

The Public Records Act

The Process, the Law and the
“Why Should I Care”

Presented By: The Legal Affairs Division



OVERVIEW

- Policy
- “Public Records” defined
- Responding to a Request
- Exemptions to Disclosure
- Why should I care? (litigation and costs)



POLICY

- “The legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.”
- GC Section 6250



What is a Record?

- Any Writing
- Containing Information Relating to the Conduct of the Public's business
- Prepared, owned, used or retained by any state or local agency
- Regardless of Physical Form or Characteristics



“Any Writing...”

- "Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation...regardless of the manner in which the record has been stored.
- **Yes**, electronic documents (including email) are subject to disclosure under the CPRA!



“Containing Information Related to the Conduct of the Public’s Business”

- Mere custody of a writing does not make it a public record
- If a record is maintained by the Chancellor's Office because it is necessary or convenient to the discharge of official duties, it is a “public record”
- Examples of non-records:
 - Coffee Invite
 - Shopping List



“Prepared, Owned, Used or Retained”

- CPRA applies only to documents that exist at the time of the request.
- The Chancellor’s Office is not required to create a document in response to a request.
 - No duty to create specific format (EX: Excel Spreadsheet)
 - No duty to connect the dots



“Regardless of Physical Form or Characteristics”

- Paper/hard copies
- Emails
- Handwritten notes
- Emails
- Documents saved in Microsoft Word
- PDF Files
- Emails
- Email Attachments
- Format doesn't matter...if you have a record, it is subject to disclosure under the CPRA unless an exemption applies!



Responding to a Request

- Form of request
- Respond within ten (10) days
- Reasonably Identifiable Records
- Duty to Assist Requestor
- Make records available for public inspection during business hours
- Provide copies at cost (\$0.15 per page)
- Preserve records for period specified in records retention policy



Exemptions from Duty to Disclose

- Pending Litigation
- Records Protected by Legal Privilege (attorney/client, attorney work product, etc.)
- “Personnel, medical or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.”
- Security Assessments
- Library Circulation Records
- Test Questions and Other Examination Data
- FERPA



Electronic Records - Summary

- Must make electronic records available in electronic format
- In any format prepared, owned, used or retained by Chancellor's Office
- May recover only the direct cost of duplication (\$0.15 per page, cost of CD, cost of flash drive)
- No duty to compromise computer system security



So What's the Big Deal?

- The Public's Fundamental Right to Information
- Requesters may sue to challenge denial
- If plaintiff prevails, the Chancellor's Office pays plaintiff's legal fees - mandatory payment
- The Chancellor's Office may only recover legal fees if suit is "clearly frivolous"
- Newspaper Headlines...



The San Diego
Union-Tribune

Chula Vista sued over public records

THE KANSAS CITY STAR.

Kansas community college is sued over public records request

Miami Herald

Florida Gov. Rick Scott agrees to pay \$700,000 to end public records lawsuit

