

AMENDED IN SENATE AUGUST 7, 2006

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 ~~6254~~, 6258, and 6259 of, and to add Sections 6253.3, 6257, 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.~~

The bill would also authorize a person to request the Attorney General to review a state or local agency’s denial of a written request to inspect or receive a copy of a public record and would require the Attorney General to issue a written decision within 20 working days of the date the written request and written response or lack of response of an agency is received by the Attorney General. The bill would require the Attorney General to maintain copies of the opinions issued pursuant to these provisions, to publish the opinions annually in a special volume, and make them available on the Internet.

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

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

1 displayed without scrolling, the words “Public Information
2 Center,” which shall be followed by, or shall link to, on another
3 page, all of the following:

4 (a) Under the words “Whom to Contact,” the title, mailing
5 address, telephone number, and e-mail address of the public
6 information officer or other person or persons to whom requests
7 for inspection or copying of records pursuant to the California
8 Public Records Act, or informal requests for simple factual
9 information, should be directed.

10 (b) Under the words “How to Request Records,” the written
11 guidelines authorized or required under subdivision (a) of
12 Section 6253.4, and an HTML form for submitting online
13 requests under the California Public Records Act, consisting of
14 all of the following labeled fields:

- 15 (1) Today’s date.
- 16 (2) My name (optional).
- 17 (3) My e-mail address (optional).
- 18 (4) My postal address (optional).
- 19 (5) My telephone number (optional).
- 20 (6) I am interested in the following records or information:
- 21 (7) Where can I inspect these records?
- 22 (8) Send me copies of the records without inspection.
- 23 (9) Send me a fee estimate before copying.

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

27 (c) Within 10 calendar days after its filing, under the words
28 “Officials’ Economic Interests,” the most current statement of
29 economic interests filed by every officer, employee, or consultant
30 of the agency who is required to file such reports under Sections
31 87200 or 87300, and who is exempt from civil service or who is
32 employed in a career executive assignment position.

33 (d) Within 10 calendar days after its signing or other binding
34 event, under the words “Officials’ Employment or Consulting
35 Contracts,” a copy or all terms of every employment, consulting,
36 or other contract for an individual’s services to which the agency
37 and any individual are parties. The copy or terms of the contract
38 shall be accessible for as long as the contract is in effect and shall
39 include any signing bonus, housing loan or allowance, relocation

1 allowance, transportation allowance, or other economic benefit of
2 any kind.

3 (e) Within 10 calendar days after its effective date, under the
4 words “Lawsuit Settlements,” the full text of every settlement of
5 civil litigation in which the agency is a named party, and of every
6 agreement to compensate any person for foregoing litigation,
7 involving a payment by the agency of fifty thousand dollars
8 (\$50,000) or more to an adverse party within the current calendar
9 year.

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

16 (g) Under the words “Records Withheld This Year,” a copy of
17 every request, letter, or other communication from, and the
18 agency’s reply to, a requester denying access to all or part of any
19 record, sent within the current calendar year. The agency shall
20 redact the name and personal identifying information of the
21 requester.

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

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

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

1 ~~SEC. 2.— Section 6254 of the Government Code is amended to~~
2 ~~read:~~

3 ~~6254. Except as provided in Sections 6254.7 and 6254.13,~~
4 ~~nothing in this chapter shall be construed to require disclosure of~~
5 ~~records that are any of the following:~~

6 ~~(a) Preliminary drafts, notes, or interagency or intra-agency~~
7 ~~memoranda that are not retained by the public agency in the~~
8 ~~ordinary course of business, provided that the public interest in~~
9 ~~withholding those records clearly outweighs the public interest in~~
10 ~~disclosure.~~

11 ~~(b) Records pertaining to pending litigation to which the~~
12 ~~public agency is a party, or to claims made pursuant to Division~~
13 ~~3.6 (commencing with Section 810), until the pending litigation~~
14 ~~or claim has been finally adjudicated or otherwise settled.~~

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

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

18 ~~(1) Applications filed with any state agency responsible for the~~
19 ~~regulation or supervision of the issuance of securities or of~~
20 ~~financial institutions, including, but not limited to, banks, savings~~
21 ~~and loan associations, industrial loan companies, credit unions,~~
22 ~~and insurance companies.~~

23 ~~(2) Examination, operating, or condition reports prepared by,~~
24 ~~on behalf of, or for the use of, any state agency referred to in~~
25 ~~paragraph (1).~~

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

29 ~~(4) Information received in confidence by any state agency~~
30 ~~referred to in paragraph (1).~~

31 ~~(e) Geological and geophysical data, plant production data,~~
32 ~~and similar information relating to utility systems development,~~
33 ~~or market or crop reports, that are obtained in confidence from~~
34 ~~any person.~~

35 ~~(f) Records of complaints to, or investigations conducted by,~~
36 ~~or records of intelligence information or security procedures of,~~
37 ~~the office of the Attorney General and the Department of Justice,~~
38 ~~and any state or local police agency, or any investigatory or~~
39 ~~security files compiled by any other state or local police agency,~~
40 ~~or any investigatory or security files compiled by any other state~~

1 or local agency for correctional, law enforcement, or licensing
 2 purposes, except that state and local law enforcement agencies
 3 shall disclose the names and addresses of persons involved in, or
 4 witnesses other than confidential informants to, the incident, the
 5 description of any property involved, the date, time, and location
 6 of the incident, all diagrams, statements of the parties involved in
 7 the incident, the statements of all witnesses, other than
 8 confidential informants, to the victims of an incident, or an
 9 authorized representative thereof, an insurance carrier against
 10 which a claim has been or might be made, and any person
 11 suffering bodily injury or property damage or loss, as the result
 12 of the incident caused by arson, burglary, fire, explosion, larceny,
 13 robbery, carjacking, vandalism, vehicle theft, or a crime as
 14 defined by subdivision (b) of Section 13951, unless the
 15 disclosure would endanger the safety of a witness or other person
 16 involved in the investigation, or unless disclosure would
 17 endanger the successful completion of the investigation or a
 18 related investigation. However, nothing in this division shall
 19 require the disclosure of that portion of those investigative files
 20 that reflect the analysis or conclusions of the investigating
 21 officer.

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

25 Notwithstanding any other provision of this subdivision, state
 26 and local law enforcement agencies shall make public the
 27 following information, except to the extent that disclosure of a
 28 particular item of information would endanger the safety of a
 29 person involved in an investigation or would endanger the
 30 successful completion of the investigation or a related
 31 investigation:

32 (1) The full name and occupation of every individual arrested
 33 by the agency or the agency that has or had custody of the
 34 individual for the purpose of booking, the individual's physical
 35 description including date of birth, color of eyes and hair, sex,
 36 height and weight, the time and date of arrest, the time and date
 37 of booking, the location of the arrest, the factual circumstances
 38 surrounding the arrest, the amount of bail set, the time and
 39 manner of release or the location where the individual is
 40 currently being held, and all charges the individual is being held

1 upon, including any outstanding warrants from other jurisdictions
2 and parole or probation holds.

3 (2) Subject to the restrictions imposed by Section 841.5 of the
4 Penal Code, the time, substance, and location of all complaints or
5 requests for assistance received by the agency and the time and
6 nature of the response thereto, including, to the extent the
7 information regarding crimes alleged or committed or any other
8 incident investigated is recorded, the time, date, and location of
9 occurrence, the time and date of the report, the name and age of
10 the victim, the factual circumstances surrounding the crime or
11 incident, and a general description of any injuries, property, or
12 weapons involved. The name of a victim of any crime defined by
13 Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286,
14 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code
15 may be withheld at the victim's request, or at the request of the
16 victim's parent or guardian if the victim is a minor. When a
17 person is the victim of more than one crime, information
18 disclosing that the person is a victim of a crime defined by
19 Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 286, 288,
20 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may
21 be deleted at the request of the victim, or the victim's parent or
22 guardian if the victim is a minor, in making the report of the
23 crime, or of any crime or incident accompanying the crime,
24 available to the public in compliance with the requirements of
25 this paragraph.

26 (3) Subject to the restrictions of Section 841.5 of the Penal
27 Code and this subdivision, the current address of every individual
28 arrested by the agency or the agency that has or had custody of
29 the individual for the purpose of booking, and the current address
30 of the victim of a crime, where the requester declares under
31 penalty of perjury that the request is made for a scholarly,
32 journalistic, political, or governmental purpose, or that the
33 request is made for investigation purposes by a licensed private
34 investigator as described in Chapter 11.3 (commencing with
35 Section 7512) of Division 3 of the Business and Professions
36 Code, except that the address of the victim of any crime defined
37 by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5,
38 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal
39 Code shall remain confidential. Address information obtained
40 pursuant to this paragraph may not be used directly or indirectly,

1 or furnished to another, to sell a product or service to any
2 individual or group of individuals, and the requester shall execute
3 a declaration to that effect under penalty of perjury. Nothing in
4 this paragraph shall be construed to prohibit or limit a scholarly,
5 journalistic, political, or government use of address information
6 obtained pursuant to this paragraph.

7 (g) ~~Test questions, scoring keys, and other examination data~~
8 ~~used to administer a licensing examination, examination for~~
9 ~~employment, or academic examination, except as provided for in~~
10 ~~Chapter 3 (commencing with Section 99150) of Part 65 of the~~
11 ~~Education Code.~~

12 (h) ~~The contents of real estate appraisals or engineering or~~
13 ~~feasibility estimates and evaluations made for or by the state or~~
14 ~~local agency relative to the acquisition of property, or to~~
15 ~~prospective public supply and construction contracts, until all of~~
16 ~~the property has been acquired or all of the contract agreement~~
17 ~~obtained. However, the law of eminent domain shall not be~~
18 ~~affected by this provision.~~

19 (i) ~~Information required from any taxpayer in connection with~~
20 ~~the collection of local taxes that is received in confidence and the~~
21 ~~disclosure of the information to other persons would result in~~
22 ~~unfair competitive disadvantage to the person supplying the~~
23 ~~information.~~

24 (j) ~~Library circulation records kept for the purpose of~~
25 ~~identifying the borrower of items available in libraries, and~~
26 ~~library and museum materials made or acquired and presented~~
27 ~~solely for reference or exhibition purposes. The exemption in this~~
28 ~~subdivision shall not apply to records of fines imposed on the~~
29 ~~borrowers.~~

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

33 (l) ~~Correspondence of and to the Governor or employees of the~~
34 ~~Governor's office or in the custody of or maintained by the~~
35 ~~Governor's Legal Affairs Secretary, provided that public records~~
36 ~~shall not be transferred to the custody of the Governor's Legal~~
37 ~~Affairs Secretary to evade the disclosure provisions of this~~
38 ~~chapter.~~

1 ~~(m) In the custody of or maintained by the Legislative~~
2 ~~Counsel, except those records in the public database maintained~~
3 ~~by the Legislative Counsel that are described in Section 10248.~~

4 ~~(n) Statements of personal worth or personal financial data~~
5 ~~required by a licensing agency and filed by an applicant with the~~
6 ~~licensing agency to establish his or her personal qualification for~~
7 ~~the license, certificate, or permit applied for.~~

8 ~~(o) Financial data contained in applications for financing~~
9 ~~under Division 27 (commencing with Section 44500) of the~~
10 ~~Health and Safety Code, where an authorized officer of the~~
11 ~~California Pollution Control Financing Authority determines that~~
12 ~~disclosure of the financial data would be competitively injurious~~
13 ~~to the applicant and the data is required in order to obtain~~
14 ~~guarantees from the United States Small Business~~
15 ~~Administration. The California Pollution Control Financing~~
16 ~~Authority shall adopt rules for review of individual requests for~~
17 ~~confidentiality under this section and for making available to the~~
18 ~~public those portions of an application that are subject to~~
19 ~~disclosure under this chapter.~~

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

33 ~~(q) Records of state agencies related to activities governed by~~
34 ~~Article 2.6 (commencing with Section 14081), Article 2.8~~
35 ~~(commencing with Section 14087.5), and Article 2.91~~
36 ~~(commencing with Section 14089) of Chapter 7 of Part 3 of~~
37 ~~Division 9 of the Welfare and Institutions Code, that reveal the~~
38 ~~special negotiator's deliberative processes, discussions,~~
39 ~~communications, or any other portion of the negotiations with~~
40 ~~providers of health care services, impressions, opinions,~~

1 recommendations, meeting minutes, research, work product,
2 theories, or strategy, or that provide instruction, advice, or
3 training to employees.

4 Except for the portion of a contract containing the rates of
5 payment, contracts for inpatient services entered into pursuant to
6 these articles, on or after April 1, 1984, shall be open to
7 inspection one year after they are fully executed. In the event that
8 a contract for inpatient services that is entered into prior to April
9 1, 1984, is amended on or after April 1, 1984, the amendment,
10 except for any portion containing the rates of payment, shall be
11 open to inspection one year after it is fully executed. If the
12 California Medical Assistance Commission enters into contracts
13 with health care providers for other than inpatient hospital
14 services, those contracts shall be open to inspection one year
15 after they are fully executed.

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

19 Notwithstanding any other provision of law, the entire contract
20 or amendment shall be open to inspection by the Joint Legislative
21 Audit Committee and the Legislative Analyst's Office. The
22 committee and that office shall maintain the confidentiality of the
23 contracts and amendments until the time a contract or
24 amendment is fully open to inspection by the public.

25 (r) Records of Native American graves, cemeteries, and sacred
26 places and records of Native American places, features, and
27 objects described in Sections 5097.9 and 5097.993 of the Public
28 Resources Code maintained by, or in the possession of, the
29 Native American Heritage Commission, another state agency, or
30 a local agency.

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

35 (t) Records of a local hospital district, formed pursuant to
36 Division 23 (commencing with Section 32000) of the Health and
37 Safety Code, or the records of a municipal hospital, formed
38 pursuant to Article 7 (commencing with Section 37600) or
39 Article 8 (commencing with Section 37650) of Chapter 5 of
40 Division 3 of Title 4 of this code, that relate to any contract with

1 ~~an insurer or nonprofit hospital service plan for inpatient or~~
2 ~~outpatient services for alternative rates pursuant to Section 10133~~
3 ~~or 11512 of the Insurance Code. However, the record shall be~~
4 ~~open to inspection within one year after the contract is fully~~
5 ~~executed.~~

6 ~~(u) (1) Information contained in applications for licenses to~~
7 ~~carry firearms issued pursuant to Section 12050 of the Penal~~
8 ~~Code by the sheriff of a county or the chief or other head of a~~
9 ~~municipal police department that indicates when or where the~~
10 ~~applicant is vulnerable to attack or that concerns the applicant's~~
11 ~~medical or psychological history or that of members of his or her~~
12 ~~family.~~

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

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

23 ~~(v) (1) Records of the Major Risk Medical Insurance Program~~
24 ~~related to activities governed by Part 6.3 (commencing with~~
25 ~~Section 12695) and Part 6.5 (commencing with Section 12700)~~
26 ~~of Division 2 of the Insurance Code, and that reveal the~~
27 ~~deliberative processes, discussions, communications, or any other~~
28 ~~portion of the negotiations with health plans, or the impressions,~~
29 ~~opinions, recommendations, meeting minutes, research, work~~
30 ~~product, theories, or strategy of the board or its staff, or records~~
31 ~~that provide instructions, advice, or training to employees.~~

32 ~~(2) (A) Except for the portion of a contract that contains the~~
33 ~~rates of payment, contracts for health coverage entered into~~
34 ~~pursuant to Part 6.3 (commencing with Section 12695) or Part~~
35 ~~6.5 (commencing with Section 12700) of Division 2 of the~~
36 ~~Insurance Code, on or after July 1, 1991, shall be open to~~
37 ~~inspection one year after they have been fully executed.~~

38 ~~(B) In the event that a contract for health coverage that is~~
39 ~~entered into prior to July 1, 1991, is amended on or after July 1,~~
40 ~~1991, the amendment, except for any portion containing the rates~~

1 of payment, shall be open to inspection one year after the
2 amendment has been fully executed.

3 (3) Three years after a contract or amendment is open to
4 inspection pursuant to this subdivision, the portion of the contract
5 or amendment containing the rates of payment shall be open to
6 inspection.

7 (4) Notwithstanding any other provision of law, the entire
8 contract or amendments to a contract shall be open to inspection
9 by the Joint Legislative Audit Committee. The committee shall
10 maintain the confidentiality of the contracts and amendments
11 thereto, until the contract or amendments to a contract is open to
12 inspection pursuant to paragraph (3).

13 (w) (1) Records of the Major Risk Medical Insurance
14 Program related to activities governed by Chapter 14
15 (commencing with Section 10700) of Part 2 of Division 2 of the
16 Insurance Code, and that reveal the deliberative processes,
17 discussions, communications, or any other portion of the
18 negotiations with health plans, or the impressions, opinions,
19 recommendations, meeting minutes, research, work product,
20 theories, or strategy of the board or its staff, or records that
21 provide instructions, advice, or training to employees.

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

28 (3) Notwithstanding any other provision of law, the entire
29 contract or amendments to a contract shall be open to inspection
30 by the Joint Legislative Audit Committee. The committee shall
31 maintain the confidentiality of the contracts and amendments
32 thereto, until the contract or amendments to a contract is open to
33 inspection pursuant to paragraph (2).

34 (x) Financial data contained in applications for registration, or
35 registration renewal, as a service contractor filed with the
36 Director of the Department of Consumer Affairs pursuant to
37 Chapter 20 (commencing with Section 9800) of Division 3 of the
38 Business and Professions Code, for the purpose of establishing
39 the service contractor's net worth, or financial data regarding the

1 funded accounts held in escrow for service contracts held in force
2 in this state by a service contractor.

3 ~~(y) (1) Records of the Managed Risk Medical Insurance~~
4 ~~Board related to activities governed by Part 6.2 (commencing~~
5 ~~with Section 12693) or Part 6.4 (commencing with Section~~
6 ~~12699.50) of Division 2 of the Insurance Code, and that reveal~~
7 ~~the deliberative processes, discussions, communications, or any~~
8 ~~other portion of the negotiations with health plans, or the~~
9 ~~impressions, opinions, recommendations, meeting minutes,~~
10 ~~research, work product, theories, or strategy of the board or its~~
11 ~~staff, or records that provide instructions, advice, or training to~~
12 ~~employees.~~

13 ~~(2) (A) Except for the portion of a contract that contains the~~
14 ~~rates of payment, contracts entered into pursuant to Part 6.2~~
15 ~~(commencing with Section 12693) or Part 6.4 (commencing with~~
16 ~~Section 12699.50) of Division 2 of the Insurance Code, on or~~
17 ~~after January 1, 1998, shall be open to inspection one year after~~
18 ~~they have been fully executed.~~

19 ~~(B) In the event that a contract entered into pursuant to Part~~
20 ~~6.2 (commencing with Section 12693) or Part 6.4 (commencing~~
21 ~~with Section 12699.50) of Division 2 of the Insurance Code is~~
22 ~~amended, the amendment shall be open to inspection one year~~
23 ~~after the amendment has been fully executed.~~

24 ~~(3) Three years after a contract or amendment is open to~~
25 ~~inspection pursuant to this subdivision, the portion of the contract~~
26 ~~or amendment containing the rates of payment shall be open to~~
27 ~~inspection.~~

28 ~~(4) Notwithstanding any other provision of law, the entire~~
29 ~~contract or amendments to a contract shall be open to inspection~~
30 ~~by the Joint Legislative Audit Committee. The committee shall~~
31 ~~maintain the confidentiality of the contracts and amendments~~
32 ~~thereto until the contract or amendments to a contract are open to~~
33 ~~inspection pursuant to paragraph (2) or (3).~~

34 ~~(5) The exemption from disclosure provided pursuant to this~~
35 ~~subdivision for the contracts, deliberative processes, discussions,~~
36 ~~communications, negotiations with health plans, impressions,~~
37 ~~opinions, recommendations, meeting minutes, research, work~~
38 ~~product, theories, or strategy of the board or its staff shall also~~
39 ~~apply to the contracts, deliberative processes, discussions,~~
40 ~~communications, negotiations with health plans, impressions,~~

1 opinions, recommendations, meeting minutes, research, work
 2 product, theories, or strategy of applicants pursuant to Part 6.4
 3 (commencing with Section 12699.50) of Division 2 of the
 4 Insurance Code.

5 (z) Records obtained pursuant to paragraph (2) of subdivision
 6 (e) of Section 2891.1 of the Public Utilities Code.

7 (aa) A document prepared by or for a state or local agency that
 8 assesses its vulnerability to terrorist attack or other criminal acts
 9 intended to disrupt the public agency’s operations and that is for
 10 distribution or consideration in a closed session.

11 (bb) Critical infrastructure information, as defined in Section
 12 131(3) of Title 6 of the United States Code, that is voluntarily
 13 submitted to the California Office of Homeland Security for use
 14 by that office, including the identity of the person who or entity
 15 that voluntarily submitted the information. As used in this
 16 subdivision, “voluntarily submitted” means submitted in the
 17 absence of the office exercising any legal authority to compel
 18 access to or submission of critical infrastructure information.
 19 This subdivision shall not affect the status of information in the
 20 possession of any other state or local governmental agency.

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

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

29 Nothing in this section prevents any health facility from
 30 disclosing to a certified bargaining agent relevant financing
 31 information pursuant to Section 8 of the National Labor
 32 Relations Act.

33 *SEC. 2. Section 6257 is added to the Government Code, to*
 34 *read:*

35 *6257. (a) A person may request the Attorney General to*
 36 *review a state or local agency’s denial of a written request to*
 37 *inspect or receive a copy of a public record by delivering a copy*
 38 *of the request and the written response by the agency denying, in*
 39 *whole or in part, the request to the office of the Attorney General*
 40 *within 20 days of receipt of the agency’s written denial. In the*

1 case of the failure of an agency to provide any response under
2 Section 6253 to a public records request within the time limits
3 specified by this chapter, the person may seek review by the
4 Attorney General by providing a copy of the request and the
5 circumstances under which it was sent to the agency no less than
6 20 days and no more than 40 days after the request was
7 delivered or mailed to the agency. The Attorney General may
8 grant relief from the 40-day time limit upon a showing by the
9 person seeking relief that he or she refrained from requesting
10 review within the 40-day time limit because the person
11 reasonably relied upon representations of the agency that a
12 response would be forthcoming.

13 The person seeking review shall demonstrate by means of
14 written proof of service or other credible and reliable means that
15 a copy of his or her request for review has been delivered to the
16 denying agency. Within 20 working days of receipt of the request
17 for review that complies with the requirements of this
18 subdivision, the Attorney General shall issue a written opinion
19 stating whether the agency's response or lack of response
20 complied with provisions of this chapter.

21 (b) For good cause, the Attorney General may extend by 30
22 working days the time to issue an opinion under this section by
23 sending written notice to the complaining party and a copy to the
24 denying agency stating the reasons for the extension and the day
25 on which a decision is expected to be issued. As used in this
26 section, "good cause" means any of the following:

27 (1) The need to obtain additional information from the agency
28 or the requester.

29 (2) The need to conduct research on issues of first impression.

30 (3) An unmanageable workload.

31 (4) Unanticipated absence of staff assigned to a particular
32 request, or similar unavoidable circumstance.

33 (c) The Attorney General may solicit additional information or
34 explanation from the denying agency, including copies of the
35 records claimed to be exempt, or a detailed explanation of the
36 content of the information in those records. The denying agency
37 may, within 10 working days from the date of receipt of the
38 request pursuant to subdivision (a), submit any additional
39 information or explanation it deems relevant. However, the
40 records or other information for which an exemption is claimed

1 shall not be provided except in response to a request by the
2 Attorney General and shall not be disclosed by the Attorney
3 General. The Attorney General shall return or destroy
4 nondisclosable records received under this subdivision upon
5 completion of the review and shall not use the records for any
6 other purpose. The agency need not provide records or
7 information but failure to do so without adequate justification
8 under the circumstances of the case may be considered in
9 assessing the sufficiency of the agency's written denial under
10 review.

11 (d) If the Attorney General or the Department of Justice is the
12 agency that is the subject of the public records request, the
13 request for review under this section shall be treated as a request
14 for reconsideration and, where possible, shall be reviewed by
15 members of the Attorney General's office not involved in the
16 original decision.

17 (e) Upon completion of the opinion pursuant to this section,
18 the Attorney General shall immediately mail a copy of it to the
19 person requesting review and to the state or local agency that
20 denied access to the record in question.

21 (f) The Attorney General shall maintain copies of opinions
22 issued pursuant to this section at each of his or her legal offices
23 for purposes of public inspection. The Attorney General shall
24 cause to be published annually a special volume of opinions
25 issued under this section and shall make the opinions available
26 on the Internet. The Attorney General may charge a fee for the
27 sale of the volumes not to exceed the reasonable cost of
28 publication and distribution.

29 (g) Notwithstanding any other provision of law, except where
30 the records of the Attorney General or the Department of Justice
31 are at issue, neither the Attorney General, nor the Department of
32 Justice, nor any of its staff shall be subject to suit or to discovery
33 in any suit for any action taken as a result of review under this
34 section.

35 (h) An opinion issued under this section does not affect the
36 right of a person to enforce his or her right to inspect or to
37 receive a copy of any public record through an action pursuant
38 to Sections 6258 and 6259. A person shall not be required to
39 exhaust the administrative remedies available in this section
40 prior to filing a legal action. If a person elects to bring an action

1 *under Sections 6258 and 6259, the Attorney General shall not*
2 *proceed under this section. If a person elects to seek review*
3 *under this section, no legal action may be brought against the*
4 *agency whose decision is the subject of the opinion until 10 days*
5 *after the issuance and mailing of the opinion. A person may*
6 *withdraw, by written notice, his or her request for review under*
7 *this section if the withdrawal notice is received by the Attorney*
8 *General prior to the issuance of an opinion.*

9 *(i) (1) Representation of a state agency by the Attorney*
10 *General involving advice as to a request for inspection or copies*
11 *of public records may provide a basis for that agency to claim an*
12 *attorney-client relationship that would preclude the Attorney*
13 *General from providing an opinion under this section regarding*
14 *that request.*

15 *(2) A state agency against which an action is brought pursuant*
16 *to Sections 6258 and 6259, after a receipt of an adverse opinion*
17 *under this section, is authorized to retain counsel, other than the*
18 *Attorney General, who shall be compensated at the same rate*
19 *that the Attorney General would charge for legal services for the*
20 *defense of that action.*

21 *(3) Except as provided in this section, the Attorney General's*
22 *review under this section does not preclude the Attorney*
23 *General's representation of the affected state agency on any*
24 *matter.*

25 *(j) The time limits for the Attorney General to respond*
26 *pursuant to subdivisions (a) and (b) are directory not mandatory.*

27 *(k) This section shall not apply to a request for public records*
28 *made to a state agency by a party to a pending proceeding*
29 *involving the state agency or an employee of the state agency, or*
30 *a pending investigation by the state agency, if the Attorney*
31 *General has provided or is providing legal advice or*
32 *representation to the state agency with regard to the proceeding*
33 *or investigation.*

34 SEC. 3. Section 6258 of the Government Code is amended to
35 read:

36 6258. Any person may institute proceedings for injunctive or
37 declarative relief or writ of mandate in any court of competent
38 jurisdiction to enforce his or her right to inspect or to receive a
39 copy of any public record or class of public records under this
40 chapter, or to enforce the duty of a state agency to post

1 information in its office and on its Internet Web site, if any, in
2 compliance with Section 6253.3. The times for responsive
3 pleadings and for hearings in these proceedings shall be set by
4 the judge of the court with the object of securing a decision as to
5 these matters at the earliest possible time.

6 SEC. 4. Section 6259 of the Government Code is amended to
7 read:

8 6259. (a) Whenever it is made to appear by verified petition
9 to the superior court of the county where the records or some part
10 thereof are situated that certain public records are being
11 improperly withheld from a member of the public, the court shall
12 order the officer or person charged with withholding the records
13 to disclose the public record or show cause why he or she should
14 not do so. The court shall decide the case after examining the
15 record in camera, if permitted by subdivision (b) of Section 915
16 of the Evidence Code, papers filed by the parties and any oral
17 argument and additional evidence as the court may allow.

18 (b) If the court finds that the public official's decision to
19 refuse disclosure is not justified under Section 6254 or 6255, he
20 or she shall order the public official to make the record public. If
21 the judge determines that the public official was justified in
22 refusing to make the record public, he or she shall return the item
23 to the public official without disclosing its content with an order
24 supporting the decision refusing disclosure.

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

1 merits. Any person who fails to obey the order of the court shall
2 be cited to show cause why he or she is not in contempt of court.

3 (d) The court shall award court costs and reasonable attorney
4 fees to the plaintiff should the plaintiff prevail in litigation filed
5 pursuant to this section. The costs and fees shall be paid by the
6 public agency of which the public official is a member or
7 employee and shall not become a personal liability of the public
8 official. If the court finds that the plaintiff's case is clearly
9 frivolous, it shall award court costs and reasonable attorney fees
10 to the public agency.

11 (e) (1) If a state or local agency (A) declines to comply with a
12 request to inspect or copy a record that is publicly accessible
13 pursuant to this chapter; (B) delays in responding to the request,
14 or in producing the requested records, for reasons that are
15 unstated to the requester, or that are unsupported by compelling
16 circumstances, or that otherwise demonstrate a lack of the
17 diligence required to make records available promptly, without
18 delay or obstruction, pursuant to the standards and deadlines of
19 Section 6253; (C) imposes conditions precedent to access to
20 records that are not authorized by this chapter, including, but not
21 limited to, the payment of copy fees in excess of an applicable
22 statutory fee or the direct cost of duplication pursuant to Section
23 6253 or 6253.9; or (D) otherwise frustrates timely and complete
24 access; and the court determines that the agency acted in bad
25 faith or with knowledge that the request sought nonexempt
26 records, the court, in its discretion, may make an award not to
27 exceed one hundred dollars (\$100) per day for each day, as
28 determined by the court, that the agency's action resulted in the
29 denial of the plaintiff's right to copy or inspect the record or
30 records in question.

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

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

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

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

3 (D) Whether the plaintiff acted in good faith in pursuing the
 4 request.

5 (E) Whether the agency’s denial or other conduct inconsistent
 6 with this chapter was based on a reasonable interpretation of the
 7 law.

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

11 SEC. 5. Section 6259.1 is added to the Government Code, to
 12 read:

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

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

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

38 (d) If the plaintiff prevails in an action filed pursuant to this
 39 section, the court shall award court and discovery costs and
 40 reasonable attorney’s fees to the plaintiff. The costs and fees

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

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

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