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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, 6257, 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, *as of January 1, 2008*, 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, ~~agency officials' statements of economic interests, agency officials' employment or consulting contracts, the terms of litigation settlements~~

~~in which the agency is a named party, copies of records disclosed under the act, and copies of letters of other communication denying a request for a record with the requester's personal information redacted. 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, 2008.~~

The bill would also authorize a person to request the Attorney General to review a state or 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 no later than July 1, 2007.

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
- 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~~ both of the following:
- 8 (a) Under the words "Whom to Contact," the title, mailing
- 9 address, telephone number, and e-mail address of the public
- 10 information officer or other person or persons to whom requests
- 11 for inspection or copying of records pursuant to the California
- 12 Public Records Act, or informal requests for simple factual
- 13 information, should be directed.

(b) Under the words “How to Request Records,” the written guidelines authorized or required under subdivision (a) of Section 6253.4, and an HTML form for submitting online requests under the California Public Records Act, consisting of all of the following labeled fields:

- (1) Today’s date.
- (2) My name (optional).
- (3) My e-mail address (optional).
- (4) My postal address (optional).
- (5) My telephone number (optional).
- (6) I am interested in the following records or information:
- (7) Where can I inspect these records?
- (8) Send me copies of the records ~~without inspection~~.
- (9) Send me a fee estimate before copying.

The HTML form shall be designed to send a copy of the request immediately and automatically to the e-mail address ~~from which it was sent~~. *listed on the HTML form, if an e-mail address is provided by the person submitting the form.*

~~(c) Within 10 calendar days after its filing, under the words “Officials’ Economic Interests,” the most current statement of economic interests filed by every officer, employee, or consultant of the agency who is required to file such reports under Sections 87200 or 87300, and who is exempt from civil service or who is employed in a career executive assignment position.~~

~~(d) Within 10 calendar days after its signing or other binding event, under the words “Officials’ Employment or Consulting Contracts,” a copy or all terms of every employment, consulting, or other contract for an individual’s services to which the agency and any individual are parties. The copy or terms of the contract shall be accessible for as long as the contract is in effect and shall include any signing bonus, housing loan or allowance, relocation allowance, transportation allowance, or other economic benefit of any kind.~~

~~(e) Within 10 calendar days after its effective date, under the words “Lawsuit Settlements,” the full text of every settlement of civil litigation in which the agency is a named party, and of every agreement to compensate any person for foregoing litigation, involving a payment by the agency of fifty thousand dollars (\$50,000) or more to an adverse party within the current calendar year.~~

1 ~~(f) Under the words “Records Disclosed This Year,” a copy of~~
2 ~~every record disclosed by the agency without redaction within~~
3 ~~the current calendar year, except publications and mass-produced~~
4 ~~materials, or, if the volume of records disclosed pursuant to a~~
5 ~~particular request exceeds 10 pages, a copy of the requester’s~~
6 ~~own description of the records that were disclosed.~~

7 ~~(g) Under the words “Records Withheld This Year,” a copy of~~
8 ~~every request, letter, or other communication from, and the~~
9 ~~agency’s reply to, a requester denying access to all or part of any~~
10 ~~record, sent within the current calendar year. The agency shall~~
11 ~~redact the name and personal identifying information of the~~
12 ~~requester.~~

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

17 ~~(i) Beginning three months from the effective date of this~~
18 ~~subdivision, any agency determined by the court to have failed to~~
19 ~~comply with the requirements of subdivision (a) or (b), or to have~~
20 ~~fallen more than 15 days behind in posting or archiving the~~
21 ~~information required under subdivisions (c), (d), (e), (f), (g), and~~
22 ~~(h), in addition to any other remedy to bring the agency into~~
23 ~~compliance with this subdivision, may be ordered by a court to~~
24 ~~post, immediately after the heading “Public Information Center,”~~
25 ~~under the words “Our Failure to Comply,” a copy of the court’s~~
26 ~~findings in such a compliance action. The duration of such~~
27 ~~posting shall rest with the sound discretion of the court, but in no~~
28 ~~case should be less than 30 days.~~

29 ~~(j) Nothing in this section shall be construed to require a state~~
30 ~~agency to display any information on its Internet Web site that is~~
31 ~~exempt from disclosure pursuant to this chapter.~~

32 ~~(c) This section shall become operative on January 1, 2008.~~

33 SEC. 2. Section 6257 is added to the Government Code, to
34 read:

35 6257. (a) A person may request the Attorney General to
36 review a state or local agency’s denial of a written request to
37 inspect or receive a copy of a public record by delivering a copy
38 of the request and the written response by the agency denying, in
39 whole or in part, the request to the office of the Attorney General
40 within 20 days of receipt of the agency’s written denial. In the

case of the failure of an agency to provide any response under Section 6253 to a public records request within the time limits specified by this chapter, the person may seek review by the Attorney General by providing a copy of the request and the circumstances under which it was sent to the agency no less than 20 days and no more than 40 days after the request was delivered or mailed to the agency. The Attorney General may grant relief from the 40-day time limit upon a showing by the person seeking relief that he or she refrained from requesting review within the 40-day time limit because the person reasonably relied upon representations of the agency that a response would be forthcoming.

The person seeking review shall demonstrate by means of written proof of service or other credible and reliable means that a copy of his or her request for review has been delivered to the denying agency. Within 20 working days of receipt of the request for review that complies with the requirements of this subdivision, the Attorney General shall issue a written opinion stating whether the agency's response or lack of response complied with provisions of this chapter.

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

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

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

(3) An unmanageable workload.

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

(c) The Attorney General may solicit additional information or explanation from the denying agency, including copies of the records claimed to be exempt, or a detailed explanation of the content of the information in those records. The denying agency may, within 10 working days from the date of receipt of the request pursuant to subdivision (a), submit any additional information or explanation it deems relevant. However, the records or other information for which an exemption is claimed

1 shall not be provided except in response to a request by the
2 Attorney General and shall not be disclosed by the Attorney
3 General. The Attorney General shall return or destroy
4 nondisclosable records received under this subdivision upon
5 completion of the review and shall not use the records for any
6 other purpose. The agency need not provide records or
7 information but failure to do so without adequate justification
8 under the circumstances of the case may be considered in
9 assessing the sufficiency of the agency's written denial under
10 review.

11 (d) If the Attorney General or the Department of Justice is the
12 agency that is the subject of the public records request, the
13 request for review under this section shall be treated as a request
14 for reconsideration and, where possible, shall be reviewed by
15 members of the Attorney General's office not involved in the
16 original decision.

17 (e) Upon completion of the opinion pursuant to this section,
18 the Attorney General shall immediately mail a copy of it to the
19 person requesting review and to the state or local agency that
20 denied access to the record in question.

21 (f) The Attorney General shall maintain copies of opinions
22 issued pursuant to this section at each of his or her legal offices
23 for purposes of public inspection. The Attorney General shall
24 cause to be published annually a special volume of opinions
25 issued under this section and shall make the opinions available
26 on the Internet. The Attorney General may charge a fee for the
27 sale of the volumes not to exceed the reasonable cost of
28 publication and distribution.

29 (g) Notwithstanding any other provision of law, except where
30 the records of the Attorney General or the Department of Justice
31 are at issue, neither the Attorney General, nor the Department of
32 Justice, nor any of its staff shall be subject to suit or to discovery
33 in any suit for any action taken as a result of review under this
34 section.

35 (h) An opinion issued under this section does not affect the
36 right of a person to enforce his or her right to inspect or to
37 receive a copy of any public record through an action pursuant to
38 Sections 6258 and 6259. A person shall not be required to
39 exhaust the administrative remedies available in this section prior
40 to filing a legal action. If a person elects to bring an action under

1 Sections 6258 and 6259, the Attorney General shall not proceed
2 under this section. If a person elects to seek review under this
3 section, no legal action may be brought against the agency whose
4 decision is the subject of the opinion until 10 days after the
5 issuance and mailing of the opinion. A person may withdraw, by
6 written notice, his or her request for review under this section if
7 the withdrawal notice is received by the Attorney General prior
8 to the issuance of an opinion.

9 (i) (1) Representation of a state agency by the Attorney
10 General involving advice as to a request for inspection or copies
11 of public records may provide a basis for that agency to claim an
12 attorney-client relationship that would preclude the Attorney
13 General from providing an opinion under this section regarding
14 that request.

15 (2) A state agency against which an action is brought pursuant
16 to Sections 6258 and 6259, after a receipt of an adverse opinion
17 under this section, is authorized to retain counsel, other than the
18 Attorney General, who shall be compensated at the same rate that
19 the Attorney General would charge for legal services for the
20 defense of that action.

21 (3) Except as provided in this section, the Attorney General's
22 review under this section does not preclude the Attorney
23 General's representation of the affected state agency on any
24 matter.

25 (j) The time limits for the Attorney General to respond
26 pursuant to subdivisions (a) and (b) are directory not mandatory.

27 (k) This section shall not apply to a request for public records
28 made to a state agency by a party to a pending proceeding
29 involving the state agency or an employee of the state agency, or
30 a pending investigation by the state agency, if the Attorney
31 General has provided or is providing legal advice or
32 representation to the state agency with regard to the proceeding
33 or investigation.

34 SEC. 3. Section 6258 of the Government Code is amended to
35 read:

36 6258. Any person may institute proceedings for injunctive or
37 declarative relief or writ of mandate in any court of competent
38 jurisdiction to enforce his or her right to inspect or to receive a
39 copy of any public record or class of public records under this
40 chapter, or to enforce the duty of a state agency to post

1 information in its office and on its Internet Web site, if any, in
2 compliance with Section 6253.3. The times for responsive
3 pleadings and for hearings in these proceedings shall be set by
4 the judge of the court with the object of securing a decision as to
5 these matters at the earliest possible time.

6 SEC. 4. Section 6259 of the Government Code is amended to
7 read:

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

18 (b) If the court finds that the public official's decision to
19 refuse disclosure is not justified under Section 6254 or 6255, he
20 or she shall order the public official to make the record public. If
21 the judge determines that the public official was justified in
22 refusing to make the record public, he or she shall return the item
23 to the public official without disclosing its content with an order
24 supporting the decision refusing disclosure.

25 (c) In an action filed on or after January 1, 1991, an order of
26 the court, either directing disclosure by a public official or
27 supporting the decision of the public official refusing disclosure,
28 is not a final judgment or order within the meaning of Section
29 904.1 of the Code of Civil Procedure from which an appeal may
30 be taken, but shall be immediately reviewable by petition to the
31 appellate court for the issuance of an extraordinary writ. Upon
32 entry of any order pursuant to this section, a party shall, in order
33 to obtain review of the order, file a petition within 20 days after
34 service upon him or her of a written notice of entry of the order,
35 or within such further time not exceeding an additional 20 days
36 as the trial court may for good cause allow. If the notice is served
37 by mail, the period within which to file the petition shall be
38 increased by five days. A stay of an order or judgment shall not
39 be granted unless the petitioning party demonstrates 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) The court shall award court costs and reasonable attorney
4 fees to the plaintiff should the plaintiff prevail in litigation filed
5 pursuant to this section. The costs and fees shall be paid by the
6 public agency of which the public official is a member or
7 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 costs and reasonable attorney fees
10 to the public agency.

11 (e) (1) If a state or local agency (A) declines to comply with a
12 request to inspect or copy a record that is publicly accessible
13 pursuant to this chapter; (B) delays in responding to the request,
14 or in producing the requested records, for reasons that are
15 unstated to the requester, or that are unsupported by compelling
16 circumstances, or that otherwise demonstrate a lack of the
17 diligence required to make records available promptly, without
18 delay or obstruction, pursuant to the standards and deadlines of
19 Section 6253; (C) imposes conditions precedent to access to
20 records that are not authorized by this chapter, including, but not
21 limited to, the payment of copy fees in excess of an applicable
22 statutory fee or the direct cost of duplication pursuant to Section
23 6253 or 6253.9; or (D) otherwise frustrates timely and complete
24 access; and the court determines that the agency acted in bad
25 faith or with ~~knowledge that the request sought nonexempt~~
26 ~~records~~ *reckless disregard of the agency's obligations under this*
27 *chapter*, the court, in its discretion, may make an award not to
28 exceed one hundred dollars (\$100) per day for each day, as
29 determined by the court, that the agency's action resulted in the
30 denial of the plaintiff's right to copy or inspect the record or
31 records in question.

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

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

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

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

6 (D) Whether the plaintiff acted in good faith in pursuing the
7 request.

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

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

14 SEC. 5. Section 6259.1 is added to the Government Code, to
15 read:

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

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

29 (c) Upon entry of any order pursuant to this section, a party
30 shall, in order to obtain review of the order, file a petition within
31 20 days after service upon him or her of a written notice of entry
32 of the order, or within such further time not exceeding an
33 additional 20 days as the trial court may for good cause allow. If
34 the notice is served by mail, the period within which to file the
35 petition shall be increased by five days. A stay of an order or
36 judgment shall not be granted unless the petitioning party
37 demonstrates that it will otherwise sustain irreparable damage
38 and probable success on the merits. Any person who fails to obey
39 the order of the court shall be cited to show cause why he or she
40 is not in contempt of court.

1 (d) If the plaintiff prevails in an action filed pursuant to this
2 section, the court shall award court and discovery costs and
3 reasonable attorney's fees to the plaintiff. The costs and fees
4 shall be paid by the state agency of which the public official is a
5 member or employee and shall not become a personal liability of
6 the public official. If the court finds that the plaintiff's case is
7 clearly frivolous, it shall award court costs and reasonable
8 attorney's fees to the agency.

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

21 (e) *This section shall become operative on January 1, 2008.*

22 SEC. 6. (a) *The Department of Justice shall convene an*
23 *advisory task force to consider and make recommendations for a*
24 *statutory standard governing the posting of requests and denials,*
25 *and public documents that are subject to disclosure, under the*
26 *California Public Records Act (Chapter 3.5 (commencing with*
27 *Section 6250) of Division 7 of Title 1 of the Government Code),*
28 *on the Internet Web sites of state agencies.*

29 (b) *Members of the task force shall include all of the*
30 *following:*

31 (1) *State agency or board representatives.*

32 (2) *Representatives of the Department of Information*
33 *Technology.*

34 (3) *Representatives of organizations with expertise in*
35 *technical policy and practices of Internet disclosure.*

36 (4) *Representatives of organizations with expertise in privacy*
37 *policy relevant to Internet disclosure.*

38 (5) *Representatives of organizations with expertise in fostering*
39 *public integrity and accountability.*

1 (6) Representatives of organizations with expertise in
2 informed electoral participation.

3 (7) Representatives of organizations with expertise in
4 investigative journalism.

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

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

10 (1) Whether it is of greater value to the public for state
11 agencies to automatically post, with appropriate security and
12 privacy controls, certain public records that are subject to
13 disclosure under the act on agency Internet Web sites rather than
14 making those records available to requesters on a request-only
15 basis. Specific consideration shall be given to records that relate
16 to the compensation and economic interests of key public
17 officials and consultants, and the performance of public
18 agencies, including, but not limited to, the settlement of
19 litigation. Specific consideration should also be given to what
20 specific advantages or disadvantages may be associated with an
21 affirmative Internet posting requirement.

22 (2) Whether eventual cost savings or increases in efficiency, or
23 both, are likely to offset the implementation and management
24 costs of requiring state agencies to automatically post
25 disclosable public records on their Internet Web sites, and
26 whether certain types of public records are better suited to
27 automatic disclosure based on these cost and efficiency
28 considerations.

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

34 (4) Whether appropriate security measures are available, and
35 cost-effective, to ensure that disclosable public records posted on
36 the Internet are protected from alteration by third parties or
37 other forms of misuse.

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

1 *(d) The task force shall report its findings and*
2 *recommendations to the Governor and the Legislature no later*
3 *than July 1, 2007, at which time it shall cease to exist.*

O