THE PEOPLE'S BUSINESS:
A Guide to the Public Records Act
December 2014 Guide Supplement

This 2014 supplement to ***THE PEOPLE'S BUSINESS: A Guide to the California Public Records Act*** discusses changes in the law since the guide's original publication in 2008. **It should be used in conjunction with and read together with the 2008 guide.** (The August 2011 Guide Supplement should be discarded.) This 2014 Guide Supplement covers both recent statutory changes and appellate decisions that affect the California Public Records Act. The updates direct the reader to the chapter, subheading and page of the main text of the 2008 guide. An updated and complete table of ***Frequently Requested Information and Records*** is also included. Our goal is to provide a comprehensive resource to assist cities and other local public agencies in complying with the Act and other related state laws.

This 2014 Guide Supplement is made available thanks to the outstanding work and dedication of the City Attorneys' Department 2014 California Public Records Act Committee:

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The League hereby acknowledges and thanks the 2014 committee, the original authors and reviewers of the 2008 guide, the committee members who authored the 2010 and 2011 guide supplements that followed, and all committee members that have served since publication of the 2011 supplement. All have made important contributions to the guide and related supplements.

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2014 Guide Supplement
(Read together with Original 2008 Guide)

CHAPTER 1: INTRODUCTION AND OVERVIEW

■ ACHIEVING BALANCE

Page 3 – Replace the paragraph with the following paragraphs:

In enacting the Act, the Legislature struck a balance between two competing yet fundamental interests. The legislative findings declare that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in the state and that the Legislature is "mindful of the right of individuals to privacy." [Gov. Code, § 6250, Cal. Const., art. 1, § 3, subd. (b)(3).] The Act balances these competing interests by reserving an "island of privacy upon the broad sea of enforced disclosure." [*Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645.] For the past four decades, courts have balanced these competing interests in deciding whether to order disclosure of records. [*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136; *American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307; *Britt v. Superior Court* (1978) 20 Cal.3d 844.] The courts have consistently held that exemptions must be narrowly construed. [*Sutter's Place v. Superior Court* (2008) 161 Cal.App.4th 1370; *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469; *New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762.] Ambiguities in the Act must be interpreted in a way that maximizes the public's access to information unless the Legislature has expressly provided otherwise. [*Sierra Club v. Superior Court of Orange County* (2013) 57 Cal.4th 157.]

Certain provisions in the Act help maintain the balancing scheme established under the Act and the cases interpreting it by prohibiting state and local agencies from making arrangements with other entities that could limit access to public records. For example, state and local agencies may not allow another party to control the disclosure of information otherwise subject to disclosure under the Act. [Gov. Code, § 6253.3.] Also, state and local agencies may not provide public records subject to disclosure under the Act to a private entity in a way that prevents a state or local agency from providing the records directly pursuant to the Act. [Gov. Code, § 6270 subd. (a).]

Page 3 – Add the following ***Practice Tip****:*

The Act provides that a third party cannot control disclosure of public records. So, for example, even though contracts or settlement agreements may require a city to give notice to another party

that a request for the contract or settlement agreement has been made, the other party to such contract or settlement agreement cannot dictate whether the record is in fact a public record.

■ **Proposition 59**

Page 3 – Replace this section with the following:

In November 2004, the voters approved Proposition 59, which amended the California Constitution to include the public's right to access public records: "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." [Cal. Const., art. 1, § 3, subd. (b)(1).] As amended, the California Constitution provides that each statute, court rule and other authority "shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access." [Cal. Const., art. 1, § 3, subd. (b)(2).] The Proposition 59 amendments expressly retained and did not supersede or modify other existing constitutional, statutory or regulatory provisions, including the rights of privacy, due process and equal protection, as well as any constitutional, statutory or common-law exception to the right of access to public records in effect on the amendments' effective date. This includes any statute protecting the confidentiality of law enforcement and prosecution records. [Cal. Const., art. 1, § 3, subds. (b)(3), (4), (5).] The courts and the attorney general have determined that the constitutional provisions added by Proposition 59 maintain the established principles that disclosure obligations under the Act must be construed broadly, and exemptions construed narrowly. [*Sierra Club v. Superior Court of Orange County* (2013) 57 Cal.4th 157; *International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319; *Sutter's Place, v. Superior Court* (2008) 161 Cal.App.4th 1370; *Los Angeles Unified Sch. Dist. v. Superior Court* (2007) 151 Cal.App.4th 759; *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742; 89 Ops. Cal. Atty. Gen. 204 (2006); 88 Ops. Cal. Atty. Gen. 16 (2005); 87 Ops. Cal. Atty. Gen. 181 (2004).]

Page 3 - Add a new section as follows:

■ **Proposition 42**

In June 2014, the voters approved Proposition 42, which amended the California Constitution "to ensure public access to the meetings of public bodies and the writings of public officials and agencies." [Cal. Const., art. 1, § 3, subd. (b)(7).] As amended, the constitution requires local agencies to comply with the Act, and with the Brown Act, and any subsequent amendments to either act, any successor act, and any amendments to any successor act that contain findings that the legislation furthers the purposes of public access to public body meetings and public official and agency writings. [Cal. Const., art. 1, § 3, subd. (b)(7).] As amended, the constitution also no longer requires the state to reimburse local governments for the cost of complying with legislative mandates in the Act, the Brown Act and successor statutes and amendments. [Cal. Const., art. 13B, § 6, subd. (a)(4).]

■ **Beyond the Law**

Page 4 – Add the following at the end of the first paragraph:
Such "sunshine ordinances," however, do not purport to authorize a locality to enact an ordinance about records access that conflicts with the locality's governing city charter. [*St. Croix v. Superior Court* (2014) 228 Cal.App.4th 434 ("Because the charter incorporates the [attorney-client] privilege, an ordinance (whether enacted by the City's board of supervisors or by the voters) cannot eliminate it, either by designating as not confidential a class of material that otherwise would be protected by the privilege, or by waiving the privilege as to that category of documents; only a charter amendment can achieve that result.").]

CHAPTER 2: THE BASICS

■ **WHAT ARE PUBLIC RECORDS?**

Page 6 – Insert a new footnote at the end of the second paragraph:
Gov. Code, § 6253.9. See also, the discussion concerning production of electronic records and communications in Chapter 6.

Page 6 – Insert a new sentence at the end of the second paragraph:
However, documents that an agency previously possessed, but does not actually or constructively possess at the time of the request may not be subject to disclosure. [See *Am. Small Bus. League v. United States SBA* (2010) 623 F.3d 1052, (analyzed under FOIA). See "Practice Tip," p. 30 of the Guide which discusses treatment of FOIA precedent.]

Page 6 - Insert a new third paragraph after the second paragraph in this section:
In addition to defining records subject to the Act, the Act also expressly makes particular types of records subject to the Act, or subject to disclosure, or both. For example, the Act provides that contracts of state and local agencies that require a private entity to review, audit or report on any aspect of the agency are public records, to the extent the contract is otherwise subject to disclosure under the Act. [Gov. Code, § 6253.31.] Specified pollution information that state or local agencies require applicants to submit, pollution monitoring data from stationary sources, and records of notices and orders to building owners of housing or building law violations are also public records. [Gov. Code, § 6254.7, but see *Masonite Corp. v. County of Mendocino Air Quality Management District* (1996) 42 Cal.App.4th 436, regarding trade secret information that may be exempt from disclosure.] Employment contracts between state and local agencies and any public official or employee are public records subject to disclosure. [Gov. Code, § 6254.8.] Itemized statements of the total expenditures and disbursements of judicial agencies provided for under the State Constitution are open for inspection. [Gov. Code, § 6261.]

Page 7 – Replace the entire last paragraph in this section with the following:

Over the years the courts have both broadened and limited the scope of the definition of a "public record." It is clear that the term "public records" encompasses more than simply those documents that public officials are required by law to keep as official records. Courts have held that a public record is one that is "necessary or convenient to the discharge of [an] official duty"

such as a status memorandum provided to the city manager on a pending project [*Braun v. City of Taft* (1984) 154 Cal.App.3d 332; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762]. "The statute unambiguously states that '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, § 6252, subd. (e). *Regents of the University of California v. Superior Court* (2013) 222 Cal.App.4th 383.] Thus, unless the writing is related 'to the conduct of the public's business' *and* is 'prepared, owned, used or retained by' a public entity, it is not a public record under the CPRA, and its disclosure would not be governed by the Act. [*Regents of the University of California v. Superior Court* (2013) 222 Cal.App.4th 383.] An appellate court has ruled that emails of individual public officials and employees that relate to public business and are sent or received on personal devices and accounts that are inaccessible to a local agency are not public records subject to the Act because they are not "prepared, owned, used or retained by a local agency." However, that opinion has been depublished by grant of review by the California Supreme Court. [*City of San Jose v. Superior Court* (2014) 225 Cal.App.4th 7; *review granted, depublished* (2014) 173 Cal.Rptr. 3d 46.] See Locating Records, p. 12, and Electronic Records, p. 51. Records in the possession of a city's consultants, which are deemed "owned" by the city by terms of an agreement between the city and the consultant, are also public records. [*Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385; *Consolidated Irrigation District v. Superior Court* (2013) 205 Cal.App.4th 697.] Courts have observed that merely because a writing is in the possession of the local agency, it is not automatically a public record. It must also relate to the conduct of the public's business. [Gov. Code, § 6252, subd. (e); *Regents of the University of California v. Superior Court* (2013) 222 Cal.App.4th 383; *Braun v. City of Taft* (1984) 154 Cal.App.3d 332; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762.] For example, records containing purely personal information unrelated to the conduct of the people's business, such as an employee's personal address list or grocery list, are considered outside the scope of the Act. [*San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762.]

■ WHO CAN REQUEST RECORDS?

Page 7 - Replace the entire paragraph with the following:
All "persons" have the right to inspect and copy disclosable public records. A "person" need not be a resident of California or a citizen of the United States to make use of the Act. [*San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762.] "Persons" include corporations, partnerships, limited liability companies, firms or associations. [Gov. Code, § 6252, subd. (c); *Connell v. Superior Court* (1997) 56 Cal.App.4th 601.] Often, requesters include persons who have filed claims or lawsuits against the government, or who are investigating the possibility of doing so, or who just want to know what their government officials are up to. Local agencies and their officials are entitled to access public records on the same basis as any other person. [Gov. Code, § 6252.5.] With certain exceptions, neither the media nor a person who is the subject of a public record has any greater right of access to public records than any other person. [Gov. Code, § 6252.5; *Los Angeles Unified School Dist. v. Superior Court* (2007) 151 Cal.App.4th 759; *Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271.] Further, local agency officials may access public records of their own agency that are otherwise exempt when authorized to do so as part of their official duties. [*Marylander v. Superior Court* (2002) 81 Cal.App.4th 1119; *Los*

Angeles Police Dept. v. Superior Court (1977) 65 Cal.App.3d 661; *Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271. See "Information That Must Be Disclosed," p. 22; "Requests for Journalistic or Scholarly Purposes," p. 24.] When the members of a legislative body of a local agency are authorized to access a writing of the body or of the agency in the administration of their duties, the local agency shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available. [Gov. Code, § 6252.5. See also Gov. Code, § 54957.2.]

CHAPTER 3: RESPONDING TO A PUBLIC RECORDS REQUEST

■ TIMING OF THE RESPONSE

Page 11 - Replace the paragraph with the following:
Time is critical in responding to public records requests. A local agency must respond promptly, but no later than ten calendar days from receipt of the request, to notify the requester whether records will be disclosed. [Gov. Code, § 6253, subd. (c).] The Act is silent as to whether a local agency has the same no-later-than-ten day window to evaluate whether the requested records are subject to disclosure when a requester merely wishes to inspect records. However, it is generally assumed that a local agency is afforded a reasonable period of time to retrieve requested records and review them to determine whether they must be produced for inspection, even when copies are not sought. If the request is received after business hours or on a weekend or holiday, the next business day may be considered the date of receipt. The ten-day response period starts with the first calendar day after the date of receipt. [Civ. Code, § 10.] If the tenth day falls on a weekend or holiday, the next business day is considered the deadline for responding to the request. [Civ. Code, § 11.] The time limit for responding to a public records request is not necessarily the same as the time within which the records must be disclosed to the requester. See "Timing of Disclosure," p. 13.

■ LOCATING RECORDS

Page 12 - Replace the first paragraph in this section with the following:
Local agencies must make a reasonable effort to search for and locate requested records, including by asking probing questions of city staff and consultants. [*Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385; *Cal. First Amend. Coalition v. Superior Court* (1998) 67 Cal.App.4th 159.] No bright-line test exists to determine whether an effort is reasonable. That determination will depend on the facts and circumstances surrounding each request. In general, upon the local agency's receipt of a public records request, those persons or offices that would most likely be in possession of responsive records should be consulted in an effort to locate the records. For a local agency to have a duty to locate records they must qualify as public records. "Thus, unless the writing is related 'to the conduct of the public's business' *and* is 'prepared, owned, used or retained by' a public entity, it is not a public record under the CPRA, and its disclosure would not be governed by the Act. No words in the statute suggest that the public entity has an obligation to obtain documents even though it has not prepared, owned, used or retained them." [*Regents of the University of California v. Superior Court* (2013) 222 Cal.App.4th 383.] See What Are Public Records, p. 6. An appellate court has ruled that emails of individual public officials and employees that relate to public business and

are sent or received on personal devices and accounts that are inaccessible to a local agency are not public records subject to the Act because they are not "prepared, owned, used or retained by a local agency." However, that opinion has been depublished by grant of review by the California Supreme Court. [*City of San Jose v. Superior Court* (2014) 225 Cal.App.4th 7; *review granted, depublished* (2014) 173 Cal.Rptr. 3d 46.] See Electronic Records, p. 51.

Page 12 – Add the following ***Practice Tip****:*
To ensure compliance with the Act and in anticipation of court scrutiny of agency diligence in locating responsive records, agencies may want to consider adopting policies similar to those required by state and federal E-discovery statutes to prevent records destruction while a request is pending.

■ NO DUTY TO CREATE A RECORD OR TO CREATE A PRIVILEGE LOG

Page 13 - Replace the first paragraph in this section with the following:
A local agency has no duty to create a record that does not exist at the time of the request [Gov. Code, § 6252, subd. (e); *Haynie v. Superior Court* (2001) 26 Cal.4th 1061; 71 Ops.Cal.Atty.Gen. 235 (1988).] (But see Chapter 6 concerning duties and obligations with respect to electronic records.) There is also no duty to reconstruct a record that was lawfully discarded prior to receipt of the request. However, an agency may be liable for attorney fees when a court determines the agency was not sufficiently diligent in locating requested records, even when the requested records no longer exist. [*Community Youth Athletic Center v. National City* (2013) 220 Cal.App.4th 1385.] See "Attorney Fees and Costs," p. 46.

■ FEES

Page 14 - Add to the end of footnote 46:
Public Contract Code §§ 10111.2 and 20103.7; 8 CCR, § 16402.

Page 14 – Replace the second paragraph in this section with the following:
The local agency may charge a fee for the direct costs of duplicating a record when the requester is seeking a copy [Gov. Code, § 6253, subd. (b).], or it may charge a statutory fee, if applicable. [Gov. Code, § 6253, subd. (b); 85 Ops.Cal.Atty.Gen. 225 (2002); see, e.g., Gov. Code, § 81008.] Direct costs of duplication include costs of reproduction, and conceivably the cost of staff time expended in making a copy of the record. [*North County Parents Organization v. Dept. of Education* (1994) 23 Cal.App.4th 144.] (But see "Electronic Records" in Chapter 6 concerning recovery of duplication and computer programming costs associated with producing copies of electronic records.) An agency may require payment in advance before providing the requested copies. [Gov. Code § 6253, subd. (b).] However, no payment may be required merely to look at a record where copies are not sought.

CHAPTER 4: EXEMPTIONS

■ OVERVIEW OF EXEMPTIONS

Page 18 – Add to the end of footnote 2:

Sierra Club v. Superior Court (2013) 57 Cal.4th 157; see also "Proposition 59," p. 3.

■ SPECIFIC EXEMPTIONS

Attorney Client Communications and Attorney Work Product

Page 19 - Insert new second and third paragraphs in this section:
The attorney client privilege protects from disclosure the entirety of confidential communications between attorney and client, as well as among the attorneys within a firm representing such client, including factual and other information not in itself privileged outside of attorney client communications. [*Costco Wholesale Corporation v. Superior Court* (2009) 47 Cal.4th 725; *Fireman's Fund Insurance Company v. Superior Court* (2011) 196 Cal.App.4th 1263; *Clark v. Superior Court* (2011) 196 Cal.App.4th 37.] The fundamental purpose of the attorney client privilege is preservation of the confidential relationship between attorney and client. It is not necessary to demonstrate that prejudice would result from disclosure of attorney client communications in order to prevent such disclosure. [*Costco Wholesale Corporation v. Superior Court* (2009) 47 Cal.4th 725.] When the party claiming the privilege shows the dominant purpose of the relationship between the parties to the communication was one of attorney and client, the communication is protected by the privilege. [*Clark v. Superior Court* (2011) 196 Cal.App.4th 37.] Unlike the exemption for pending litigation, attorney client privileged information is still protected from disclosure even after litigation is concluded. [*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363; see "Pending Litigation or Claims," p. 28.] But note, the attorney client privilege will likely not protect communication between a public employee and his or her personal attorney if that communication occurs utilizing a public entity's computer system and the public entity has a computer policy that indicates the computers are intended for the public entity's business and are subject to monitoring by the employer. [*Holmes v. Petrovich Development Co. LLC* (2011) 191 Cal.App.4th 1047.] The attorney plaintiff in a wrongful termination suit and the defendant insurer may reveal privileged third-party attorney client communications to their own attorneys to the extent necessary for the litigation, but may not publicly disclose such communications. [*Chubb & Son v. Superior Court* (2014) 228 Cal.App.4th 1094.]

The common interest doctrine may also protect communications with third parties from disclosure where the communication is protected by the attorney client privilege or attorney work product doctrine and maintaining the confidentiality of the communication is necessary to accomplish the purpose for which legal advice was sought. The common interest doctrine is not an independent privilege; rather, it is a nonwaiver doctrine. [*OXY Resources LLC v. Superior Court* (2004) 115 Cal.App.4th 874.] For the common interest doctrine to attach, the parties to the shared communication must have a reasonable expectation that the information disclosed will remain confidential. Further, the parties must have a common interest in a matter of joint concern. In other words, they must have a common interest in securing legal advice related to the same matter and the communication must be made to advance their shared interest in securing legal advice on that common matter. [Compare *Citizens for Ceres v. Superior Court* (2012) 217 Cal.App.4th 889 (common interest doctrine inapplicable to communications between developer and city prior to approval of application because, pre-project approval, parties lacked a common interest) with *California Oak Foundation v. County of Tehama* (2009) 174 Cal.App.4th 1217

(sharing of privileged documents with project applicant prepared by county's outside law firm regarding CEQA compliance was within common interest doctrine).]

Page 19- Replace the final paragraph in this section with the following:

The courts have established a narrower rule governing disclosure of attorney bills. An attorney's billing entries remain exempt from disclosure under the attorney client privilege or attorney work product doctrine only insofar as they describe an attorney's impressions, conclusions, opinions, legal research or strategy. Neither the attorney client privilege nor the attorney work product doctrine protects entire attorney bills from disclosure, even if the bills concern pending litigation. [*County of Los Angeles v. Superior Court* (2012) 211 Cal.App.4th 57.] Only substantive attorney communications such as legal conclusions, research, or strategy are protected. [*County of Los Angeles v. Superior Court* (2012) 211 Cal.App.4th 57; *U.S. v. Amlani* (9th Cir. 1999) 169 F.3d 1189; *Clarke v. American Commerce Nat. Bank* (9th Cir. 1992) 974 F.2d 127; *Smith v. Laguna Sur Villas Community Assn.* (2000) 79 Cal.App.4th 639.] Similarly, retainer agreements between a local agency and its attorneys may constitute confidential communications that fall within the attorney client privilege. [Bus. & Prof. Code, § 6149 (a written fee contract shall be deemed to be a confidential communication within the meaning of section 6068, subdivision (e) of the Business & Professions Code and section 952 of the Evidence Code); Evid. Code, § 952 ("Confidential communication between client and lawyer"); Evid. Code, § 954 (attorney client privilege).] A local agency may waive the privilege and elect to produce the agreements. [Evid. Code, § 912. See also Gov. Code, § 6254.5 and "Waiver", p. 13.] Only the local agency's governing board may waive the privilege. [See Rules Prof. Conduct, rule 3-600.]

Page 19 – Add the following ***Practice Tip****:*

Some agencies simplify redaction of attorney bills and production of non-exempt bill information in response to requests by requiring that non-exempt portions of attorney bills, such as the name of the matter, the invoice amount, and date, are contained in separate documents from privileged bill text.

Page 22 - Add the following sub-heading and paragraph:

Information Technology Systems Security Records

An information security record is exempt from disclosure if, on the facts of a particular case, disclosure would reveal vulnerabilities to attack, or would otherwise increase the potential for an attack on a public agency's information technology system. Disclosure of records stored within a public agency's information technology system that are not otherwise exempt under the law do not fall within this exemption. [Gov. Code, § 6254.19; see also Gov. Code, § 6254aa.]

Law Enforcement Records

Page 22 – add the following to the end of the first paragraph under the **Overview** *subheading:*

The names of officers involved in a police shooting are subject to disclosure, unless disclosure would endanger an officer's safety (*e.g.*, if there is a specific threat to an officer or an officer is working undercover). [*Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59.]

Page 22 – add the following to the end of footnote 46:

Office of the Inspector General v. Superior Court (2010) 189 Cal.App.4th 695 [Office of the Attorney General has discretion to determine which investigatory records are subject to disclosure in connection with its investigations, and investigatory records in that context may include some documents that were not prepared as part of, but became subsequently relevant to, the investigation.]

Disclosure to Victims, Authorized Representatives, Insurance Carriers

Page 23 – add the following paragraph to the end of the sub-section:

Local agencies may not require a victim or a victim's authorized representative to show proof of the victim's legal presence in the United States to obtain the information required to be disclosed to victims. [Gov. Code, § 6254.30.] However, if a local agency does require identification for a victim or authorized representative to obtain information disclosable to victims, the agency must (at a minimum), accept a current driver's license or identification card issued by any state in the United States, a current passport issued by the United States or a foreign government with which the United States has a diplomatic relationship, or a current Matricula Consular card. [Gov. Code, § 6254.30.]

Page 23 – add the following to the end of footnote 51:

Buckheit v. Dennis (ND Cal. 2012) 2012 U.S. Dist. LEXIS 49062 (noting that Gov. Code, § 6254 , subd. (f) requires disclosure of certain information to a victim. Suspects are not entitled to that same information).

Page 24 – add the following heading and paragraph:

Coroner Photographs or Video

Photographs or video recordings of the body of a deceased person taken for or by the coroner are confidential and may be disseminated only as provided by statute. [Civ. Proc. Code, § 129.]

Page 25 – Replace the section titled "Library and Circulation Records" with the following:

Library Patron Use Records

All patron use records of any library that is supported in whole or in part by public funds are confidential and shall not be disclosed except to persons acting within the scope of their duties within library administration, upon written authorization from the person whose records are sought, or court order. [Gov. Code, § 6254, subd. (j).] The term "patron use records" includes written or electronic records that identify the patron, the patron's borrowing information or use of library resources including database search records, or any other personally identifiable information requests or inquiries. [Gov. Code, § 6267.] This exemption does not extend to statistical reports of registration and circulation or records of fines collected by the library. In addition, library and museum materials presented solely for reference or exhibition purposes are exempt from disclosure. [Gov. Code, § 6254, subd. (j); Gov. Code, § 6267.]

Medical Privacy Laws

Page 25 - Replace the first two paragraphs with the following:
State and federal medical privacy laws that may apply to records of local agencies include the physician/patient privilege, the Confidentiality of Medical Information Act, the Health Data and Advisory Council Consolidation Act and the Health Insurance Portability and Accountability Act. [Evid. Code, § 990 et seq.; Civ. Code, § 56 et seq.; Health & Saf. Code, § 128675 et seq.; 42 U.S.C. § 1320d.] The exemptions from and prohibitions against disclosure contained in these laws are incorporated into the Act. [Gov. Code, § 6254, subd. (k).]

Local agencies that receive or maintain individually identifiable health information may comply with the requirements of the physician/patient privilege, the Confidentiality of Medical Information Act, the Health Data and Advisory Council Consolidation Act and the Health Insurance Portability and Accountability Act by citing appropriate sections of the Act, as well as applicable medical privacy laws and regulations, in declining to disclose protected, individually identifiable health information. [Both § 6254, subd. (c) and § 6254, subd. (k) of the Act probably apply to most records protected under the physician/patient privilege, the Confidentiality of Medical Information Act, the Health Data and Advisory Council Consolidation Act or the Health Insurance Portability and Accountability Act. Section 6254, subdivision (c) of the Act exempts from disclosure "[p]ersonnel, medical, or similar files the disclosure of which would constitute an unwarranted invasion of personal privacy." Section 6254, subdivision (k) of the Act exempts "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Protected individually identifiable health information is probably also exempt from disclosure under the "public interest" exemption in § 6255 of the Act.]

Page 25 - Add the following sub-heading and paragraph under ***Medical Privacy Laws****:*

Health Data and Advisory Council Consolidation Act
State law requires any organization that operates, conducts, owns or maintains a health facility, hospital or freestanding ambulatory surgery clinic, as these terms are defined in the law, to file specified reports with the state that include detailed patient health and financial information. [Health & Saf. Code, §§ 128735, 128736, and 128737.] Patient medical record numbers and any other data elements of these reports that could be used to determine the identity of an individual patient are exempt from disclosure. [Health & Saf. Code, § 128745, subd. (c)(6).]

Pending Litigation or Claims

Page 29 – In the first paragraph on this page, insert a new third sentence to read as follows:
The Evidence Code privilege for confidential communications, including the prohibition against *in camera* review of privileged communications, applies to Workers Compensation hearings and Public Utilities Commission proceedings. [*The Regents of the University of California v. Workers' Compensation Appeals Board* (2014) 226 Cal.App.4th 530; *Southern California Gas Company v. Public Utilities Commission* (1990) 50 Cal.3d. 31.] See "Workers' Compensation Benefits," p. 26, regarding treatment of such records.

Personal Contact Information

Page 29 – replace the entire third paragraph with the following:
Information contained in applications for licenses to carry firearms is public, except for information that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family. [Gov. Code, § 6254, subd. (u)(1).] Courts have also ordered disclosure of the names and addresses of residential water customers who exceeded their water allocation under a rationing ordinance, [*New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579] and the names of donors to a university affiliated foundation, even though those donors had requested anonymity. [*California State University, Fresno Assn., Inc., v. Superior Court* (2001) 90 Cal.App.4th 810.]

Posting Personal Information of Elected/Appointed Officials on the Internet

Page 29 - Replace the entire paragraph with the following:
The Act prohibits a state or local agency from posting on the Internet the home address or telephone number of any elected or appointed officials without first obtaining their written permission. [See Gov. Code, § 6254.21, subd. (f) (containing a non-exhaustive list of individuals who qualify as "elected or appointed official[s]").] The Act also prohibits someone from knowingly posting on the Internet the home address or telephone number of any elected or appointed official or the official's "residing spouse" or child, and either threatening or intending to cause imminent great bodily harm. [Gov. Code, § 6254.21.]

In addition, the Act prohibits a person, business or association from publicly posting or displaying on the Internet the home address or telephone number of any elected or appointed official where the official has made a written demand not to disclose his or her address or phone number. [Gov. Code, § 6254.21.]

The prohibition against posting home address and telephone numbers of elected or appointed officials on the Internet does not apply to a comprehensive database of property-related information maintained by a state or local agency that may incidentally contain such information, where the officials are not identifiable as such from the data, and the database is only transmitted over a limited-access network, such as an intranet, extranet, or virtual private network, but not the Internet. [91 Ops.Cal.Atty.Gen. 19 (2008).]

Personnel Records

Page 30 – Add the following at the end of the first paragraph on this page:
The courts have permitted persons who believe their rights may be infringed by an agency decision to disclose records to bring a "reverse PRA action" to seek an order preventing disclosure of the records. [*Marken v. Santa Monica-Malibu Unified Sch. Dist.* (2012) 202 Cal.App.4th 1250.] See "The Trial Court Process and Decision," p. 44.

Page 30 – Replace the second paragraph of this page with the following:

Concerning allegations of non-law enforcement public employee misconduct, courts have considered the following factors in determining whether disclosure of employment investigation reports or related records would constitute an unwarranted invasion of personal privacy:

- Are the allegations of misconduct against a high-ranking public official or an employee in a position of public trust and responsibility (e.g., teachers, public safety employees, employees who work with children)?
- Are the allegations of misconduct of a substantial nature or trivial?
- Were findings of misconduct sustained or was discipline imposed?

Courts have upheld the public interest against disclosure of "trivial or groundless charges." In contrast, when "the charges are found true, or discipline is imposed," the public interest likely favors disclosure. In addition, "where there is reasonable cause to believe the complaint to be well founded, the right of public access to related public records exists." However, even if the employee is exonerated of wrong-doing, disclosure may be warranted if the allegations of misconduct involve a high-ranking public official or employee in a position of public trust and responsibility, given the public's interest in understanding why the employee was exonerated and how the public employer treated the accusations. [*Marken v. Santa Monica-Malibu Unified Sch. Dist.* (2012) 202 Cal.App.4th 1250; *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742; *Bakersfield City School District v. Superior Court* (2004) 118 Cal.App.4th 1041; *American Federation of State etc. Employees v. Regents of University of California* (1978) 80 Cal.App.3d 913.]

Page 30 – Add the following as a new, third paragraph on this page:

With respect to personnel investigation reports, although the Act's personnel exemption may not exempt such a report from disclosure, the attorney client privilege or attorney work product doctrine may apply. See Attorney Client Communications and Attorney Work Product, page 18. (But see *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, where on the facts of that case, an investigation report that arguably was privileged was ordered disclosed.) Further, discrete portions of the personnel report may still be exempt from disclosure and redacted, such as medical information contained in a report or the names of third party witnesses. [*BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742 (permitting redaction of names, home addresses, phone numbers, and job titles "of all persons mentioned in the report other than [the subject of the report] or elected members" of the school board); *Marken v. Santa Monica-Malibu Unified Sch. Dist.* (2012) 202 Cal.App.4th 1250 (permitting redaction of the identity of the complainant and other witnesses, as well as other personal information in the investigation report)].

Peace Officer Personnel Records

Page 30 - Replace the first paragraph in this section with the following:
Peace officer personnel records, including internal affairs investigation reports regarding alleged misconduct, are both confidential and privileged. They clearly fall within the category of records, "the disclosure of which is exempted or prohibited pursuant to federal or state law...." [Gov. Code, § 6254, subd. (k); Pen. Code, §§ 832.7 and 832.8; *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th

319; *People v. Superior Court* (2014) 228 Cal.App.4th 1046; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411.]

Page 30 - Insert the following at the end of the second paragraph in this section:
These files are not protected from disclosure, however, when the district attorney, attorney general or grand jury are investigating the conduct of the officers, including when the district attorney conducts a *Brady* review of files for exculpatory evidence relevant to a criminal proceeding. [Pen. Code, § 832.7, subd. (a); *People v. Superior Court* (2014) 228 Cal.App.4th 1046.] The other notable exception arises where an officer publishes factual information concerning a disciplinary action that is known by the officer to be false. If the information is published in the media, the employing agency may disclose factual information about the discipline to refute the employee's false statements. [Pen. Code, § 832.7, subd. (d).]

Page 30 – Insert the following at the end of the third paragraph in this section:
Additionally, official service photographs of peace officers are subject to disclosure and are not exempt or privileged as personnel records unless disclosure would pose an unreasonable risk of harm to the peace officer. [*Ibarra v. Superior Court* (2013) 217 Cal.App.4th 695.] The names of officers involved in a police shooting are subject to disclosure, unless disclosure would endanger an officer's safety (*e.g.*, if there is a specific threat to an officer or an officer is working undercover). [*Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59.] See also "Law Enforcement Records," p. 22.

Employee Contracts, Salaries, Benefits and Pension Information

Page 30 – Insert the following after the second paragraph in this section:

In addition to public employee contracts, salaries and benefits, public agencies are required to disclose the identities of pensioners and the amount of pension benefits received by such pensioners. In *Sacramento County Employees' Retirement System (SCERS) v. Superior Court* (2011) 195 Cal.App.4th 440, the court determined that the public interest in disclosure of the names of pensioners and data concerning the amounts of their pension benefits outweighs any privacy interests the pensioners may have in such information. The courts have treated as exempt personal information provided to a retirement system by a member or on a member's behalf, such as a member's personal email address, home address, telephone number, social security number, birthday, age at retirement, benefits election or health reports concerning a member. [*Sonoma County Employees' Retirement Association v. Superior Court* (2011) 198 Cal.App.4th 986.] With regard to the PERS system, the court pointed out that Government Code section 20230 provides that the identities of and amount of benefits received by PERS pensioners are subject to public disclosure. [See also *San Diego County Employees Retirement Association v. Superior Court* (2011) 196 Cal.App.4th 1228, citing with approval 25 Ops.Cal.Atty.Gen. 90 (1955) which exempts from disclosure employee election of benefits. For peace officer election of benefits see Penal Code sections 832.7 and 832.8 and *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 343.]

■ PUBLIC INTEREST EXEMPTION

Page 34 – At the end of the last sentence of the second paragraph, delete the "and" and add:
, and individual teacher test scores, identified by name, designed to measure each teacher's effect on student performance on standardized tests. [*Los Angeles Unified School District v. Superior Court* (2014) 228 Cal.App.4th 222.]

Page 34 – At the end of the last sentence of the fourth paragraph delete the "and" and add:
, and GIS base map information. [*Sierra Club v. Superior Court* (2013) 57 Cal.4th 157.]

Deliberative Process Privilege

Page 35 – Insert the following at the end of the third paragraph in this section: However, the privilege may be limited to records of communications regarding decisions before the governmental agency asserting the privilege, and might not apply or extend to documents that are in the possession of a governmental agency or official who is participating as a member of a separate non-governmental board or entity, or as a member of a different government agency. [*California Earthquake Authority v. Metropolitan West Securities*, (2012) 285 F.R.D. 585.]

■ EFFECT OF PROPOSITION 59 ON EXEMPTIONS

Page 36 - Replace the second paragraph in this section with the following:
Proposition 59 "constitutionalized" the right of access to public records. On its face, it expressly does not "repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records." [Cal. Const., art. 1, § 3, subd. (b)(5); *International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319.] Both the courts and the Attorney General have also confirmed that Proposition 59 maintained all existing statutory exemptions, preexisting common law and constitutional separation of powers, as well as the Act's internal public interest exemption. [Gov. Code, §6254; *Sutter's Place v. Superior Court* (2008) 161 Cal.App.4th 1370; *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742; Los Angeles Unified School Dist. v. Superior Court (2007) 151 Cal.App.4th 759; *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319; 87 Ops.Cal.Atty.Gen. 181 (2004); 88 Ops.Cal.Atty.Gen. 16 (2005); 89 Ops.Cal.Atty.Gen. 204 (2006).] For example, while the constitution states that an existing exemption must be narrowly construed, this is consistent with existing case authority. [*New York Times v. Superior Court* (1990) 218 Cal.App.3d 1579; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762; *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469; *Sutter's Place v. Superior Court* (2008) 161 Cal.App.4th 1370.]

Page 36 - Delete the final paragraph in this section:
~~No published opinion has extensively analyzed the impact of Proposition 59 on the exemptions in the Act. However, one court summarily noted that as to construction of the specific exemptions under the Act, it was simply declarative of existing law.[216] In addition, in three~~

~~separate opinions, the California Attorney General has concluded that Proposition 59 did not alter the application of exemptions under the Act that existed at the time of its enactment.[217] Enactment of Proposition 59 underscores the general principle that public access to records is the rule, and nondisclosure the exception, only to be invoked in narrow circumstances after careful consideration.[218]~~

Page 38 – Add the following reference to footnote 49:
Dixon v. Superior Court (2009) 170 Cal.App.4th 1271 (coroner and autopsy reports).

Page 39 – Add the following reference to footnotes 120 and 123:
Costco Wholesale Corporation v, Superior Court (2009) 47 Cal.4th 725.

Page 39 – Add the following reference to footnote 124:
Clark v. Superior Court (2011) 196 Cal.App.4th 37.

Page 40 – Add the following references to a new footnote (regarding disclosure of names of officers involved in shootings) following footnote 142:
Long Beach Police Officers Association v. City of Long Beach (2014) 59 Cal.4th 59; 91 Ops.Cal.Atty.Gen. 11 (2008) (the names of peace officers involved in critical incidents, such as ones involving lethal force, are not categorically exempt from disclosure, however, the balancing test may be applied under the specific factual circumstances of each case to weigh the public interests at stake.)

Page 40 – Add the following references to footnote 146:
Gov. Code, § 53262, subd. (b).

Page 40 – Add the following references to footnote 154:
Trustees of Southern California IBEW-NECA Pension Plan v. Los Angeles Unified School District (2010) 187 Cal.App.4th 621.

Page 41 – Add the following references to footnote 203:
County of Santa Clara v. Superior Court (2009) 170 Cal.App.4th 1301; (See also, the discussion of GIS information in Chapter 6 at page 51).

CHAPTER 5: JUDICIAL REVIEW AND REMEDIES

■ THE TRIAL COURT PROCESS AND DECISION

Page 44 – Insert the following as a second paragraph in this section:
Whether the Act provides the exclusive judicial remedy for resolving whether or not a public entity has erroneously refused to disclose a particular record or class of records remains an open issue. [*Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59, 66 fn.2.] The Act does not preclude a taxpayer lawsuit seeking declaratory or injunctive relief to challenge the legality of an entity's policies or practices for responding to public records requests generally. [*County of Santa Clara v. Superior Court* (2009) 171 Cal.App.4th 119.]

Page 44 - Replace the last paragraph on page with the following :
A local agency may not commence an action for declaratory relief to determine the agency's obligation to disclose records to a member of the public under the Act. [*Filarsky v. Superior Court* (2002) 28 Cal.4th 419.] Allowing a local agency to seek declaratory relief to determine whether it must disclose records to a member of the public would require the person requesting documents to defend civil actions they did not commence and discourage them from requesting records, thereby frustrating the Legislature's purpose of furthering the fundamental right of every person in the state to have prompt access to information in the possession of local agencies. However, a local agency is a "person" under the Act and may maintain an action to compel the disclosure of records under the Act from another public entity. [*Los Angeles Unified School Dist. v. Superior Court* (2007) 151 Cal.App.4th 759.] A person who believes that his or her rights would be infringed by an agency decision to disclose documents may bring a "reverse PRA action" to seek an order preventing disclosure. The action may be brought after an agency decision to disclose even though there is no specific statutory authority for such an action. Records requesters may join in reverse PRA actions as real parties or intervenors. [*Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250, 1264, 1269.]

Page 44 – Add the following ***Practice Tip****:*
An agency that receives a request for records containing potentially confidential information of employees, contractors, or other third-party stakeholders that the agency intends to disclose may want to consider notifying the stakeholders prior to disclosing the records in case they want to file a reverse PRA action. Stakeholder notice may be particularly appropriate where it is not clear that disclosure of the records is required.

■ APELLATE REVIEW

Page 45 – Insert the following sentence at the end of the third paragraph of this section:
Absent a stay, any person who fails to obey the order of the court shall be ordered to show cause why he or she is not in contempt of court. [Gov. Code, § 6259, subd. (c).]

Page 46 - Replace the final paragraph of this section with the following:
While the trial court's decision regarding disclosure of records is not subject to the normal appeal process, other decisions of the trial court related to a lawsuit under the Act are subject to appeal. Thus, a trial court's decision to grant or deny a motion for attorney fees and costs under the Act is subject to appeal and is not subject to the extraordinary writ process. Similarly, an award of sanctions in a public records case is subject to appeal rather than a petition for an extraordinary writ. [*Butt v. City of Richmond* (1996) 44 Cal.App.4th 925.] Under limited circumstances, an appellate court may exercise its discretion to treat an appeal from a non-appealable order as a petition for writ relief. [*Mincal Consumer Law Group v. Carlsbad Police Department* (2013) 214 Cal.App.4th 259.]

■ ATTORNEY FEES AND COSTS

Page 46 - Replace the first paragraph in this section with the following:
If the plaintiff prevails in the litigation, the judge must award court costs and reasonable attorney fees to the plaintiff. [Gov. Code, § 6259, subd. (d); *Los Angeles Times v. Alameda Corridor*

Transportation Authority (2001) 88 Cal.App.4th 1381; *Garcia v. Governing Board of Bellflower Unified School District* (2013) 220 Cal.App.4th 1058.] In determining whether a plaintiff has prevailed, courts have applied several variations of analysis similar to that used under the private attorney general laws, i.e., whether the party has succeeded on any issue in the litigation and achieved some of the benefits sought in the lawsuit. Some courts, however, have determined that a plaintiff may still be a prevailing party entitled to attorney fees under the Act even without a favorable ruling or other court action. [*Rogers v. Superior Court* (1993) 19 Cal.App.4th 469; *Beth v. Garamendi* (1991) 232 Cal.App.3d 896.] Generally, if an agency makes a timely effort to respond to a vague document request, a plaintiff will not be awarded attorney fees as the prevailing party even in litigation resulting in issuance of a writ. [*Motorola Communications and Electronics v. Department of General Services* (1997) 55 Cal.App.4th 1340.] But where the court determines that the city was not sufficiently diligent in locating all requested records and issues declaratory relief that there has in fact been a violation of the Act, even if the records sought no longer exist and cannot be produced, the court may still award attorney fees on the basis of the statutory polices underlying the Act. [*Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385.] A member of the public may be entitled to an award of attorney fees and costs even when he or she is not denominated as the "plaintiff" in a lawsuit under the Act, if the party is the functional equivalent of a plaintiff. [*Fontana Police Dep't. v. Villegas-Banuelos* (1999) 74 Cal.App.4th 1249.] Records requesters that participate in a reverse-PRA lawsuit are not entitled to an award of attorney fees for successfully opposing such litigation. [*Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250, 1264.]

The trial court has significant discretion when determining the appropriate amount of attorney fees to award. [*Bernardi v. County of Monterey* (2008) 167 Cal.App.4th 1379.] Local agencies, and not public officials who decide not to disclose public records, must pay any award of costs and fees. [Gov. Code, § 6259, subd. (d).] Successful agency defendants may obtain an award of attorney fees and court costs against an unsuccessful plaintiff only when the court finds that the plaintiff's case is clearly frivolous. [Gov. Code, § 6259, subd. (d).] The courts have been reluctant to find a plaintiff's case is frivolous and award attorney fees to an agency. [*Crews v. Willows Unified School Dist. et al.* (2013) 217 Cal.App.4th 1368.] Only one reported case has upheld an award of attorney fees to an agency based on a frivolous request. [*Butt v. City of Richmond* (1996) 44 Cal.App.4th 925.]

CHAPTER 6: RECORDS MANAGEMENT

■ PUBLIC MEETING RECORDS

Page 50 - Replace the final paragraph in this section with the following:
Writings that are distributed to all or a majority of all members of a legislative body in connection with a matter subject to discussion or consideration at a public meeting of the body are public records (subject to the exemptions in the Act) and must be made available upon request without delay. [Gov. Code, § 54957.5, subd. (a).] Where such nonexempt writings are distributed during a public meeting, in addition to making them available for public inspection at the meeting (if prepared by the agency or member of its legislative body) or after the meeting (if prepared by another person), they must be made available in appropriate alternative formats upon request by a person with a disability. [Gov. Code, § 54957.4, subd. (c).] The agency may charge

a fee for a copy of this record; however, no surcharge may be imposed on persons with disabilities. [Gov. Code, § 54957.5, subd. (d).] When records relating to agenda items are distributed to all or a majority of all members of a legislative body less than 72 hours prior to the meeting, the records must be made available for public inspection in a designated location at the same time they are distributed. The address of the designated location shall be listed in the meeting agenda. [Gov. Code, § 54957.5, subds. (b)(1),(2).] The agency may also post the information on its website in a place and manner which makes it clear that the documents relate to an agenda item for an upcoming meeting. [Gov. Code, § 54957.5, subd. (b)(2).]

*Page 50 – Replace **Practice Tip** with the following:*
Some agencies have found it useful to adopt electronic records policies governing such issues as: what electronic records (for example emails) and what attributes of the electronically stored information are considered "retained in the ordinary course of business" for purposes of the Act; whether personal electronic devices (like computers, tablets, cell phones, etc.) and personal email accounts may be used to store or send electronic communications concerning the agency, or whether agency devices must be used; privacy expectations; etc. Local agencies should consult with information technology officials to understand what information is being stored electronically and the technological limits of their systems for the retention and production of electronic records.

■ ELECTRONIC RECORDS

Page 51 - Replace this entire section with the following:
"Public records" subject to the Act 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 § 6252, subd. (e).] Therefore, records subject to the Act include records in any media, including electronic media, in which government agencies may possess records. This is underscored by the definition of "writings" treated as public records, which include any "transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds or symbols or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." [Gov. Code § 6252, subd. (g).] However, electronic records must still qualify as "public records" to be subject to disclosure under the Act. "'[P]ublic records' under the CPRA are those records included in the definition set forth in section 6252, subdivision (c). If the document sought is not 'prepared, owned, used, or retained' by the public agency it is not a public record, even though it may contain information relating to the conduct of the public's business." [*Regents of the University of California v. Superior Court* (2013) 222 Cal.App.4th 383.] See What Are Public Records, p. 6, and Locating Records, p. 12. An appellate court has ruled that emails of individual public officials and employees that relate to public business and are sent or received on personal devices and accounts that are inaccessible to a local agency are not public records subject to the Act because they are not "prepared, owned, used or retained by a local agency." However, that opinion has been de-published by grant of review by the California Supreme Court. [*City of San Jose v. Superior Court* (2014) 225 Cal.App.4th 7; *review granted, de-published* (2014) 173 Cal.Rptr. 3d 46.] [*Regents of the University of California v. Superior Court* (2013) 222 Cal.App.4th 383.] One court has held that it is currently an open issue whether

and to what extent public records may be obtained from private computers under the Act. [*Bertoli v. City of Sebastopol* (2015) 182 Cal.Rptr.3d 308.]

Page 51 – Add the following ***Practice Tip****:*

Local agencies may wish to consider adopting policies requiring use of agency devices and accounts for communications about agency business. In the absence of such a policy, pending a decision by the California Supreme Court in litigation seeking disclosure of public officials' emails on their personal accounts and devices, local agency counsel may wish to caution their clients to use agency devices and accounts for communications involving agency business to avoid communications on their personal devices and accounts potentially being subject to disclosure under the Act.

The Act does not require an agency to keep records in an electronic format. But, if an agency has an existing, nonexempt public record in an electronic format, the Act does require the agency make the information available in any electronic format in which it holds the information when requested. [Gov. Code, § 6253.9, subd. (a)(1).] The Act also requires the agency to provide a copy of such records in any alternative electronic format requested if the alternative format is one that the agency uses for itself or for transmission to other agencies. [Gov. Code, § 6253.9, subd. (a)(2).] However, the Act does not require an agency to release a public record in the electronic form in which it is held if the release violates a license, or would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained. [Gov. Code, § 6253.9, subd. (f).] Likewise, the Act does not permit public access to records held electronically if access is otherwise restricted by statute. [Gov. Code, § 6253.9, subd. (g).]

Duplication costs of electronic records are limited to the direct cost of producing the electronic copy. [Gov. Code, § 6253.9, subd. (a)(2).] However, requesters may be required to bear additional costs of producing a copy of an electronic record, such as programming and computer services costs, if the request requires the production of electronic records that are otherwise only produced at regularly scheduled intervals, or production of the record would require data compilation, extraction or programming. [Gov. Code, § 6253.9, subd. (b).] Agencies are not required to reconstruct electronic copies of records no longer available to the agency in electronic format. [Gov. Code, § 6253.9, subd. (c). See "No Duty to Create a Record or to Create a Privilege Log," p. 13.]

Electronic records may include "metadata," or data about data contained in a record that is not visible in the text. For example, metadata may describe how, when or by whom particular data was collected, and contain information about document authors, other documents, or commentary or notes. Although no provision of the Act expressly addresses metadata, and there are no reported court opinions in California considering whether or the extent to which metadata is subject to disclosure, evolving law in other jurisdictions has held that local agency metadata is a public record subject to disclosure unless an exemption applies. [*Lake v. City of Phoenix*, (2009) 218 P.3d 1004; *O'Neill v. City of Shoreline* (2010) 240 P.3d 1149; *Irwin v. Onondaga County* (2010) 895 N.Y.S. 2d 262.] There are no reported California court opinions providing guidance on whether agencies have a duty to disclose metadata when an electronic record

contains exempt information that cannot be reasonably segregated without compromising the record's integrity. The Act permits government agencies to develop and commercialize computer software and to benefit from copyright protections for agency-developed software. Computer software developed by state or local agencies, including computer mapping systems, computer programs, and computer graphics systems, is not a public record subject to the Act. [Gov. Code, § 6254.9, subds. (a), (b).] As a result, public agencies are not required to provide copies of agency-developed software pursuant to the Act. The Act authorizes state and local agencies to sell, lease, or license agency-developed software for commercial or noncommercial use. [Gov. Code, § 6254.9, subd. (a).] The exception for agency-developed software does not affect the public record status of information merely because it is stored electronically. [Gov. Code, § 6254.9, subd. (d).]

While computer mapping systems developed by local agencies are not public records subject to disclosure, such systems generally include geographic information system (GIS) data. Many local agencies use GIS programs and databases for a broad range of purposes, including the creation and editing of maps depicting property and facilities of importance to the agency and the public. As with metadata, the Act does not expressly address GIS information disclosure. However, the California Supreme Court has held that while GIS software is exempt under the Act, the data in a GIS file format is a public record, and data in a GIS database must be produced. [*Sierra Club v. Superior Court* (2013) 57 Cal. 4th 157; see also *County of Santa Clara v. Superior Court*, (2009) 170 Cal.App.4th 1301.]

State and local agencies subject to the Public Contract Code that are taking bids for construction of a public work or improvement, shall, upon request from a contractor plan room, provide an electronic copy of a project's contract documents at no charge to the contractor plan room. [Pub. Contract Code, §§ 10111.2 and 20103.7.] The Public Contract Code does not define the term "contractor plan room," but the term commonly refers to a clearinghouse that contractors can use to identify potential bidding opportunities and obtain bid documents. The term may also refer to an on-line resource for a contractor to share plans and information with subcontractors.

*Page 51 – Add the following **Practice Tip**:*
Agencies that receive requests for metadata or requests for records that include metadata should treat the requests the same way that they treat all other requests for electronic information and disclose non-exempt metadata.

■ ELECTRONIC DISCOVERY

Page 52 - Replace both paragraphs in this section with the following:
The importance of maintaining a written document retention policy is evident by revisions to the Federal Rules of Civil Procedure, and California's Civil Discovery procedures, relative to electronic discovery. [Fed. Rules Civ.Proc., rule 26, 28 U.S.C.; Cal. Rules of Court, rule 3.724(8); Code Civ. Proc., §§ 2016.020, 2031.020–2031.320.] These discovery procedures require parties in litigation to address the production and preservation of electronic records. These rule changes may require a local agency to alter its routine management or storage of electronic information, and illustrate the importance of having and following formal document retention policies.

Once a local agency knows or receives notice that information is relevant to litigation, it has a duty to preserve information for discovery. In some cases, the local agency may have to suspend the routine operation of its information systems in order to preserve information relevant to the litigation.

■ RECORDS RETENTION AND DESTRUCTION LAWS

Page 52 - Replace the first two paragraphs in this section with the following:
The Act is not a records retention statute. The Act does not prescribe what type of information a public agency may gather or keep, or provide a method for correcting records. [*Los Angeles Police Dept. v. Superior Court* (1977) 65 Cal.App.3d 661.] Its sole function is to provide access to and for disclosure of public records. [*Los Angeles Police Dept. v. Superior Court* (1977) 65 Cal.App.3d 661.] Other provisions of state law govern retention of public records.

Local agencies generally must retain public records for a minimum of two years, although some records may be destroyed sooner. [Gov. Code, § 34090, subd. (d).] For example, duplicate records that are less than two years old may be destroyed if no longer required. [Gov. Code, §34090.7.] Likewise, routine video monitoring need only be retained for one year, and may be destroyed or erased after 90 days if another record, such as written minutes, is kept of the recorded event. "Routine video monitoring" is defined as video recording by a video or electronic imaging system designed to record the regular and ongoing operations of a city, including mobile in-car video systems, jail observation and monitoring systems, and building security recording systems. [Gov. Code, §§ 34090.6, 34090.7.] State law does not permit destruction of records affecting title to or liens on real property, court records, records required to be kept by statute, and the minutes, ordinances, or resolutions of the legislative body or city board or commission. [Gov. Code, § 34090, subds. (a), (b), (c), (e).] Employers are required to maintain personnel records for at least three years after an employee's termination, subject to certain exceptions, including peace officer personnel records, pre-employment records, and where an applicable collective bargaining agreement provides otherwise. [Lab. Code, § 1198.5, subd. (c)(1).] Most local agencies adopt records retention schedules as a key element of a records management system. The Secretary of State has provided local governments with records management guidelines. [The Secretary of State's Local Government Records Management Guidelines may be viewed at http://www.sos.ca.gov/archives/local-gov-program/pdf/records-management-8.pdf.]

Frequently Requested Information and Records
December 2014 Cumulative Supplement

This table is intended as a general guide on the applicable law and is not intended to provide legal advice. The facts and circumstances of each request should be carefully considered in light of the applicable law. A local agency's legal counsel should always be consulted when legal issues arise.

Information/Records Requested	Must the Information/Record Generally Be Disclosed?	Applicable Authority
Agenda materials distributed to a legislative body relating to an open session item	Yes	Gov. Code, § 54957.5. *For additional information, see p. 50 of "The People's Business: A Guide to the California Public Records Act," "the Guide."*
Audit Contracts	Yes	Gov. Code, § 6253.31
Auditor Records	Yes, with certain exceptions.	Gov. Code, § 36525(b)
Automated Traffic Enforcement System (red light camera) records	No	Veh. Code, § 21455.5(e)(1)
Autopsy Reports	No	Gov. Code, § 6254(f); *Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271.
Calendars of Elected Officials	Perhaps not, but note that there is no published appellate court decision on this issue post- Prop. 59.[1]	*See Times Mirror Co. v. Superior Court (1991) 53 Cal.3d. 1325 and Rogers v. Superior Court* (1993) 19 Cal.App.4th 469 for a discussion of the deliberative process privilege. *For additional information, see p. 35 of the Guide.*
Claims for damages	Yes	*Poway Unified School District v. Superior Court* (1998) 62 Cal.App.4th 1496.

Information/Records Requested	Must the Information/Record Generally Be Disclosed?	Applicable Authority
Coroner photos or videos	No	*Civ. Proc. Code, § 129.*
Dog license information	Unclear.	*See conflict between Health & Safety Code,* § 121690(h) which states that license information is confidential, and Food and Agr. Code, § 30803(b) stating license tag applications shall remain open for public inspection.
Election petitions (initiative, referendum and recall petitions)	No, except to proponents if petition found to be insufficient.	Gov. Code, § 6253.5; Elec. Code, §§ 17200, 17400, and 18650; Evid. Code, § 1050. *For additional information, see p. 21 of the Guide.*
Emails of government staff and/or officials on government accounts and/or devices	Yes, unless an exemption applies.	Emails containing information relating to the public's business prepared, owned, used or retained by a state or local agency are public records subject to disclosure. Gov. Code, §§ 6252(e), 6253.9(a). *For additional information, see p. 51 of the Guide.*
Emails of agency staff and/or officials on personal accounts and devices inaccessible to the agency	Unclear	A document not 'prepared, owned, used, or retained' by a public agency is not a public record, even though it may contain information relating to the public's business. *Regents of the University of California v. Superior Court* (2013) 222 Cal.App.4th 383. However, a case holding that emails relating to public business on accounts and devices of individual public officials and employees are not public records has been depublished by grant of review by the Supreme Court. *City of San Jose v. Superior Court* (2014) 2225 Cal.App.4th 7; *review granted, depublished* (2014) 173 Cal.Rptr. 3d 46. One court has held that it is an open issue whether public records may be obtained from private computers under the Act. *Bertoli v. City of Sebastopol (*2015) 182 Cal.Rptr.3d 308.
Employment Agreements/Contracts	Yes	Gov. Code, §§ 6254.8 and 53262(b). *For additional*

Information/Records Requested	Must the Information/Record Generally Be Disclosed?	Applicable Authority
		information, see p. 30 of the Guide.
Expense Reimbursement Report Forms	Yes	Gov. Code, § 53232.3(e)
Form 700 (Statement of Economic Interests) and Campaign Statements	Yes[2]	Gov. Code, § 81008
Geographic Information System (GIS) mapping software and data	No, as to proprietary software. Yes as to GIS base map information.	Gov. Code, § 6254.9; 88 Ops.Cal.Atty.Gen. 153 (2005); *see Sierra Club v. Superior Court (2013) 57 Cal.4th 157 for data as a public record; see also County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301 for GIS basemap as public record; *Sierra Club v. Superior Court* (2011) 195 Cal.App.4th 1537; *for additional information, see p. 51 of the Guide*.
Grading documents including geology reports, compaction reports, and soils reports submitted in conjunction with an application for a building permit	Yes	89 Ops.Cal.Atty.Gen. 39 (2006); but see Gov. Code, § 6254(e). *For additional information, see p. 19 of the Guide.*
Juvenile Court Records	No	*T.N.G. v. Superior Court* (1971) 4 Cal.3d. 767; Welf. & Inst. Code, §§ 827 and 828. *For additional information, see p. 24 of the Guide.*
Legal billing statements	Generally, yes, as to amount billed. No, as to any billing detail which reflects an attorney's impressions, conclusions, opinions or legal research or strategy.	Gov. Code, § 6254(k); Evid. Code, § 950, et seq.; *Smith v. Laguna Sun Villas Community Assoc.* (2000) 79 Cal.App.4th 639; *United States v. Amlani,* 169 F.3d 1189 (9th Cir. 1999); *Clarke v. American Commerce National Bank*, 974 F.2d. 127 (9th Cir. 1992); but see Gov. Code, § 6254(b) as to the disclosure of billing amounts reflecting legal strategy in pending litigation. *County of Los Angeles v. Superior*

Information/Records Requested	Must the Information/Record Generally Be Disclosed?	Applicable Authority
		Court (2012) 211 Cal.App.4th 57 (Pending litigation exemption does not protect legal bills reflecting the hours worked, the identity of the person performing the work, and the amount charged from disclosure; only work product or privileged descriptions of work may be redacted). *For additional information, see pp. 19 and 28 of the Guide.*
Library Patron Use Records	No	Gov. Code, §§ 6254(j) and 6267. *For additional information, see p. 25 of the Guide.*
Medical Records	No	Gov. Code, § 6254(c). *For additional information, see p. 25 of the Guide.*
Mental Health detentions *(5150 reports)*	No	Welf. & Inst. Code, § 5328. *For additional information, see p. 24 of the Guide.*
Minutes of Closed Sessions	No	Gov. Code, § 54957.2(a). *For additional information, see pp. 19, 34, and 35 of the Guide.*
Notices/Orders to property owner re: housing/building code violations	Yes	Gov. Code, § 6254.7(c). *For additional information, see p. 20 of the Guide.*
Official Building Plans (architectural drawings and plans)	Inspection only. Copies provided under certain circumstances.	Health & Saf. Code, § 19851; see also 17 U.S.C. §§ 101 and 102. *For additional information, see p. 19 of the Guide.*
Personal Financial Records	No	Gov. Code, §§ 7470, 7471, 7473; see also Gov. Code, § 6254(n). *For additional information, see p. 25 of the Guide.*

Information/Records Requested	Must the Information/Record Generally Be Disclosed?	Applicable Authority
Personnel • Employee inspection of own personnel file	Yes, with exceptions.	• *For additional information, see pp. 29-31 of the Guide.* Lab. Code, § 1198.5. This section applies to charter cities. *See* Gov. Code, § 31011. For peace officers, see Gov. Code, § 3306.5. For firefighters, see Gov. Code, § 3256.5.
• Investigatory reports	It depends.	• *Marken v. Santa Monica-Malibu Unified Sch. Dist.* (2012) 202 Cal.App.4th 1250; *Sanchez v. County of San Bernardino* (2009) 176 Cal.App.4th 516; *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742. *For additional information, see pp. 29-30 of the Guide*.
• Name and pension amounts of public agency retirees	Yes. However, personal or individual records, including medical information, remain exempt from disclosure.	• *Sacramento County Employees Retirement System v. Superior Court* (2011) 195 Cal.App.4th 440; *San Diego County Employees Retirement Association v. Superior Court* (2011) 196 Cal.App.4th 1228; *Sonoma County Employees Retirement Assn. v. Superior Court* (2011) 198 Cal.App.4th 196.
• Names and salaries (including performance bonuses and overtime) of public employees, including peace officers	Yes, absent unique, individual circumstances. However, other personal information such as social security numbers, home telephone numbers and home addresses are generally exempt from disclosure per Gov. Code, § 6254(c).	• *International Federation of Professional and Technical Engineers, Local 21, AFL-CIO, et al. v. Superior Court* (2007) 42 Cal.4th 319; *Commission on Peace Officers Standards and Training v. Superior Court* (2007) 42 Cal.4th 278.
• Officer's personnel file, including internal affairs investigation reports	No	This information can only be disclosed through a *Pitchess* motion. Pen. Code, §§ 832.7 and 832.8; Evid. Code, §§ 1043-1045; *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319; *People v. Superior Court* (2014) 228 Cal.App.4th

Information/Records Requested	Must the Information/Record Generally Be Disclosed?	Applicable Authority
		1046; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411.
• Test Questions, scoring keys, and other examination data.	No	• Gov. Code, § 6254(g)
• **Police/Law Enforcement**		*For additional information, see p. 22-25 of the Guide.*
• Arrest Information	Yes	• Gov. Code, § 6254(f)(1); *County of Los Angeles v. Superior Court (Kusar)* (1993) 18 Cal.App.4th 588.
• Charging documents and court filings of the DA	Yes	• *Weaver v. Superior Court* (2014) 224 Cal.App.4th 746.
• Child abuse reports	No.	• Pen. Code, §11167.5
• Citizen complaint policy	Yes	• Pen. Code, § 832.5(a)(1)
• Citizen complaints	No.	• Pen. Code, § 832.7
• Citizen complaints – annual summary report to the Attorney General	Yes	• Pen. Code 832.7(c), *For additional information, see p. 20 of the Guide.*
• Citizen complainant information – names addresses and telephone numbers	No	• *City of San Jose v. San Jose Mercury News* (1999) 74 Cal.App.4th 1008. *For additional information see p. 30 of the Guide.*
• Concealed weapon permits and applications	Yes, except for home/ business address and medical/psychological history.	• Gov. Code, § 6254(u)(1); *CBS, Inc. v. Block* (1986) 42 Cal.3d 646.
• Contact information – names, addresses and phone numbers of crime victims or witnesses	No	• Gov. Code § 6254(f)(2). For additional information, see p. 29 of the Guide.
• Criminal history	No	• Pen. Code, § 13300 et seq.; Pen. Code, § 11105 et

Information/Records Requested	Must the Information/Record Generally Be Disclosed?	Applicable Authority
		seq.
• Criminal investigative reports including booking photos, audio recordings, dispatch tapes, 911 tapes and in-car video	No	• Gov. Code, § 6254(f); *Haynie v. Superior Court* (2001) 26 Cal.4th 1061.
• Crime reports	Yes	• Gov. Code, §§ 6254(f), 6255.
• Crime reports, including witness statements	Yes, but only to crime victims and their representatives	• Gov. Code, §§ 6254(f), 13951.
• Elder abuse reports	No	• Welf. and Inst. Code, §15633
• Gang intelligence information	No	• Gov. Code, § 6254(f); 79 Ops.Cal.Atty Gen. 206 (1996).
• In custody death reports to AG	Yes	• Gov. Code, § 12525
• Juvenile court records	No	• *T.N.G. v. Superior Court* (1971) 4 Cal.3d 767; Welf. & Inst. Code, §§ 827 and 828. *For additional information, see* p. 24 of the Guide.
• List of concealed weapon permit holders	Yes	• Gov. Code, § 6254(u)(1); *CBS, Inc. v. Block* (1986) 42 Cal.3d 646.
• Mental health detention(5150) reports	No	• Welf. & Inst. Code, § 5328. *For additional information, see* p. 24 of the Guide.
• Names of officers involved in critical incidents	Yes, absent unique, individual circumstances.	• *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59; *Commission on Peace Officer Standards and Training v. Superior Court* (2007) 42 Cal.4th 278; *New York Times v. Superior Court* (1997) 52 Cal.App.4th 97; 91 Ops. Cal.Atty.Gen. 11 (2008).
• Official service photographs	Yes, unless disclosure would pose an	• *Ibarra v. Superior Court* (2013) 217 Cal.App.4th 695.

Information/Records Requested	Must the Information/Record Generally Be Disclosed?	Applicable Authority
of peace officers	unreasonable risk of harm to the officer.	
• Peace officer's name, employing agency and employment dates	Yes, absent unique, individual circumstances.	• *Commission on Peace Officer Standards and Training v. Superior Court* (2007) 42 Cal.4th 278.
• Traffic accident reports	Yes, in their entirety, but only to certain parties.	• Veh. Code, §§ 16005, 20012 [only disclose to those needing the information, such as insurance companies, and the individuals involved].
Public Contracts • Bid Proposals, RFP proposals	Yes, except competitive proposals may be withheld until negotiations are complete to avoid prejudicing the public.	• *Michaelis v. Superior Court* (2006) 38 Cal. 4th 1065; *but see* Gov. Code, § 6255 and Evid. Code, § 1060. *For additional information, see pp. 31-32 of the Guide.*
• Certified payroll records	Yes, but records must be redacted to protect employee names, addresses, and social security number from disclosure.	• Labor Code § 1776.
• Financial information submitted for bids	Yes, except some corporate financial information may be protected.	• Gov. Code, §§ 6254(a),(h) and (k), 6254.15 and 6255; *Schnabel v. Superior Court of Orange County* (1993) 5 Cal.App.4th 704, 718. *For additional information, see p. 31-32 of the Guide.*
• Trade secrets	No	• Evid. Code, § 1060; Civ. Code, § 3426, et seq. *For additional information, see p. 33 of the Guide.*
Purchase price of real property	Yes, after the agency acquires the property.	Gov. Code, § 7275

Information/Records Requested	Must the Information/Record Generally Be Disclosed?	Applicable Authority
Real Estate • Property information (such as selling assessed value, square footage, number of rooms) • Appraisals and offers to purchase	 Yes Yes, but only after conclusion of the property acquisition.	*For additional information, see p. 32 of the Guide.* • 88 Ops.Cal.Atty.Gen. 153 (2005). • Gov. Code, § 6254(h); Note that Gov. Code, § 7267.2 requires release of more information to the property owner while the acquisition is pending.
Report of arrest not resulting in conviction	No, except as to peace officers or peace officer applicants.	Lab. Code, § 432.7
Settlement Agreements	Yes	*Register Division of Freedom Newspapers v. County of Orange* (1984) 158 Cal.App.3d 893. *For additional information, see p. 28 of the Guide.*
Social security numbers	No.	Gov. Code § 6254.29
Speaker Cards	Yes	Gov. Code, § 6255
Tax Return Information	No	Gov. Code, § 6254(k); IRS Code, § 6103.
Taxpayer information received in connection with collection of local taxes	No	Gov. Code, § 6254(i). *For additional information, see p. 33 of the Guide.*
Teacher test scores, identified by name, showing teachers' effect on students' standardized test performance	No	Gov. Code, § 6255; *Los Angeles Unified School Dist. v. Superior Court* (2014) 228 Cal.App.4th 222.

Information/Records Requested	Must the Information/Record Generally Be Disclosed?	Applicable Authority
Telephone Records of Elected Officials	Yes, as to expense totals. No, as to phone numbers called.	See *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469. *For additional information, see p. 35 of the Guide.*
Utility usage data	No, with certain exceptions.	Gov. Code, § 6254.16. *For additional information, see p. 33 of the Guide.*
Voter information	No	Gov. Code, § 6254.4. *For additional information, see p. 21 of the Guide.*

1 *The analysis with respect to elected officials may not necessarily apply to executive officers such as City Managers or Chief Administrative Officers, and there is no case law directly addressing this issue.*

2 *It should be noted that these statements must be made available for inspection and copying not later than the second business day following the day on which the request was received.*

Revised March 20, 2015