

## Introduction: The People's Right to Access to Government Records

The following request is made pursuant to the California Public Records Act and the decisions in *KNSD Channels 7/39 v. Superior Court (Vasquez)* (1998) 63 Cal.App.4th 1200, 74 Cal.Rptr.2d 595 [No. D029949. Fourth Dist., Div. One. May 13, 1998.], *Copley Press, Inc. v. Superior Court (M.P.R.)* (1998) 63 Cal.App.4th 367, 74 Cal.Rptr.2d 69 [No. D029986. Fourth Dist., Div. One. Apr 20, 1998.], and *Copley Press, Inc. v. Superior Court (Adams)* (1992) 6 Cal.App.4th 106, 7 Cal.Rptr.2d 841 [No. D016546. Fourth Dist., Div. One. May 7, 1992.] which govern the common law and constitutional right to public access to government and judicial records. As to any judicial records I am seeking, the legislature enacted Section 77206(f) of the Government Code to require judicial rules must "ensur[e] [120 Cal.App.4th 293] that, upon written request, the trial courts provide, in a timely manner, information relating to the administration of the courts, including financial information and other information that affects the wages, hours, and working conditions of trial court employees." (§ 77206, subd. (f).) as held in *Orange County Employees Assn., Inc. v. Superior Court* (2004) 120 Cal.App.4th 287, 15 CR 3<sup>rd</sup> 201.

These laws and decisions preceded the enactment of SCA 1 (Proposition 59) which was passed overwhelmingly by the voters in November 2004. SCA 1 amended Article I, Section 3 of the California Constitution by providing that "The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny" and that "A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access."

In the case of *Sutter's Place Inc. v. Superior Court (City of San Jose)* (2008) 161 Cal.App.4th 1370, 75 CR 3<sup>rd</sup> 9, the court held that "'Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process" (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651.) and that:

The California Public Records Act (CPRA) (Gov. Code, § 6250 et seq.), enacted by the Legislature in 1968, provides for this access via a scheme to inspect public records maintained by state and local agencies. (*Gilbert v. City of San Jose* (2003) 114 Cal.App.4th 606, 610.) The CPRA replaced a hodgepodge of statutes and court decisions relating to disclosure of public records and was conceived broadly to require full agency disclosure unless information is statutorily exempted. (*Los Angeles Unified School Dist. v. Superior Court* (2007) 151 Cal.App.4th 759, 765 (Los Angeles Unified).)

"With the passage of Proposition 59 effective November 3, 2004, the people's right of access to information in public settings now has state constitutional stature, grounding the presumption of openness in civil court proceedings with state constitutional roots." (*Savaglio v. Wal-Mart Stores, Inc.* (2007) 149 Cal.App.4th 588, 597 (*Savaglio*); see also *Commission on Peace Officer Standards and Training v. Superior Court* (2007) 2007 DJDAR 13089, 13090 [ "As a result of an initiative measure adopted by the voters in 2004, this principle now is enshrined in the state Constitution"] (Commission); *International Federation of Professional and Technical Engineers v. Superior Court* (2007) 2007 DJDAR 13105, 13106 [same] (International Federation); *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 750 [Proposition 59 "enshrined in our state Constitution the public's right to access records of public agencies"] (BRV); *Los Angeles Unified*, supra, 151 Cal.App.4th at p. 765 [same].)

### **Definitions**

In any request I make below, the following definitions apply:

1. The word "writings" means "writings" as defined in California Government Code Section 6252(f) and California Evidence Code Section 250;
2. The word policy(ies) means policies, procedures, guidelines, customs, rules and regulations or anything similar to those terms;
3. "URL" means "Universal Resource Locator" otherwise commonly known as "internet address," whether reflected in numerical format or canonical (human language name) format.

### **Previously Confidential Records May Become Public**

*Vallejos v. California Highway Patrol* (1979) 89 Cal.App.3d 781, 152 Cal.Rptr. 846 held after initial periods of confidentiality, some records ultimately become public records:

"The filing of a document imports that it is thereby placed in the custody of a public official to be preserved by him for public use. Because for a season its value is best conserved by maintaining its confidential character by excluding public gaze, it becomes no less a public record. (*People v. Tomalty*, 14 Cal.App. 224, 232 [111 P. 513]; *Cox v. Tyrone Power Enterprises, Inc.*, 49 Cal.App.2d 383, 395 [121 P.2d 829].) (*People v. Pearson* (1952) 111 Cal.App.2d 9, 30 [244 P.2d 35].)

Therefore, if you contend that any record I am seeking is temporarily but not permanently unavailable, please identify the precise or approximate date when you believe that this record will or may become publicly available and/or the circumstances which must exist for it to become publicly available.

### **Litigation or Potential Litigation Irrelevant**

In the event that you intend to object to release of these records because you believe that the request is somehow related to litigation, unless the records requested were expressly prepared for counsel, attorney-client privilege does not apply. Additionally, the fact that litigation exists or might come into play is fundamentally irrelevant to the California Public Records Act. See *City of Hemet v. Superior Court (Press-Enterprise Co.)* (1995) 37 Cal.App.4th 1411, 44 Cal.Rptr.2d 532.

### **Status of Client as Another Government Agency Irrelevant**

If I am making this request on behalf of another government agency that is irrelevant under the decision in *Los Angeles Unified School Dist. v. Superior Court (City of Long Beach)* (2007)151 Cal.App.4th 759, 60 Cal.Rptr.3d 445.

### **Requests for Records In the Possession of Government Contractors Must be Honored**

*Community Youth Athletic Center v. City of National City* (2013), Cal.App.4th [Nos. D060001, D061141. Fourth Dist., Div. One. Oct. 30, 2013.]

### **Request for Tort Claims made under the California Tort Claims Act**

If any of the writings I am requesting constitute demands for compensation made under the California Tort Claims Act or deposition transcripts, be advised that you cannot withhold them from me under provisions of Section 6254 of the Government Code (see *Board of Trustees of California State University v. Superior Court (The Copley Press, Inc.)* (2005)132 Cal.App.4th 889 , -- Cal.Rptr.3d --) and *Poway Unified School Dist. v. Superior Court (Copley Press Inc.)* (1998) 62 Cal.App.4th 1496, 73 Cal.Rptr.2d 777). Additionally, note that medical records, when attached to documents voluntarily submitted to a government agency with a letter concerning claim settlement were deemed public records in *REGISTER DIV. OF FREEDOM NEWSPAPERS, INC. v. COUNTY OF ORANGE*, (1984) 158 Cal.App.3d 893, 205 CR 92. Additionally under this case, investigative reports made for risk management as opposed to law enforcement purposes, the policies and procedures for settling tort claims and the minutes of settlement committee meetings are not protected from disclosure.

**I am therefore requesting copies of all writings as defined in California Government Code Section 6252(f) and California Evidence Code Section 250, constituting:**

### **Public Employee Name and Salary Information**

The names of all public employees, including peace officers and their salaries, have been held by the California Supreme Court to be public records in *Com. on Peace Officer etc. v. Superior Court of Sacramento County Case No. S134072* [8/27/2007] (2007) 42 Cal.4th 278, 64 CR 3<sup>rd</sup> 661, 165 P 3<sup>rd</sup> 462, and *International Federation of Professional and Technical Engineers, Local 21, AFL-CIO et al v. Superior Court of Alameda County*, Case No. S134253 [8/27/07]. These opinions are reinforced by Attorney General Opinion 07-208 (5/19/08) WL 2122596 which held that the names of officers involved in critical incidents or lethal force incidents must be disclosed. Furthermore, under Section 6253.31 of the Government Code, any contract entered into by a state or local agency subject to the laws governing the California Public Records Act that requires a private entity to review, audit, or report on any aspect of that agency is a matter of public record.

Public employment contracts themselves are public records: “Public employment contracts themselves are not subject to the exemption provisions of sections 6254 or 6255. (§ 6254.8.) And by itself, the "promise of secrecy cannot always shield a public record from disclosure." (*Versaci v. Superior Court* (2005) 127 Cal.App.4th 805, 821.

Likewise information concerning public employment retirees is public record: *San Diego County Employees Retirement Assn. v. Superior Court (California Foundation for Fiscal Responsibility)* (2011) 196 Cal.App.4th 1228; *Sacramento County Employees' Retirement System v. Superior Court* (2011) 195 Cal.App.4th 440 (SCERS) held that public pension agencies “must disclose names and corresponding pension benefit amounts of its members.”

Additionally the California Supreme Court has held that the names of peace officers involved in shootings must be disclosed in *Long Beach Police Officers Assn. v. City of Long Beach* (2014) , Cal.4<sup>th</sup> [No. S200872. May 29, 2014.]

**I am therefore requesting copies of all writings as defined in California Government Code Section 6252(f) and California Evidence Code Section 250, constituting:**

*County of Los Angeles v. Superior Court (Anderson-Barker)* (2012) 211 Cal.App.4th 57 holds that the records of charges for services to governments, such as those of law firms hired to defend the agency in court, are public records. So are government credit card usage records, under *People v. Bradley* (2012) 208 Cal.App.4th 64.

**I am therefore requesting copies of all writings as defined in California Government Code Section 6252(f) and California Evidence Code Section 250, constituting:**

### **Public Employee Disciplinary Investigation Records**

Under the CPRA investigative records of public employee disciplinary actions, including sexual harassment investigations are public records when:

"disclosure of a complaint against a public employee is justified if the complaint is of a substantial nature and there is reasonable cause to believe the complaint or charge of misconduct is well-founded." The court then held "neither the imposition of discipline nor a finding that the charge is true is a prerequisite to disclosure." That is, although there is "a strong policy for disclosure of true charges" (id. at p. 1046), a court must also order disclosure of records relevant to charges of misconduct that have not been found true by the public agency if the documents "reveal sufficient indicia of reliability to support a reasonable conclusion that the complaint was well founded." (Id. at p. 1047.) In this case, the court concluded "the documents reviewed provide a sufficient basis upon which to reasonably conclude the complaint in question is well founded." *Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250

**I am therefore requesting copies of all writings as defined in California Government Code Section 6252(f) and California Evidence Code Section 250, constituting:**

#### **Traffic Accident Reports**

*Vallejos v. California Highway Patrol* (1979) 89 Cal.App.3d 781, 152 Cal.Rptr. 846 held that traffic accident reports are public record.

**I am therefore requesting copies of all writings as defined in California Government Code Section 6252(f) and California Evidence Code Section 250, constituting:**

#### **Other Law Enforcement Reports and Documents**

Please note that as a Licensed Private Investigator, **I am entitled to un-redacted police information under Section 6254(f)(3) of the California Government Code.** Additionally, in relation to arrests made by District Attorney Investigators, I am entitled to disclosure of current information on an arrestee's parole or probation holds (*County of Los Angeles v. Superior Court*, supra, 18 Cal.App.4th at p. 595), [§ 6254, subd. (f)(1)] and Attorney General Opinion 06-203 (9/20/06) 2006 WL 3520334.

The charging documents of prosecutors are also public as held in *Weaver v. Superior Court* (2014), Cal.App.4th [No. D063768. Fourth Dist., Div. One. Mar. 12, 2014.]

Citations issued by state agencies under the Lanterman Long Term Care Act are also subject to disclosure under *State Dept. of Public Health v. Superior Court* (2013) , Cal.App.4<sup>th</sup> [No. C072325. Third Dist., Sept. 18, 2013.]

The release of “mug shots” by law enforcement is authorized under the CPRA under 86 Ops.Cal.Atty.Gen. 132 (2003), which holds that release of mug shot is one way for a law enforcement agency to fulfill its obligation to provide information in compliance with Section 6254(f) of the Government Code.

**I am therefore requesting copies of all writings as defined in California Government Code Section 6252(f) and California Evidence Code Section 250, constituting:**

**Peace Officer Complaint Procedures**

As to peace officer complaint procedures, both Section 832.5 of the Penal Code and the decision in *Cook v. Craig*, (1976) 55 Cal.App.3d 773, 127 CR 712 makes available under the California Public Records Act procedural regulations governing the investigation of citizen complaints about the conduct of peace officers.

**I am therefore requesting copies of all writings as defined in California Government Code Section 6252(f) and California Evidence Code Section 250, constituting:**

**Autopsy Reports**

Autopsy reports were held to be public record under California law that preceded the enactment of the California Public Records Act in *Walker v. Superior Court*, (1957) 155 Cal.App.2d 134, 317 P 2<sup>nd</sup> 130.

**I am therefore requesting copies of all writings as defined in California Government Code Section 6252(f) and California Evidence Code Section 250, constituting:**

**County Recorder Records**

As to County Recorder records, recorder’s accounting records including a payment receipt showing the tax amount, the recorder’s receipt are subject to inspection under the Public Records Act under Attorney General Opinion 06-1009 (7/19/07) 2007 WL 2076573.

**I am therefore requesting copies of all writings as defined in California Government Code Section 6252(f) and California Evidence Code Section 250, constituting:**

**State Dept of Public Health Records of Citations**

In a case currently on appeal to the California Supreme Court (*State Dep't of Public Health v. Superior Court*, S214679 (2013) 219 Cal.App.4th 966, the court of appeals wrote:

In this writ review proceeding (Gov. Code, § 6259, subd. (c)), we harmonize the Long-Term Care Act's public accessibility provisions with the Lanterman Act's confidentiality provisions in the context of this PRA request. We conclude, among other things, that Public Health must not redact from the citations provided under the PRA the particular description of what the nature of the violation was, a description required by the Long-Term Care Act.

### **Recordings of Government Proceedings**

Also preceding the enactment of the CPRA is the requirement that tape recordings of the proceedings of government bodies are public record under Attorney General Opinion 64-317 (4/17/81). See also *Consolidated Irrigation Dist. v. Superior Court (City of Selma)* (2012) 205 Cal.App.4th 697.

**I am therefore requesting copies of all writings as defined in California Government Code Section 6252(f) and California Evidence Code Section 250, constituting:**

### **Time for Compliance & Requirement of Written Justification for Refusal**

Under Section 6253 of the Government Code you have ten (10) days to comply with this request.

If you believe that I am not entitled to the records I am requesting, you must justify your refusal within (ten) 10 days in writing under Section 6255 of the Government Code. You may only refuse to give me these records if there is an express law prohibiting you from giving them to me. In the case of *California State University, Fresno Assn., Inc. v. Superior Court (McClatchy Co.)* (2001) 90 Cal.App.4th 810, 108 Cal.Rptr.2d 870 [No. F037383. Fifth Dist. Jul. 16, 2001.] the court held that "The burden of proof is on the proponent of nondisclosure, who must demonstrate a 'clear overbalance' on the side of confidentiality. [Citations.] The purpose of the requesting party in seeking disclosure cannot be considered.... It is also irrelevant that the requesting party is a newspaper or other form of media, because it is well established that the media has no greater right of access to public records than the general public...."

### **Duty to Maintain "911" Audio Recordings**

If any of the items I am requesting as defined in Evidence Code Section 250 and Section 6252(f) of the Government Code constitute video and/or audio recordings, and if you withhold them as not obtainable through the California Public Records Act, then this

letter will serve as notice that these items may have evidentiary value and you are required to maintain them pursuant to Government Code Section 26202.6.

### **Demand to Maintain Evidence**

This letter constitutes a formal demand to maintain evidence as it currently exists. If you destroy, lose, misplace, damage or otherwise make these items unavailable prior to the time that a court order or subpoena duces tecum can be obtained, you may be subject to a variety of sanctions (see *Willard vs. Caterpillar, Inc.* [1995] 40 Cal.App.4th 892. *Williams v. Russ* (2008) 167 Cal.App.4th 1215 held that:

Spoliation of evidence means the destruction or significant alteration of evidence or the failure to preserve evidence for another's use in pending or future litigation. (*Willard v. Caterpillar, Inc.* (1995) 40 Cal.App.4th 892, 907, overruled on other grounds in *Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1, 18, fn. 4 (*Cedars-Sinai*.) Such conduct is condemned because it "can destroy fairness and justice, for it increases the risk of an erroneous decision on the merits of the underlying cause of action. Destroying evidence can also increase the costs of litigation as parties attempt to reconstruct the destroyed evidence or to develop other evidence, which may be less accessible, less persuasive, or both." (*Cedars-Sinai*, supra, at p. 8.) While there is no tort cause of action for the intentional destruction of evidence after litigation has commenced, it is a misuse of the discovery process that is subject to a broad range of punishment, including monetary, issue, evidentiary, and terminating sanctions. (Code Civ. Proc., §§ 2023.010, subd. (d), 2023.030, subds. (a)-(d); *Cedars-Sinai*, at p. 12.) A terminating sanction is appropriate in the first instance without a violation of prior court orders in egregious cases of intentional spoliation of evidence. (*R.S. Creative, Inc. v. Creative Cotton, Ltd.* (1999) 75 Cal.App.4th 486, 497.)

Such behavior may also be criminal, under **California Penal Code Section 135**, which states:

Every person who, knowing that any book, paper, record, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, inquiry, or investigation whatever, authorized by law, willfully destroys or conceals the same, with intent thereby to prevent it from being produced, is guilty of a misdemeanor.

If any data is maintained in digital format, I strongly advise you to hire a forensic computer examiner who is qualified to clone any hard drive on which the data I am requesting currently exists if you do not intend to produce it without a court order, so that the data will be preserved intact and in an admissible format.

### **Legal Right to Bring Suit to Enforce Right to Access**

If you fail to comply with this request, I have a legal right to bring suit to force you to comply under Section 6259 of the Government Code and if I prevail, it is mandatory that the court award me reasonable attorney fees and costs.

### **Preference for Digital Response**

If possible I request that you provide the above requested documents in digital format by any of the following means:

1. If they are already online, please provide me by email with the precise URL by which I can access them;
2. If the files are small enough to be transmitted by regular email, send them to [pi@janbtucker.com](mailto:pi@janbtucker.com), preferably in PDF format;
3. If the files are too big to send by regular email:
  - (a) I can create a Dropbox file for you to upload them to;
  - (b) I can supply you with a DVD formatted for use like a Flash Drive in Microsoft format;
  - (c) I can supply you with a 16 GB Flash Drive in Microsoft format.