratic system of government



# The Public's Rights



Right to Inspect

Right to Obtain Copies

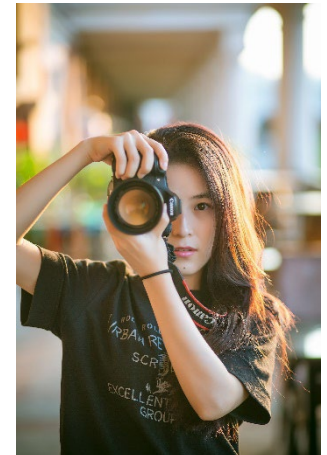
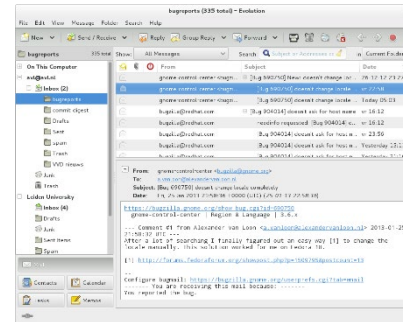




**What is a Public Record?**

# What is a “record”?

Any **written** 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 not a record?



- Records that never existed
- Records that no longer exist
- But you must follow your Records Retention Policy!

Delete File



Are you sure you want to permanently delete this file?



1522927.pdf  
Type: Adobe Acrobat Document  
Size: 910 KB  
Date modified: 8/24/2020 9:57 AM  
Original location: C:\Users\anagra\Desktop

Yes

No

# Do the Records Even Exist?

---

You receive a request for records from the head of marketing and development from Let's Taco 'bout it, Inc. under the Public Records Act which states the following:

"I am looking to assess fast food preferences in Tulare County. Please provide me records regarding employee preferences between Taco Bell and Del Taco".

What do you do?



# The Requester Who Loves Excel

You receive a request under the Public Records Act. At the end, it states the following:

“Please provide the records requested above as an Excel spreadsheet. Please include the information under No. 1 in Column A, and No. 2 in Column B.”

Your Department maintains the requested records as .pdfs and that is how you were planning on providing them.

What do you do?



# Records in Electronic Format

But the Public Records Act states if an agency maintains records in an electronic format, it must make them available in an electronic format. (Gov. Code, § 7922.570)



# Generating Reports from Databases

You receive a request for records from a marketing organization under the Public Records Act which states the following:

“Please provide a list of all county employees, work emails, phone numbers, and addresses.”

You keep this information in a large database with other employee data, including sensitive information, but you don't have the requested information in an existing record.

What should you do?



# Generating Reports from Databases

According to the California Supreme Court in *Sander v. Superior Court* (2018) 26 Cal.App.5th 651, there “is no doubt that a government agency is required to produce non-exempt responsive computer records... *and can be required to compile, redact or omit information from an electronic record*”.

*Are there any more reasons we might not want to release this record?*





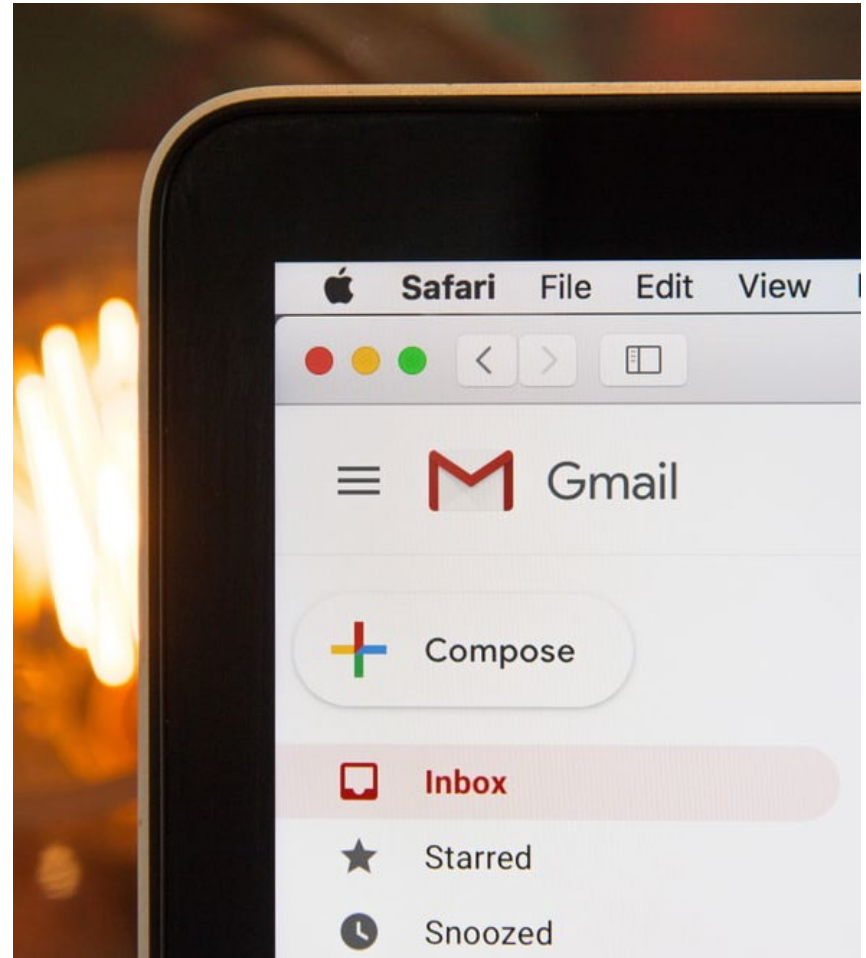
# Personal Devices and Accounts

- California Supreme Court ruled that emails and text messages sent or received on private devices and/or personal accounts are subject to disclosure under the Public Records Act.
- Opinion emphasizes the crucial function of public access laws and the expanded scope of employment-related activity in the digital age.

*City of San Jose v. Sup. Ct.* (2017) 2 Cal.5th 608

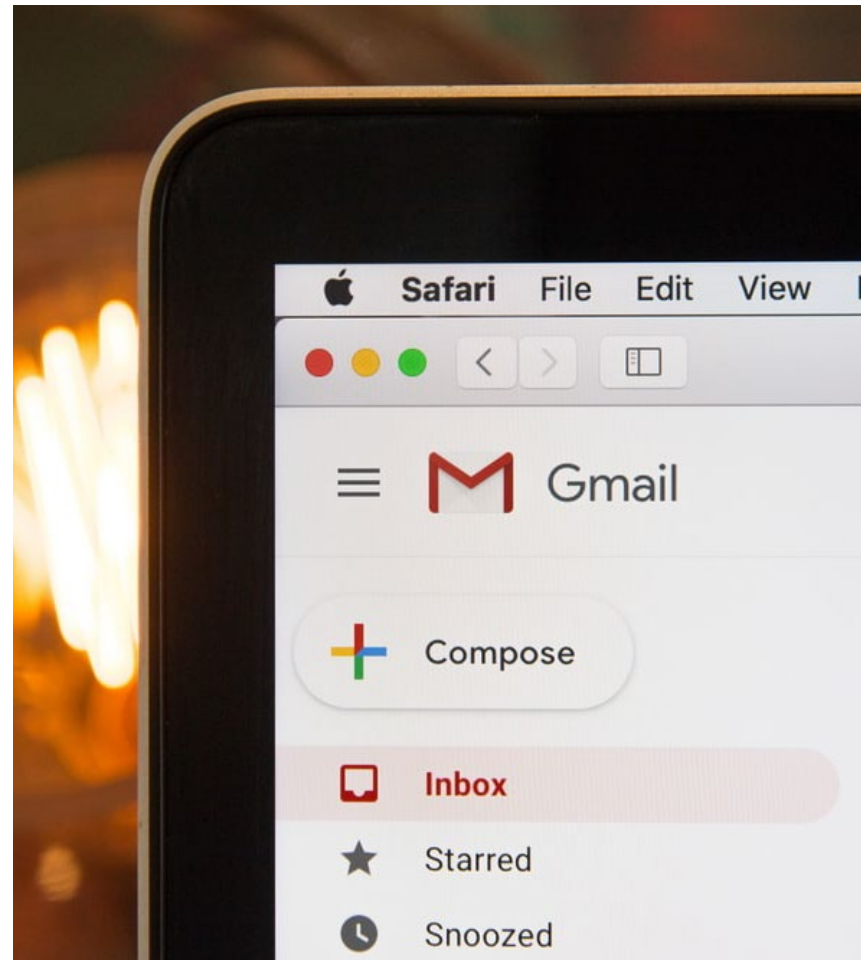
# Public Business on Personal Accounts (DON'T)

- No!
- Following *San Jose*, legislature updated the PRA to state “[u]nless used by the employee to conduct public business, or necessary to identify a person in an otherwise disclosable communication, the personal email addresses of all employees of a public agency shall not be deemed to be public records and shall not be open to public inspection.”
- (Gov. Code § 7928.300(b)(1))



# Personal Business on Public Accounts (Also DON'T)

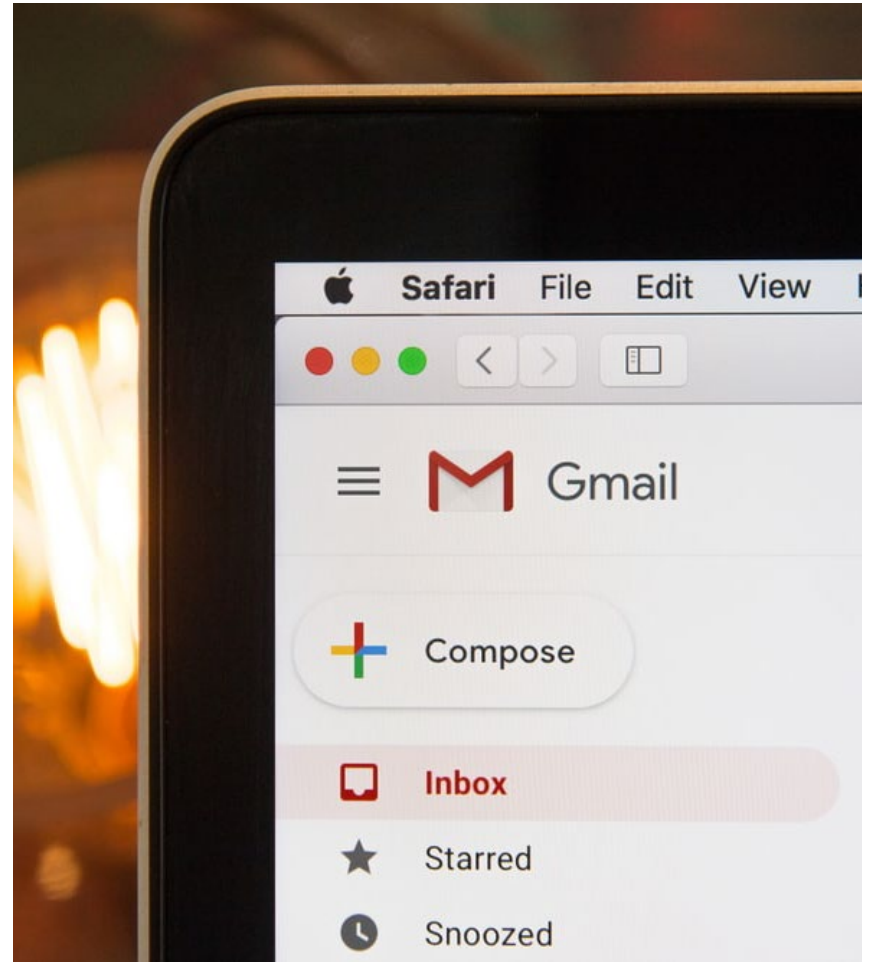
- To qualify as a public record, a writing must contain information relating to the conduct of the public's business.
- To be “sufficiently related to public business” to qualify as a public record under the PRA, “at a minimum, a writing must relate in some substantive way to the conduct of the public's business (*City of San Jose v. Sup.Ct.* (2017) 2 Cal. 5th 608, 618)





# Substantively Related?

- California Supreme Court acknowledged that determining whether a communication is sufficiently related to the public's business can be difficult
- Email stating:
  - “Attached is my financial analysis you requested”
  - “My spouse is awful”
  - “My boss is awful”



A close-up photograph of a person's hands typing on a silver laptop keyboard. The person is wearing a green top and a gold bracelet. In the foreground, there is a stack of papers and a smartphone. The background is blurred, showing other people in a room. A blue rectangular box with white text is overlaid at the bottom of the image.

**Responding to a Request**

# Requests

- The request can be from anyone
  - Natural person
  - Any business (corporation, partnership, LLC, etc.)
  - Association
  - Elected Official
  - Other public entities
- “Public Records Act” does not need to be referenced
- It does not have to be in writing, to the “Records Division,” it can be made verbally to anyone at the Department/Agency
- You are obligated to respond to every request, even if you already know those records do not exist
- “Unless a records request is overbroad or unduly burdensome, agencies are obliged to disclose all records they can locate with reasonable effort.” *City of San Jose v. Sup.Ct.* (2017) 2 Cal. 5th 608, 627

# You Received a Request, Now What?

- **Who:** what department or division possesses or maintains control over these records?
  - “Reasonable efforts” to locate responsive records include an inquiry of knowledgeable personnel. (*Community Youth Athletic Ctr. v. City of National City* (2013) 220 Cal App. 4th 1385, 1428-1429.)
- **What:** what records are being requested?
  - The requester is entitled to the agency's assistance to help it “make a focused and effective request that reasonably describes an identifiable record or records.” Gov. Code § 7922.600(a)



# You Received a Request, Now What?

- **Where:** where are these records located?
- **When:** how far back do you need to search?
- **How:** how long will it take to gather the records?

# Requests from the Media

- Contact County's Public Information Officer
- Respond only to records requests, do not provide commentary unless you are authorized by your Department to do so.



# The Requester Who Won't Leave

You are covering the front desk at a Department. Someone comes in and asks to review a document immediately. The document she is requesting is on the E Drive, which is not accessible on your computer. Plus, it may be exempt. What do you do?

- a. Tell the requester she must send her request in writing.
- b. Tell the requester to contact the Department's Records Clerk.
- c. Tell the requester you need more time to search for the records, indicate when they may be available, and ask her how to be contacted when they're ready.

# Inspecting Records

The Public Records Act provides that records must be made “promptly available” to the requester.

You must provide the records right away if they are both:

- Easily identifiable
- Readily accessible

**NOTE:** Same timelines for response apply to requests for copies as requests for inspections



# Inspecting Records

- Must be made available for inspection in the agency's office during the agency's office hours
- May impose reasonable review conditions on the requester's review
  - To avoid unduly disrupting government business
  - To protect the integrity of the document being examined

**Pro Tip: Post/direct requester to records on website.**

Gov. Code § 7922.545

# Does the Requester Need to...

... provide identification or name?

... identify specific documents or other records?

...narrow the request if it's too broad?

...give a rationale for the request?

# A Response Is Always Required, Even If . . .

- The records do not exist
- The County does not possess the records
- The requester did not provide their name
- The records are exempt
- The request asks for 10,000 pages
- You are not sure what records the requester wants



# Duty to Assist

- Can you describe the kinds of records you are searching for?
- Approximately when do you think these records would have been created?
- What information do you think might be contained in these records?
- Do the records you seek pertain to any particular person, entity or event?

**Pro Tip: Provide (but not require) a records request form**



## Public Records Request Form

Please note that you are encouraged, **but not required**, to provide the following information to help the Department search for the records you are seeking. Per the Public Records Act (GOVERNMENT CODE Section 6250 et seq), we will respond to your request within 10 calendar days.

### **Your Information**

First Name

Middle Initial

Last Name

Email Address

Confirm Email Address

Phone Number

Address

City

State

Zip Code

### **Record Requested**

(Please provide as much detailed information as possible regarding the records you seek (e.g., date, case name, case number, document description, etc.)

### **Record Description**

# Duty to Respond

Agencies must provide a **response** within **10 calendar days** of receiving the request.



# But What If. . .

...ten days is not enough?



# Gov. Code, § 7922.535

14-day statutory extension available when there is a need to:

- Communicate with other divisions/branches
- Examine a voluminous amount of records
- Communicate with others who have an interest in the records
- Construct computer reports
- Go on vacation



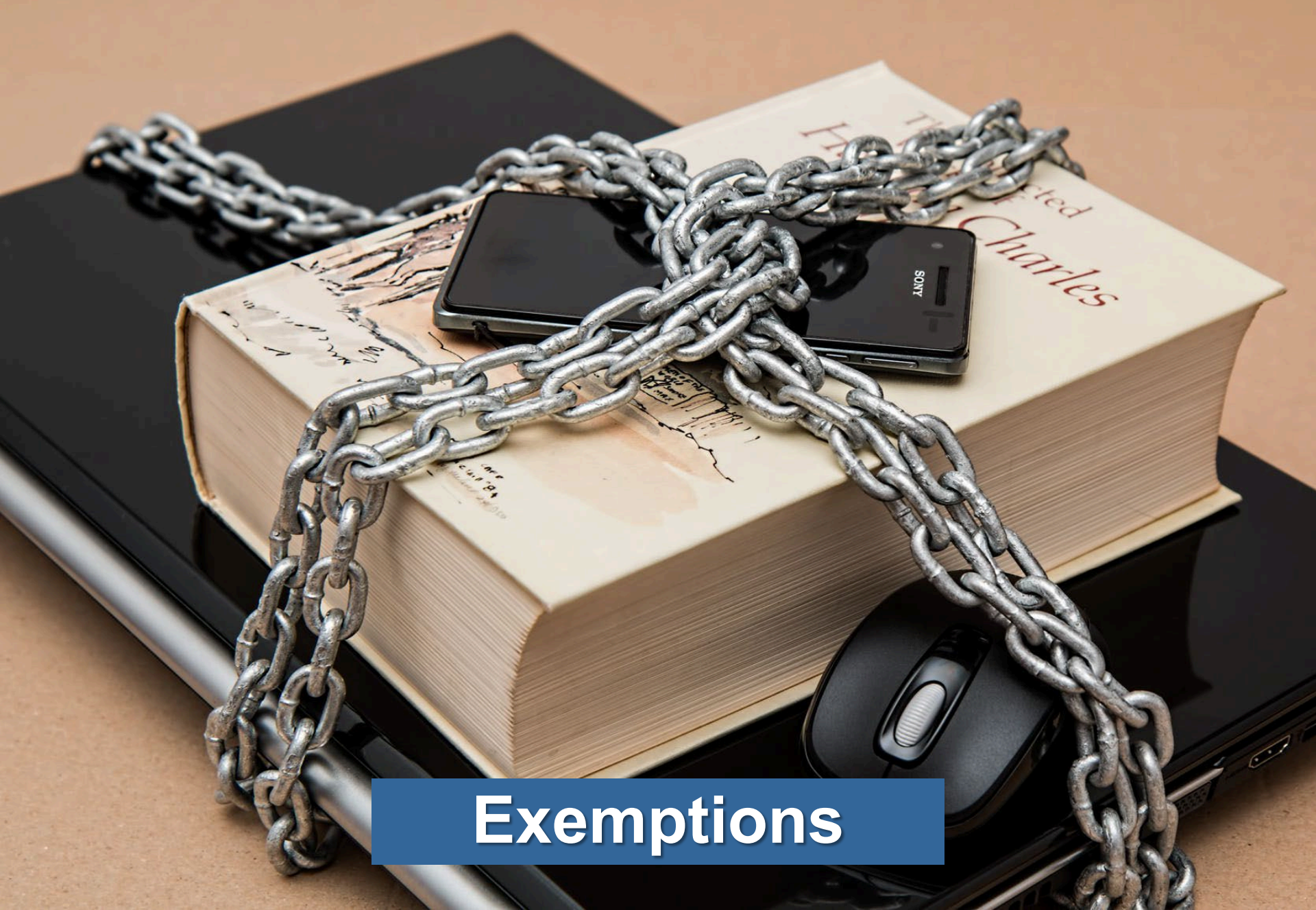
# Rolling Responses

- Specify why more time is needed to search for and review records
- Important to regularly provide requester records, e.g. every two weeks, or whenever you say you're going to do so.



# Costs

May Charge For	Can't Charge For
<ul style="list-style-type: none"><li>• Exact costs of duplicating a record if requester is seeking copies</li><li>• Statutory fees (e.g. official records from Clerk-Recorder's Office)</li><li>• Costs of extracting data</li></ul>	<ul style="list-style-type: none"><li>• Inspection of records</li><li>• Staff time spent locating records</li><li>• Staff time spent reviewing and redacting records</li></ul>



Exemptions

# Common Exemptions

- Attorney-client communication and work product
- Preliminary drafts or notes
- Medical records\*
- Personnel records\*
- Criminal investigative files
- Tests and exams
- Trade secrets or copyrighted materials
- Documents revealing vulnerabilities in security
- Welfare records
- Juvenile court records



# The Request of “Records”

Your Department recently purchased a special license from Spotify allowing you to download songs to your local drive for use in community outreach videos. A requester has found this out and is requesting copies of all music files possessed by the Department. How do you respond?



# The Catch-All Exemption

The public interest served by not disclosing the record **clearly outweighs** the public interest served by disclosure of the record

Gov. Code, § 7922.000





# What If I Don't Assert An Exemption?

Once an exempt record is disclosed to the requester, that record must be made available for inspection or copies to any future requester.

*City of San Jose v. Superior Court* (1999) 2 Cal.5th 608



# Inadvertent Disclosure of Exempt Records

City of Los Angeles inadvertently turned over attorney-client privileged communication to Ardon's attorney pursuant to a Public Records Act request. City made a motion to compel the individual to return the records. Ardon argued that the inadvertent disclosure amounted to a waiver of the exemption under the Public Records Act.

**The court found that the exemption applies only to intentional, not inadvertent disclosures.** In addition, the inadvertent release of privileged documents under the Public Records Act does not waive the privilege.

*Ardon v. City of Los Angeles* (2016) 62 Cal. 4th 1176

A close-up photograph of a thick, light-colored rope tied in a knot around a metal cleat on a wooden deck. The rope is coiled in a large loop on the deck. The text "Tying it Together" is overlaid on a blue banner at the bottom.

**Tying it Together**

# The Random Reporter

3/9/2023

Hi!

I need copies of all emails that your Department sent and received using their County email address that have any of the following keywords:

Salary

Negotiations

Unions

Bargaining

I'm writing a story and my deadline is this Friday, so I would appreciate if you could send the emails by then. Please send me .pdfs of the emails so I don't have to pay for copies.

Thanks!

"The Random Reporter

# First . . .

- Note the deadline to respond!
- A response must be provided within 10 days from when you receive it.
- Remember, you don't have to provide all the records within 10 days, but whether the (1) records exist; and (2) will they be provided.
- Do you think we will know the answers to Nos. 1 and 2 within 10 days?
- Would it be helpful to ask the requester anything?



# Next . . .

- We can likely take advantage of the 14-day extension under Government Code § 7922.535
- Again, do not have to provide all the records within the additional 14 days, but information about whether the (1) records exist; and (2) will they be provided.





# The Records Have Been Located!

15,000 emails!

What do you do now?

- a. Reject the request, that's too many emails and you have other things to do.
- b. Demand the requester narrow the request and indicate you are not providing any records until they do so.
- c. Tell the requester because of the number of records, you will be providing them every two weeks.
- d. Inform the requester of the number of records and see if they are interested in narrowing their request, especially as you start sending them records.
- e. Both c. and d.

# Asserting Exemptions

- Don't just state, "Some of the emails are exempt under the PRA."
- Identify the exemption, explain why it applies if needed, and cite the statute
- Any potential exemptions here? County's bargaining position is revealed?

# Requesting County Counsel Assistance

Provide the following information:

- Date the request was received
- What the Department has done so far to identify records
- Whether the requester wants to inspect or receive copies of documents
- Copies of any responses, correspondence, or documents already provided to the requester
- Specific legal questions the department may have regarding the request
- Whether the department anticipates needing to assert any exemptions

Send requests for assistance to [PRA@tularecounty.ca.gov](mailto:PRA@tularecounty.ca.gov)

# Completing the Request







**Penalties**

# What Happens If We're Sued?

- Court orders the person responsible for the redaction/withholding to show cause as to why the records should not be disclosed
- Judge may conduct an *in camera* review of the records requested
- Successful requester will be awarded attorneys fees and costs

Gov. Code, § 7923.115



# Requests Affecting Third Parties

A parent of a student made a request for records under the Public Records Act relating to the investigation of sexual harassment allegations made against a high school math teacher. The school district notified Marken of the request. Marken subsequently filed a writ to prevent disclosure of the requested records.

***Holding:*** A private party has a right to enjoin a public agency from releasing records pursuant to a PRA Request, provided that the party has received advanced notice of the request.

*Marken v. Santa Monica-Malibu Unified School District* (2012)  
202 Cal.App.4th 1250

# Reverse Individual Actions

So should we notify individuals that we are releasing their information?

- Not required by PRA, but may be required in contract
- Potential best practice (*Marken* notice)



A top-down view of a wooden surface with several Scrabble tiles. In the center, three tiles are arranged horizontally to spell 'LAW'. The 'L' tile has a subscript '1', the 'A' tile has a subscript '1', and the 'W' tile has a subscript '10'. Other tiles are scattered around, including 'O', 'I', 'F', 'D', 'T', 'S', 'A', 'Z', 'E', and several blank tiles with a circular indentation.

L<sub>1</sub> A<sub>1</sub> W<sub>10</sub>

**Other Statutes & New Legislation**



# Other Statutes May Apply

- Assessor – Revenue and Taxation Code
- Tulare County Sheriff's Office, District Attorney's Office, Public Defender's Office, and Probation Department – Penal Code
- Child Support – Family Code
- Health and Human Services Agency – Welfare and Institutions Code
- Agriculture Commissioner – Food and Agricultural Code
- Registrar of Voters – Elections Code

# AB 473 (21-22)- Recodification of PRA

- Recodifies (reorganizes) the entire CPRA
- No substantive changes made to the Act
- Why?
  - Previous CPRA “poorly organized and cumbersome for members of the public to use and understand” 8/31/21 Assembly Floor Analysis
  - Achieved by recodification?

# Recodification – Commonly Used Exemptions

Old Section	New Section
Government Code § 6254(f) (Law Enforcement Files)	Government Code §§ 7923.600 et seq.
Government Code § 6255 (Catch-All Test)	Government Code § 7922.000
Government Code § 6254(c) (Personnel, medical, other files)	Government Code § 7927.700
Government Code § 6254(k) (Incorporating state/federal restrictions on disclosure)	Government Code § 7927.705



# Questions



## TULARE COUNTY COUNSEL



**Disclaimer:** These materials and all discussions of these materials are for instructional purposes only and do not constitute legal advice.

**Copyright © 2023 Tulare County Counsel**

All rights reserved. No portion of this work may be copied, or sold or used for any commercial advantage or private gain, nor any derivative work prepared there from, without the express prior written permission of Tulare County Counsel through the County Counsel, Jennifer M. Flores.