

First Supplement to Memorandum 2019-57

**California Public Records Act Clean-Up
(Comments of County of Santa Clara)**

The County of Santa Clara recently submitted a letter commenting on the Commission's tentative recommendation on recodification of the California Public Records Act ("CPRA").¹ The Commission much appreciates the county's input and the effort that county representatives put into reviewing the tentative recommendation and preparing the letter. The letter is attached as an Exhibit and discussed below.

Unless otherwise indicated, all statutory references in this supplement are to the Government Code.

SUPPORT FOR THE PROPOSED RECODIFICATION

County representatives "reviewed the Tentative Recommendation carefully," and "support the Commission's proposed approach to reorganizing and reformatting the [CPRA] with the goal of making the CPRA clearer and easier to reference and apply."² They realize that "there will be an initial adjustment period after the CPRA is re-codified," but they "believe that in the long term, both government employees implementing the CPRA and members of the public exercising their rights under the CPRA will benefit."³

They further explain:

Aspects of the Tentative Recommendation that we particularly support include the proposed reorganization of most of the CPRA's disclosure exemptions into a new Part 5, split into chapters organized by subject matter; and the use of a three-digit decimal system for numbering each section within those chapters, with

1. Tentative Recommendation on *California Public Records Act Clean-Up* (May 2019). Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. Exhibit p. 1.

3. *Id.*

gaps maintained for insertion of newly enacted material on related subjects. We agree with the Commission that the current disclosure exemptions as codified in Government Code section 6254 are difficult to understand, use, and cite because of the section's length and its subdivision into paragraphs, subparagraphs, and unnumbered subsections. And we agree that re-codification into shorter sections without changing any of the substantive context of each statutory exemption, will enhance its readability and understanding. Re-codification into shorter sections will have the same benefit for the procedural requirements proposed to be included in Part 3.⁴

COMMENTS ON THE CPRA INDEX

The County of Santa Clara's "primary recommendation" regarding the proposed recodification concerns the CPRA index (proposed Sections 7930.000-7930.215, which would recodify existing Sections 6275-6276.48).⁵

The county supports one of the Commission's key decisions regarding the CPRA index. It "strongly agree[s] ... that the exemptions included in the alphabetical index should not be relocated into the CPRA out of the codes in which they currently exist."⁶ The county points out that "[s]uch a move would separate these sections from other substantive provisions on the same subject matter," which "could prove problematic in many instances."⁷

The county suggests, however, that the Commission "reconsider reorganizing the ... alphabetical index by subject matter."⁸ County representatives "believe a subject-matter-based approach would make the index much more user-friendly."⁹ They "recognize the time-consuming work required to individually examine and categorize the full list of exemptions contained in the cross-referenced index," but believe the potential "increase in long-term efficiency" would be "well worth the one-time administrative burden to re-organize the provisions."¹⁰

In making this suggestion, county representatives considered the partial draft of a subject-matter-based index that the staff prepared for the Commission's consideration earlier this year (see the attachment to Memorandum 2019-25). That draft would have placed the subject-matter-based index in Part 6 of the

4. Exhibit pp. 1-2.

5. Exhibit p. 2.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

proposed recodification, after the substance of the CPRA (Parts 1-5 of proposed new Division 10 of Title 1 of the Government Code).

The County of Santa Clara recommends that instead of recodifying the CPRA index in a separate Part 6, the Commission place each index entry “within its corresponding subject-matter-based chapter(s) in Part 5.” To illustrate this approach, the county points out that “Part 5, Chapter 1, Article 5 of the Tentative Recommendation currently contains only Sections 7923.800 and 7923.805, two exemptions relating to firearm license applications”¹¹ Under the county’s proposed approach, that article “would also include a new Section 7923.810,” which would contain the following index entries:

7930.180. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

(1) Section 26715 of the Penal Code, relating to preparation and use of a centralized list of firearms dealers licensed pursuant to subdivisions (a) to (e), inclusive, of Section 26700 of the Penal Code.

(2) Section 28060 of the Penal Code, relating to confidentiality of records of a private party firearms transaction.

(3) Sections 28475 and 28480 of the Penal Code, relating to use of the centralized list of exempted federal firearms licensees.¹²

The county says that under this organizational approach “a CPRA user looking for exemptions in any chapter of Part 5 could be confident that *all* such exemptions — whether part of the CPRA itself, or cross-referenced from another code — are located together.”¹³ The county also points out that the approach “would reduce the overall length of the newly re-codified CPRA” (because it would no longer be necessary to include index entries for the firearm-related provisions recodified as Sections 7923.800 and 7923.805), “while retaining the clarity and usability benefits the Commission has prioritized.”¹⁴

STAFF ANALYSIS

The County of Santa Clara has cogently expressed the potential advantages of its proposed approach to the CPRA index. As the county recognizes, however, reorganization of the CPRA index by subject matter would be a substantial undertaking, requiring extensive rewriting of the draft recommendation attached to Memorandum 2019-57.

11. Exhibit p. 3.

12. See *id.*

13. Exhibit p. 2 (emphasis in original).

14. Exhibit p. 3.

It would be close to impossible for the Commission to complete such work in time to submit its proposed recodification to the Legislature in the upcoming legislative session. That would be particularly true if the Commission were to intersperse the index entries throughout Part 5 of the proposed recodification as the county suggests, instead leaving the entire index in Part 6.

Interspersing the index entries in Part 5 would also have another downside. The CPRA index would no longer be in a discrete part of the code, making it less clear that the index is merely a helpful tool for CPRA users, not substantive law. In addition, the instructions regarding use of the index (now in proposed Sections 7930.000 and 7930.005) would be separated from the rest of the index, perhaps decreasing the likelihood that readers will refer to those instructions.

The Commission should also bear in mind that the California News Publishers Association (“CNPA”) expressed support for the alphabetical approach used in the tentative recommendation and in current law:

CNPA believes that, *at least for the time*, the index should be left in alphabetical order to avoid creating further confusion for practitioners familiar with the CPRA in its existing form. CNPA is not aware of many members of the general public that regularly utilize the index to the CPRA and thus does not believe that reorganizing the index by topic, or otherwise, would be of great utility.¹⁵

Rather than delaying the recodification by making changes to the alphabetical index now, it might be better to revisit the index at another time, as the Commission has previously discussed to some extent.¹⁶ For example, the Commission could conduct a separate study that (1) reexamines how to organize the index (alphabetically, by subject matter, etc.), and (2) reviews the codes (including the CPRA itself) for additional provisions that belong in the index.

Would the Commission like to follow that approach? Would it prefer to take some other approach to the CPRA index?

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

15. Memorandum 2019-47, Exhibit p. 13 (comments of CNPA) (emphasis added).

16. See Memorandum 2019-44, pp. 40-41, 48; *Draft Minutes* (Sept. 2019), p. 4; see also Memorandum 2019-57, Attachment p. 13, n. 74.

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VIA EMAIL & U.S. MAIL

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Re: County of Santa Clara's Comments on the California Law Revision Commission's
Tentative Recommendation: California Public Records Act Clean-Up

Dear Ms. Gaal,

I write to submit comments on behalf of the County of Santa Clara regarding the California Law Revision Commission's California Public Records Act Clean-Up Tentative Recommendation, issued in May 2019.

We have reviewed the Tentative Recommendation carefully, and we support the Commission's proposed approach to reorganizing and reformatting the California Public Records Act (CPRA) with the goal of making the CPRA clearer and easier to reference and apply. While we know there will be an initial adjustment period after the CPRA is re-codified, we believe that in the long term, both government employees implementing the CPRA and members of the public exercising their rights under the CPRA will benefit.

Aspects of the Tentative Recommendations that we particularly support include the proposed reorganization of most of the CPRA's disclosure exemptions into a new Part 5, split into chapters organized by subject matter; and the use of a three-digit decimal system for numbering each section within those chapters, with gaps maintained for insertion of newly enacted materials on related subjects. We agree with the Commission that the current disclosure exemptions as codified in Government Code section 6254 are difficult to understand, use, and cite because of the section's length and its subdivision into paragraphs, subparagraphs, and unnumbered subsections. And we agree that re-codification into shorter sections, without changing any of the substantive context of each statutory exemption, will enhance its readability

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and understanding. Re-codification into shorter sections will have the same benefit for the procedural requirements proposed to be included in Part 3.

Our primary recommendation for the Commission concerns the proposed Part 6, which would contain the alphabetical index of cross-referenced disclosure exemptions from other California codes. This index is currently codified in Government Code sections 6275-6276.48. The Commission indicated that comments on its proposal with respect to Part 6 would be especially helpful.

We strongly agree with the Commission that the exemptions included in the alphabetical index should not be relocated into the CPRA out of the codes in which they currently exist. As the Commission noted, such a move would separate these sections from other substantive provisions on the same subject matter. In our view, that separation could prove problematic in many instances. For example, the Penal Code sections relating to confidentiality of local summary criminal history information (see Pen. Code, §§ 13300, 13305) serve other important substantive purposes in the Penal Code, and should not be removed from that code into the CPRA.

However, we urge the Commission to reconsider reorganizing the cross-referenced alphabetical index by subject matter. The Commission previously considered, but tentatively rejected, a subject-matter-based approach for the index. In its Memorandum 2019-25, dated April 2, 2019 ("April Memo"), the Commission included a proposed draft of Part 6 that would have divided the cross-referenced exemptions into multiple articles and sections based on their subject matter. The April Memo flagged several questions for consideration and comment, including "Would the subject matter approach used in the staff draft make the list of exemptions more user-friendly? Would it be preferable to stick with the current approach? Is there a better way to handle Article 2's list of exemptions in the Commission's recodification?" Although we recognize the time-consuming work required to individually examine and categorize the full list of exemptions contained in the cross-referenced index, we believe a subject-matter-based approach would make the index much more user-friendly. We believe this increase in long-term efficiency is well worth the one-time administrative burden to re-organize the provisions.

We recommend that the Commission depart from its current proposal of locating these cross-referenced exemptions in their own Part 6, and instead recommend locating each cross-reference within its corresponding subject-matter-based chapter(s) in Part 5. Under our proposal, a CPRA user looking for exemptions in any chapter of Part 5 could be confident that *all* such exemptions—whether part of the CPRA itself, or cross-referenced from another code—are located together.

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For example, Part 5, Chapter 1, Article 5 of the Tentative Recommendation currently contains only Sections 7923.800 and 7923.805, two exemptions relating to firearm license applications that are proposed to be relocated from Government Code Section 6254(u). Under our proposal, Part 5, Chapter 1, Article 5 of the Tentative Recommendation would also include a new Section 7923.810, containing the cross-references listed in Part 6, Article 4, Section 7930.180, subsections (3)-(5) of the April Memo. Subsections (1)-(2) would no longer need to be included because those CPRA exemptions would immediately precede the section containing the cross-references. This organization would reduce the overall length of the newly re-codified CPRA, while retaining the clarity and usability benefits the Commission has prioritized.

Please feel free to contact me with any questions about our recommendations.

Very truly yours,



for JAMES R. WILLIAMS
County Counsel