



California State
Association of Counties

Public Records Act

What is the California Public Records Act?

The California Public Records Act (CPRA) is part of the bedrock of laws enshrining the public's right to hold their governments accountable by ensuring the public can access government records. The CPRA has been amended many times since its initial passage in 1968, however, the core objective remains to provide "access to information concerning the conduct of the people's business [which] is a fundamental and necessary right of every person in this state," (Government Code § 7921). The provisions of the CPRA are included in Government Code §§ 7920-7931.

What is a public record?

Public records include "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," (Gov. Code 7920.530). "Writing" has been interpreted broadly to include photographs, videos, data, and other information.

Who does the CPRA apply to?

The CPRA applies broadly to records produced by the state and local agencies, including "county, city, city and county, school district, municipal corporation, special district, community college district or political subdivision," (Gov. Code 7920.510). The CPRA can apply to some contractor records, but not those created or maintained by a third-party contractor that are not shared with the local agency.

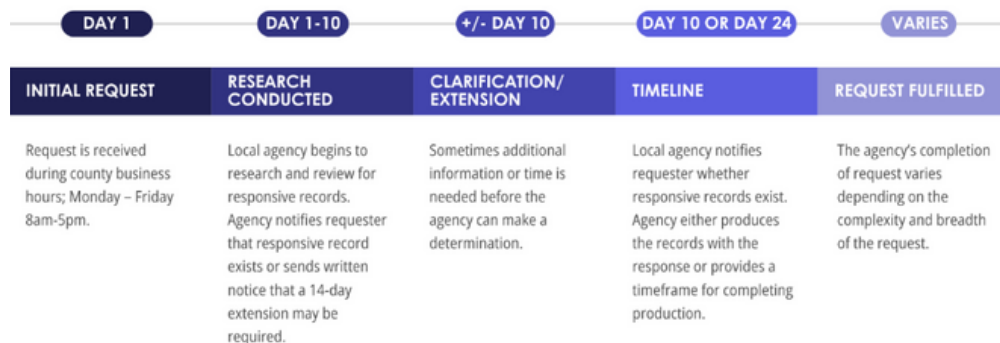
Lifecycle of a California Public Records Act Request

From the initial request for public records, a local agency has 10 days to respond to the request by notifying the requestor if the requested records exist, if the request can be accomplished, and when the request can be completed. The deadline can be extended for an additional 14 days in some circumstances, including an emergency, if agencies must consult with each other, or if there's a need to use programming to evaluate the request. There is no deadline for the production of records in response to a PRA request, but the law requires agencies to make the records "promptly available." While most requests are responded to promptly, agencies have seen an increase in vast, sweeping requests that require significant resources to collect, review and redact records.

Who uses the CPRA?

The CPRA has been a tool used by local residents, media organizations, journalists, and researchers and is often the basis for investigative reporting. In recent years, local agencies have reported increased prevalence of CPRA requests aimed at advancing business interests through data mining, use of the CPRA as a discovery tool in court litigation and increase in requests that are vast in their scope, requiring substantial time and resources for a response.

Government documents that are a matter of public record can include emails, text messages, inter-office direct chat messaging platforms such as Microsoft Teams, and any other form of communication about government business.



Exemptions

The act assumes that a record must be disclosed if it is requested, but certain exceptions are embedded in the law to balance access with privacy and the public interest. Records exempt from public request include:

- Information containing records of minors
- Personnel, medical, and similar records (such as records protected by HIPAA or CMIA)
- Peace officer personnel records
- Preliminary drafts not retained in the ordinary course of business
- Law enforcement investigative records
- Documents created and maintained by a contractor
- Records pertaining to pending litigation

Records can also be exempt from public access if it is in the public's best interest that the information remains confidential, often referred to as the "public interest exception," established in Government Code § 7922.000. The exemption is often referred to as a "catchall" exemption that generally permits agencies to avoid releasing a broad array of records and must 'clearly outweigh' the interest of the public. The exemption has been cited for decisions to withhold documents that could have exposed vulnerabilities in public infrastructure, would have released contact information for members of the public, and to prevent the release of "deliberative process," documents that would expose an agency's decision-making process.

California Public Records Act and Federal Freedom of Information Act

The CPRA was created two years after the passage of the federal Freedom of Information Act (FOIA) which was established in 1966. While both the CPRA and the FOIA are meant to achieve similar goals, their jurisdictions are very different. The CPRA applies to California's state and local agency records while FOIA grants the right to federal records. Just like the CPRA, certain records are exempt. Both laws have requirements for response time to requestors, but do not have deadlines for releasing the responsive documents.

Changes to the Public Records Act Over Time

Since enactment in 1968, legislation, voter-led initiatives, and court cases have changed the CPRA. Some notable changes include:

- **Proposition 59 (2004):** Added a constitutional amendment to include the right to access public records and public meetings in the California Constitution. This adjusts the voting thresholds needed to create changes to the existing right to public records from needing a simple majority to a 2/3 majority.
- **Proposition 42 (2014):** Amended the California constitution to discontinue the requirement that the state reimburse local governments for the cost to comply with PRA laws, or any subsequent PRA laws enacted by the Legislature. Prior to Proposition 42, costs for local governments to comply with the CPRA were a reimbursable state mandate for which local governments could file annual claims with the State Controller's Office.
- **SB 1421 (Chapter 988, Statutes of 2018):** Removed the exemption from public access for documents related to incidents in which use of deadly force by a police officer resulted in death or serious injury.
- **National Lawyers Guild v. City of Hayward (2020):** The California Supreme Court ruled that local agencies cannot charge the public for staff time and costs necessary to review, redact, and release public records in response to CPRA requests, allowing fees to be used only for limited circumstances including, for example, \$0.10 per page for physical copies, the cost of physical hardware used to transmit records, or the cost of data extraction.
- **AB 473 (Chapter 614, Statutes of 2021):** CPRA Recodification Act effective Jan. 1, 2023, renumbered and reorganized the CPRA in a new Division 614 of the Government Code, beginning at § 7920.005.

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