
THIRD READING

Bill No: AB 1479
Author: Bonta (D), et al.
Amended: 9/1/17 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE: 6-1, 7/11/17
AYES: Jackson, Anderson, Hertzberg, Monning, Stern, Wieckowski
NOES: Moorlach

SENATE APPROPRIATIONS COMMITTEE: 7-0, 9/1/17
AYES: Lara, Bates, Beall, Bradford, Hill, Nielsen, Wiener

ASSEMBLY FLOOR: 71-1, 5/30/17 - See last page for vote

SUBJECT: Public records: custodian of records: civil penalties

SOURCE: Author

DIGEST: This bill requires public agencies designate a person or office to act as the agency's custodian of records who would be responsible for responding to any request made pursuant to the California Public Records Act (CPRA) and any inquiry from the public about a decision by the agency to deny a request for records. This bill provides that the designation of a custodian of records does not impose a duty upon a requester to direct the request to a designated custodian, nor does it prevent a person or office that is not the designated custodian from disclosing information pursuant to this chapter.

ANALYSIS:

Existing law:

- 1) Provides, under the California Constitution, that "the people have the right of access to information concerning the conduct of the people's business, and

therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny...” (Cal. Const., art. I, Sec. 3.)

- 2) Governs, under CPRA, the disclosure of information collected and maintained by public agencies. (Gov. Code Sec. 6250 et seq.) Generally, all public records are accessible to the public upon request, unless the record requested is exempt from public disclosure. There are 30 general categories of documents or information that are exempt from disclosure, essentially due to the character of the information, and unless it is shown that the public’s interest in disclosure outweighs the public’s interest in non-disclosure of the information, the exempt information may be withheld by the public agency with custody of the information. (Gov. Code Sec. 6254.)
- 3) Provides that an agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of the CPRA, or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov. Code Sec. 6255(a).)
- 4) Provides that a response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing. (Gov. Code Sec. 6255(b).)
- 5) Defines state agency, for the purposes of the CPRA, to include every state officer, department, division, bureau, board, and commission or other state body or agency except for the Legislature and the Judiciary. (Gov. Code Sec. 6252.)
- 6) Provides that public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as provided. (Gov. Code Sec. 6253(a).)
- 7) Provides that each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so. (Gov. Code Sec. 6253(b).)
- 8) Provides that each agency shall determine within 10 days from the receipt of the CPRA request, whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly

notify the person making the request of the agency's determinations and reasons therefore. In unusual circumstances, the time limit may be extended by written notice by the head of the agency or his or her designee, but notice shall specify a date that would result in an extension not for more than 14 days. (Gov. Code Section 6253(c).)

- 9) Provides that the public agency shall do all of the following to the extent reasonable under the circumstances:
 - a) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;
 - b) Describe the information technology and physical location in which the records exist; and
 - c) Provide suggestions for overcoming any practical basis for denying access to the records or information sought. (Gov. Code Sec. 6253.1(a).)
- 10) Provides that some state agencies shall establish written guidelines for the accessibility of public records and shall post these written guidelines in a conspicuous public place at the offices of these agencies, and provide a copy of the guidelines upon request and free of charge. (Gov. Code Sec. 6253.4.)
- 11) Allows any person to institute proceedings for injunctive relief, declarative relief, or a writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or receive a copy of any public record or class of public records under the CPRA. (Gov. Code Sec. 6258.)
- 12) Provides for whenever it is made to appear by verified petition to the superior court of the county where the public records are situated, that specified public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose them or show cause why he or she should not have to disclose them. (Gov. Code Sec. 6259(a).)
- 13) Requires the court to order the public official to make the record public if the court finds that the public official's decision to refuse disclosure is not justified under Government Code Section 6245 or 6255. If the court finds the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content and issue an order supporting the decision to refuse disclosure. (Gov. Code Sec. 6259(b).)

- 14) Allows review of a court's decision directing disclosure of records or supporting the public official's refusal to disclose. The decision of the court is not viewed as a final judgment or order appealable within the meaning of Section 904.1 of the Code of Civil Procedure, but rather is considered to be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. A stay of an order or judgment may be granted if the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. In order to obtain this review, a party shall file a petition within 20 days of service of a written notice of entry of the order. (Gov. Code Sec. 6259(c).)
- 15) Provides that the court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to the CPRA. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. (Gov. Code Sec. 6259(d).)
- 16) Provides that if the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency. (Gov. Code Sec. 6259(d).)

This bill:

- 1) Provides that each agency shall designate a person or office to act as the agency's custodian of records who is responsible for responding to any requests made pursuant to the CPRA and any inquiry from the public about a decision by the agency to deny a request for records.
- 2) Provides that the designation of a custodian of records does not impose a duty upon a requester to direct the request to a designated custodian, nor does it prevent a person or office that is not the designated custodian from disclosing information pursuant to this chapter.
- 3) Sunsets on January 1, 2023.

Comments

Making public records more accessible. Existing law provides that a public agency should assist the member of the public make a focused and effective request. Specifically, existing law provides the public agency shall do all of the following to the extent reasonable under the circumstances:

- Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;
- Describe the information technology and physical location in which the records exist; and
- Provide suggestions for overcoming any practical basis for denying access to the records or information sought. (Gov. Code Sec. 6253.1(a).)

Additionally, existing law provides that every agency may adopt regulations stating the procedures a member of the public should follow when making a CPRA request. Existing law further states that some state agencies shall establish written guidelines for the accessibility of public records and shall post these written guidelines in a conspicuous public place at the offices of these agencies, and provide a copy of the guidelines upon request and free of charge. The agencies included in this requirement for written, publicly posted guidelines includes, but is not limited to, the: Department of Motor Vehicles; Transportation Agency, Department of Consumer Affairs; Secretary of State, Department of Insurance, San Francisco Bay Conservation and Development Commission; State Department of Social Services; State Department of Public Health; California Coastal Commission; and Los Angeles County Air Pollution Control District. (Gov. Code Sec. 6253.4.)

Despite these provisions, under existing law it is not clear to whom a member of the public should direct their request, unless it is included in the agency's guidelines. Though the CPRA is often utilized by organizations with legal and other specialized knowledge who may understand the process, the goal of the CPRA is to make these records available to a member of the general public. (Cal. Const., art. I, Sec. 3.) This bill thus requires each agency subject to the CPRA to designate a person or office to act as the agency's custodian of records who is responsible for responding to any request made pursuant to this chapter and any inquiry from the public about a decision by the agency to deny a request for the records. The author believes this change will help clarify the process for making a CPRA request with a particular agency and prevent delayed responses to a CPRA request.

In opposition, the, California Municipal Utilities Association, Association of California Healthcare Districts, Beta Healthcare Group, and Association of California Water Agencies writes:

Local agencies strive to comply with the strict guidelines inherent with the CPRA, including responding within a 10-day period from the time of the

request; this measure runs counter to that intent. AB 1479 would cause further delays in processing requests by creating a bottleneck in the process. AB 1479 requires each public agency to designate a person or office to act as the agency's "custodian of records." The custodian of records is then responsible for responding to all CPRA requests made to the agency. Rather than allowing an agency to determine who is the most appropriate person or office to respond to a request, based on their level of expertise on the subject of a request, AB 1479 takes a one-size-fits-all approach to responding to CPRA requests. For example, when a county receives a question about sheriff's records, should the same office respond to that request that is also responding to requests about health services? Records and information are going to need to be shuffled from office to office, and department to department, unnecessarily to meet the requirements of this bill.

This bill was amended to provide that the designation of a custodian of records does not impose a duty upon a requester to direct the request to a designated custodian, nor does it prevent a person or office that is not the designated custodian from disclosing information pursuant to this chapter. This ensures that a request made by an individual not aware of the custodian of records would still be a valid request. Moreover, it provides clarification to agencies that even employees or offices who are not designated as the custodian of records, may provide information regarding a CPRA request. This provision would ensure that another employee may be able to respond to a request should the agency need someone who is not the designated custodian to respond or provide information regarding a CPRA request. This arguably addresses some of the concerns raised by the California Municipal Utilities Association, Association of California Healthcare Districts, Beta Healthcare Group, and Association of California Water Agencies.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- Unknown, potentially-significant costs ranging from the hundreds of thousands of dollars to negligible (General Fund) to each of the various state agencies and departments (of which there are over 150) depending on an agency's current practice and if it would need to hire additional personnel to designate a person as custodian of records.
- The California Constitution exempts a subvention of funds from the state to reimburse local governments for the program or increased level of service with respect to legislative mandates related to compliance with the PRA.

SUPPORT: (Verified 9/1/17)

American Civil Liberties Union of California
California Broadcasters Association
Californians Aware
Cleveland National Forest Foundation - Save Our Forest and Ranchlands
Climate Action Campaign
Coastal Environmental Rights Foundation
ECO San Diego
Electronic Frontier Foundation
First Amendment Coalition
Inland Oversight Committee
Judge Quentin L. Kopp
Naked Capitalism
Oakland Privacy
San Diegans for Open Government
San Diego Audubon Society
San Diego Coastkeeper
Think Computer Foundation
One Individual

OPPOSITION: (Verified 9/5/17)

Association of California Healthcare Districts
Association of California Water Agencies
Association of Monterey Bay Area Governments
Beta Healthcare Group
California Association of Clerks and Election Officials
California Department of Fish and Wildlife
California Municipal Utilities Association
City Clerks Association of California
City of El Centro
City of Huntington Beach
City of La Quinta
City of Palm Desert
City of Torrance
Costa Mesa Sanitary District
County of Los Angeles
County of Orange
Department of Fish and Wildlife
Santa Cruz Regional 9-1-1

South Bay Cities Council of Governments

ASSEMBLY FLOOR: 71-1, 5/30/17

AYES: Acosta, Aguiar-Curry, Travis Allen, Arambula, Baker, Berman, Bigelow, Bloom, Bocanegra, Bonta, Brough, Burke, Caballero, Calderon, Cervantes, Chávez, Chen, Chiu, Chu, Cooley, Cunningham, Dababneh, Dahle, Daly, Flora, Fong, Frazier, Friedman, Cristina Garcia, Gipson, Gloria, Gomez, Gonzalez Fletcher, Gray, Grayson, Harper, Holden, Jones-Sawyer, Kalra, Kiley, Lackey, Levine, Low, Maienschein, Mathis, McCarty, Medina, Melendez, Mullin, Muratsuchi, Nazarian, Obernolte, O'Donnell, Patterson, Quirk, Quirk-Silva, Reyes, Ridley-Thomas, Rodriguez, Rubio, Salas, Santiago, Steinorth, Mark Stone, Thurmond, Ting, Voepel, Waldron, Weber, Wood, Rendon

NOES: Irwin

NO VOTE RECORDED: Chau, Choi, Cooper, Eggman, Gallagher, Eduardo Garcia, Limón, Mayes

Prepared by: Marisa Shea / JUD. / (916) 651-4113

9/5/17 18:15:34

**** END ****