

AMENDED IN SENATE AUGUST 1, 2007

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 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 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

1 technology, for submitting online requests under the California
2 Public Records Act, consisting of all of the following labeled fields:

3 (A) Today's date.

4 (B) My name (optional).

5 (C) My contact information, including at least one of the
6 following:

7 (i) My e-mail address.

8 (ii) My postal address.

9 (iii) My telephone number.

10 (D) I am interested in the following records or information:

11 (E) Where can I inspect these records?

12 (F) Send me copies of the records.

13 (G) Send me a fee estimate before copying.

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

18 (c) This section shall become operative on July 1, 2009.

19 SEC. 2. Section 6257 is added to the Government Code, to
20 read:

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

38 (2) The person seeking review shall demonstrate by means of
39 written proof of service or other credible and reliable means that
40 a copy of his or her request for review has been delivered to the

1 denying agency. Within 20 working days of receipt of the request
2 for review that complies with the requirements of this subdivision,
3 the Attorney General shall issue a written opinion stating whether
4 the agency's response or lack of response complied with this
5 chapter.

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

12 (1) The need to obtain additional information from the agency
13 or the requester.

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

15 (3) An unmanageable workload.

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

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

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

39 (e) The Attorney General shall maintain copies of opinions
40 issued pursuant to this section at each of his or her legal offices

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

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

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

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

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

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

38 6259. (a) Whenever it is made to appear by verified petition
39 to the superior court of the county where the records or some part
40 thereof are situated that certain public records are being improperly

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

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

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

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

1 ~~(e) (1) If a state or local agency (A) declines to comply with a~~
2 ~~request to inspect or copy a record that is not exempt from~~
3 ~~disclosure pursuant to this chapter; (B) delays in responding to the~~
4 ~~request, or in producing the requested records, for reasons that are~~
5 ~~unstated to the requester, or that are unsupported by compelling~~
6 ~~circumstances, or that otherwise demonstrate a lack of the diligence~~
7 ~~required to make records available promptly, without delay or~~
8 ~~obstruction, pursuant to the standards and deadlines of Section~~
9 ~~6253; (C) imposes conditions precedent to access to records that~~
10 ~~are not authorized by this chapter, including, but not limited to,~~
11 ~~the payment of copy fees in excess of an applicable statutory fee~~
12 ~~or the direct cost of duplication pursuant to Section 6253 or 6253.9;~~
13 ~~or (D) otherwise frustrates timely and complete access; and the~~
14 ~~court determines that the agency acted in bad faith or with reckless~~
15 ~~disregard of the agency's obligations under this chapter, the court,~~
16 ~~in its discretion, may~~

17 *(e) (1) The court may make an award as described in paragraph*
18 *(2) if it makes both of the following determinations:*

19 *(A) That any of the following have occurred:*

20 *(i) The agency declined to comply with a request to inspect or*
21 *copy a record as requested.*

22 *(ii) The agency delayed in responding to the request or in*
23 *producing the records.*

24 *(iii) The agency imposed unauthorized conditions precedent to*
25 *access to the records, including, but not limited to, requiring*
26 *payment of fees in excess of those authorized by statute.*

27 *(iv) The agency otherwise frustrated timely and complete access*
28 *to records.*

29 *(B) (i) That the agency acted in bad faith or with reckless*
30 *disregard to the agency's obligations under this chapter.*

31 *(ii) In determining whether the agency acted in bad faith or*
32 *reckless disregard under this subparagraph, the court shall*
33 *consider all the facts and circumstances surrounding the agency's*
34 *decision, including, but not limited to, both of the following:*

35 *(I) Whether the agency's justification for denying the request*
36 *was reasonably based upon its perceived obligation to protect the*
37 *rights of persons or entities identified in the requested records.*

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

1 (2) Upon making both the determinations described in
2 paragraph (1), the court, in its discretion, may make an award not
3 to exceed one hundred dollars (\$100) per day for each day, as
4 determined by the court, that the agency's action resulted in the
5 denial of the plaintiff's right to copy or inspect the record or records
6 in question. If the plaintiff first sought review of the public
7 agency's denial of a review of a written request pursuant to Section
8 6257 before seeking a court review pursuant to this section, 50
9 percent of an award made pursuant to this subdivision shall be
10 paid to the plaintiff and the other 50 percent shall be paid to the
11 Office of the Attorney General.

12 ~~(2)~~

13 (3) In determining the amount of an award under this
14 subdivision, the court shall consider all the facts and circumstances
15 surrounding the agency's decision, including, but not limited to,
16 all of the following:

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

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

23 ~~(C) Whether the agency has developed publicly accessible~~
24 ~~internal operating guidelines under Section 6253.4 or complied~~
25 ~~with the requirements of Section 6253.3.~~

26 ~~(B) Whether the agency has developed publicly accessible~~
27 ~~internal operating procedures under Section 6253.3 or guidelines~~
28 ~~under Section 6253.4, as applicable.~~

29 ~~(D)~~

30 (C) Whether the plaintiff acted in good faith in pursuing the
31 request.

32 ~~(E) Whether the agency's denial or other conduct inconsistent~~
33 ~~with this chapter was based on a reasonable interpretation of the~~
34 ~~law.~~

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

37 (4) An award pursuant to this subdivision shall not exceed a
38 total of ten thousand dollars (\$10,000) for the record or records
39 in question, and shall not include the period of time that a request
40 for an opinion is pending with the Attorney General pursuant to

1 *Section 6257 or the period of time that a court is considering the*
2 *plaintiff's petition.*

3 SEC. 5. Section 6259.1 is added to the Government Code, to
4 read:

5 6259.1. (a) Whenever it is made to appear by verified petition
6 to the superior court of the county wherein the plaintiff resides
7 that a state agency has failed to comply with the requirements of
8 Section 6253.3, the court shall order the officer or person charged
9 with posting the information as required by that section, or if no
10 such person has been appointed, the senior officer in the agency,
11 to effectuate compliance forthwith or show cause why he or she
12 should not do so. The court shall decide the case after examining
13 papers filed by the parties and any oral argument and additional
14 evidence as the court may allow.

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

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

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

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

38 SEC. 6. (a) The Department of Justice shall convene an
39 advisory task force to consider and make recommendations for a
40 statutory standard governing the posting of requests and denials,

1 and public documents that are not exempt from disclosure, under
2 the California Public Records Act (Chapter 3.5 (commencing with
3 Section 6250) of Division 7 of Title 1 of the Government Code),
4 on the Internet Web sites of state agencies.

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

6 (1) State agency or board representatives.

7 (2) Representatives of the Department of Information
8 Technology.

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

11 (4) Representatives of organizations with expertise in privacy
12 policy relevant to disclosures made on the Internet.

13 (5) Representatives of organizations with expertise in fostering
14 public integrity and accountability.

15 (6) Representatives of organizations with expertise in informed
16 electoral participation.

17 (7) Representatives of organizations with expertise in
18 investigative journalism.

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

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

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

36 (2) Whether eventual cost savings or increases in efficiency, or
37 both, are likely to offset the implementation and management costs
38 of requiring state agencies to automatically post public records not
39 exempt from disclosure on their Internet Web sites, and whether

1 certain types of public records are better suited to automatic
2 disclosure based on these cost and efficiency considerations.

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

8 (4) Whether appropriate security measures are available, and
9 cost effective, to ensure that public records not exempt from
10 disclosure that are posted on the Internet are protected from
11 alteration by third parties or other forms of misuse.

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

15 (d) The task force shall report its findings and recommendations
16 to the Governor and the Legislature by no later than January 1,
17 2009, at which time it shall cease to exist.