

AMENDED IN SENATE JULY 17, 2007

AMENDED IN SENATE JUNE 28, 2007

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~~ *July* 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 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~~ *January 1, 2009*.

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 and easily visible without scrolling when viewing the homepage
6 on a desktop monitor, the words "Public Records Center," which
7 shall be followed by, or shall link to, on another page, both of the
8 following:
9 (a) Under the words "Whom to Contact," the title, mailing
10 address, telephone number, and e-mail address of the public
11 information officer or other person or persons to whom requests
12 for inspection or copying of records pursuant to the California
13 Public Records Act, or informal requests for simple factual
14 information, should be directed.
15 (b) (1) Under the words "How to Request Records," the written
16 guidelines authorized or required under subdivision (a) of Section
17 6253.4, and a form, in HTML or a comparable alternative
18 technology, for submitting online requests under the California
19 Public Records Act, consisting of all of the following labeled fields:
20 (A) Today's date.

- 1 (B) My name (optional).
- 2 (C) My contact information, including at least one of the
- 3 following:
- 4 (i) My e-mail address.
- 5 (ii) My postal address.
- 6 (iii) My telephone number.
- 7 (D) I am interested in the following records or information:
- 8 (E) Where can I inspect these records?
- 9 (F) Send me copies of the records.
- 10 (G) Send me a fee estimate before copying.

11 (2) The submitted form shall be designed to send a copy of the
12 request immediately and automatically to the e-mail address listed
13 on the form, if an e-mail address is provided by the person
14 submitting the form.

15 (c) This section shall become operative on ~~January~~ *July* 1, 2009.

16 SEC. 2. Section 6257 is added to the Government Code, to
17 read:

18 6257. (a) (1) A person may request the Attorney General to
19 review a local agency's denial of a written request to inspect or
20 receive a copy of a public record by delivering a copy of the request
21 and the written response by the agency denying, in whole or in
22 part, the request to the office of the Attorney General within 20
23 days of receipt of the agency's written denial. In the case of the
24 failure of an agency to provide any response under Section 6253
25 to a public records request within the time limits specified by this
26 chapter, the person may seek review by the Attorney General by
27 providing a copy of the request and the circumstances under which
28 it was sent to the agency no less than 20 days and no more than
29 40 days after the request was delivered or mailed to the agency.
30 The Attorney General may grant relief from the 40-day time limit
31 upon a showing by the person seeking relief that he or she refrained
32 from requesting review within the 40-day time limit because the
33 person reasonably relied upon representations of the agency that
34 a response would be forthcoming.

35 (2) The person seeking review shall demonstrate by means of
36 written proof of service or other credible and reliable means that
37 a copy of his or her request for review has been delivered to the
38 denying agency. Within 20 working days of receipt of the request
39 for review that complies with the requirements of this subdivision,
40 the Attorney General shall issue a written opinion stating whether

1 the agency's response or lack of response complied with this
2 chapter.

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

9 (1) The need to obtain additional information from the agency
10 or the requester.

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

12 (3) An unmanageable workload.

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

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

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

36 (e) The Attorney General shall maintain copies of opinions
37 issued pursuant to this section at each of his or her legal offices
38 for purposes of public inspection. The Attorney General shall cause
39 to be published annually a special volume of opinions issued under
40 this section and shall make the opinions available on the Internet.

1 The Attorney General may charge a fee for the sale of the volumes
2 not to exceed the reasonable cost of publication and distribution.

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

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

21 SEC. 3. Section 6258 of the Government Code is amended to
22 read:

23 6258. Any person may institute proceedings for injunctive or
24 declarative relief or writ of mandate in any court of competent
25 jurisdiction to enforce his or her right to inspect or to receive a
26 copy of any public record or class of public records under this
27 chapter, or to enforce the duty of a state agency to post information
28 in its office and on its Internet Web site, if any, in compliance with
29 Section 6253.3. The times for responsive pleadings and for hearings
30 in these proceedings shall be set by the judge of the court with the
31 object of securing a decision as to these matters at the earliest
32 possible time.

33 SEC. 4. Section 6259 of the Government Code is amended to
34 read:

35 6259. (a) Whenever it is made to appear by verified petition
36 to the superior court of the county where the records or some part
37 thereof are situated that certain public records are being improperly
38 withheld from a member of the public, the court shall order the
39 officer or person charged with withholding the records to disclose
40 the public record or show cause why he or she should not do so.

1 The court shall decide the case after examining the record in
2 camera, if permitted by subdivision (b) of Section 915 of the
3 Evidence Code, papers filed by the parties, and any oral argument
4 and additional evidence as the court may allow.

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

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

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

38 (e) (1) If a state or local agency (A) declines to comply with a
39 request to inspect or copy a record that is ~~publicly accessible~~ *not*
40 *exempt from disclosure* pursuant to this chapter; (B) delays in

1 responding to the request, or in producing the requested records,
2 for reasons that are unstated to the requester, or that are
3 unsupported by compelling circumstances, or that otherwise
4 demonstrate a lack of the diligence required to make records
5 available promptly, without delay or obstruction, pursuant to the
6 standards and deadlines of Section 6253; (C) imposes conditions
7 precedent to access to records that are not authorized by this
8 chapter, including, but not limited to, the payment of copy fees in
9 excess of an applicable statutory fee or the direct cost of duplication
10 pursuant to Section 6253 or 6253.9; or (D) otherwise frustrates
11 timely and complete access; and the court determines that the
12 agency acted in bad faith or with reckless disregard of the agency's
13 obligations under this chapter, the court, in its discretion, may
14 make an award not to exceed one hundred dollars (\$100) per day
15 for each day, as determined by the court, that the agency's action
16 resulted in the denial of the plaintiff's right to copy or inspect the
17 record or records in question. If the plaintiff first sought review
18 of the public agency's denial of a review of a written request
19 pursuant to Section 6257 before seeking a court review pursuant
20 to this section, 50 percent of an award made pursuant to this
21 subdivision shall be paid to the plaintiff and the other 50 percent
22 shall be paid to the Office of the Attorney General.

23 (2) In determining the amount of an award under this
24 subdivision, the court shall consider all the facts and circumstances
25 surrounding the agency's decision, including, but not limited to,
26 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 in
29 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 under Section 6253.3 or guidelines under Section~~
35 ~~6253.4. internal operating guidelines under Section 6253.4 or~~
36 ~~complied with the requirements of Section 6253.3.~~

37 (D) Whether the plaintiff acted in good faith in pursuing the
38 request.

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

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

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

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

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

21 (c) Upon entry of any order pursuant to this section, a party
22 shall, in order to obtain review of the order, file a petition within
23 20 days after service upon him or her of a written notice of entry
24 of the order, or within any further time not exceeding an additional
25 20 days as the trial court may for good cause allow. If the notice
26 is served by mail, the period within which to file the petition shall
27 be increased by five days. A stay of an order or judgment shall not
28 be granted unless the petitioning party demonstrates that it will
29 otherwise sustain irreparable damage and probable success on the
30 merits. Any person who fails to obey the order of the court shall
31 be cited to show cause why he or she 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. The costs and fees shall
35 be paid by the state agency of which the public official is a member
36 or employee and shall not become a personal liability of the public
37 official. If the court finds that the plaintiff's case is clearly
38 frivolous, it shall award court *and discovery* costs and reasonable
39 attorney's fees to the agency.

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

1 SEC. 6. (a) The Department of Justice shall convene an
2 advisory task force to consider and make recommendations for a
3 statutory standard governing the posting of requests and denials,
4 and public documents that are ~~subject to~~ *not exempt from*
5 disclosure, under the California Public Records Act (Chapter 3.5
6 (commencing with Section 6250) of Division 7 of Title 1 of the
7 Government Code), on the Internet Web sites of state agencies.

8 (b) Members of the task force shall include all of the following:
9 (1) State agency or board representatives.
10 (2) Representatives of the Department of Information
11 Technology.
12 (3) Representatives of organizations with expertise in technical
13 policy and practices of Internet disclosure.
14 (4) Representatives of organizations with expertise in privacy
15 policy relevant to ~~Internet disclosure~~ *disclosures made on the*
16 *Internet*.
17 (5) Representatives of organizations with expertise in fostering
18 public integrity and accountability.
19 (6) Representatives of organizations with expertise in informed
20 electoral participation.
21 (7) Representatives of organizations with expertise in
22 investigative journalism.
23 (8) Representatives of legislative staff, at the option of the
24 applicable legislative oversight entities, and to the extent not in
25 conflict with their legislative duties.

26 (c) The task force shall consider at least all of the following
27 issues:
28 (1) Whether it is of greater value to the public for state agencies
29 to automatically post, with appropriate security and privacy
30 controls, certain public records that are ~~subject to~~ *not exempt from*
31 disclosure under the act on agency Internet Web sites rather than
32 making those records available to requesters on a request-only
33 basis. Specific consideration shall be given to records that relate
34 to the compensation and economic interests of key public officials
35 and consultants, and the performance of public agencies, including,
36 but not limited to, the settlement of litigation. Specific
37 consideration should also be given to what specific advantages or
38 disadvantages may be associated with an affirmative Internet
39 posting requirement.

1 (2) Whether eventual cost savings or increases in efficiency, or
 2 both, are likely to offset the implementation and management costs
 3 of requiring state agencies to automatically post ~~disclosable public~~
 4 ~~records~~ *public records not exempt from disclosure* on their Internet
 5 Web sites, and whether certain types of public records are better
 6 suited to automatic disclosure based on these cost and efficiency
 7 considerations.

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

13 (4) Whether appropriate security measures are available, and
 14 cost effective, to ensure that ~~disclosable public records~~ *public*
 15 *records not exempt from disclosure that are* posted on the Internet
 16 are protected from alteration by third parties or other forms of
 17 misuse.

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

21 (d) The task force shall report its findings and recommendations
 22 to the Governor and the Legislature by no later than ~~September~~
 23 ~~30, 2008~~ *January 1, 2009*, at which time it shall cease to exist.