

AMENDED IN ASSEMBLY APRIL 11, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1393

**Introduced by Assembly Members Leno and Maze
(Coauthor: Assembly Member Aghazarian)**

February 23, 2007

An act to amend Sections 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 1393, 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, as of January 1, 2009, 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, and a form for submitting online requests for records. 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, with specified provisions to become operative on January 1, 2009.

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 to make them available on the Internet.

This bill would require the Department of Justice to convene an advisory task force with a specified membership, to consider specified issues with respect to a statutory standard governing the posting of certain activities under the act, and to report its findings and recommendations to the Governor and the Legislature by no later than September 30, 2008.

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

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

- 1 SECTION 1. Section 6253.3 is added to the Government Code,
- 2 to read:
- 3 6253.3. Every state agency that publishes an Internet Web site
- 4 shall include on the homepage of that site, prominently displayed
- 5 without scrolling, the words “Public Records Center,” which shall
- 6 be followed by, or shall link to, on another page, both of the
- 7 following:
- 8 (a) Under the words “Whom to Contact,” the title, mailing
- 9 address, telephone number, and e-mail address of the public
- 10 information officer or other person or persons to whom requests
- 11 for inspection or copying of records pursuant to the California
- 12 Public Records Act, or informal requests for simple factual
- 13 information, should be directed.
- 14 (b) (1) Under the words “How to Request Records,” the written
- 15 guidelines authorized or required under subdivision (a) of Section
- 16 6253.4, and an HTML form for submitting online requests under
- 17 the California Public Records Act, consisting of all of the following
- 18 labeled fields:
- 19 (A) Today’s date.
- 20 (B) My name (optional).
- 21 (C) My e-mail address (optional).
- 22 (D) My postal address (optional).
- 23 (E) My telephone number (optional).
- 24 (F) I am interested in the following records or information:

1 (G) Where can I inspect these records?

2 (H) Send me copies of the records.

3 (I) Send me a fee estimate before copying.

4 (2) The HTML form shall be designed to send a copy of the
5 request immediately and automatically to the e-mail address listed
6 on the HTML form, if an e-mail address is provided by the person
7 submitting the form.

8 (c) This section shall become operative on January 1, 2009.

9 SEC. 2. Section 6257 is added to the Government Code, to
10 read:

11 6257. (a) (1) A person may request the Attorney General to
12 review ~~a state or~~ local agency's denial of a written request to
13 inspect or receive a copy of a public record by delivering a copy
14 of the request and the written response by the agency denying, in
15 whole or in part, the request to the office of the Attorney General
16 within 20 days of receipt of the agency's written denial. In the case
17 of the failure of an agency to provide any response under Section
18 6253 to a public records request within the time limits specified
19 by this chapter, the person may seek review by the Attorney
20 General by providing a copy of the request and the circumstances
21 under which it was sent to the agency no less than 20 days and no
22 more than 40 days after the request was delivered or mailed to the
23 agency. The Attorney General may grant relief from the 40-day
24 time limit upon a showing by the person seeking relief that he or
25 she refrained from requesting review within the 40-day time limit
26 because the person reasonably relied upon representations of the
27 agency that a response would be forthcoming.

28 (2) The person seeking review shall demonstrate by means of
29 written proof of service or other credible and reliable means that
30 a copy of his or her request for review has been delivered to the
31 denying agency. Within 20 working days of receipt of the request
32 for review that complies with the requirements of this subdivision,
33 the Attorney General shall issue a written opinion stating whether
34 the agency's response or lack of response complied with this
35 chapter.

36 (b) For good cause, the Attorney General may extend by 30
37 working days the time to issue an opinion under this section by
38 sending written notice to the complaining party and a copy to the
39 denying agency stating the reasons for the extension and the day

1 on which a decision is expected to be issued. As used in this
2 section, “good cause” means any of the following:

3 (1) The need to obtain additional information from the agency
4 or the requester.

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

6 (3) An unmanageable workload.

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

9 (c) The Attorney General may solicit additional information or
10 explanation from the denying agency, including copies of the
11 records claimed to be exempt, or a detailed explanation of the
12 content of the information in those records. The denying agency
13 may, within 10 working days from the date of receipt of the request
14 pursuant to subdivision (a), submit any additional information or
15 explanation it deems relevant. However, the records or other
16 information for which an exemption is claimed shall not be
17 provided except in response to a request by the Attorney General
18 and shall not be disclosed by the Attorney General. The Attorney
19 General shall return or destroy nondisclosable records received
20 under this subdivision upon completion of the review and shall
21 not use the records for any other purpose. The agency need not
22 provide records or information but failure to do so without adequate
23 justification under the circumstances of the case may be considered
24 in assessing the sufficiency of the agency’s written denial under
25 review.

26 ~~(d) If the Attorney General or the Department of Justice is the~~
27 ~~agency that is the subject of the public records request, the request~~
28 ~~for review under this section shall be treated as a request for~~
29 ~~reconsideration and, when possible, shall be reviewed by members~~
30 ~~of the Attorney General’s office not involved in the original~~
31 ~~decision.~~

32 (e)

33 (d) Upon completion of the opinion pursuant to this section, the
34 Attorney General shall immediately mail a copy of it to the person
35 requesting review and to the state or local agency that denied access
36 to the record in question.

37 (f)

38 (e) The Attorney General shall maintain copies of opinions
39 issued pursuant to this section at each of his or her legal offices
40 for purposes of public inspection. The Attorney General shall cause

1 to be published annually a special volume of opinions issued under
2 this section and shall make the opinions available on the Internet.
3 The Attorney General may charge a fee for the sale of the volumes
4 not to exceed the reasonable cost of publication and distribution.

5 ~~(g) Notwithstanding any other provision of law, except when~~
6 ~~the records of the Attorney General or the Department of Justice~~
7 ~~are at issue, neither the Attorney General, nor the Department of~~

8 *(f) Notwithstanding any other provision of law, neither the*
9 *Attorney General, nor the Department of Justice, nor any of its*
10 *staff shall be subject to suit or to discovery in any suit for any*
11 *action taken as a result of review under this section.*

12 ~~(h)~~

13 *(g) An opinion issued under this section does not affect the right*
14 *of a person to enforce his or her right to inspect or to receive a*
15 *copy of any public record through an action pursuant to Sections*
16 *6258 and 6259. A person shall not be required to exhaust the*
17 *administrative remedies available in this section prior to filing a*
18 *legal action. If a person elects to bring an action under Sections*
19 *6258 and 6259, the Attorney General shall not proceed under this*
20 *section. If a person elects to seek review under this section, no*
21 *legal action may be brought against the agency whose decision is*
22 *the subject of the opinion until 10 days after the issuance and*
23 *mailing of the opinion. A person may withdraw, by written notice,*
24 *his or her request for review under this section if the withdrawal*
25 *notice is received by the Attorney General prior to the issuance of*
26 *an opinion.*

27 ~~(i) (1) Representation of a state agency by the Attorney General~~
28 ~~involving advice as to a request for inspection or copies of public~~
29 ~~records may provide a basis for that agency to claim an~~
30 ~~attorney-client relationship that would preclude the Attorney~~
31 ~~General from providing an opinion under this section regarding~~
32 ~~that request.~~

33 ~~(2) A state agency against which an action is brought pursuant~~
34 ~~to Sections 6258 and 6259, after a receipt of an adverse opinion~~
35 ~~under this section, is authorized to retain counsel other than the~~
36 ~~Attorney General.~~

37 ~~(3) Except as provided in this section, the Attorney General's~~
38 ~~review under this section does not preclude the Attorney General's~~
39 ~~representation of the affected state agency on any matter.~~

1 (j) ~~The time limits for the Attorney General to respond pursuant~~
 2 ~~to subdivisions (a) and (b) are directory not mandatory.~~

3 (k) ~~This section shall not apply to a request for public records~~
 4 ~~made to a state agency by a party to a pending proceeding involving~~
 5 ~~the state agency or an employee of the state agency, or a pending~~
 6 ~~investigation by the state agency, if the Attorney General has~~
 7 ~~provided or is providing legal advice or representation to the state~~
 8 ~~agency with regard to the proceeding or investigation.~~

9 SEC. 3. Section 6258 of the Government Code is amended to
 10 read:

11 6258. Any person may institute proceedings for injunctive or
 12 declarative relief or writ of mandate in any court of competent
 13 jurisdiction to enforce his or her right to inspect or to receive a
 14 copy of any public record or class of public records under this
 15 chapter, or to enforce the duty of a state agency to post information
 16 in its office and on its Internet Web site, if any, in compliance with
 17 Section 6253.3. The times for responsive pleadings and for hearings
 18 in these proceedings shall be set by the judge of the court with the
 19 object of securing a decision as to these matters at the earliest
 20 possible time.

21 SEC. 4. Section 6259 of the Government Code is amended to
 22 read:

23 6259. (a) Whenever it is made to appear by verified petition
 24 to the superior court of the county where the records or some part
 25 thereof are situated that certain public records are being improperly
 26 withheld from a member of the public, the court shall order the
 27 officer or person charged with withholding the records to disclose
 28 the public record or show cause why he or she should not do so.
 29 The court shall decide the case after examining the record in
 30 camera, if permitted by subdivision (b) of Section 915 of the
 31 Evidence Code, papers filed by the parties, and any oral argument
 32 and additional evidence as the court may allow.

33 (b) If the court finds that the public official's decision to refuse
 34 disclosure is not justified under Section 6254 or 6255, he or she
 35 shall order the public official to make the record public. If the
 36 judge determines that the public official was justified in refusing
 37 to make the record public, he or she shall return the item to the
 38 public official without disclosing its content with an order
 39 supporting the decision refusing disclosure.

1 (c) In an action filed on or after January 1, 1991, an order of
2 the court, either directing disclosure by a public official or
3 supporting the decision of the public official refusing disclosure,
4 is not a final judgment or order within the meaning of Section
5 904.1 of the Code of Civil Procedure from which an appeal may
6 be taken, but shall be immediately reviewable by petition to the
7 appellate court for the issuance of an extraordinary writ. Upon
8 entry of any order pursuant to this section, a party shall, in order
9 to obtain review of the order, file a petition within 20 days after
10 service upon him or her of a written notice of entry of the order,
11 or within any further time not exceeding an additional 20 days as
12 the trial court may for good cause allow. If the notice is served by
13 mail, the period within which to file the petition shall be increased
14 by five days. A stay of an order or judgment shall not be granted
15 unless the petitioning party demonstrates it will otherwise sustain
16 irreparable damage and probable success on the merits. Any person
17 who fails to obey the order of the court shall be cited to show cause
18 why he or she is not in contempt of court.

19 (d) The court shall award court costs and reasonable attorney's
20 fees to the plaintiff should the plaintiff prevail in litigation filed
21 pursuant to this section. The costs and fees shall be paid by the
22 public agency of which the public official is a member or employee
23 and shall not become a personal liability of the public official. If
24 the court finds that the plaintiff's case is clearly frivolous, it shall
25 award court costs and reasonable attorney's fees to the public
26 agency.

27 (e) (1) If a state or local agency (A) declines to comply with a
28 request to inspect or copy a record that is publicly accessible
29 pursuant to this chapter; (B) delays in responding to the request,
30 or in producing the requested records, for reasons that are unstated
31 to the requester, or that are unsupported by compelling
32 circumstances, or that otherwise demonstrate a lack of the diligence
33 required to make records available promptly, without delay or
34 obstruction, pursuant to the standards and deadlines of Section
35 6253; (C) imposes conditions precedent to access to records that
36 are not authorized by this chapter, including, but not limited to,
37 the payment of copy fees in excess of an applicable statutory fee
38 or the direct cost of duplication pursuant to Section 6253 or 6253.9;
39 or (D) otherwise frustrates timely and complete access; and the
40 court determines that the agency acted in bad faith or with reckless

1 disregard of the agency’s obligations under this chapter, the court,
2 in its discretion, may make an award not to exceed one hundred
3 dollars (\$100) per day for each day, as determined by the court,
4 that the agency’s action resulted in the denial of the plaintiff’s
5 right to copy or inspect the record or records in question.

6 (2) In determining the amount of an award under this
7 subdivision, the court shall consider all the facts and circumstances
8 surrounding the agency’s decision, including, but not limited to,
9 all of the following:

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

13 (B) Whether the agency’s justification for denying the request
14 was reasonably based upon its perceived obligation to protect the
15 rights of persons or entities identified in the requested records.

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

18 (D) Whether the plaintiff acted in good faith in pursuing the
19 request.

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

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

25 SEC. 5. Section 6259.1 is added to the Government Code, to
26 read:

27 6259.1. (a) Whenever it is made to appear by verified petition
28 to the superior court of the county wherein the plaintiff resides
29 that a state agency has failed to comply with the requirements of
30 Section 6253.3, the court shall order the officer or person charged
31 with posting the information as required by that section, or if no
32 such person has been appointed, the senior officer in the agency,
33 to effectuate compliance forthwith or show cause why he or she
34 should not do so. The court shall decide the case after examining
35 papers filed by the parties and any oral argument and additional
36 evidence as the court may allow.

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

1 (c) Upon entry of any order pursuant to this section, a party
2 shall, in order to obtain review of the order, file a petition within
3 20 days after service upon him or her of a written notice of entry
4 of the order, or within any further time not exceeding an additional
5 20 days as the trial court may for good cause allow. If the notice
6 is served by mail, the period within which to file the petition shall
7 be increased by five days. A stay of an order or judgment shall not
8 be granted unless the petitioning party demonstrates that it will
9 otherwise sustain irreparable damage and probable success on the
10 merits. Any person who fails to obey the order of the court shall
11 be cited to show cause why he or she is not in contempt of court.

12 (d) If the plaintiff prevails in an action filed pursuant to this
13 section, the court shall award court and discovery costs and
14 reasonable attorney's fees to the plaintiff. The costs and fees shall
15 be paid by the state agency of which the public official is a member
16 or employee and shall not become a personal liability of the public
17 official. If the court finds that the plaintiff's case is clearly
18 frivolous, it shall award court costs and reasonable attorney's fees
19 to the agency.

20 (e) This section shall become operative on January 1, 2009.

21 SEC. 6. (a) The Department of Justice shall convene an
22 advisory task force to consider and make recommendations for a
23 statutory standard governing the posting of requests and denials,
24 and public documents that are subject to disclosure, under the
25 California Public Records Act (Chapter 3.5 (commencing with
26 Section 6250) of Division 7 of Title 1 of the Government Code),
27 on the Internet Web sites of state agencies.

28 (b) Members of the task force shall include all of the following:

29 (1) State agency or board representatives.

30 (2) Representatives of the Department of Information
31 Technology.

32 (3) Representatives of organizations with expertise in technical
33 policy and practices of Internet disclosure.

34 (4) Representatives of organizations with expertise in privacy
35 policy relevant to Internet disclosure.

36 (5) Representatives of organizations with expertise in fostering
37 public integrity and accountability.

38 (6) Representatives of organizations with expertise in informed
39 electoral participation.

1 (7) Representatives of organizations with expertise in
2 investigative journalism.

3 (8) Representatives of legislative staff, at the option of the
4 applicable legislative oversight entities, and to the extent not in
5 conflict with their legislative duties.

6 (c) The task force shall consider at least all of the following
7 issues:

8 (1) Whether it is of greater value to the public for state agencies
9 to automatically post, with appropriate security and privacy
10 controls, certain public records that are subject to disclosure under
11 the act on agency Internet Web sites rather than making those
12 records available to requesters on a request-only basis. Specific
13 consideration shall be given to records that relate to the
14 compensation and economic interests of key public officials and
15 consultants, and the performance of public agencies, including,
16 but not limited to, the settlement of litigation. Specific
17 consideration should also be given to what specific advantages or
18 disadvantages may be associated with an affirmative Internet
19 posting requirement.

20 (2) Whether eventual cost savings or increases in efficiency, or
21 both, are likely to offset the implementation and management costs
22 of requiring state agencies to automatically post disclosable public
23 records on their Internet Web sites, and whether certain types of
24 public records are better suited to automatic disclosure based on
25 these cost and efficiency considerations.

26 (3) Whether appropriate security measures are available, and
27 cost effective, to ensure that the personal or proprietary information
28 contained in a public record that is posted on the Internet is
29 protected from the possibility of identity theft or other forms of
30 misuse.

31 (4) Whether appropriate security measures are available, and
32 cost effective, to ensure that disclosable public records posted on
33 the Internet are protected from alteration by third parties or other
34 forms of misuse.

35 (5) Other issues that might arise from a statutory requirement
36 that certain public records be automatically posted on agency
37 Internet Web sites.

1 (d) The task force shall report its findings and recommendations
2 to the Governor and the Legislature by no later than September
3 30, 2008, at which time it shall cease to exist.

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