



California Public Records Act Update

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This image shows a full page of blank white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page, providing a template for writing or drawing. There are no margins, text, or other markings present.



**California Law Revision Commission – Tentative Recommendation –
California Public Records Act Clean-up (May 2019)**

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Introduction

In late 2016, the Legislature directed the California Law Revision Commission (“CLRC”) to conduct a “nonsubstantive” clean-up of the California Public Records Act (“CPRA”) (“Clean-up Study”)¹ to address the “piecemeal nature” of the many revisions to the CPRA. This paper traces the history of the Clean-up Study, provides an overview of the State’s proposed revisions and discusses the work of the League of California Cities, City Attorneys’ Department’s California Public Records Act Committee (“CPRA Committee”) related to the proposed legislation.

History of the Clean-up Study

In May 2019, the CLRC proposed its *Tentative Recommendation California Public Records Act Clean-Up* (“Tentative Recommendation”) for public comment.²

Assembly Member Chau authored the legislative resolution and he included the following in the resolution:

“Resolved, That the Legislature authorizes and requests that the California Law Revision Commission study, report on, and prepare recommended legislation as soon as possible, considering the Commission’s preexisting duties and workload demands, concerning the revision of the portions of the California Public Records Act and related provisions, and that this legislation shall accomplish all of the following objectives:

- “(1) Reduce the length and complexity of current sections.
- (2) Avoid unnecessary cross-references.
- (3) Neither expand nor contract the scope of existing exemptions to the general rule that records are open to the public pursuant to the current provisions of the Public Records Act.
- (4) To the extent compatible with (3), use terms with common definitions.
- (5) Organize the existing provisions in such a way that similar provisions are located in close proximity to one another.
- (6) Eliminate duplicate provisions.
- (7) Clearly express legislative intent without any change in the substantive provisions; ...”³

The Assembly Committee on Judiciary explained the need for the study:

“The CPRA, signed into law in 1968 as a general record keeping law, allows the public to monitor government activity. Since the enactment of the CPRA, it has been amended multiple times to exempt certain records. ... Due to the multiple changes in the statute, *the CPRA has become difficult for the public to understand.*”⁴

¹ 2016 Cal. Stat. res. ch. 150 (ACR 148 (Chau)); see also 2018 Cal. Stat. res. ch. 158 (SRC 91 (Roth)) (reaffirming Commission’s authority to study CPRA).

² Comments on the Tentative Recommendation must have been received by the CLRC no later than August 26, 2019.

³ 2016 Cal. Stat. res. ch. 150 (ACR 148 (Chau)).

⁴ Assembly Committee on Judiciary Analysis of ACR 148 (April 19, 2016), p.3 (emphasis in original).

The analysis for the Senate Committee on Judiciary further explained:

“Because of nearly 50 years of amendments to the CPRA, *the CPRA has become more difficult to understand*. Making it easier for the public to understand their rights to access government information arguably will lead to more access to public records and more government accountability.”⁵

The Legislature unanimously passed the resolution near the end of the 2016 legislative session. It was at this time that the League of California Cities became aware of the Clean-up Study and directed it to the CPRA Committee for its review. *See* discussion at the end of this paper for the CPRA Committee’s comments regarding the Clean-up Study.

Through the Clean-up Study, the CLRC was instructed to “study, report on and prepare recommended legislation...concerning the revision of *the portions of the government code relating to public records*. ...”⁶ The resolution was amended to instruct the CLRC to “study, report on, and prepare recommended legislation ... concerning the revision of ... the *California Public Records Act and related provisions*. ...” This amendment clarified that the CLRC’s authority was limited to public records inspection law and not to a review of other public records laws.⁷ However, the CLRC’s authority was not restricted to the Government Code. The CLRC was able to review other statutes, if they related to the CPRA. The CLRC was also authorized to prepare a recodification of the CPRA and to recommend revisions of other statutes that cross-reference to the CPRA.

The Legislature clearly intended that the Clean-up Study was to be entirely nonsubstantive in nature. The Legislature’s direction to the CLRC was to “clearly express legislative intent *without any change* in the substantive provisions” and “[n]either *expand nor contract* the scope of existing exemptions to the general rule that records are open to the public pursuant to the current provisions of the Public Records Act.”⁸

A very important provision of the Tentative Recommendation is that it contains an explanatory “comment” for every section that was added, amended or repealed. It should be noted that almost every comment in the Tentative Recommendation expressly states that a proposed new code section continues an existing code section “without substantive change.” These comments are also intended to assist in determining legislative intent.

CPRA Recodification Act of 2020

The proposed legislation will be known as “*CPRA Recodification Act of 2020*.”⁹ The introduction clearly states the nonsubstantive purpose and effect of the recodification. For examples:

⁵ Senate Committee on Judiciary analysis of ACR 148 (June 14, 2016), p.4 (emphasis in original).

⁶ ARC 148 (Chau), as introduced on March 3, 2016 (emphasis in original).

⁷ 2016 Cal. Stat. res. ch. 150 (ACR 148 (Chau)); see also 2018 Cal. Stat. res. ch. 158 (SRC 91 (Roth)) (reaffirming Commission’s authority to study CPRA).

⁸ 2016 Cal. Stat. res. ch. 150 (emphasis in original).

⁹ *See* Proposed Derivation of New Law, a copy of which is attached to this paper.

- Proposed Section 7920.100 is a “general” statement regarding the nonsubstantive effect of the recodification.
- Proposed Section 7920.105 states that a provision of the proposed legislation is intended as a restatement and continuation of the provision that it restates, rather than a new enactment.
- Proposed Section 7920.110 states that the restatement of an existing CPRA provision is not intended to have any effect on judicial interpretations of the restated provision.
- Proposed Section 7920.120 states that the restatement of a CPRA provision is not intended to have any effect on judicial decisions or attorney general opinions on the constitutionality of the restated provision.¹⁰

Structure of the Proposed Legislation

The CPRA is currently located in the Government Code as “Chapter 3.5 Inspection of Public Records” in “Division 7. Miscellaneous” in “Title 1. General.” The CLRC proposes to repeal the existing CPRA and recodify it in the Government Code as a new division (Division 10) of Title 1.¹¹ The Tentative Recommendation states that this new division makes it possible to divide the materials into parts, chapters, and articles with enough subcategories to create a “user-friendly” organizational scheme. The CRLC proposes that Division 10 would be divided into 6 parts as follows:

Part 1 - General Provisions.

Part 2 - Disclosure and Exemptions Generally.

Part 3 - Procedures.

Part 4 - Enforcement.

Part 5 - Specific Types of Public Records.

Part 6 - Other Exemptions from Disclosures.

Numbering System

The CLRC proposes a three-digit decimal system for numbering code sections (i.e. Section 7920.000). This numbering approach is intended to prevent confusion regarding the proper sequencing of code sections, and to promote logical, “user-friendly” organization as the CPRA continues to evolve.

¹⁰ See proposed Government Code sections 7920.100 -7920.120.

¹¹ See proposed Contents table, a copy of which is attached to this paper.

The CLRC also states that one of the other intended purposes of the Clean-up Study was to “reduce the length and complexity of current sections.”¹² The CLRC proposes to divide lengthy sections into shorter and simpler provisions.

Comments and Cross-References

The existing CPRA contains numerous internal cross-references. In the proposed legislation, the CLRC updated each cross-reference to reflect the new numbering scheme in the recodification. The Tentative Recommendation includes two tables, located immediately after the proposed legislation. One table contains the disposition of each existing code section, the other table contains the derivation of each proposed code section.

Pending, Future Legislation and Delayed Operative Date

If there are any pending bills to revise the CPRA and those bills are enacted, then the CLRC will incorporate the substance of the enacted bill(s) into the proposed legislation without substantive change.

The CLRC recommends that the proposed legislation will be given a delayed operative date of July 1, 2021.

CPRA Committee Comments

On January 26, 2017, the CLRC Memorandum 2017-5 entitled *California Public Records Act Clean-up: Scope of Study* was made public. Over the two years of the Clean-up Study, the CPRA Committee commented on many of the CLRC’s Memoranda. A few of the CPRA Committee’s significant comments on the Clean-up Study are discussed below.

Memorandum 2017-5 introduced the Clean-up Study and discussed its timing, scope and methodology. The CPRA Committee quickly responded to CLRC on February 14, 2017 and noted that the Committee appreciated the opportunity to comment on the Clean-up Study and looked forward to working with the CLRC.

From the beginning of the Clean-up Study, the CPRA Committee voiced its overall concern that, through no fault of the CLRC, the revisions might not be entirely nonsubstantive in nature. The CPRA Committee was most particularly concerned with how the Clean-up Study might affect the application of existing judicial and Attorney General’s opinions. With that in mind, the CPRA Committee requested that any proposed legislation should contain specific legislative intent that any changes made to the CPRA were not intended to supersede or modify existing case law or Attorney General opinions. The CPRA Committee was also concerned how the Clean-Up Study would affect and/or conflict with Proposition 59, the “Sunshine Amendment” to the Constitution of California.

¹² 2016 Cal. Stat. res. ch. 150 (ACR 148 (Chau)); see also 2018 Cal. Stat. res. ch. 158 (SRC 91 (Roth)) (reaffirming Commission’s authority to study CPRA).

As mentioned above, the CLRC included several provisions in the proposed legislation that it was intended to preserve the nonsubstantive effect of the recodification and that it was not intended to effect existing judicial or Attorney General opinions.¹³

In September 2017, the CPRA Committee again voiced its concern that recodification of the CPRA may have far-reaching impacts that the CLRC may not have considered and could result in an increase in litigation for public agencies. The CPRA Committee further commented that the new reorganization of the CPRA would render local agency publications, guidebooks and reference materials obsolete.

In November 2017, the CPRA Committee strongly opposed the removal of either subsection (a) or (b) from Government Code section 6253. The CPRA Committee advised the CLRC that these two subsections express the *fundamental purpose* of the CPRA because they provide for the two ways to gain access to public records under the CPRA by inspection and/or copying, and any modifications to these subsections would constitute a substantive change of the law. The CLRC did not change this section in the proposed legislation.

In May 2018 the CPRA Committee voiced its concerns regarding CLRC's proposed approach to modifying Government Code Section 6254(f) ("6254(f)").¹⁴ The CPRA Committee strongly advocated that if CLRC was inclined to make any changes to 6254 (f), whether substantive or nonsubstantive, that it should involve the law enforcement community, along with representatives from public agency law communities (City Attorneys, Attorney Generals, County Council, etc.) to participate in what could turn out to be a complicated and daunting project.

The Tentative Recommendation noted that the CLRC refrained from attempting to rephrase 6254(f) more clearly, but instead relocated 6245(f) into a new article.¹⁵ The CPRA Committee intends to comment on the Tentative Recommendation regarding the reorganization of former section 6254(f). As reorganized, 6254(f) was divided into many subparts and as a result, it is confusing and could affect how it is interpreted in future litigation.

Next Steps

On completion of a final recommendation of the Clean-up Study, the CLRC will present its recommendation, including the comments, to the Legislature and the Governor. If a bill is introduced to implement the CLRC's recommendation, it will provide the full recommendation to each member of every policy committee that reviews the bill.

¹³ See proposed Government Code sections 7920.100 -7920.120.

¹⁴ Government Code section 6254(f) currently governs law enforcement records, which are *generally* exempt from disclosure under the CPRA.

¹⁵ See proposed Government Code sections 7923.600-7923.625.

DERIVATION OF NEW LAW

Note. This table shows the derivation of each proposed provision in this draft. Unless otherwise indicated, all statutory references are to the Government Code.

Proposed Provision(s)	Existing Provision(s)	Proposed Provision(s)	Existing Provision(s)
7920.000	6251	7922.535(c)	6253(c) 5th sent
7920.005	new	7922.540(a)	6255(b)
7920.100	new	7922.540(b)	6253(d) 2d sent
7920.105	new	7922.540(c)	new
7920.110	new	7922.545	6253(f)
7920.115	new	7922.545(a)	6253(f) 1st sent
7920.120	new	7922.545(b)	6253(f) 2d sent
7920.200	6260	7922.570-7922.580	6253.9
7920.500	6254.21(f)	7922.570(a)	6253.9 intro cl 1st part
7920.505	new	7922.570(b)	6253.9 intro cl 2d part,
7920.510	6252(a)	(a)(1), (a)(2) 1st sent
7920.515	6252(b)	7922.570(c)	6253.9(d)
7920.520	6252(c)	7922.575(a)	6253.9(a)(2) 2d sent
7920.525(a)	6252(d)	7922.575(b)	6253.9(b)
7920.525(b)	new	7922.580(a)	6253.9(c)
7920.530	6252(e)	7922.580(b)	6253.9(e)
7920.535	6254.24	7922.580(c)	6253.9(f)
7920.540	6252(f)	7922.580(d)	6253.9(g)
7920.545	new	7922.585	6254.9
7920.550	6252(g)	7922.600	6253.1(a)-(c)
7921.000	6250	7922.605	6253.1(d)
7921.005	6253.3	7922.630	6253.4(a) 1st ¶
7921.010	6270	7922.635	6253.4(a) 2d ¶
7921.300	6257.5	7922.640	6253.4(b)
7921.305	6252.5	7922.680	6253.10
7921.310	6252.7	7922.700-7922.725	6270.5
7921.500	6254 next-to-last ¶	7922.700(a)	6270.5(c)(1)
7921.505	6254.5	7922.700(b)	6270.5(c)(3)
7921.505(a)	6254.5 2d sent	7922.705	6270.5(c)(2)
7921.505(b)	6254.5 1st sent	7922.710(a)	6270.5(a) 1st sent
7921.505(c)	6254.5(a)-(i)	7922.710(b)	6270.5(f)
7921.700	6263	7922.715(a)	6270.5(a) 2d sent
7921.705	6264	7922.715(b)	6270.5(a) 3d sent
7921.710	6265	7922.720(a), (b)	6270.5(a) 4th sent
7922.000	6255(a)	7922.720(c)	6270.5(e)
7922.200	6254.29	7922.725(a)	6270.5(b)
7922.205	6254.27	7922.725(b)	6270.5(d)
7922.210	6254.28	7923.000	6258 1st sent
7922.500	6253(d) 1st sent	7923.005	6258 2d sent
7922.505	6253(e)	7923.100-7923.510	6259(d) (except (c)
7922.525	6253(a)	1st sent intro cl)
7922.525(a)	6253(a) 1st sent	7923.100	6259(a) 1st sent
7922.525(b)	6253(a) 2d sent	7923.105	6259(a) 2d sent
7922.530	6253(b)	7923.110	6259(b)
7922.535	6253(c)	7923.115(a)-(b)	6259(d)
7922.535(a)	6253(c) 1st, 4th sent	7923.115(c)	6259(e)
7922.535(b)	6253(c) 2d, 3d sent	7923.120	6259(c) 5th sent

Proposed Provision(s)	Existing Provision(s)	Proposed Provision(s)	Existing Provision(s)
7923.500	6259(c) 1st sent	7924.510	6254.7 (except (c))
7923.505(a)	6259(c) 2d sent	7924.510(a)	6254.7(a)
7923.505(b)	6259(c) 3d sent	7924.510(b)	6254.7(b)
7923.510	6259(c) 4th sent	7924.510(c)	6254.7(d) 1st sent
7923.600-7923.625	6254(f)	7924.510(d)	6254.7(e)
7923.600(a)	6254(f) 1st sent	7924.510(e)	6254.7(f)
7923.600(b)	6254(f) 2d ¶	7924.510(f)	6254.7(d) 2d sent
7923.605(a)	6254(f) 2d sent	7924.700	6254.7(c)
7923.605(b)	6254(f) 3d sent	7924.900	6253.8(a)-(e)
7923.610	6254(f) 3d ¶ (re 6254(f)(1)), 6254(f)(1)	7925.000	6254(i)
7923.615(a)	6254(f) 3d ¶ (re 6254(f)(2)), 6254(f)(2)(A) 1st sent	7925.005	6254(n)
7923.615(b)	6254(f)(2)(A) 2d, 3d sent	7925.010	6254(x)
7923.615(c)	6254(f)(2)(B)	7926.000	6254(s)
7923.620(a)	6254(f) 3d ¶ (re 6254(f)(3)), 6254(f)(3) 1st, 2d sent	7926.100	6254(ac)
7923.620(b)	6254(f)(3) 3d sent	7926.200	6254 last ¶ (unlabeled)
7923.620(c)	6254(f)(3) 4th sent	7926.205	6254.22
7923.625	6254(f)(4)	7926.205(a)	6254.22 1st sent
7923.650	6262	7926.205(b)	6254.22 2d sent
7923.655	6254.30	7926.205(c)	6254.22 3d & 4th sent
7923.655(a)	6254.30 1st sent	7926.210	6254(t)
7923.655(b)	6254.30 2d sent	7926.215	6254.14(a)
7923.700	6254(z)	7926.215(a)	6254.14(a)(1)
7923.750	6254.4.5	7926.215(b)	6254.14(a)(2)
7923.755	6254.17	7926.215(c)	6254.14(a)(3)
7923.800-7923.805	6254(u)	7926.215(d)	6254.14(a)(4)
7923.800	6254(u)(1)	7926.215(e)	6254.14(a)(5)
7923.805	6254(u)(2)-(3)	7926.220(a)	6254(q)(1)
7924.000	6254.4	7926.220(b)	6254(q)(2)
7924.005	6253.6	7926.220(c)	6254(q)(3)
7924.100	6253.5(c)	7926.220(d)	6254(q)(4), 6254.14(b) (re 6254(q))
7924.105	6253.5(d)	7926.225(a)	6254(v)(1)
7924.110(a)-(b)	6253.5(a) 1st sent	7926.225(b)	6254(v)(2)
7924.110(c)	6253.5(a) 2d sent	7926.225(c)	6254(v)(3)
7924.110(d)	6253.5(b)	7926.225(d)	6254(v)(4), 6254.14(b) (re 6254(v))
7924.300-7924.335	6254.2	7926.230(a)	6254(y)(1)
7924.300	6254.2(a)	7926.230(b)	6254(y)(2)
7924.305(a)	6254.2(b)	7926.230(c)	6254(y)(3)
7924.305(b)	6254.2(c)	7926.230(d)	6254(y)(4), 6254.14(b)(re 6254(y))
7924.305(c)	6254.2(d)	7926.230(e)	6254(y)(5)
7924.305(d)	6254.2(e)	7926.235	6254(w)
7924.305(e)	6254.2(m)	7926.235(a)	6254(w)(1)
7924.305(f)	6254.2(f)	7926.235(b)	6254(w)(2)
7924.310(a)-(b)	6254.2(h)	7926.235(c)	6254(w)(3)
7924.310(c)	6254.2(k)	7926.300	6253.2
7924.315	6254.2(i)	7926.400-7926.430	6254.18
7924.320	6254.2(j)	7926.400	6254.18(b)
7924.325	6254.2(n)	7926.400(a)	6254.18(b)(1)
7924.330	6254.2(l)	7926.400(b)	6254.18(b)(2)
7924.335	6254.2(g)	7926.400(c)	6254.18(b)(3)
7924.500	6254.11	7926.400(d)	6254.18(b)(4)
7924.505	6254(o)	7926.405	6254.18(a)

Proposed Provision(s)	Existing Provision(s)	Proposed Provision(s)	Existing Provision(s)
7926.410	6254.18(c)	7928.705	6254(h)
7926.415	6254.18(d)	7928.710(a)	6254.26(c)
7926.415(a)	6254.18(d) 1st sent	7928.710(b)	6254.26(a)
7926.415(b)	6254.18(d) 3d sent	7928.710(c)	6254.26(b)
7926.415(c)	6254.18(d) 2d sent	7928.715	6254.33
7926.420	6254.18(e)	7928.720	6261
7926.425	6254.18(f)	7928.800	6270.6
7926.430	6254.18(g)	7929.000	6254(d)
7926.500	6270.7	7929.005	6254.12
7927.000	6254(r)	7929.200	6254(aa)
7927.005	6254.10	7929.205	6254(ab)
7927.100	6254(j)	7929.205(a)	6254(ab) 2d sent
7927.105	6267	7929.205(b)	6254(ab) 1st sent
7927.200	6254(b)	7929.205(c)	6254(ab) 3d sent
7927.205	6254.25	7929.210	6254.19
7927.300	6254(e)	7929.215	6254.23
7927.400	6254.20	7929.400-7929.430	6254(ad)
7927.405	6254.1(b)	7929.400	6254(ad)(1)
7927.410	6254.16	7929.405	6254(ad)(2)
7927.415	6254.1(a)	7929.410	6254(ad)(3)
7927.420	6252.6	7929.415	6254(ad)(4)
7927.500	6254(a)	7929.420	6254(ad)(5)
7927.600	6254.6	7929.425	6254(ad)(6)
7927.605	6254.15	7929.430	6254(ad)(7)
7927.700	6254(c)	7929.600	6254.1(c)
7927.705	6254(k)	7929.605	6254(g)
7928.000	6254.1	7929.610	6254.13
7928.005	6268(a)	7930.000	6275
7928.010-7928.015	6268	7930.005	6276
7928.010(a)	6268(b)	7930.100-7930.215	6275-6276.48
7928.010(b)	6268(c)	7930.100	6276.01
7928.015	6268.5	7930.105	6276.02
7928.100	6254(m)	7930.110	6276.04
7928.200-7928.230	6254.21 (except (f))	7930.115	6276.06
7928.200(a)	6254.21(e)	7930.120	6276.08
7928.200(b)	6254.21(g)	7930.125	6276.10
7928.205	6254.21(a)	7930.130	6276.12
7928.210	6254.21(b)	7930.135	6276.14
7928.215-7928.225	6254.21(c)	7930.140	6276.16
7928.215	6254.21(c)(1)	7930.145	6276.18
7928.215(a)	6254.21(c)(1)(E)	7930.150	6276.22
7928.215(b)	6254.21(c)(1)(A)	7930.155	6276.24
7928.215(c)	6254.21(c)(1)(B)	7930.160	6276.26
7928.215(d)	6254.21(c)(1)(C)	7930.165	6276.28
7928.215(e)	6254.21(c)(1)(D)	7930.170	6276.30
7928.220	6254.21(c)(3)	7930.175	6276.32
7928.225	6254.21(c)(2)	7930.180	6276.34
7928.230	6254.21(d)	7930.185	6276.36
7928.300	6254.3	7930.190	6276.38
7928.400	6254.8	7930.195	6276.40
7928.405	6254(p)(1)	7930.200	6276.42
7928.410	6254(p)(2)	7930.205	6276.44
7928.700	6253.31	7930.210	6276.46
		7930.215	6276.48

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