



City of Los Altos

ADMINISTRATIVE POLICY

SUBJECT: PUBLIC RECORDS ACT POLICY

DATE: JUNE 10, 2025

APPROVED BY: CITY COUNCIL

City of Los Altos Public Records Act Policy.

The City of Los Altos (City) adopts this Public Records Act Policy (Policy) to establish reasonable policies for the inspection and copying of public records, and to protect the integrity of the City's files and preserve the orderly function of City Hall. This Policy furthers the fundamental purpose of the California Public Records Act (CPRA) to provide access to information about the conduct of the people's business. This Policy is considered a restatement and continuation of the City's previously existing practice of responding to CPRA requests.

Overview of the California Public Records Act.

The CPRA, which can be found at California Government Code sections 7920.000 et seq, is the California law that provides the public with the right to inspect and the right to promptly obtain copies of "public records." The purpose of the CPRA is to provide access to information that enables the public to monitor the functioning of their Government. *CBS Inc. v. Block*, (1986) 42 Cal. 3d 646, 651.

The CPRA is interpreted broadly in favor of providing access to public records, and any exceptions to the CPRA are interpreted narrowly. Cal. Const, art. I, §3(b)(2); *Sander v. Superior Court* (2018) 26 Cal. App. 5th 651, 654. In 2004, the California Constitution was amended to include Article I, section 3(b), regarding the public's right to access public records.

What is a "Public Record"?

The CPRA defines a "public record" as "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 §7920.530.

A "**writing**" is defined as "any handwriting, typewriting, printing, photostating, photographing, photocopying, 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 create, regardless of the manner in which the record has been stored." Gov. Code §7920.545.

Questions are Not Writings or Records.

The CPRA creates no duty to answer written questions or oral questions submitted by members of the public. If an existing and readily available record contains the information that would answer the question, the City may choose to either answer the question or provide the record.

The Record Must Relate to the Public's Business.

Not every record in possession of the City is a public record. If a record contains primarily personal information, it is not a public record for purposes of the CPRA. *City of San Jose v. Superior Court* (2017) 2 Cal. 5th 608, 618-19.

The Record Must be Prepared, Owned, Used, or Retained by the City.

Records do not have to be in physical custody of the City to qualify as "prepared, owned, used or retained" by it. Records in the possession of a City's consultant can be public records if the City's agreement with the consultant provides that the City owns or controls the records. *City of San Jose v. Superior Court* (2017) 2 Cal. 5th 608, 623. Additionally, documents that otherwise meet the definition of public records are considered to be "retained" by the City if they are retained on an employee or official's personal device. *City of San Jose v. Superior Court*, (2017) 2 Cal. 5th 608, 629.

The Record Must be an Existing Record.

The CPRA applies only to existing records, and the City has no duty to create a record that does not exist at the time of the request. See Govt. Code § 7920.530; *Sander v. Superior Court* (2018) 26 Cal.App.5th 651; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061.

Physical Form is Not Important.

The courts have recognized that the intent of the CPRA was to include in the definition of "public records" all forms of records, including electronic media, and any new forms of record keeping that are developed. *Braun v. City of Taft* (1984) 154 Cal. App. 3d 332, 340.

What Agencies are Covered? Proposition 59.

The CPRA is applicable to state and local agencies in California. A "state agency" includes "every state office, officer, department, division, bureau, board and commission or other state body or agency." Gov. Code §7290.540. A "local agency" includes a county, city, city and county, school district, municipal corporation, special district, community college district or political subdivision." Gov. Code §7290.510. It should be noted that no case has yet held Prop 59 substantially altered the balance struck in the CPRA between government transparency, privacy protection, and government effectiveness.

Records that are Exempt from Disclosure.

The CPRA exempts certain public records from disclosure, based on concerns regarding privacy, government efficiency, or both. Some of the key exemptions can be found in California Government Code sections 7923.60-7929.610. A list of other California statutes that exempt records from disclosure pursuant to the CPRA can be found in California Government Code sections 7930-7930.215.

There are approximately 76 exemptions to record disclosure that are set forth in the CPRA. A few of the exemptions that are relied on frequently by the City are listed below:

Architectural and Official Building Plans.

Full-size design, engineer or official building plans are not public records and are exempt from disclosure without the written permission of the architects or engineers. These plans may be inspected at City Hall, but they cannot be photographed or video recorded. Gov. Code §7927.705; Health & Safety Code §19851; 17 U.S.C. §17 (federal copyright laws apply).

Requests for Proposals.

Pursuant to Government Code section 7922.000, the City does not release the responses to the City's Requests for Proposals (RFP) until the contract negotiations are complete. While the public has a strong interest in scrutinizing the process leading to the selection of the winning proposer, the City's interest in keeping these proposals confidential outweighs the public interest in disclosure "until the negotiations with the winning proposer are complete." Govt. Code § 7922.000; *Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065.

Attorney-Client Privilege and Attorney Work Product.

All records protected by privileges under the Evidence Code are exempt from disclosure under the CPRA pursuant to Gov. Code §7927.705. Attorney-client privileged communications and attorney work product are examples of privileged documents that are exempt from disclosure under the CPRA.

Code Enforcement Records

Local agencies may pursue code enforcement through administrative, civil, or criminal proceedings, or a combination of both. Records of code enforcement cases for which criminal sanctions are sought may be subject to the same disclosure rules as police and other law enforcement records, including the rules for investigatory records and files, as long as there is a concrete and definite prospect of criminal enforcement. Records of code enforcement cases being brought administratively or civilly do not qualify as law enforcement records. However, some administrative code or civil enforcement information, such as names and contact information of complainants, may be exempt from disclosure under the official information privilege, the identity

of informant privilege, or the public interest exemption. *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008.

Preliminary Drafts.

Gov. Code §7927.500 exempts from disclosure "preliminary drafts, notes or interagency or intra-agency memoranda that are not retained in the ordinary course of business." If a document goes through multiple drafts before being finalized or approved, only the final version is subject to disclosure once it has been deemed complete, approved, and/or issued. This applies to draft staff reports, resolutions and ordinances.

Law Enforcement Records.

The provisions of the CPRA related to crime and law enforcement records can be found at Gov. Code §7923.600-7923.805. Law enforcement investigatory files as a whole are generally exempt from disclosure pursuant to Gov. Code §7923.600; however, the City is required to disclose certain information that is contained in those records.

For instance, Vehicle Code §20012 requires that traffic accident reports be released to certain persons, including involved drivers, injured persons, and the authorized representatives of those persons. Also, certain information must be disclosed about arrestees, including their name, occupation, physical description, time and date of arrest, location of arrest and charges. Gov. Code §7923.610. For more information about the CPRA and law enforcement records contact the Police Records Division and/or the City Attorney.

Pending Litigation.

Records related to pending litigation to which the agency is a party, or claims made under the Government Claims Act are exempt from disclosure until the pending litigation or claim has been finally resolved or settled. Gov. Code §7927.200. This exemption applies only to documents specifically prepared for use in existing or anticipated litigation. *Fairley v. Superior Court* (1998) 66 Cal. App. 4th 1414. The Claim itself is a public record.

Personnel, Medical and Similar Records.

Personnel, medical, or similar files are exempt if their disclosure would constitute an unwarranted invasion of personal privacy. Gov. Code §7927.700.

Utility Customer Information.

The name, credit history, usage data, home address, and telephone number of a City's utility customer is generally exempt from disclosure under the CPRA, except in certain circumstances listed in Gov. Code §7927.410 (e.g. violation of utility usage policies).

"Public Interest" Exemption (Balancing Test or "Catchall" Exemption).

This exemption allows the City to withhold records that are not listed in any specific exemptions under the CPRA, when the public interest served by withholding the records clearly outweighs the public interest served by disclosure. Gov. Code §7922.000. (former Gov. Code §6255). The agency relying on this "balancing test" or "catchall" exemption must be able to clearly demonstrate the public interest in nondisclosure based on the facts of the particular case. *Black Panther Party v. Kehoe* (1974) 42 Cal. App.3d 645, 657.

How to Make a Request for Public Records.

Form of the Request.

A record request under the CPRA can be made orally or in writing, in person or by phone. A written request can be mailed, emailed, or personally delivered. *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1392. The City may strongly encourage the requester to use NextRequest, or similar public records requests software, but it cannot mandate it. It is recommended to reduce an oral request to a written request to have a record of the request in the event of a dispute over the City's response.

Specificity of the Request.

A public records request must reasonably describe an "identifiable record" or records and must be focused, specific, and reasonably clear, so that the City can determine which records are being requested. *Rogers v. Superior Court* (1993) 19 Cal. App. 4th 469, 481; *California First Amendment Coalition v. Superior Court* (1998) 67 Gal. App. 4th 159, 166.

Content of the Request.

A requesting party has a right to inspect disclosable records, or to copy records, or both. Gov. Code §§7922.525, 7922.530. A request should also specify whether it is for inspection, copying, or both. No "magic words" are required to make a record request, only that the described record or records are being sought. If a requesting party cites the federal Freedom of Information Act rather than the CPRA, the City is still required to respond pursuant to the CPRA. A requesting party is not required to explain the purpose of the request or how he or she intends to use the record. Gov. Code §7921.300.

The City's Response.

Timing of the Response.

The CPRA requires the City to respond to a request for records within ten (10) days from receipt of the request. Gov. Code §7922.535. This 10-day response is not a deadline for providing access to the records, but the deadline for the City to notify the requesting party about its determination of whether it has the requested records, and if they will be disclosed. This 10-day response may also notify the requester that the City will produce the records on a rolling basis beginning on a certain date.

The City can extend the 10-day response period for an additional fourteen (14) days if there is a need for more time to search and collect the records from separate facilities, to search for voluminous records, to consult with another interested agency or department, or to compile electronic records. Gov. Code §7922.535(b).

CPRA Does Not Provide Immediate Access to Public Records.

The CPRA does not provide a precise deadline for providing access to records. It states that the agency shall make the records "promptly available." Gov. Code §7922.530(a). However, the right to inspect public records does not mean that a person requesting to inspect public records during the City's regular office hours has an absolute right to see a record and immediately gain access to it.

The right to inspect a public record is constrained by an implied rule of reason to protect the records against theft, mutilation, or accidental damage, prevent interference with the orderly function of the office, and generally avoid chaos in record archives. *Bruce v. Gregory* (1967) 65 Cal.2d 666; *Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754; 64 Ops. Cal. Atty. Gen. 317 (1981).

Assisting the Requester.

The CPRA requires the City to assist a person making a request if they are having trouble with making a specific and effective request. This assistance includes helping the person identify records that would satisfy the purpose of the request; describing the City's records, record keeping technology and locations of records; providing an index of records; and other suggestions for overcoming barriers to obtaining the records. Gov. Code §7922.600.

Withholding or Redacting Records.

When the City denies all or part of a request based on an exemption, it must identify the specific exemption in its written response and must identify by name and title the person responsible for the decision. Gov. Code §§7922.540; 7922.000.

No Duty to Create a Privilege Log.

The CPRA does not require the City to create a privilege log or list that identifies the specific records being withheld. The City's response only needs to identify the legal grounds for nondisclosure. *Haynie v. Superior Court* (2001) 26 Cal.4th 1061.

No Waiver.

The waiver provision in Government Code section 7921.505 applies to an intentional disclosure of privileged documents, and the City's inadvertent release of privileged or exempt does not waive such privilege or exemption. *Ardon v. City of Los Angeles* (2016) 62 Cal.4th 1176; *Newark School District v. Superior Court* (2015) 245 Cal.App.4th 887.

Fees for Providing Records.

The City cannot charge a fee for inspecting records, but when copies are requested the City can charge the "direct cost of duplication" or a statutory fee for the copies, which it can require in advance of providing copies. Gov. Code §7922.530(a). City's Fee Schedule sets 25 cents per page for copies of records.

Remedies for CPRA Violations Remedies for Violation of the CPRA.

The CPRA provides for a special process for challenging the City's response to a record request. The CPRA provides that any person may petition the superior court to enforce the CPRA. Gov. Code §7923.100. The action must be filed in the superior court in the county where the requested records are maintained. Gov. Code §7923.100. The requesting party has the burden of proving that the City violated the CPRA, and the City is entitled to a presumption that it acted reasonably and in good faith in responding to the request. *ACLU of N. Cal. v. Superior Court* (2011) 202 Cal. App. 4th 55, 85.

Attorneys' Fees and Costs in CPRA Litigation.

The party that wins a CPRA lawsuit may be awarded attorneys' fees and costs, however, when the City wins the lawsuit, it will only be awarded its fees and costs if the plaintiffs case was *clearly frivolous*. Gov. Code §7923.115.