

AMENDED IN SENATE AUGUST 31, 2007

AMENDED IN SENATE AUGUST 1, 2007

AMENDED IN SENATE JULY 17, 2007

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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.~~ *An act to add Section 6253.3 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 *also* 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

1 6253.4, and a form, in HTML or a comparable alternative
2 technology, for submitting online requests under the California
3 Public Records Act, consisting of all of the following labeled fields:

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

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

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

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

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

39 ~~(2) The person seeking review shall demonstrate by means of~~
40 ~~written proof of service or other credible and reliable means that~~

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

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

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

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

16 (3) An unmanageable workload.

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

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

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

1 ~~(e) The Attorney General shall maintain copies of opinions~~
2 ~~issued pursuant to this section at each of his or her legal offices~~
3 ~~for purposes of public inspection. The Attorney General shall cause~~
4 ~~to be published annually a special volume of opinions issued under~~
5 ~~this section and shall make the opinions available on the Internet.~~
6 ~~The Attorney General may charge a fee for the sale of the volumes~~
7 ~~not to exceed the reasonable cost of publication and distribution.~~

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

26 ~~SEC. 3. Section 6258 of the Government Code is amended to~~
27 ~~read:~~

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

38 ~~SEC. 4. Section 6259 of the Government Code is amended to~~
39 ~~read:~~

1 ~~6259. (a) Whenever it is made to appear by verified petition~~
2 ~~to the superior court of the county where the records or some part~~
3 ~~thereof are situated that certain public records are being improperly~~
4 ~~withheld from a member of the public, the court shall order the~~
5 ~~officer or person charged with withholding the records to disclose~~
6 ~~the public record or show cause why he or she should not do so.~~
7 ~~The court shall decide the case after examining the record in~~
8 ~~camera, if permitted by subdivision (b) of Section 915 of the~~
9 ~~Evidence Code, papers filed by the parties, and any oral argument~~
10 ~~and additional evidence as the court may allow.~~

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

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

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

1 the court finds that the plaintiff's case is clearly frivolous, it shall
2 award court costs and reasonable attorney's fees to the public
3 agency:

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

6 (A) That any of the following have occurred:

7 (i) The agency declined to comply with a request to inspect or
8 copy a record as requested.

9 (ii) The agency delayed in responding to the request or in
10 producing the records.

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

14 (iv) The agency otherwise frustrated timely and complete access
15 to records.

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

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

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

25 (II) Whether the agency's denial or other conduct inconsistent
26 with this chapter was based on a reasonable interpretation of the
27 law.

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

39 (3) In determining the amount of an award under this
40 subdivision, the court shall consider all the facts and circumstances

1 surrounding the agency’s decision, including, but not limited to,
2 all of the following:

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

6 (B) Whether the agency has developed publicly accessible
7 internal operating procedures under Section 6253.3 or guidelines
8 under Section 6253.4, as applicable.

9 (C) Whether the plaintiff acted in good faith in pursuing the
10 request.

11 (4) An award pursuant to this subdivision shall not exceed a
12 total of ten thousand dollars (\$10,000) for the record or records in
13 question, and shall not include the period of time that a request for
14 an opinion is pending with the Attorney General pursuant to
15 Section 6257 or the period of time that a court is considering the
16 plaintiff’s petition.

17 SEC. 5. Section 6259.1 is added to the Government Code, to
18 read:

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

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

32 (c) Upon entry of any order pursuant to this section, a party
33 shall, in order to obtain review of the order, file a petition within
34 20 days after service upon him or her of a written notice of entry
35 of the order, or within any further time not exceeding an additional
36 20 days as the trial court may for good cause allow. If the notice
37 is served by mail, the period within which to file the petition shall
38 be increased by five days. A stay of an order or judgment shall not
39 be granted unless the petitioning party demonstrates that 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) If the plaintiff prevails in an action filed pursuant to this
4 section, the court shall award court and discovery costs and
5 reasonable attorney's fees to the plaintiff. The costs and fees shall
6 be paid by the state agency of which the public official is a member
7 or 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 and discovery costs and reasonable
10 attorney's fees to the agency.~~

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

12 ~~SEC. 6.~~

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

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

21 (1) State agency or board representatives.

22 (2) Representatives of the Department of Information
23 Technology.

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

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

28 (5) Representatives of organizations with expertise in fostering
29 public integrity and accountability.

30 (6) Representatives of organizations with expertise in informed
31 electoral participation.

32 (7) Representatives of organizations with expertise in
33 investigative journalism.

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

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

39 (1) Whether it is of greater value to the public for state agencies
40 to automatically post, with appropriate security and privacy

1 controls, certain public records that are not exempt from disclosure
2 under the act on agency Internet Web sites rather than making
3 those records available to requesters on a request-only basis.
4 Specific consideration shall be given to records that relate to the
5 compensation and economic interests of key public officials and
6 consultants, and the performance of public agencies, including,
7 but not limited to, the settlement of litigation. Specific
8 consideration should also be given to what specific advantages or
9 disadvantages may be associated with an affirmative Internet
10 posting requirement.

11 (2) Whether eventual cost savings or increases in efficiency, or
12 both, are likely to offset the implementation and management costs
13 of requiring state agencies to automatically post public records not
14 exempt from disclosure on their Internet Web sites, and whether
15 certain types of public records are better suited to automatic
16 disclosure based on these cost and efficiency considerations.

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

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

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

29 (d) The task force shall report its findings and recommendations
30 to the Governor and the Legislature by no later than January 1,
31 2009, at which time it shall cease to exist.