

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 1034 (Seyarto)  
Version: February 6, 2024  
Hearing Date: April 2, 2024  
Fiscal: Yes  
Urgency: No  
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**SUBJECT**

California Public Records Act: state of emergency

**DIGEST**

This bill adds an additional unusual circumstance under which the initial response time to a public records request may be extended by an agency for an additional 14 days to include the need to search for, collect, appropriately examine, and copy records during a state of emergency proclaimed by the Governor when the state of emergency has affected the agency's ability to timely respond to requests due to decreased staffing or closure of the agency's facilities, and specifies that this provision only applies to records not created during and applying to the state of emergency.

**EXECUTIVE SUMMARY**

The California Public Records Act (CPRA) makes all public records of a public agency open to public inspection upon request and grants the public the right to obtain a copy of any public record, unless the records are otherwise exempt from public disclosure. Under the CPRA, a public agency is required to make a determination within 10 days of a records request on whether the agency is in possession of the requested records and whether those records are disclosable. The agency must also provide an estimated date and time the requested records will be made available to the requester. An agency may extend that 10-day response period by an additional 14 days in specified "unusual circumstances." This bill would add an additional "unusual circumstance" under which the initial response time may be extended to include the need to search for, collect, appropriately examine, and copy records during a state of emergency proclaimed by the Governor when the state of emergency has affected the agency's ability to timely respond to requests due to decreased staffing or closure of the agency's facilities. The bill is sponsored by the City of Chino Hills and supported by various cities, public agencies, water districts, and associations representing government entities. No timely opposition was received by the Committee.

## PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides, pursuant to 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 are required to be open to public scrutiny. (Cal. const. art. I, § 3(b)(1).)
  - a) Requires a statute to 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. I, § 3(b)(1).)
  - b) Requires a statute that limits the public's right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. const. art. I, § 3(b)(1).)
- 2) Governs the disclosure of information collected and maintained by public agencies pursuant to the CPRA. (Gov. Code §§ 792.000 et seq.)
  - a) States that, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Code § 7921.000.)
  - b) Defines "public records" 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.)
  - c) Defines "public agency" as any state or local agency. (Gov. Code § 7920.525(a).)
- 3) Provides that all public records are accessible to the public upon request, unless the record requested is exempt from public disclosure. (Gov. Code § 7922.525.)
  - a) Some records are prohibited from being disclosed and other records are permissively exempted from being disclosed. (See e.g. Gov. Code §§ 7920.505 & 7922.200.)
  - b) There are several general categories of documents or information that are permissively exempt from disclosure under the CPRA essentially due to the character of the information. The exempt information can be withheld by the public agency with custody of the information, but it also may be disclosed if it is shown that the public's interest in disclosure outweighs the public's interest in non-disclosure of the information. (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, at 652.).<sup>1</sup>

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<sup>1</sup> *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, at 652 (stating that "[t]wo exceptions to the general policy of disclosure are set forth in the [CPRA]. Section 6254 lists 19 categories of disclosure-exempt material. These exemptions are permissive, not mandatory. The [CPRA] endows the agency with discretionary authority to override the statutory exceptions when a dominating public interest favors

- 4) Requires each public agency, upon a request for a copy of public records, to determine, within 10 days from receipt of the request, whether the request seeks copies of disclosable public records in the possession of that agency and requires the agency to promptly notify the person making the request of the determination and the reasons therefor. (Gov. Code § 7922.535(a).)
  - a) If the agency determines that the request seeks public records that are disclosable to the public, the agency must also state the estimated date and time when the records will be made available to the requester. (*Ibid.*)

This bill adds an additional unusual circumstance under which the initial response time to a public records request may be extended to include the need to search for, collect, appropriately examine, and copy records during a state of emergency proclaimed by the Governor when the state of emergency has affected the agency's ability to timely respond to requests due to decreased staffing or closure of the agency's facilities, and specifies that this provision only applies to records not created during and applying to the state of emergency.

### COMMENTS

#### 1. Stated need for the bill

The author writes:

In recent years, the COVID-19 pandemic brought unprecedented circumstances that were not captured under the current definition of "unusual circumstances" for the purposes of the California Public Records Act. Consequently, agencies were obligated to allocate limited time and resources to comply with the normal 10-day determination period in the midst of a statewide public health and safety emergency. SB 1034 provides a reasonable recognition that an "unusual circumstance" includes a state of emergency that causes decreased staffing or closure of agency facilities, thereby allowing agencies a 14-day extension to make determinations on public record requests. This new provision is only applicable to instances in which the requested record is not related to the state of emergency.

#### 2. Public right of access under the CPRA

Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Cod § 7921.000.) In 2004, the right of public access was enshrined in the California Constitution with the passage of Proposition 59 (Nov. 3, 2004, statewide general election),<sup>2</sup> which amended the

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disclosure."). The exemptions in Section 6254 were continued under the reorganization of the CPRA and may be referred to as former Section 6254 provisions. (Gov. Code § 7920.505.)

<sup>2</sup> Prop. 59 was placed on the ballot by a unanimous vote of both houses of the Legislature. (SCA 1 (Burton, Ch. 1, Stats. 2004).

California Constitution to specifically protect the right of the public to access and obtain government records: “The people have the right of access to information concerning the conduct of the people’s business, and therefore . . . the writings of public officials and agencies shall be open to public scrutiny.” (Cal. Const., art. I, sec. 3 (b)(1).) In 2014, voters approved Proposition 42 (Jun. 3, 2014, statewide direct primary election)<sup>3</sup> to further increase public access to government records by requiring local agencies to comply with the CPRA and the Ralph M. Brown Act<sup>4</sup>, and with any subsequent statutory enactment amending either act, as provided. (Cal. Const., art. I, sec. 3 (b)(7).)

Under the CPRA, public records are open to inspection by the public at all times during the office hours of the agency, unless exempted from disclosure. (Gov. Cod § 7922.252.) A public record is defined as any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any public agency regardless of physical form or characteristics. (Gov. Code § 7920.530.) The CPRA requires a public agency to make a determination within 10 days of a records request on whether the agency is in possession of the requested records and whether they are disclosable records, either in part or full, including an explanation for the agency’s determination and an estimated date and time the records will be made available. (Gov. Code § 7922.530(a).) The CPRA allows an agency to extend that response period by 14 days in specified “unusual circumstances.” (*Id.* at subd. (b).) These “unusual circumstances” are: (1) needing to search for and collect the requested records from facilities that are separate from the office processing the request; (2) needing to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; (3) needing to consult with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein; or (4) needing to compile data, to write programming language or a computer program, or to construct a computer report to extract data. (*Id.* at subd. (b)(1)-(3).)

This bill adds an additional “unusual circumstance” that would allow an agency to extend their initial response time by 14 days to also include the need to search for, collect, appropriately examine, and copy records during a state of emergency proclaimed by the Governor when the state of emergency has affected the agency’s ability to timely respond to requests due to decreased staffing or closure of the agency’s facilities. The author and sponsor of the bill point to the recent COVID-19 pandemic as the reason for this bill. Recognizing that accessing records about a state of emergency during a state of emergency is important and necessary for the public, the bill specifically provides that this new “unusual circumstance” only applies to records that are not related to the state of emergency.

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<sup>3</sup> Prop. 42 was placed on the ballot by a unanimous vote of both houses of the Legislature. (SCA 3 (Leno, Ch. 123, Stats. 2013).)

<sup>4</sup> The Ralph M. Brown Act is the open meetings laws that applies to local agencies. (Gov. Code §§ 59450 et. seq.)

### 3. Proposed amendments

The Committee may wish to amend the bill to make it clearer that the new “unusual circumstance” does not apply to records related to the state of emergency. Additionally, the Committee may wish to provide a definition for “state of emergency.” The specific amendments are as follows:

#### Amendments<sup>5</sup>

On page 3, in line 13, strike out “The time to respond to a request”, strike out lines 14 to 17, inclusive, and insert:

(A) This paragraph shall not apply to a request for records created during and related to the state of emergency proclaimed by the Governor.

(B) For purposes of this paragraph, “state of emergency” means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2).

### 4. Statements in support

The City of Chino Hills, the sponsor of the bill, writes:

A state of emergency can affect state and local agencies' ability to timely respond to Records Act requests due to decreased staffing or closure of the agency's facilities. Additionally, difficulties can include a combination of resource constraints, logistical hurdles, safety concerns, and the need to prioritize immediate needs. [...]

SB 1034 allows agencies to focus on keeping their communities safe during a state of emergency. During a state of emergency agencies may face a surge in demand for their services while simultaneously experiencing resource constraints. These constraints can include shortages in staffing, equipment, and supplies, and immediate safety concerns, making it difficult to promptly respond to public record requests to stay within the compliance period.

#### SUPPORT

City of Chino Hills (sponsor)  
Association of California School Administrators  
Association of California Healthcare Districts

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<sup>5</sup> The amendment may also include technical, nonsubstantive changes recommended by the Office of Legislative Counsel.

California Association of Joint Powers Authority  
California Association of Recreation and Park Districts  
California Law Enforcement Association of Records Supervisors  
California State Association of Counties  
California Special Districts Association  
City Clerks Association of California  
City of Brea  
City of Calabasas  
City of Chino  
City of Chowchilla  
City of Eastvale  
City of Fortuna  
City of Glendora  
City of Grand Terrace  
City of Lake Elsinore  
City of Plymouth  
City of Rancho Cucamonga  
City of Roseville  
City of Torrance  
City of Upland  
Chino Valley Fire District  
Desert Water Agency  
El Dorado Irrigation District  
Curt Harman, 4<sup>th</sup> District Supervisor, San Bernardino County  
Orange County Sanitation District  
Public Risk Innovation, Solutions, and Management  
Rural County Representatives of California  
Solano County Water Agency  
Urban Counties of California

### **OPPOSITION**

None received

### **RELATED LEGISLATION**

#### **Pending Legislation:**

AB 1785 (Pacheco, 2024) would prohibit a state or local agency from posting an assessor's parcel number of an elected or appointed official from being posted on the internet without first obtaining written permission of that individual.

AB 2283 (Pacheco, 2024) would require a public agency that receives a request for the personnel records of one of the public agency's employees to provide written notice, as

prescribed, to the employee within 48 hours of receipt of the request if specified conditions are met. AB 2283 is currently pending in the Assembly Judiciary Committee.

AB 2439 (Quirk-Silva, 2024) would require an owner, developer, or their agents who receives public funds or the equivalent of public funds from a public agency to perform a public works project to be subject to the act in connection with records that it prepares, owns, uses, or retains relating to that public works project, as specified. AB 2439 is currently pending in the Assembly Judiciary Committee.

Prior Legislation:

SB 790 (Padilla, Ch. 77, Stats. 2023) provided that any executed contract for the purchase of goods or services by a state or local agency, including the price and terms of payment, is a public record subject to disclosure under the CPRA, as provided.

AB 469 (Vince Fong, 2023) was substantially similar to AB 343. AB 469 was vetoed by Governor Newsom stating the “bill would create an unnecessary layer of review by an official who would interpret the law in a manner that may or may not be consistent with case law” and that “establishment of this office would result in tens of millions of dollars in cost pressures not considered in the annual budget process.”

AB 343 (Vince Fong, 2022) was substantially similar to this bill. AB 343 was never set for a hearing in the Senate Governmental Organization Committee.

AB 289 (Vince Fong, 2019) was similar to this bill. AB 289 failed passage in this Committee.

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