

AMENDED IN ASSEMBLY JULY 19, 2004
AMENDED IN ASSEMBLY JUNE 22, 2004
AMENDED IN SENATE MAY 10, 2004
AMENDED IN SENATE APRIL 28, 2004
AMENDED IN SENATE APRIL 12, 2004

SENATE BILL

No. 1352

Introduced by Senators Romero and Speier

February 18, 2004

An act to amend Sections 6126.3 and 6126.5 of, and to add Sections 6131 and 6132 to, and to repeal Section 6126.6 of, the Penal Code, relating to the Inspector General.

LEGISLATIVE COUNSEL'S DIGEST

SB 1352, as amended, Romero. Inspector General: Youth and Adult Correctional Agency.

Existing law specifies the duties and responsibilities of the Inspector General in connection with departments under the authority of the Youth and Adult Correctional Agency.

This bill would revise and recast provisions relating to classifying what materials in connection with investigations and audits by the Inspector General are public records.

Existing law authorizes access by the Inspector General to specified records for the purpose of conducting an audit or investigation. Failure or refusal to permit access, examination, or reproduction of those records is a misdemeanor.

This bill would expand access by the Inspector General to certain records, as specified. The bill would also authorize the Inspector General to redact certain identifying personal information, as specified.

By expanding the access of the Inspector General to certain records, where the denial of access is a crime, this bill would expand the scope of an existing crime, and thereby impose a state-mandated local program.

Existing law provides that it is a misdemeanor for the Inspector General or any employee of the Inspector General to release any information received pursuant to these provisions, except as provided by these provisions, or to release information that is otherwise prohibited by law from being disclosed.

This bill would repeal those provisions.

The bill would require disclosure of completed audit or investigation reports by the Inspector General, and specify the conditions of those disclosures.

The bill would require annual and other regular reports by the Inspector General, to the Governor and the Legislature, and others, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6126.3 of the Penal Code is amended to
2 read:

3 6126.3. (a) The Inspector General shall not destroy any
4 papers or memoranda used to support a completed audit within
5 three years after a report is released.

6 (b) Except as provided in subdivision (c), all books, papers,
7 records, and correspondence of the office pertaining to its work are
8 public records subject to Chapter 3.5 (commencing with Section
9 6250) of Division 7 of Title 1 of the Government Code and shall



1 be filed at any of the regularly maintained offices of the Inspector
2 General.

3 (c) The following books, papers, records, and correspondence
4 of the office of the Inspector General pertaining to its work are not
5 public records subject to Chapter 3.5 (commencing with Section
6 6250) of Division 7 of Title 1 of the Government Code, nor shall
7 they be subject to discovery pursuant to any provision of Title 3
8 (commencing with Section 1985) of Part 4 of the Code of Civil
9 Procedure in any manner:

10 (1) All reports, papers, correspondence, memoranda,
11 electronic communications, or other documents that are otherwise
12 exempt from disclosure pursuant to the provisions of subdivision
13 (d) of Section 6126.5, subdivision (c) of Section 6128, subdivision
14 (a) or (b) of Section 6131, or all other applicable laws regarding
15 confidentiality, including, but not limited to, the California Public
16 Records Act, the Public Safety Officers' Procedural Bill of Rights,
17 the Information Practices Act of 1977, the Confidentiality of
18 Medical Information Act of 1977, and the provisions of Section
19 832.7, relating to the disposition notification for complaints
20 against peace officers.

21 (2) Any papers, correspondence, memoranda, electronic
22 communications, or other documents pertaining to any audit or
23 investigation that has not been completed.

24 (3) Any papers, correspondence, memoranda, electronic
25 communications, or other documents pertaining to internal
26 discussions between the Inspector General and his or her staff, or
27 between staff members of the Inspector General, or any personal
28 notes of the Inspector General or his or her staff.

29 (4) All identifying information, and any personal papers or
30 correspondence from any person requesting assistance from the
31 Inspector General, except in those cases where the Inspector
32 General determines that disclosure of the information is necessary
33 in the interests of justice.

34 SEC. 2. Section 6126.5 of the Penal Code is amended to read:
35 6126.5. (a) Notwithstanding any other provision of law, the
36 Inspector General during regular business hours or at any other
37 time determined necessary by the Inspector General, shall have
38 access to and authority to examine and reproduce, any and all
39 books, accounts, reports, vouchers, correspondence files,
40 documents, and other records, and to examine the bank accounts,



1 money, or other property, of any entity defined in Section 6126 for
2 any audit or investigation. Any officer or employee of any agency
3 or entity having these records or property in his or her possession
4 or under his or her control shall permit access to, and examination
5 and reproduction thereof consistent with the provisions of this
6 section, upon the request of the Inspector General or his or her
7 authorized representative.

8 (b) For the purpose of conducting any audit or investigation,
9 the Inspector General or his or her authorized representative shall
10 have access to the records and property of any public or private
11 entity or person subject to review or regulation by the public
12 agency or public entity being audited or investigated to the same
13 extent that employees or officers of that agency or public entity
14 have access. No provision of law or any memorandum of
15 understanding or any other agreement entered into between the
16 employing entity and the employee or the employee's
17 representative providing for the confidentiality or privilege of any
18 records or property shall prevent disclosure pursuant to
19 subdivision (a).

20 (c) Any officer or person who fails or refuses to permit access,
21 examination, or reproduction, as required by this section, is guilty
22 of a misdemeanor.

23 (d) The Inspector General may require any employee of those
24 entities specified in Section 6126 to be interviewed on a
25 confidential basis. Any employee requested to be interviewed
26 shall comply and shall have time afforded by the appointing
27 authority for the purpose of an interview with the Inspector
28 General or his or her designee. The Inspector General shall have
29 the discretion to redact the name or other identifying information
30 of any person interviewed from any *public* report issued by the
31 Inspector General, ~~in those cases required by confidentiality laws~~
32 *where required by law* or where the failure to redact the
33 information may hinder prosecution or an action in a criminal,
34 civil, or administrative proceeding, or where the Inspector General
35 determines that disclosure of the information is not in the interests
36 of justice. It is not the purpose of these communications to address
37 disciplinary action or grievance procedures that may routinely
38 occur. If it appears that the facts of the case could lead to punitive
39 action, the Inspector General shall be subject to ~~Section 3303~~
40 *Sections 3303, 3307, 3307.5, 3308, and 3309* of the Government



1 Code as if the Inspector General were the employer, except that the
2 Inspector General shall not be subject to the provisions of any
3 memorandum of understanding or other agreement entered into
4 between the employing entity and the employee or the employee's
5 representative that is in conflict with, or adds to the requirements
6 of, ~~Section 3303~~ Sections 3303, 3307, 3307.5, 3308, and 3309 of
7 the Government Code.

8 SEC. 3. Section 6126.6 of the Penal Code is repealed.

9 SEC. 4. Section 6131 is added to the Penal Code, to read:

10 6131. (a) Upon the completion of any audit conducted by the
11 Inspector General, he or she shall prepare a written report, which
12 shall be disclosed, along with all underlying materials the
13 Inspector General deems appropriate, to the Governor, the
14 Secretary of the Youth and Adult Correctional Agency, the
15 appropriate director, chair, or law enforcement agency, and the
16 Legislature. Copies of all those written reports shall be posted on
17 the Inspector General's Web site within 10 days of being disclosed
18 to the above-listed entities or persons.

19 (b) Upon the completion of any investigation conducted by the
20 Inspector General, he or she shall prepare a complete written
21 report, which shall be ~~disclosed~~ held as confidential and disclosed
22 in confidence, along with all underlying investigative materials the
23 Inspector General deems appropriate, to the Governor, the
24 Secretary of the Youth and Adult Correctional Agency, and the
25 appropriate director, chair, or law enforcement agency.

26 (c) Upon the completion of any investigation conducted by the
27 Inspector General, he or she shall also prepare *and issue on a*
28 *quarterly basis*, a public investigative report *that includes all*
29 *investigations completed in the previous quarter*. The public
30 investigative report shall differ from the complete investigative
31 report ~~only~~ in the respect that the Inspector General shall have the
32 discretion to redact *or otherwise protect* the names of individuals,
33 specific locations, or other facts that, if not redacted, might hinder
34 prosecution related to the investigation, or where disclosure of the
35 information is otherwise prohibited by law, and to decline to
36 produce any of the underlying investigative materials. In a case
37 where allegations were deemed to be unfounded, all applicable
38 identifying information shall be redacted. The public investigative
39 report shall be made ~~public~~ available to the public upon request
40 and on a quarterly basis as follows:



1 (1) In those cases where an investigation is referred only for
2 disciplinary action before the State Personnel Board or for other
3 administrative proceedings, the employing entity shall, within 10
4 days of receipt of the State Personnel Board's order rendered in
5 other administrative proceedings, provide the Inspector General
6 with a copy of the order. The Inspector General shall, ~~within 10~~
7 ~~days of this notification, post~~ *attach the order to* the public
8 investigative report on its Web site and provide copies of the report
9 *and order* to the Legislature, as well as to any complaining
10 employee and any employee who was the subject of the
11 investigation.

12 (2) In those cases where the employing entity and the employee
13 against whom disciplinary action has been taken enter into a
14 settlement agreement concerning the disciplinary action, the
15 employing entity shall, within 10 days of the settlement agreement
16 becoming final, notify the Inspector General in writing of that fact
17 and shall describe what disciplinary action, if any, was ultimately
18 imposed on the employee. The Inspector General shall, ~~within 10~~
19 ~~days of this notification, post~~ *include the settlement information*
20 *in* the public investigative report on its Web site and provide copies
21 of the report to the Legislature, as well as to any complaining
22 employee and any employee who was the subject of the
23 investigation.

24 (3) In those cases where the employing entity declines to
25 pursue disciplinary action against an employee, the employing
26 entity shall, ~~within 30~~ *10* days of receipt of the investigative report
27 *its decision*, notify the Inspector General in writing of its decision
28 not to pursue disciplinary action, setting forth the reasons for its
29 decision. The Inspector General shall, ~~within 10 days of this~~
30 ~~notification, post~~ *include the decision and rationale in* the public
31 investigative report on its Web site and provide copies of the report
32 to the Legislature, as well as to any complaining employee and any
33 employee who was the subject of the investigation.

34 (4) In those cases where an investigation has been referred for
35 possible criminal prosecution, and the applicable local law
36 enforcement agency or the Attorney General has decided to
37 commence criminal proceedings against an employee, the report
38 shall be made public at a time deemed appropriate by the Inspector
39 General after consultation with the local law enforcement agency
40 or the Attorney General, but in all cases no later than when



1 discovery has been provided to the defendant in the criminal
2 proceedings. The Inspector General shall thereafter post the public
3 investigative report on its Web site and provide copies of the report
4 to the Legislature, as well as to any complaining employee and any
5 employee who was the subject of the investigation.

6 (5) In those cases where the local law enforcement agency or
7 the Attorney General declines to commence criminal proceedings
8 against an employee, the local law enforcement agency or the
9 Attorney General shall, within 30 days of reaching that decision,
10 notify the Inspector General of that fact. The Inspector General
11 shall, ~~within 10 days of this notification, post~~ *include the decision*
12 *in* the public investigative report on its Web site and provide copies
13 of the report to the Legislature, as well as to any complaining
14 employee and any employee who was the subject of the
15 investigation.

16 (6) In those cases where an investigation has been referred for
17 neither disciplinary action or other administrative proceedings,
18 nor for criminal prosecution, the Inspector General shall, ~~within~~
19 ~~30 days of issuing the complete investigative report, post~~ *include*
20 *the decision not to refer the matter in* the public investigative
21 report on its Web site and provide copies of the report to the
22 Legislature, as well as to any complaining employee and any
23 employee who was the subject of the investigation.

24 SEC. 5. Section 6132 is added to the Penal Code, to read:

25 6132. (a) The Inspector General shall report annually to the
26 Governor and the Legislature a summary of his or her
27 investigations and audits. The summary shall be posted on the
28 Inspector General's Web site and otherwise made available to the
29 public upon its release to the Governor and the Legislature. The
30 summary shall include, but not be limited to, significant problems
31 discovered by the Inspector General, and whether
32 recommendations the Inspector General has made through audits
33 and investigations have been implemented by the subject agency,
34 department, or board.

35 (b) The Inspector General shall issue regular, and in no case less
36 than twice per year, reports to the Governor and the Legislature
37 summarizing its findings concerning its oversight of Youth and
38 Adult Correctional Agency disciplinary cases.

39 SEC. 6. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because



1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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