

Assembly Bill No. 2799

CHAPTER 982

An act to amend Sections 6253 and 6255 of, and to add Section 6253.9 to, the Government Code, relating to public records.

[Approved by Governor September 29, 2000. Filed
with Secretary of State September 30, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2799, Shelley. Public records: disclosure.

(1) The California Public Records Act provides that any person may receive a copy of any identifiable public record from any state or local agency upon payment of fees covering direct costs of duplication or a statutory fee if applicable. The act provides that it shall not be construed to permit an agency to obstruct the inspection or copying of public records and requires any notification of denial of any request for records pursuant to the act to set forth the names and titles or positions of each person responsible for the denial. The act also requires computer data to be provided in a form determined by the agency.

This bill would provide that nothing in the act shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. This bill would delete the requirement that computer data be provided in a form determined by the agency and would require any agency that has information that constitutes an identifiable public record not otherwise exempt from disclosure that is in an electronic format to make that information available in an electronic format when requested by any person. The bill would require the agency to make the information available in any electronic format in which it holds the information, but would not require release of a record in the electronic form in which it is held if its release would jeopardize or compromise the security or integrity of the original record or any proprietary software in which it is maintained. Because these requirements would apply to local agencies as well as state agencies, this bill would impose a state-mandated local program.

Regarding payment of fees for records released in an electronic format, the bill would require that the requester bear the cost of programming and computer services necessary to produce a record not otherwise readily produced, as specified.

(2) The act requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the act or that, on the facts of the particular case, the

public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

This bill would require a response to a written request for public records that includes a denial of the request in whole or in part to be in writing. By imposing this new duty on local public officials, the bill would create a state-mandated local program.

(3) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

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 people of the State of California do enact as follows:

SECTION 1. Section 6253 of the Government Code is amended to read:

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. As used in this section, "unusual circumstances" means the following, but only to the extent



reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

SEC. 2. Section 6253.9 is added to the Government Code, to read:

6253.9. (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.



(2) The request would require data compilation, extraction, or programming to produce the record.

(c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

(d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.

(e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

SEC. 3. Section 6255 of the Government Code is amended to read:

6255. (a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

(b) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

