

AMENDED IN ASSEMBLY MAY 26, 2006

AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2927

Introduced by Assembly Member Leno

February 24, 2006

An act to amend Sections 6258 and 6259 of, and to add Sections 6253.3 and 6259.1 to, the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 2927, 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 require any state agency that publishes an Internet Web site to include on the homepage of that site specified information about how to contact the agency, how to request records under the act, a form for submitting online requests for records, agency officials' statements of economic interests, agency officials' employment or consulting contracts, the terms of litigation settlements, copies of records disclosed under the act, and copies of letters of other communication denying a request for a record. 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 ~~agency officers or employees in specified circumstances~~ *the agency*.

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

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

1 SECTION 1. Section 6253.3 is added to the Government
2 Code, to read:
3 6253.3. Every state agency that publishes an Internet Web
4 site shall include on the homepage of that site, prominently
5 displayed without scrolling, the words “Public Information
6 Center,” which shall be followed by, or shall link to on another
7 page, all of the following:
8 (a) Under the words “Whom to Contact,” the name, title,
9 mailing address, telephone number, and e-mail address of the
10 public information officer or other person or persons to whom
11 requests for inspection or copying of records pursuant to the
12 California Public Records Act, or informal requests for simple
13 factual information, should be directed.
14 (b) Under the words “How to Request Records,” the written
15 guidelines authorized or required under subdivision (a), and an
16 HTML form for submitting online requests under the California
17 Public Records Act, consisting of all of the following labeled
18 fields:
19 (1) Today’s date.
20 (2) My name (optional).
21 (3) My e-mail address (optional).
22 (4) My postal address (optional).
23 (5) My telephone number (optional).
24 (6) I am interested in the following records or information:
25 (7) Where can I inspect these records?
26 (8) Send me copies of the records without inspection.
27 (9) Send me a fee estimate before copying.
28 The HTML form shall be designed to send a copy of the
29 request immediately and automatically to the e-mail address from
30 which it was sent.
31 (c) Within ~~24 hours~~ *five business days* after its filing, under the
32 words “Officials’ Economic Interests,” the most current
33 statement of economic interests filed by every officer, employee,
34 or consultant of the agency *who is* required to file such reports
35 under Sections 87200 or 87300, *and who is exempt from civil*

1 service or who plays a significant role in making or
2 recommending decisions as to purchasing, contracting, or
3 issuing licenses, permits, or similar official regulatory approvals.

4 (d) ~~Within 24 hours after its effective date~~ five business days
5 after its signing or other binding event, under the words
6 “Officials’ Employment or Consulting Contracts,” a copy or all
7 terms of every employment, consulting, or other contract for an
8 individual’s services to which the agency and any individual ~~are,~~
9 ~~or have been, parties in the current calendar year.~~ are parties.
10 The copy or terms of the contract shall be accessible for as long
11 as the contract is in effect and shall include any signing bonus,
12 housing loan or allowance, relocation allowance, transportation
13 allowance, or other economic benefit of any kind.

14 (e) ~~Within 24 hours~~ five business days after its effective date,
15 under the words “Lawsuit Settlements,” the full text of every
16 settlement of civil litigation, and of every agreement to
17 compensate any person for foregoing litigation, involving the
18 ~~agency as a~~ payment by the agency of fifty thousand dollars
19 (\$50,000) or more to an adverse party within the current calendar
20 year.

21 (f) Under the words “Records Disclosed This Year,” a copy of
22 every record disclosed by the agency without redaction within
23 the current calendar year or, if the volume of records disclosed
24 pursuant to a particular request exceeds 10 pages, a copy of the
25 requester’s own description of the records that were ~~produced.~~
26 *disclosed.*

27 (g) Under the words “Records Withheld This Year,” a copy of
28 every ~~letter request, letter,~~ or other communication ~~to from,~~ and
29 the agency’s reply to, a requester denying access to all or part of
30 any record, sent within the current calendar year.

31 (h) Beginning January 1 of the second year after the effective
32 date of this subdivision, under the word “Archive,” a link to a
33 ~~term-searchable~~ text-searchable archive of the items posted
34 under subdivisions (c), (d), (e), and (f) in preceding years.

35 (i) Beginning three months from the effective date of this
36 subdivision, any agency determined by the court to have failed to
37 comply with the requirements of subdivision (a) or (b), or to have
38 fallen more than 15 days behind in posting or archiving the
39 information required under subdivisions (c), (d), (e), (f), (g), and
40 (h), in addition to any other remedy to bring the agency into

1 compliance with this subdivision, may be ordered by a court to
2 post, immediately after the heading “Public Information Center,”
3 under the words “Our Failure to Comply,” a copy of the court’s
4 findings in such a compliance action. The duration of such
5 posting shall rest with the sound discretion of the court, but in no
6 case should be less than 30 days.

7 SEC. 2. Section 6258 of the Government Code is amended to
8 read:

9 6258. Any person may institute proceedings for injunctive or
10 declarative relief or writ of mandate in any court of competent
11 jurisdiction to enforce his or her right to inspect or to receive a
12 copy of any public record or class of public records under this
13 chapter, or to enforce the duty of a state agency to post
14 information in its office and on its Internet Web site, if any, in
15 compliance with Section 6253.3. The times for responsive
16 pleadings and for hearings in these proceedings shall be set by
17 the judge of the court with the object of securing a decision as to
18 these matters at the earliest possible time.

19 SEC. 3. Section 6259 of the Government Code is amended to
20 read:

21 6259. (a) Whenever it is made to appear by verified petition
22 to the superior court of the county where the records or some part
23 thereof are situated that certain public records are being
24 improperly withheld from a member of the public, the court shall
25 order the officer or person charged with withholding the records
26 to disclose the public record or show cause why he or she should
27 not do so. The court shall decide the case after examining the
28 record in camera, if permitted by subdivision (b) of Section 915
29 of the Evidence Code, papers filed by the parties and any oral
30 argument and additional evidence as the court may allow.

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

38 (c) In an action filed on or after January 1, 1991, an order of
39 the court, either directing disclosure by a public official or
40 supporting the decision of the public official refusing disclosure,

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

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

24 (e) (1) If a state or local agency (A) declines to comply with a
25 request to inspect or copy a record that is publicly accessible
26 pursuant to this chapter; (B) delays in responding to the request,
27 or in producing the requested records, for reasons that are
28 unstated to the requester, or that are unsupported by compelling
29 circumstances, or that otherwise demonstrate a lack of the
30 diligence required to make records available promptly, without
31 delay or obstruction, pursuant to the standards and deadlines of
32 Section 6253; (C) imposes conditions precedent to access to
33 records that are not authorized by this chapter, including, but not
34 limited to, the payment of copy fees in excess of an applicable
35 statutory fee or the direct cost of duplication pursuant to Section
36 6253 or 6253.9; or (D) otherwise frustrates timely and complete
37 access; and the court determines that the agency acted in bad
38 faith or with knowledge that the request sought nonexempt
39 records, the court, in its discretion, may make an award not to
40 exceed one hundred dollars (\$100) per day for each day, as

1 determined by the court, that the agency's action resulted in the
2 denial of the plaintiff's right to copy or inspect the record or
3 records in question.

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

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

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

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

16 (D) Whether the plaintiff acted in good faith in pursuing the
17 request.

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

21 ~~(f) If the court determines that the agency's unlawful denial or~~
22 ~~other conduct was not based on a reasonable interpretation of the~~
23 ~~law and was unsupported or uniformly contradicted by legal~~
24 ~~authority interpreting or applying this chapter, the award shall be~~
25 ~~the liability of the person named in the notification of denial~~
26 ~~pursuant to subdivision (d) of Section 6253, or if no such~~
27 ~~notification was made or the notification failed to name the~~
28 ~~responsible person, the liability of the chief executive officer of~~
29 ~~the agency; or, if the denial or other conduct inconsistent with~~
30 ~~this chapter relied on the advice of counsel, of the attorney~~
31 ~~providing that advice. Where the plaintiff makes a preliminary~~
32 ~~showing that the agency's denial or other conduct was not based~~
33 ~~on a reasonable interpretation of the law and was unsupported or~~
34 ~~uniformly contradicted by legal authority interpreting or applying~~
35 ~~this chapter, legal counsel's advice or other communication~~
36 ~~concerning the request at issue shall not be privileged pursuant to~~
37 ~~Section 954 of the Evidence Code or any other provision of law.~~

38 (g)

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

1 ~~question. The time basis for an award shall not include the period~~
2 ~~of time when a request for an opinion is pending with the~~
3 ~~Attorney General pursuant to Section 6257 or the period of time~~
4 ~~when a court is considering the plaintiff's petition. question.~~

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

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

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

20 (c) Upon entry of any order pursuant to this section, a party
21 shall, in order to obtain review of the order, file a petition within
22 20 days after service upon him or her of a written notice of entry
23 of the order, or within such further time not exceeding an
24 additional 20 days as the trial court may for good cause allow. If
25 the notice is served by mail, the period within which to file the
26 petition shall be increased by five days. A stay of an order or
27 judgment shall not be granted unless the petitioning party
28 demonstrates that it will otherwise sustain irreparable damage
29 and probable success on the merits. Any person who fails to obey
30 the order of the court shall be cited to show cause why he or she
31 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. For the purposes of this
35 subdivision, a plaintiff prevails, even in the absence of a judicial
36 determination in his or her favor, if filing of the action is
37 followed by the agency's coming into compliance with Section
38 6253.3, provided that the plaintiff has made a written demand for
39 compliance, sent to the agency at least 30 days prior to filing the
40 action, including an unambiguous statement of the alleged facts

1 of noncompliance and a warning that an enforcement action may
2 follow. The costs and fees shall be paid by the state or local
3 agency of which the public official is a member or employee and
4 shall not become a personal liability of the public official. If the
5 court finds that the plaintiff's case is clearly frivolous, it shall
6 award court costs and reasonable attorney's fees to the agency.

7 (e) Commencing three months from the effective date of this
8 subdivision, any agency determined by the court to have failed to
9 comply with the requirements of subdivision (a) or (b) of Section
10 6253.3, or to have fallen more than 15 days behind in posting or
11 archiving the information required by subdivisions (c), (d), (e),
12 (f), (g), and (h) of Section 6253.3, in addition to any order to
13 bring the agency into compliance with these provisions, may be
14 ordered to post on its homepage, immediately after the heading
15 "Public Information Center," under the words "Our Failure to
16 Comply," a copy of the court's findings and order. The duration
17 of this posting shall rest with the sound discretion of the court,
18 but in no case may be less than 30 days.