

AMENDED IN SENATE JUNE 22, 2006

AMENDED IN ASSEMBLY MAY 26, 2006

AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2927

Introduced by Assembly Member Leno

February 24, 2006

An act to amend Sections ~~6258~~ 6254, 6258, and 6259 of, and to add Sections 6253.3 and 6259.1 to, the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 2927, as amended, Leno. Public records.

The California Public Records Act requires state and local agencies to make their records available for public inspection and, upon request of any person, to provide a copy of any public record unless the record is exempt from disclosure.

This bill would require any state agency that publishes an Internet Web site to include on the homepage of that site specified information *that is not exempt from disclosure under the act* about how to contact the agency, how to request records under the act, a form for submitting online requests for records, agency officials' statements of economic interests, agency officials' employment or consulting contracts, the terms of litigation settlements *in which the agency is a named party*, copies of records disclosed under the act, and copies of letters of other communication denying a request for a record *with the requester's personal information redacted*. It would authorize any person to bring an action to enforce the duty of a state agency to post

this information and would provide for penalties including monetary awards to be paid by the agency.

Existing law requires state and local law enforcement agencies to make public certain information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation.

This bill would also require state and local law enforcement agencies to make public specified information of every individual who has been held in custody for the purpose of booking. The imposition of this new requirement on local agencies would impose a state-mandated local program.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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 6253.3 is added to the Government
- 2 Code, to read:
- 3 6253.3. Every state agency that publishes an Internet Web
- 4 site shall include on the homepage of that site, prominently
- 5 displayed without scrolling, the words “Public Information
- 6 Center,” which shall be followed by, or shall link to, on another
- 7 page, all of the following:
- 8 (a) Under the words “Whom to Contact,” the ~~name~~, title,
- 9 mailing address, telephone number, and e-mail address of the
- 10 public information officer or other person or persons to whom
- 11 requests for inspection or copying of records pursuant to the
- 12 California Public Records Act, or informal requests for simple
- 13 factual information, should be directed.
- 14 (b) Under the words “How to Request Records,” the written
- 15 guidelines authorized or required under subdivision (a) of *Section*

1 6253.4, and an HTML form for submitting online requests under
2 the California Public Records Act, consisting of all of the
3 following labeled fields:

- 4 (1) Today's date.
- 5 (2) My name (optional).
- 6 (3) My e-mail address (optional).
- 7 (4) My postal address (optional).
- 8 (5) My telephone number (optional).
- 9 (6) I am interested in the following records or information:
- 10 (7) Where can I inspect these records?
- 11 (8) Send me copies of the records without inspection.
- 12 (9) Send me a fee estimate before copying.

13 The HTML form shall be designed to send a copy of the
14 request immediately and automatically to the e-mail address from
15 which it was sent.

16 ~~(c) Within five business days~~ *10 calendar days* after its filing,
17 under the words "Officials' Economic Interests," the most
18 current statement of economic interests filed by every officer,
19 employee, or consultant of the agency who is required to file
20 such reports under Sections 87200 or 87300, and who is exempt
21 from civil service or who ~~plays a significant role in making or~~
22 ~~recommending decisions as to purchasing, contracting, or issuing~~
23 ~~licenses, permits, or similar official regulatory approvals.~~ *is*
24 *employed in a career executive assignment position.*

25 ~~(d) Within five business days~~ *10 calendar days* after its
26 signing or other binding event, under the words "Officials'
27 Employment or Consulting Contracts," a copy or all terms of
28 every employment, consulting, or other contract for an
29 individual's services to which the agency and any individual are
30 parties. The copy or terms of the contract shall be accessible for
31 as long as the contract is in effect and shall include any signing
32 bonus, housing loan or allowance, relocation allowance,
33 transportation allowance, or other economic benefit of any kind.

34 ~~(e) Within five business days~~ *10 calendar days* after its
35 effective date, under the words "Lawsuit Settlements," the full
36 text of every settlement of civil litigation *in which the agency is*
37 *a named party*, and of every agreement to compensate any person
38 for foregoing litigation, involving a payment by the agency of
39 fifty thousand dollars (\$50,000) or more to an adverse party
40 within the current calendar year.

1 (f) Under the words “Records Disclosed This Year,” a copy of
2 every record disclosed by the agency without redaction within
3 the current calendar year, *except publications and mass-produced*
4 *materials*, or, if the volume of records disclosed pursuant to a
5 particular request exceeds 10 pages, a copy of the requester’s
6 own description of the records that were disclosed.

7 (g) Under the words “Records Withheld This Year,” a copy of
8 every request, letter, or other communication from, and the
9 agency’s reply to, a requester denying access to all or part of any
10 record, sent within the current calendar year. *The agency shall*
11 *redact the name and personal identifying information of the*
12 *requester.*

13 (h) Beginning January 1 of the second year after the effective
14 date of this subdivision, under the word “Archive,” a link to a
15 text-searchable archive of the items posted under subdivisions
16 (c), (d), (e), and (f) in preceding years.

17 (i) Beginning three months from the effective date of this
18 subdivision, any agency determined by the court to have failed to
19 comply with the requirements of subdivision (a) or (b), or to have
20 fallen more than 15 days behind in posting or archiving the
21 information required under subdivisions (c), (d), (e), (f), (g), and
22 (h), in addition to any other remedy to bring the agency into
23 compliance with this subdivision, may be ordered by a court to
24 post, immediately after the heading “Public Information Center,”
25 under the words “Our Failure to Comply,” a copy of the court’s
26 findings in such a compliance action. The duration of such
27 posting shall rest with the sound discretion of the court, but in no
28 case should be less than 30 days.

29 (j) *Nothing in this section shall be construed to require a state*
30 *agency to display any information on its Internet Web site that is*
31 *exempt from disclosure pursuant to this chapter.*

32 *SEC. 2. Section 6254 of the Government Code is amended to*
33 *read:*

34 6254. Except as provided in Sections 6254.7 and 6254.13,
35 nothing in this chapter shall be construed to require disclosure of
36 records that are any of the following:

37 (a) Preliminary drafts, notes, or interagency or intra-agency
38 memoranda that are not retained by the public agency in the
39 ordinary course of business, provided that the public interest in

1 withholding those records clearly outweighs the public interest in
2 disclosure.

3 (b) Records pertaining to pending litigation to which the
4 public agency is a party, or to claims made pursuant to Division
5 3.6 (commencing with Section 810), until the pending litigation
6 or claim has been finally adjudicated or otherwise settled.

7 (c) Personnel, medical, or similar files, the disclosure of which
8 would constitute an unwarranted invasion of personal privacy.

9 (d) Contained in or related to any of the following:

10 (1) Applications filed with any state agency responsible for the
11 regulation or supervision of the issuance of securities or of
12 financial institutions, including, but not limited to, banks, savings
13 and loan associations, industrial loan companies, credit unions,
14 and insurance companies.

15 (2) Examination, operating, or condition reports prepared by,
16 on behalf of, or for the use of, any state agency referred to in
17 paragraph (1).

18 (3) Preliminary drafts, notes, or interagency or intra-agency
19 communications prepared by, on behalf of, or for the use of, any
20 state agency referred to in paragraph (1).

21 (4) Information received in confidence by any state agency
22 referred to in paragraph (1).

23 (e) Geological and geophysical data, plant production data,
24 and similar information relating to utility systems development,
25 or market or crop reports, that are obtained in confidence from
26 any person.

27 (f) Records of complaints to, or investigations conducted by,
28 or records of intelligence information or security procedures of,
29 the office of the Attorney General and the Department of Justice,
30 and any state or local police agency, or any investigatory or
31 security files compiled by any other state or local police agency,
32 or any investigatory or security files compiled by any other state
33 or local agency for correctional, law enforcement, or licensing
34 purposes, except that state and local law enforcement agencies
35 shall disclose the names and addresses of persons involved in, or
36 witnesses other than confidential informants to, the incident, the
37 description of any property involved, the date, time, and location
38 of the incident, all diagrams, statements of the parties involved in
39 the incident, the statements of all witnesses, other than
40 confidential informants, to the victims of an incident, or an

1 authorized representative thereof, an insurance carrier against
2 which a claim has been or might be made, and any person
3 suffering bodily injury or property damage or loss, as the result
4 of the incident caused by arson, burglary, fire, explosion, larceny,
5 robbery, carjacking, vandalism, vehicle theft, or a crime as
6 defined by subdivision (b) of Section 13951, unless the
7 disclosure would endanger the safety of a witness or other person
8 involved in the investigation, or unless disclosure would
9 endanger the successful completion of the investigation or a
10 related investigation. However, nothing in this division shall
11 require the disclosure of that portion of those investigative files
12 that reflect the analysis or conclusions of the investigating
13 officer.

14 Customer lists provided to a state or local police agency by an
15 alarm or security company at the request of the agency shall be
16 construed to be records subject to this subdivision.

17 Notwithstanding any other provision of this subdivision, state
18 and local law enforcement agencies shall make public the
19 following information, except to the extent that disclosure of a
20 particular item of information would endanger the safety of a
21 person involved in an investigation or would endanger the
22 successful completion of the investigation or a related
23 investigation:

24 (1) The full name and occupation of every individual arrested
25 by the agency *or the agency that has or had custody of the*
26 *individual for the purpose of booking*, the individual's physical
27 description including date of birth, color of eyes and hair, sex,
28 height and weight, the time and date of arrest, the time and date
29 of booking, the location of the arrest, the factual circumstances
30 surrounding the arrest, the amount of bail set, the time and
31 manner of release or the location where the individual is
32 currently being held, and all charges the individual is being held
33 upon, including any outstanding warrants from other jurisdictions
34 and parole or probation holds.

35 (2) Subject to the restrictions imposed by Section 841.5 of the
36 Penal Code, the time, substance, and location of all complaints or
37 requests for assistance received by the agency and the time and
38 nature of the response thereto, including, to the extent the
39 information regarding crimes alleged or committed or any other
40 incident investigated is recorded, the time, date, and location of

1 occurrence, the time and date of the report, the name and age of
2 the victim, the factual circumstances surrounding the crime or
3 incident, and a general description of any injuries, property, or
4 weapons involved. The name of a victim of any crime defined by
5 Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286,
6 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code
7 may be withheld at the victim's request, or at the request of the
8 victim's parent or guardian if the victim is a minor. When a
9 person is the victim of more than one crime, information
10 disclosing that the person is a victim of a crime defined by
11 Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 286, 288,
12 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may
13 be deleted at the request of the victim, or the victim's parent or
14 guardian if the victim is a minor, in making the report of the
15 crime, or of any crime or incident accompanying the crime,
16 available to the public in compliance with the requirements of
17 this paragraph.

18 (3) Subject to the restrictions of Section 841.5 of the Penal
19 Code and this subdivision, the current address of every individual
20 arrested by the agency *or the agency that has or had custody of*
21 *the individual for the purpose of booking*, and the current address
22 of the victim of a crime, where the requester declares under
23 penalty of perjury that the request is made for a scholarly,
24 journalistic, political, or governmental purpose, or that the
25 request is made for investigation purposes by a licensed private
26 investigator as described in Chapter 11.3 (commencing with
27 Section 7512) of Division 3 of the Business and Professions
28 Code, except that the address of the victim of any crime defined
29 by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5,
30 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal
31 Code shall remain confidential. Address information obtained
32 pursuant to this paragraph may not be used directly or indirectly,
33 or furnished to another, to sell a product or service to any
34 individual or group of individuals, and the requester shall execute
35 a declaration to that effect under penalty of perjury. Nothing in
36 this paragraph shall be construed to prohibit or limit a scholarly,
37 journalistic, political, or government use of address information
38 obtained pursuant to this paragraph.

39 (g) Test questions, scoring keys, and other examination data
40 used to administer a licensing examination, examination for

1 employment, or academic examination, except as provided for in
2 Chapter 3 (commencing with Section 99150) of Part 65 of the
3 Education Code.

4 (h) The contents of real estate appraisals or engineering or
5 feasibility estimates and evaluations made for or by the state or
6 local agency relative to the acquisition of property, or to
7 prospective public supply and construction contracts, until all of
8 the property has been acquired or all of the contract agreement
9 obtained. However, the law of eminent domain shall not be
10 affected by this provision.

11 (i) Information required from any taxpayer in connection with
12 the collection of local taxes that is received in confidence and the
13 disclosure of the information to other persons would result in
14 unfair competitive disadvantage to the person supplying the
15 information.

16 (j) Library circulation records kept for the purpose of
17 identifying the borrower of items available in libraries, and
18 library and museum materials made or acquired and presented
19 solely for reference or exhibition purposes. The exemption in this
20 subdivision shall not apply to records of fines imposed on the
21 borrowers.

22 (k) Records, the disclosure of which is exempted or prohibited
23 pursuant to federal or state law, including, but not limited to,
24 provisions of the Evidence Code relating to privilege.

25 (l) Correspondence of and to the Governor or employees of the
26 Governor's office or in the custody of or maintained by the
27 Governor's Legal Affairs Secretary, provided that public records
28 shall not be transferred to the custody of the Governor's Legal
29 Affairs Secretary to evade the disclosure provisions of this
30 chapter.

31 (m) In the custody of or maintained by the Legislative
32 Counsel, except those records in the public database maintained
33 by the Legislative Counsel that are described in Section 10248.

34 (n) Statements of personal worth or personal financial data
35 required by a licensing agency and filed by an applicant with the
36 licensing agency to establish his or her personal qualification for
37 the license, certificate, or permit applied for.

38 (o) Financial data contained in applications for financing
39 under Division 27 (commencing with Section 44500) of the
40 Health and Safety Code, where an authorized officer of the

1 California Pollution Control Financing Authority determines that
2 disclosure of the financial data would be competitively injurious
3 to the applicant and the data is required in order to obtain
4 guarantees from the United States Small Business
5 Administration. The California Pollution Control Financing
6 Authority shall adopt rules for review of individual requests for
7 confidentiality under this section and for making available to the
8 public those portions of an application that are subject to
9 disclosure under this chapter.

10 (p) Records of state agencies related to activities governed by
11 Chapter 10.3 (commencing with Section 3512), Chapter 10.5
12 (commencing with Section 3525), and Chapter 12 (commencing
13 with Section 3560) of Division 4 of Title 1, that reveal a state
14 agency's deliberative processes, impressions, evaluations,
15 opinions, recommendations, meeting minutes, research, work
16 products, theories, or strategy, or that provide instruction, advice,
17 or training to employees who do not have full collective
18 bargaining and representation rights under these chapters.
19 Nothing in this subdivision shall be construed to limit the
20 disclosure duties of a state agency with respect to any other
21 records relating to the activities governed by the employee
22 relations acts referred to in this subdivision.

23 (q) Records of state agencies related to activities governed by
24 Article 2.6 (commencing with Section 14081), Article 2.8
25 (commencing with Section 14087.5), and Article 2.91
26 (commencing with Section 14089) of Chapter 7 of Part 3 of
27 Division 9 of the Welfare and Institutions Code, that reveal the
28 special negotiator's deliberative processes, discussions,
29 communications, or any other portion of the negotiations with
30 providers of health care services, impressions, opinions,
31 recommendations, meeting minutes, research, work product,
32 theories, or strategy, or that provide instruction, advice, or
33 training to employees.

34 Except for the portion of a contract containing the rates of
35 payment, contracts for inpatient services entered into pursuant to
36 these articles, on or after April 1, 1984, shall be open to
37 inspection one year after they are fully executed. In the event that
38 a contract for inpatient services that is entered into prior to April
39 1, 1984, is amended on or after April 1, 1984, the amendment,
40 except for any portion containing the rates of payment, shall be

1 open to inspection one year after it is fully executed. If the
2 California Medical Assistance Commission enters into contracts
3 with health care providers for other than inpatient hospital
4 services, those contracts shall be open to inspection one year
5 after they are fully executed.

6 Three years after a contract or amendment is open to inspection
7 under this subdivision, the portion of the contract or amendment
8 containing the rates of payment shall be open to inspection.

9 Notwithstanding any other provision of law, the entire contract
10 or amendment shall be open to inspection by the Joint Legislative
11 Audit Committee and the Legislative Analyst's Office. The
12 committee and that office shall maintain the confidentiality of the
13 contracts and amendments until the time a contract or
14 amendment is fully open to inspection by the public.

15 (r) Records of Native American graves, cemeteries, and sacred
16 places and records of Native American places, features, and
17 objects described in Sections 5097.9 and 5097.993 of the Public
18 Resources Code maintained by, or in the possession of, the
19 Native American Heritage Commission, another state agency, or
20 a local agency.

21 (s) A final accreditation report of the Joint Commission on
22 Accreditation of Hospitals that has been transmitted to the State
23 Department of Health Services pursuant to subdivision (b) of
24 Section 1282 of the Health and Safety Code.

25 (t) Records of a local hospital district, formed pursuant to
26 Division 23 (commencing with Section 32000) of the Health and
27 Safety Code, or the records of a municipal hospital, formed
28 pursuant to Article 7 (commencing with Section 37600) or
29 Article 8 (commencing with Section 37650) of Chapter 5 of
30 Division 3 of Title 4 of this code, that relate to any contract with
31 an insurer or nonprofit hospital service plan for inpatient or
32 outpatient services for alternative rates pursuant to Section 10133
33 or 11512 of the Insurance Code. However, the record shall be
34 open to inspection within one year after the contract is fully
35 executed.

36 (u) (1) Information contained in applications for licenses to
37 carry firearms issued pursuant to Section 12050 of the Penal
38 Code by the sheriff of a county or the chief or other head of a
39 municipal police department that indicates when or where the
40 applicant is vulnerable to attack or that concerns the applicant's

1 medical or psychological history or that of members of his or her
2 family.

3 (2) The home address and telephone number of peace officers,
4 judges, court commissioners, and magistrates that are set forth in
5 applications for licenses to carry firearms issued pursuant to
6 Section 12050 of the Penal Code by the sheriff of a county or the
7 chief or other head of a municipal police department.

8 (3) The home address and telephone number of peace officers,
9 judges, court commissioners, and magistrates that are set forth in
10 licenses to carry firearms issued pursuant to Section 12050 of the
11 Penal Code by the sheriff of a county or the chief or other head
12 of a municipal police department.

13 (v) (1) Records of the Major Risk Medical Insurance Program
14 related to activities governed by Part 6.3 (commencing with
15 Section 12695) and Part 6.5 (commencing with Section 12700)
16 of Division 2 of the Insurance Code, and that reveal the
17 deliberative processes, discussions, communications, or any other
18 portion of the negotiations with health plans, or the impressions,
19 opinions, recommendations, meeting minutes, research, work
20 product, theories, or strategy of the board or its staff, or records
21 that provide instructions, advice, or training to employees.

22 (2) (A) Except for the portion of a contract that contains the
23 rates of payment, contracts for health coverage entered into
24 pursuant to Part 6.3 (commencing with Section 12695) or Part
25 6.5 (commencing with Section 12700) of Division 2 of the
26 Insurance Code, on or after July 1, 1991, shall be open to
27 inspection one year after they have been fully executed.

28 (B) In the event that a contract for health coverage that is
29 entered into prior to July 1, 1991, is amended on or after July 1,
30 1991, the amendment, except for any portion containing the rates
31 of payment, shall be open to inspection one year after the
32 amendment has been fully executed.

33 (3) Three years after a contract or amendment is open to
34 inspection pursuant to this subdivision, the portion of the contract
35 or amendment containing the rates of payment shall be open to
36 inspection.

37 (4) Notwithstanding any other provision of law, the entire
38 contract or amendments to a contract shall be open to inspection
39 by the Joint Legislative Audit Committee. The committee shall
40 maintain the confidentiality of the contracts and amendments

1 thereto, until the contract or amendments to a contract is open to
 2 inspection pursuant to paragraph (3).

3 (w) (1) Records of the Major Risk Medical Insurance
 4 Program related to activities governed by Chapter 14
 5 (commencing with Section 10700) of Part 2 of Division 2 of the
 6 Insurance Code, and that reveal the deliberative processes,
 7 discussions, communications, or any other portion of the
 8 negotiations with health plans, or the impressions, opinions,
 9 recommendations, meeting minutes, research, work product,
 10 theories, or strategy of the board or its staff, or records that
 11 provide instructions, advice, or training to employees.

12 (2) Except for the portion of a contract that contains the rates
 13 of payment, contracts for health coverage entered into pursuant
 14 to Chapter 14 (commencing with Section 10700) of Part 2 of
 15 Division 2 of the Insurance Code, on or after January 1, 1993,
 16 shall be open to inspection one year after they have been fully
 17 executed.

18 (3) Notwithstanding any other provision of law, the entire
 19 contract or amendments to a contract shall be open to inspection
 20 by the Joint Legislative Audit Committee. The committee shall
 21 maintain the confidentiality of the contracts and amendments
 22 thereto, until the contract or amendments to a contract is open to
 23 inspection pursuant to paragraph (2).

24 (x) Financial data contained in applications for registration, or
 25 registration renewal, as a service contractor filed with the
 26 Director of the Department of Consumer Affairs pursuant to
 27 Chapter 20 (commencing with Section 9800) of Division 3 of the
 28 Business and Professions Code, for the purpose of establishing
 29 the service contractor’s net worth, or financial data regarding the
 30 funded accounts held in escrow for service contracts held in force
 31 in this state by a service contractor.

32 (y) (1) Records of the Managed Risk Medical Insurance
 33 Board related to activities governed by Part 6.2 (commencing
 34 with Section 12693) or Part 6.4 (commencing with Section
 35 12699.50) of Division 2 of the Insurance Code, and that reveal
 36 the deliberative processes, discussions, communications, or any
 37 other portion of the negotiations with health plans, or the
 38 impressions, opinions, recommendations, meeting minutes,
 39 research, work product, theories, or strategy of the board or its

1 staff, or records that provide instructions, advice, or training to
2 employees.

3 (2) (A) Except for the portion of a contract that contains the
4 rates of payment, contracts entered into pursuant to Part 6.2
5 (commencing with Section 12693) or Part 6.4 (commencing with
6 Section 12699.50) of Division 2 of the Insurance Code, on or
7 after January 1, 1998, shall be open to inspection one year after
8 they have been fully executed.

9 (B) In the event that a contract entered into pursuant to Part
10 6.2 (commencing with Section 12693) or Part 6.4 (commencing
11 with Section 12699.50) of Division 2 of the Insurance Code is
12 amended, the amendment shall be open to inspection one year
13 after the amendment has been fully executed.

14 (3) Three years after a contract or amendment is open to
15 inspection pursuant to this subdivision, the portion of the contract
16 or amendment containing the rates of payment shall be open to
17 inspection.

18 (4) Notwithstanding any other provision of law, the entire
19 contract or amendments to a contract shall be open to inspection
20 by the Joint Legislative Audit Committee. The committee shall
21 maintain the confidentiality of the contracts and amendments
22 thereto until the contract or amendments to a contract are open to
23 inspection pursuant to paragraph (2) or (3).

24 (5) The exemption from disclosure provided pursuant to this
25 subdivision for the contracts, deliberative processes, discussions,
26 communications, negotiations with health plans, impressions,
27 opinions, recommendations, meeting minutes, research, work
28 product, theories, or strategy of the board or its staff shall also
29 apply to the contracts, deliberative processes, discussions,
30 communications, negotiations with health plans, impressions,
31 opinions, recommendations, meeting minutes, research, work
32 product, theories, or strategy of applicants pursuant to Part 6.4
33 (commencing with Section 12699.50) of Division 2 of the
34 Insurance Code.

35 (z) Records obtained pursuant to paragraph (2) of subdivision
36 (c) of Section 2891.1 of the Public Utilities Code.

37 (aa) A document prepared by or for a state or local agency that
38 assesses its vulnerability to terrorist attack or other criminal acts
39 intended to disrupt the public agency's operations and that is for
40 distribution or consideration in a closed session.

1 (bb) Critical infrastructure information, as defined in Section
 2 131(3) of Title 6 of the United States Code, that is voluntarily
 3 submitted to the California Office of Homeland Security for use
 4 by that office, including the identity of the person who or entity
 5 that voluntarily submitted the information. As used in this
 6 subdivision, “voluntarily submitted” means submitted in the
 7 absence of the office exercising any legal authority to compel
 8 access to or submission of critical infrastructure information.
 9 This subdivision shall not affect the status of information in the
 10 possession of any other state or local governmental agency.

11 (cc) All information provided to the Secretary of State by a
 12 person for the purpose of registration in the Advance Health Care
 13 Directive Registry, except that those records shall be released at
 14 the request of a health care provider, a public guardian, or the
 15 registrant’s legal representative.

16 Nothing in this section prevents any agency from opening its
 17 records concerning the administration of the agency to public
 18 inspection, unless disclosure is otherwise prohibited by law.

19 Nothing in this section prevents any health facility from
 20 disclosing to a certified bargaining agent relevant financing
 21 information pursuant to Section 8 of the National Labor
 22 Relations Act.

23 ~~SEC. 2.~~

24 *SEC. 3.* Section 6258 of the Government Code is amended to
 25 read:

26 6258. Any person may institute proceedings for injunctive or
 27 declarative relief or writ of mandate in any court of competent
 28 jurisdiction to enforce his or her right to inspect or to receive a
 29 copy of any public record or class of public records under this
 30 chapter, or to enforce the duty of a state agency to post
 31 information in its office and on its Internet Web site, if any, in
 32 compliance with Section 6253.3. The times for responsive
 33 pleadings and for hearings in these proceedings shall be set by
 34 the judge of the court with the object of securing a decision as to
 35 these matters at the earliest possible time.

36 ~~SEC. 3.~~

37 *SEC. 4.* Section 6259 of the Government Code is amended to
 38 read:

39 6259. (a) Whenever it is made to appear by verified petition
 40 to the superior court of the county where the records or some part

1 thereof are situated that certain public records are being
2 improperly withheld from a member of the public, the court shall
3 order the officer or person charged with withholding the records
4 to disclose the public record or show cause why he or she should
5 not do so. The court shall decide the case after examining the
6 record in camera, if permitted by subdivision (b) of Section 915
7 of the Evidence Code, papers filed by the parties and any oral
8 argument and additional evidence as the court may allow.

9 (b) If the court finds that the public official's decision to
10 refuse disclosure is not justified under Section 6254 or 6255, he
11 or she shall order the public official to make the record public. If
12 the judge determines that the public official was justified in
13 refusing to make the record public, he or she shall return the item
14 to the public official without disclosing its content with an order
15 supporting the decision refusing disclosure.

16 (c) In an action filed on or after January 1, 1991, an order of
17 the court, either directing disclosure by a public official or
18 supporting the decision of the public official refusing disclosure,
19 is not a final judgment or order within the meaning of Section
20 904.1 of the Code of Civil Procedure from which an appeal may
21 be taken, but shall be immediately reviewable by petition to the
22 appellate court for the issuance of an extraordinary writ. Upon
23 entry of any order pursuant to this section, a party shall, in order
24 to obtain review of the order, file a petition within 20 days after
25 service upon him or her of a written notice of entry of the order,
26 or within such further time not exceeding an additional 20 days
27 as the trial court may for good cause allow. If the notice is served
28 by mail, the period within which to file the petition shall be
29 increased by five days. A stay of an order or judgment shall not
30 be granted unless the petitioning party demonstrates it will
31 otherwise sustain irreparable damage and probable success on the
32 merits. Any person who fails to obey the order of the court shall
33 be cited to show cause why he or she is not in contempt of court.

34 (d) The court shall award court costs and reasonable attorney
35 fees to the plaintiff should the plaintiff prevail in litigation filed
36 pursuant to this section. The costs and fees shall be paid by the
37 public agency of which the public official is a member or
38 employee and shall not become a personal liability of the public
39 official. If the court finds that the plaintiff's case is clearly

1 frivolous, it shall award court costs and reasonable attorney fees
2 to the public agency.

3 (e) (1) If a state or local agency (A) declines to comply with a
4 request to inspect or copy a record that is publicly accessible
5 pursuant to this chapter; (B) delays in responding to the request,
6 or in producing the requested records, for reasons that are
7 unstated to the requester, or that are unsupported by compelling
8 circumstances, or that otherwise demonstrate a lack of the
9 diligence required to make records available promptly, without
10 delay or obstruction, pursuant to the standards and deadlines of
11 Section 6253; (C) imposes conditions precedent to access to
12 records that are not authorized by this chapter, including, but not
13 limited to, the payment of copy fees in excess of an applicable
14 statutory fee or the direct cost of duplication pursuant to Section
15 6253 or 6253.9; or (D) otherwise frustrates timely and complete
16 access; and the court determines that the agency acted in bad
17 faith or with knowledge that the request sought nonexempt
18 records, the court, in its discretion, may make an award not to
19 exceed one hundred dollars (\$100) per day for each day, as
20 determined by the court, that the agency's action resulted in the
21 denial of the plaintiff's right to copy or inspect the record or
22 records in question.

23 (2) In determining the amount of an award under this
24 subdivision, the court shall consider all the facts and
25 circumstances surrounding the agency's decision, including, but
26 not limited to, all of the following:

27 (A) Whether the agency unreasonably failed to respond within
28 the time periods set forth in Section 6253 or otherwise engaged
29 in conduct that caused undue delay.

30 (B) Whether the agency's justification for denying the request
31 was reasonably based upon its perceived obligation to protect the
32 rights of persons or entities identified in the requested records.

33 (C) Whether the agency has developed publicly accessible
34 internal operating procedures or guidelines under Section 6253.4.

35 (D) Whether the plaintiff acted in good faith in pursuing the
36 request.

37 (E) Whether the agency's denial or other conduct inconsistent
38 with this chapter was based on a reasonable interpretation of the
39 law.

1 (f) An award pursuant to this section shall not exceed a total of
2 ten thousand dollars (\$10,000) for the record or records in
3 question.

4 ~~SEC. 4.~~

5 *SEC. 5.* Section 6259.1 is added to the Government Code, to
6 read:

7 6259.1. (a) Whenever it is made to appear by verified
8 petition to the superior court of the county wherein the plaintiff
9 resides that a state has failed to comply with the requirements of
10 Section 6253.3, the court shall order the officer or person
11 charged with posting the information as required by that section,
12 or if no such person has been appointed, the senior officer in the
13 agency, to effectuate compliance forthwith or show cause why he
14 or she should not do so. The court shall decide the case after
15 examining papers filed by the parties and any oral argument and
16 additional evidence as the court may allow.

17 (b) If the court finds that the agency has failed to comply with
18 Section 6253.3, he or she shall order the officer or person ordered
19 to show cause to effectuate compliance forthwith.

20 (c) Upon entry of any order pursuant to this section, a party
21 shall, in order to obtain review of the order, file a petition within
22 20 days after service upon him or her of a written notice of entry
23 of the order, or within such further time not exceeding an
24 additional 20 days as the trial court may for good cause allow. If
25 the notice is served by mail, the period within which to file the
26 petition shall be increased by five days. A stay of an order or
27 judgment shall not be granted unless the petitioning party
28 demonstrates that it will otherwise sustain irreparable damage
29 and probable success on the merits. Any person who fails to obey
30 the order of the court shall be cited to show cause why he or she
31 is not in contempt of court.

32 (d) If the plaintiff prevails in an action filed pursuant to this
33 section, the court shall award court and discovery costs and
34 reasonable attorney's fees to the plaintiff. ~~For the purposes of this~~
35 ~~subdivision, a plaintiff prevails, even in the absence of a judicial~~
36 ~~determination in his or her favor, if filing of the action is~~
37 ~~followed by the agency's coming into compliance with Section~~
38 ~~6253.3, provided that the plaintiff has made a written demand for~~
39 ~~compliance, sent to the agency at least 30 days prior to filing the~~
40 ~~action, including an unambiguous statement of the alleged facts~~

1 of noncompliance and a warning that an enforcement action may
2 follow. The costs and fees shall be paid by the state or local
3 agency of which the public official is a member or employee and
4 shall not become a personal liability of the public official. If the
5 court finds that the plaintiff's case is clearly frivolous, it shall
6 award court costs and reasonable attorney's fees to the agency.

7 (e) Commencing three months from the effective date of this
8 subdivision, any agency determined by the court to have failed to
9 comply with the requirements of subdivision (a) or (b) of Section
10 6253.3, or to have fallen more than 15 days behind in posting or
11 archiving the information required by subdivisions (c), (d), (e),
12 (f), (g), and (h) of Section 6253.3, in addition to any order to
13 bring the agency into compliance with these provisions, may be
14 ordered to post on its homepage, immediately after the heading
15 "Public Information Center," under the words "Our Failure to
16 Comply," a copy of the court's findings and order. The duration
17 of this posting shall rest with the sound discretion of the court,
18 but in no case may be less than 30 days.

19 *SEC. 6. If the Commission on State Mandates determines that*
20 *this act contains costs mandated by the state, reimbursement to*
21 *local agencies and school districts for those costs shall be made*
22 *pursuant to Part 7 (commencing with Section 17500) of Division*
23 *4 of Title 2 of the Government Code.*