



**Advanced Seminar on Gaining  
Access to Public Records under the  
Freedom of Information Act and  
California Public Records Act**

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## I. Summary

These training materials are intended as a tool for public interest attorneys and other advocates who may in the course of their work seek records in the possession of federal or state government agencies. These, like all other training materials prepared by the Center for Human Rights and Constitutional Law (CHRCL), are non-exhaustive and subject to continuous update to reflect the rapidly changing context of immigration law and policy in which we work and live. For over thirty years, CHRCL has been at the forefront of the battle for the rights of immigrants, refugees, prisoners, and other vulnerable populations in the United States.

We invite readers to not only review these materials and consider them as a guidepost when approaching a request for public records, but also to consider opportunities for strategic litigation in this field. As always, CHRCL and its staff remain available to provide technical assistance on these and other constitutional rights issues. Please contact Peter Schey, Executive Director, at [pschey@centerforhumanrights.org](mailto:pschey@centerforhumanrights.org) should you want to discuss potential cases in greater detail. We look forward to the opportunity to support you in your professional growth and to collaborate to promote the rights of all people in our country.

This webinar, entitled Advanced Seminar on Gaining Access to Public Records under the Freedom of Information Act (FOIA) and the California Public Records Act (CPRA), will cover strategies in preparing lawsuits to gain access to public records, preparing motions, understanding privileges and exemptions that may apply, seeking attorneys fees in successful cases. It is meant to be a follow-up to CHRCL's previous webinar, which provided an introduction to FOIA and the CPRA. This webinar serve as a more in depth analysis of potential issues that could arise in attempting to obtain public records.

## II. Freedom of Information Act

The Freedom of Information Act, codified at 5 U.S.C. § 552 as an amendment to the Administrative Procedures Act, provides the basis for obtaining records from the federal government. It forms part of the legal framework for protecting individuals and organizations from the often unchecked power of the government derived from the exclusivity of the information it holds. As summarized by the Reporter's Committee for the Freedom of the Press:

“The public's ability to receive information about government has been significantly enhanced by the federal Freedom of Information Act, passed in 1966; the Federal Advisory Committee Act, passed in 1972; and the Government in the Sunshine Act, passed in 1976.

By making all records of federal agencies presumptively available upon request, FOIA guarantees the public's right to inspect a storehouse of documents. Likewise, FACA presumes the right to attend meetings of federal advisory committees and the Sunshine Act opens meetings held by federal agencies. The Privacy Act, passed in 1974, also affects the way journalists obtain information from the federal government about themselves and others....

Despite Congress' intent, records are not always released by agencies within the 20-day time frame, and often are withheld, sometimes improperly, under one of the law's exemptions. As a result, journalists often plan long-term projects and reports around the information sought, allowing for delays should they occur. Diligent follow-up with the agencies can boost a journalist's chance of having the request filled. Also, if a request is denied, persistence in appealing the denial may help pry the requested records loose....

The federal FOIA provides access to all records of all federal agencies in the executive branch, unless those records fall within one of nine categories of exempt information that agencies are permitted (but generally not required) to withhold.

On President Barack Obama's first full day in office — Jan. 21, 2009 — he issued two memos addressing government transparency and FOIA. Announcing that his administration is “committed to creating an unprecedented level of openness in Government,” Obama's Memorandum on Transparency and Open Government pledged that the White House would work with the public “to ensure the public trust and establish a system of transparency, public participation, and collaboration.”

Obama's Day One memorandum brought the administration's interpretation of FOIA back in step with the 1993 memorandum issued by then-Attorney General Janet Reno. She had instructed agencies to use their discretion to release documents. Even if requested information arguably or technically fell within an

exemption, agencies were not to invoke that exemption unless they could point to a “foreseeable harm” that would come from disclosure.

The January 2009 Obama directive is even more proactive, ordering agencies to take “affirmative steps to make information public. They should not wait for specific requests from the public. All agencies should use modern technology to inform citizens about what is known and done by their Government.” Finally, it urges timely disclosure — a long-standing barrier to filling requests.”

See Introduction to FOIA, available at <https://www.rcfp.org/federal-open-government-guide/introduction>; How FOIA Works, available at <https://www.rcfp.org/federal-open-government-guide/federal-freedom-information-act/how-foia-works>

#### A. Elements of a Successful Request

In order to be effective in requesting documents, it is necessary to ensure that a number of elements are addressed. Prior to undertaking a formal request, an attorney should take steps to identify what records are sought and, accordingly, which agency is in possession of those records. Requests must be directed to specific agencies of the federal government, as there is no central FOIA office responsible for aggregating all government records and coordinating responses to individual requests. Once an agency or agencies have been identified and the records sought have been specified, the next step is to prepare a written request. To do so, you should consult with the publicly available information published by each agency to ensure that the records that you seek have not already been made available, either proactively by the agency or pursuant to publication of the release of documents after a separate FOIA request. Additionally, regulations published by each agency will provide additional guidance on the procedures for pursuing records under FOIA from that agency.

#### Written Request

To preserve all of your rights under FOIA, a formal request for records should be directed to the agency in writing. FOIA provides, at 5 U.S.C. § 552(a)(3)(A), that the agency must respond as directed “upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed.”

The request should contain your personal information, including your full name, address, phone number, preferred method of communication, and the capacity in which you make the request, whether as a private individual, a lawyer or other professional, or as a journalist, scholar or member of a citizens group. The request must also include a clear description of the records sought. Include identifying details, such as names, places, and specific periods of time about which you are inquiring. Indicate your preferred format of receipt of the documents, whether in paper or electronically.

#### Fee

Most agencies will not consider your request properly filed unless you state something about the fees – either your willingness to pay or your request for a fee waiver. While members of the news media are entitled to what is called a “fee benefit” other persons or organizations seeking federal records may seek a fee waiver. Although the parameters of waiver of fees are subject to the regulations of each particular agency, general such a waiver will be available if release of information is in the public interest because it will contribute significantly to public understanding of government operations and activities.

Specifically, the FOIA provides:

“Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”

*See* 5. U.S.C. §552 (a)(4)(A)(III). As such, a requestor seeking a waiver of fees should specify the public interest involved, how the public understanding will be services, and the non-existence or minimal nature of the commercial interest. In particular, organizations should emphasize their position to digest and disseminate complicated information about government activities, citing past activity to raise public awareness in the subject area, as well as channels of communications, including websites, listservs, and databases. All of this information shows that if the request is granted and the records produced, the information would not be limited to the parties requesting it but would instead truly serve to foster greater public understanding.

### Expedited Treatment

The law requires that agencies grant or deny your request within 20 working days unless an “unusual circumstance” of a sort specifically described in the statute occurs. In particular, the statute requires that each agency

“determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination

...

The 20-day period under clause (i) shall commence on the date on which the request is first received by the appropriate component of the agency, but in any event not later than ten days after the request is first received by any component of the agency that is designated in the agency’s regulations under this section to receive requests under this section. The 20-day period shall not be tolled by the agency except—that the agency may make one request to the requester for information and toll the 20-day period while it is awaiting such information that it

has reasonably requested from the requester under this section; or if necessary to clarify with the requester issues regarding fee assessment. In either case, the agency's receipt of the requester's response to the agency's request for information or clarification ends the tolling period."

*See* 5 U.S.C. §552 (a)(6).

Amendments to FOIA passed in 1996 allow for expedited processing of some requests. If you are a reporter or a person who is "primarily engaged in disseminating information," and your request concerns a matter of "compelling need," a request for expedited processing may be honored. If you have a life-threatening need for the information or delayed disclosure could threaten the physical safety of any individual, a request for expedited processing may be honored. If your request is to the Department of Justice or any of its components such as the FBI and delay could cause a loss of substantial due process rights, you may be entitled to expedited processing of your request. If your request is to the Department of Justice or any of its components such as the FBI and your request concerns a matter of "widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence," you should explain why your request meets these criteria in a request for expedited processing.

In order to make a request for expedited processing, it is necessary to consult specific agency regulations. The FOIA states:

Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records—

- (I) in cases in which the person requesting the records demonstrates a compelling need; and
- (II) in other cases determined by the agency.

...

[Regulations under this subparagraph must ensure—

- (I) that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request; and
- (II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.

For purposes of this subparagraph, the term "compelling need" means—

- (I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or
- (II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

*See* 5 U.S.C. §552(a)(6)(E).

## B. Common Responses and Setbacks

### Delays or Non-Responses

As recognized by Reporters Committee for Freedom of the Press, “[t]ime and again, requesters find that their greatest obstacle to successfully using FOIA is delays in processing requests. Although the statute has always required agencies to respond to FOIA requests by granting or denying them (not just acknowledging them) within a short time frame, few agencies have consistently adhered to the time limits.” While this does not mean that agencies have to provide all of the documents requested within the twenty-day time period, it does require a determination on whether the agency will produce the documents and if not, on what basis.

Failure of an agency to respond within the twenty-day time limit or the issuance of a form letter without a determination as to whether or not the agency will comply and on what terms should be construed by advocates as a denial of the request for the purposes of pursuing administrative appeal.

### Fees

As discussed above, and as recognized by the RCFP,

“Under language added to FOIA in 1986, a requester is entitled to a waiver or reduction of fees where “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”

Congressional authors of this language said in floor statements that they intended that this provision make more requesters eligible for fee waivers. However, while federal agencies were preparing new fee regulations, the Justice Department issued a lengthy and controversial memorandum saying that the public interest standard under the 1986 amendments would be more difficult for requesters to meet.<sup>15</sup> It outlined six criteria agencies should consider before granting fee waivers. You may wish to address these criteria in your request for a fee waiver.

A waiver may be granted if:

- The subject of the requested records concerns government operations and activities.
- The disclosure is likely to contribute to understanding of these operations or activities.
- Disclosure will likely result in public understanding of the subject.
- The contribution to public understanding of government operations or activities will be significant.
- The requester has a limited commercial interest in the disclosure.
- The public interest in disclosure is greater than the requester’s commercial interest.

The last two factors concern the commercial value of the request to the requester.

The memo says dissemination of news to the public is not a commercial activity, so news media requesters need to address only the first four criteria if they are seeking more than 100 pages.

Experience shows that requesters seeking a relatively modest number of documents are more likely to be granted fee waivers than those whose requests encompass thousands of pages. In this regard, you may want to show that you have narrowed your request as much as possible and therefore are not unduly burdening the agency.

You may appeal any agency decision regarding fee categories or waivers just as you would an agency's decision to withhold information. “

### Refusal to Expedite

If you ask for expedited processing, an agency must grant or deny you faster processing within 10 calendar days. If the agency grants you expedited processing, it will take your request out of order and process it before other requests.

A denial of a request to expedite may subject the request to an extended response time, in violation of the statute. Necessary appellate mechanisms should be invoked.

### Exemptions

The statute expressly recognizes nine categories of exemptions to the disclosure of public records which may be cited by a federal agency. As summarized by FOIA Advocates on their website,

#### (1) National defense or foreign policy information properly

classified pursuant an Executive Order. 5 U.S.C. § 552(b)(1). This exemption allows the withholding of properly classified documents. The basis for classification is expressly limited to protecting an interest of national defense or foreign policy. The rules for classification are established and periodically updated by the President. They are not a product of the FOIA or other law. Under exemption one, if a document has been properly classified under a Presidential Executive order, the document can be withheld from disclosure. However, classified documents may still be requested under the FOIA. An agency may then review the document to determine if it still requires protection. The Executive order on security classification establishes a special procedure for requesting the declassification of documents. The current Executive order on security classification is Executive Order 12958, issued by President Clinton on Apr. 17, 1995. The text of the order can be found at 60 Federal Register 19825-43 and found online by [clicking here](#). Remember that even if a requested document is declassified, it still may be exempt under other FOIA exemptions.



- (2) Documents "related solely to the internal personnel rules and practices of an agency." 5 U.S.C. § 552(b)(2). The courts have held that there are two separate classes of documents that generally fall within the ambit of exemption 2. First, information relating to personnel rules or internal agency practices is exempt if it can reasonably be described as a trivial administrative matter of no genuine public interest, such as a rule establishing when agency workers can take sick leave. In Department of the Air Force v. Rose, 425 U.S. 352 (1976), the Supreme Court construed Exemption 2's somewhat ambiguous language as protecting internal agency matters so routine or trivial that they could not be "subject to . . . a genuine and significant public interest." Id. at 369. The Court declared that Exemption 2 was intended to relieve agencies of the burden of assembling and providing access to any "matter in which the public could not reasonably be expected to have an interest." Id. at 369-70. Second, an internal administrative manual for instance, might be exempt if its disclosure would risk circumvention of law or agency regulations. In order to fall into this category, the material will normally have to regulate internal agency conduct rather than public behavior. The boundaries of Exemption 2 were described by the Court of Appeals for the District of Columbia as follows: First, the material withheld should fall within the terms of the statutory language as a personnel rule or internal practice of the agency. Then, if the material relates to trivial administrative matters of no genuine public interest, exemption would be automatic under the statute. If withholding frustrates legitimate public interest, however, the material should be released unless the government can show that disclosure would risk circumvention of lawful agency regulation Church of Scientology v. Smith, 721 F.2d 828, 830-31 n.4 (D.C. Cir. 1983).
- (3) Documents "specifically exempted from disclosure by statute" other than FOIA, but only if the other statute's disclosure prohibition is absolute. 5 U.S.C. § 552(b)(3). This exemption simply incorporates into FOIA other laws which restrict the availability of information. Exemption 3 allows the withholding of information prohibited from disclosure by another statute only if one of two disjunctive requirements are met: the statute in question either "(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." A statute thus falls within the exemption's coverage if it satisfies any one of its disjunctive requirements. See Long v. IRS, 742 F.2d 1173, 1178 (9th Cir. 1984); Irons & Sears v. Dann, 606 F.2d 1215, 1220 (D.C. Cir. 1979); American Jewish Congress v. Kreps, 574 F.2d 624, 628 (D.C. Cir. 1978). See generally 5 U.S.C. § 552(e)(1)(A)(ii) (provision of Electronic Freedom of Information Act Amendments of 1996 requiring agencies to list Exemption 3 statutes upon which they rely each year in their annual FOIA reports, beginning with reports for Fiscal Year 1998). One example of a qualifying statute is the provision of the Code prohibiting the public disclosure of tax returns and tax return information. See, 26 U.S.C. Sec. 6103. Another qualifying exemption 3 statute is the law designating identifiable census data as confidential. See, 13 U.S.C. Sec. 9.

- (4) Documents which would reveal "[t]rade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4). Exemption 4 protects from public disclosure two types of information: (1) trade secrets; and (2) information that is (a) commercial or financial, and (b) obtained from a person, and (c) privileged or confidential. Congress intended this exemption to protect the interests of both the government and submitters of information. Its existence encourages submitters to voluntarily furnish useful commercial or financial information to the government and it correspondingly provides the government with an assurance that such information will be reliable. A trade secret is a commercially valuable plan, formula, process, or device. This is a narrow and relatively easily recognized category of information. It is "a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort." Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1288 (D.C. Cir. 1983). An example of a trade secret might be the formula of a gasoline additive. The second form of protected data is "commercial or financial information obtained from a person and privileged or confidential." Courts have held that data qualifies for withholding if disclosure by the government would be likely to harm the competitive position of the person who submitted the information. Detailed information on a company's marketing plans, profits, or costs can qualify as confidential business information. Information may also be withheld if disclosure would be likely to impair the government's ability to obtain similar information in the future. (a) Generally, the commercial/financial nature of a document is not difficult to ascertain, consequently, the main issue in contest is whether the information is privileged or confidential. (b) A leading case on this aspect of Exemption 4 sets out the test for exempting commercial information from FOIA disclosure as follows: "Commercial or financial matter is "confidential" for purposes of [Exemption 4] if disclosure of the information is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained." National Parks and Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C.Cir. 1974); see also Frasee v. U.S. Forest Service, 97 F.3d 367, 371 (9th Cir. 1996). This review has been further bifurcated in the analysis set forth in Critical Mass Energy Project v. Nuclear Regulatory Comm'n, 975 F.2d 871 (D.C.Cir. 1992) (en banc). In Critical Mass: "the D.C. Circuit reaffirmed the two-prong National Parks confidentiality test, holding that the substantial competitive harm test was to be applied to information *mandatorily* provided to the government. The court then established a separate test to be applied to information *voluntarily* submitted to the government. The court concluded that information that is voluntarily provided to the Government is 'confidential' for the purpose of Exemption 4 if it is of a kind that would customarily not be released to the public by the person from whom it was

obtained." Frasee v. U.S. Forest Service, 97 F.3d at 372. However, the Ninth Circuit has expressly refused to incorporate this two level test as precedent. *Id.* Consequently, the more difficult to satisfy (for the agency) "substantial competitive harm" test remains the law applicable to this Circuit.

- (5) Documents which are "inter-agency or intra-agency memorandum or letters" which would be privileged in civil litigation. 5 U.S.C. § 552(b)(5). (a) Exemption 5 is an exemption very frequently invoked against public interest requesters because the nature of such party's intended uses are usually to get information regarding the agency's processes and conclusions. The exemption was intended to incorporate common-law privileges against discovery. Of all such privileges, the one most frequently encountered by public interest requesters is based on the concept of "executive" privilege which protects recommendations and advice which are part of the "deliberative process" involved in governmental decision-making. The rationale being to protect the integrity of agency decision-making by encouraging both full and frank discussions of policy proposals and to prevent premature disclosure of policies under review. The exemption also incorporates other of privileges which would apply in litigation involving the government. For example, papers prepared by the government's lawyers can be withheld in the same way that papers prepared by private lawyers for clients are not available through discovery in civil litigation. However, this incorporation of discovery privileges requires that a privilege be applied in the FOIA context as it exists in the discovery context. See United States Dep't of Justice v. Julian, 486 U.S. 1, 13 (1988) (holding that presentence report privilege, designed to protect report subjects, cannot be invoked against them as first-party requesters). Thus, the precise contours of a privilege, with regard to applicable parties or types of information which are protectible, are also incorporated into the FOIA. *Id.* (b) Courts have resolved to distinguish "pre-decisional" documents, which fall within the protections of Exemption 5, and "post-decisional" documents, which must be disclosed. F.T.C. v. Warner Comm. Inc., 742 F.2d 1156, 1161 (9th. Cir. 1984); NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 151-153 (1975) (memos directing agency counsel criteria and actions involved in decision to file complaints are not final dispositions of issue, and are thus protected, while final opinions or dispositions can never be protected by Exemption 5). (c) However, even if a document is pre-decisional, some courts have upheld a distinction between "materials reflecting deliberative or policy-making process on the one hand, and purely factual, investigative matters on the other," the exemption protects the former, not the latter. EPA v. Mink, 410 U.S. 73, 89 (1973). Those portions of a document which are not exempt must be disclosed unless they are "inextricably intertwined" with the exempt portions. Ryan v. Dept. of Justice, 617 F. 2d 781, 790-91 (D.C. Cir. 1980). (d) The Ninth Circuit has rejected a major component of the fact/opinion distinction by embracing a "process-oriented" rule that "to the extent that they reveal the mental process of decisionmakers," factual materials are not automatically outside the ambit of exemption 5. National Wildlife Federation v. U.S. Forest Service, 861 F.2d 1114, 1119 (9th.

Cir. 1988); see also Assembly of the State of California v. U.S. Dept. of Comm., 968 F.2d 916, 921 (9th Cir. 1992). As almost all agency fact-finding may be construed in some manner to reveal aspects of the decision-making process, this fuzzy rationale creates an exception which threatens to swallow the rule.

- (6) Documents which are "personnel and medical and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). This exemption protects the privacy interests of individuals by allowing an agency to withhold personal data kept in government files. Keep in mind that by the plain terms of the statute, only individuals can have privacy interests. By definition, corporations and other "legal persons" can have no privacy rights under the Exemption 6 because there can be no objective expectation attaching against an "unwarranted invasion of personal privacy." Occasionally, agencies or business submitters of information will assert Exemption 6 when, in fact, the proper analysis should sound under Exemption 4. (a) The Supreme Court has reviewed the application of this exemption. It noted: First, in evaluating whether a request for information lies within the scope of a FOIA exemption, such as Exemption 6, that bars disclosure when it would amount to an invasion of privacy that is to some degree 'unwarranted, 'a court must balance the public interest in disclosure against the interest Congress intended the [e]xemption to protect." Department of Defense v. F.L.R.A., 114 S.Ct. 1006, 1012 (1994). (b) The Court continued: Second, the only relevant "public interest in disclosure" to be weighed in this balance is the extent to which disclosure would serve the "core purpose of the FOIA," which is "contribut[ing] significantly to public understanding of the operations or activities of the government. Id. In other words, the requested materials must in some way illuminate "what the government is 'up to'" in order to justify disclosure. A request for information from the government which illustrates what you neighbor, or business competitor, is "up to" will not meet the public interest balancing test under exemption 6. The exemption requires agencies to strike a balance between an individual's privacy interest and the public's right to know. However, since only a clearly unwarranted invasion of privacy is a basis for withholding, there is a perceptible tilt in favor of disclosure in the exemption. "In the Act generally, and *particularly under Exemption (6)*, there is a strong presumption in favor of disclosure." Local 598 v. Department of Army Corps of Engineers, 841 F.2d 1459, 1463 (9th Cir. 1988) (emphasis added). In that case, the Ninth Circuit reviewed the context of applicable Exemption 6 case law: The Freedom of Information Act embodies a strong policy of disclosure and places a duty to disclose on federal agencies. As the district court recognized, 'disclosure, not secrecy, is the dominant objective of the Act.' Department of the Air Force v. Rose, 425 U.S. 352, 361, 96 S.Ct. 1592, 1599, 48 L.Ed.2d 11 (1976). 'As a final and overriding guideline courts should always keep in mind the basic policy of the FOIA to encourage the maximum feasible public access to government information....' Nationwide Bldg. Maintenance, Inc. v. Sampson,

559 F.2d 704, 715 (D.C.Cir.1977). As a consequence, the listed exemptions to the normal disclosure rule are to be construed narrowly. See *Rose*, 425 U.S. at 361, 96 S.Ct. at 1599. *This is particularly true of Exemption (6). Exemption (6) protects only against disclosure which amounts to a 'clearly unwarranted invasion of personal privacy.'* That strong language 'instructs us to 'tilt the balance [of disclosure interests against privacy interests] in favor of disclosure.'" *Id.* (emphasis added), citing Washington Post Co. v. Department of Health and Human Servs., 690 F.2d 252, 261 (D.C.Cir.1982) (quoting *Ditlow v. Shultz*, 517 F.2d 166, 169 (D.C. Cir.1975)).

Moreover, the Privacy Act of 1974 regulates the disclosure of personal information about an individual. The FOIA and the Privacy Act partially overlap in this regard, but there is no real inconsistency. An individual seeking records about herself should cite both laws when making a request. This will ensure that the maximum amount of disclosable information will be released. Also remember that records which can be denied to an individual under the Privacy Act are not necessarily exempt under the FOIA.

- (7) Documents which are "records or information compiled for law enforcement purposes," but only if one or more of six specified types of harm would result. 5 U.S.C. § 552(b)(7). Congress intended for Exemption 7 to allow agencies to withhold law enforcement records in order to protect the law enforcement process from interference. The exemption was amended slightly in 1986, but it still retains six specific subexemptions. Exemption (7)(A) provides for the withholding of a law enforcement record the disclosure of which would reasonably be expected to interfere with enforcement proceedings. This exemption protects an active law enforcement investigation from interference through premature disclosure. Therefore, determining the applicability of this Exemption 7(A) requires a two-step analysis focusing on (1) whether a law enforcement proceeding is pending or prospective and (2) whether release of information about it could reasonably be expected to cause some articulable harm. See, e.g., NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 224 (1978) (holding that government must show how records "would interfere with a pending enforcement proceeding"). Exemption (7)(B) allows the withholding of information that would deprive a person of a right to a fair trial or an impartial adjudication. It is aimed at preventing prejudicial pretrial publicity that could impair a court proceeding. A reviewing court established a two part test of the applicability of this rarely used exemption: "(1) that a trial or adjudication is pending or truly imminent; and (2) that it is more probable than not that disclosure of the material sought would seriously interfere with the fairness of those proceedings." Washington Post Co. v. United States Department of Justice, 863 F.2d 96, 101-02 (D.C. Cir. 1988). Exemption (7)(C) recognizes that individuals have a privacy interest in information maintained in law enforcement files. It is the law enforcement counterpart to Exemption 6, providing protection for law enforcement information the disclosure of which "could reasonably be expected to constitute an unwarranted

invasion of personal privacy." If the disclosure of information could reasonably be expected to constitute an unwarranted invasion of personal privacy, the information is exempt from disclosure. The standards for privacy protection in exemption 6 and exemption (7)(C) differ slightly. Exemption (7)(C) protects against an "unwarranted invasion of personal privacy" while exemption 6 protects against a "clearly unwarranted invasion." Also, exemption (7)(C) allows the withholding of information that "could reasonably be expected to" invade someone's privacy. Under exemption 6, information can be withheld only if disclosure "would" invade someone's privacy. The D.C. Court of Appeals held in SafeCard Services v. SEC, 926 F.2d 1197 (D.C. Cir. 1991), that, based upon the traditional recognition of the strong privacy interests inherent in law enforcement records and the logical ramifications of United States Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989) the "categorical withholding" of information that identifies third parties in law enforcement records will ordinarily be appropriate under Exemption 7(C). 926 F.2d at 1206, see, e.g., Fiduccia v. United States Dep't of Justice, 185 F.3d 1035, 1047-48 (9th Cir. 1999) (categorically protecting records concerning FBI searches of house of two named individuals); Nation Magazine v. United States Customs Serv., 71 F.3d 885, 896 (D.C. Cir. 1995) (restating that those portions of records in investigatory files which would reveal subjects, witnesses, and informants in law enforcement investigations are categorically exempt (citing SafeCard)). Exemption (7)(D) protects the identity of confidential sources. Information which could reasonably be expected to reveal the identity of a confidential source is exempt from disclosure. It has historically been recognized that Exemption 7(D) provides the most comprehensive protection of all of the FOIA's law enforcement exemptions. The courts have repeatedly indicated their appreciation that a "robust" Exemption 7(D) is important to ensure that "confidential sources are not lost through retaliation against the sources for past disclosure or because of the sources' fear of future disclosure." Brant Constr. Co. v. EPA, 778 F.2d 1258, 1262 (7th Cir. 1985; see, also., Ortiz v. HHS, 70 F.3d 729, 732 (2d Cir. 1995) (stating that "Exemption 7(D) is meant to . . . protect confidential sources from retaliation that may result from the disclosure of their participation in law enforcement activities"); McDonnell v. United States, 4 F.3d 1227, 1258 (3d Cir. 1993) (finding that "goal of Exemption 7(D) [is] to protect the ability of law enforcement agencies to obtain the cooperation of persons having relevant information and who expect a degree of confidentiality in return for their cooperation"); Providence Journal Co. v. United States Dep't of the Army, 981 F.2d 552, 563 (1st Cir. 1992) (explaining that Exemption 7(D) is intended to avert "drying-up" of sources); Nadler v. United States Dep't of Justice, 955 F.2d 1479, 1486 (11th Cir. 1992) (observing that "fear of exposure would chill the public's willingness to cooperate with the FBI . . . [and] would deter future cooperation" (citing Irons v. FBI, 880 F.2d 1446, 1450-51 (1st Cir. 1989))); Shaw v. FBI, 749 F.2d 58, 61 (D.C. Cir. 1984) (holding that purpose of Exemption 7(D) is "to prevent the FOIA from causing the 'drying up' of sources of information in criminal investigations"). A confidential source might include

a State, local, or foreign agency or authority, or a private institution that furnished information on a confidential basis. Sources' identities are protected wherever they have provided information under either an express promise of confidentiality-see Rosenfeld v. United States Dep't of Justice, 57 F.3d 803, 814 (9th Cir. 1995) ("[A]n express promise of confidentiality is 'virtually unassailable' [and is] easy to prove: 'The FBI need only establish the informant was told his name would be held in confidence.'" (quoting Wiener v. FBI, 943 F.2d 972, 986 (9th Cir. 1991))) or "under circumstances from which such an assurance could be reasonably inferred." S. Conf. Rep. No. 93-1200, at 13 (1974) reprinted in 1974 U.S.C.C.A.N. 6267, 6291. In 1993, the Supreme Court made clear that not all sources furnishing information in the course of criminal investigations are entitled to a "presumption" of confidentiality. United States Department of Justice v. Landano, 508 U.S. 165, 175 (1993). Rather, the Court held that source confidentiality must be determined on a case-by-case basis, *id.* at 179-80, noting particularly that such a presumption should not be applied automatically to cooperating law with enforcement agencies. *Id.* at 176. Additionally, the Exemption 7(D) protects information furnished by a confidential source if the data was compiled by a criminal law enforcement authority during a criminal investigation or by an agency conducting a lawful national security intelligence investigation. Exemption (7)(E) protects from disclosure information which would reveal techniques and procedures for law enforcement investigations or prosecutions or that would disclose guidelines for law enforcement investigations or prosecutions if disclosure of the information could reasonably be expected to risk circumvention of the law. Exemption (7)(F) protects law enforcement information which could reasonably be expected to endanger the life or physical safety of any individual. Courts have interpreted Exemption 7(F) as affording protection of the "names and identifying information of . . . federal employees, and third persons who may be unknown" to the requester in connection with particular law enforcement matters. Luther v. IRS, No. 5-86-130, slip op. at 6 (D. Minn. Aug. 13, 1987). Significantly, Exemption 7(F) protection has been held to remain applicable even after a law enforcement officer subsequently retired. Moody v. DEA, 592 F. Supp. 556, 559 (D.D.C. 1984).

- (8) Documents which are related to specified reports prepared by, on behalf of, or for the use of agencies which regulate financial institutions. 5 U.S.C. § 552(b)(8). Exemption 8 protects information that is contained in or related to examination, operating, or condition reports prepared by or for a bank supervisory agency such as the Federal Deposit Insurance Corporation, the Federal Reserve, or similar agencies.
- (9) Documents which would reveal oil well data. 5 U.S.C. § 552(b)(9). The ninth FOIA exemption covers geological and geophysical information, data, and maps about wells. It is rarely used.

### C. Administrative Appeal

A denial of a request to expedite or a request for fee waiver may be administratively appealed before the agency's FOIA officer, as may a denial of a request, either substantively or constructively. Specific provisions regarding the administrative appeal process are made in the regulations of each particular agency. However, the filing of an administrative appeal, and its subsequent denial or a non-response within twenty days, are precursors to filing a judicial complaint.

#### D. Judicial Complaint and *Vaughn* Motion

##### Judicial Complaint

In the event of non-compliance of a federal agency with the dictates of FOIA, individuals and organizations have a right of action to bring a judicial complaint against said agency. In particular, FOIA provides at 5 U.S.C. §552(a)(4)(B):

On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).

The filing of a judicial complaint compels the agency to answer the request or to provide the legal justification (exemptions, etc) for failing to do so in a timely manner. In an age of backlogs and boilerplate letters provided by many federal agencies, judicial complaints are often the only way to force an agency to comply with the requirements of the FOIA.

The RCFP provides:

If your appeal is denied, or if the agency fails to respond to your appeal within 20 working days, you may file a FOIA lawsuit in the United States District Court most convenient to you, nearest the agency office where the records are kept or in the District of Columbia. Though technically you have up to six years after the date on which your appeal was denied to file a lawsuit, you should try to file the suit as soon as possible in order to demonstrate to the court your need for the information

The National Security Archive of George Washington University provides helpful information on litigating your FOIA request in court:



Before bringing a FOIA lawsuit, the requester first must exhaust his or her administrative remedies, which means receiving the agency's denial, filing an administrative appeal, and receiving a denial of the appeal. Alternatively, you may file a lawsuit without having filed an administrative appeal if the agency fails to comply with any of the FOIA's time limits (twenty working days to respond to an initial request or to respond to an administrative appeal). In some cases it may be effective to go to court immediately after the twenty-day initial request deadline has passed. However, in most cases it is productive to talk with the agency and wait a reasonable time for the agency to process the request rather than going to the time and expense of litigation before the agency has made its final decision.

“Going to Court: Litigating Your FOIA Request.”

[http://nsarchive.gwu.edu/nsa/foia/foia\\_guide/foia\\_guide\\_chapter6.pdf](http://nsarchive.gwu.edu/nsa/foia/foia_guide/foia_guide_chapter6.pdf)

Department of Justice FOIA Guide, 2004 Edition: Litigation Considerations provides:

The FOIA permits requesters to treat an agency's failure to comply with its specific time limits as full, or "constructive," exhaustion of administrative remedies. Thus, when an agency does not respond to a perfected request within the twenty-day (excepting Saturdays, Sundays, and legal public holidays) statutory time limit set forth in the Act, the requester is deemed to have exhausted his administrative remedies and can seek immediate judicial review, even though the requester has not filed an administrative appeal. If a requester files suit before the twenty-day period has expired, the suit must be dismissed even if the agency still has failed to respond to the request after the twenty day period has expired because "the Court will only consider those facts and circumstances that existed at the time of the filing of the complaint, and not subsequent events." Indisputably, though, an agency's failure to comply with the statutory deadline neither requires nor empowers a court to ignore the agency's right to invoke applicable statutory exemptions and summarily order disclosure of any or all information sought.

<https://www.justice.gov/oip/foia-guide-2004-edition-litigation-considerations>

#### *Request for Fees and Costs*

As discussed in subsequent sections to this training material, as part of your complaint, you may reserve the right to seek attorneys fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E), and if applicable, the Equal Access to Justice Act, 28 U.S.C. § 2412(d).

#### Vaughn Motion

Often filed concurrently with a judicial complaint is a *Vaughn* motion. This motion “is a formal request asking the court to order the government to give you an index describing the documents it is withholding and the justification it claims for withholding each piece of information.”

In most cases dealing with the Freedom of Information Act, the Government is required to produce a *Vaughn* index. In every FOIA dispute, there is an imbalance of information in that the government can review the information sought by, but hidden from, the requestor. For that reason, a *Vaughn* index is often required to attempt to address that imbalance. “The significance of agency affidavits in a FOIA case cannot be underestimated. As, ordinarily, the agency alone possesses knowledge of the precise content of documents withheld, the FOIA requester and the court both must rely upon its representations for an understanding of the material sought to be protected. The petitioner seeks information that the government agency can access.” *King v. United States Dep’t of Justice*, 830 F.2d 210, 218 (D.C. Cir. 1987). *See also Weiner v. FBI*, 943 F. 2d. 972, 976 (9th Cir. 1991) (“In a FOIA case, however, because the issue is whether one party will disclose documents to the other, only the party opposing disclosure will have access to all the facts.”)

Because of this imbalance, federal agencies are obligated to produce a *Vaughn* index to justify withholding records sought under the FOIA. “In recognition of this problem, government agencies seeking to withhold documents requested under the FOIA have been *required* to supply the opposing party and the court with a ‘*Vaughn* index,’ identifying each document withheld, the statutory exemption claimed, and a particularized explanation of how disclosure of the particular document would damage the interest protected by the claimed exemption.” *Weiner v. FBI*, 943 F.2d. 972, 977 (9th Cir. 1991). “The purpose of the [*Vaughn*] index is to afford the FOIA requester a meaningful opportunity to contest, and the district court an adequate foundation to review, the soundness of the withholding ... The index thus functions to restore the adversary process to some extent, and to permit more effective judicial review of the agency's decision.” *Weiner*, 943 F.2d at 977-978, *citing King v. United States Dep’t of Justice, supra*, 830 F.2d at 218 (internal quotations and citations omitted).<sup>1</sup>

In order for a *Vaughn* index to serve its purpose in the adversarial process, it must contain specific, non-generalized information. In *Weiner v. FBI, supra*, an academic sought documents relating to John Lennon. The FBI refused to produce responsive documents citing, among others, the exemption in Section 552(b)(1) of the FOIA, which protects from disclosure materials “specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order.” 5 U.S.C. § 552(b)(1)(A). The FBI did not make a Glomar response, but objected to producing the

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<sup>1</sup> The purpose of the *Vaughn* index in the adversarial process is universally recognized. *See, e.g., Vaughn*, 484 F.2d at 828; *Orion Research, Inc. v. EPA*, 615 F.2d 551, 553 (1st Cir. 1980); *Donovan v. FBI*, 806 F.2d 55, 58 (2d Cir. 1986); *Ferri v. Bell*, 645 F.2d 1213, 1222 (3d Cir. 1981) *modified on other grounds Ferri v. Bell*, 671 F.2d 769 (3d Cir. 1982); *Ingle v. Dep’t of Justice*, 698 F.2d 259, 263 (6th Cir. 1983); *Stein v. Dep’t of Justice*, 662 F.2d 1245, 1253 (7th Cir. 1981); *Davis v. CIA*, 711 F.2d 858, 861 (8th Cir. 1983) *Ollestad v. Kelley*, 573 F.2d 1109, 1110 (9th Cir. 1978); *Ely v. FBI*, 781 F.2d 1487, 1492 (11th Cir. 1986).

contents of certain documents on the grounds they would reveal confidential sources. The FBI submitted a generalized Vaughn index justifying the withholding of materials.

The submitted *Vaughn* index stated “in general terms why each category of information should be withheld.” *Weiner*, 943 F.2d at 978. “These ‘boilerplate’ explanations were drawn from a ‘master’ response filed by the FBI for many FOIA requests. No effort [was] made to tailor the explanation to the specific document withheld.” *Id.* at 977-978.

The Ninth Circuit held that generalized responses were improper:

This categorical approach affords Wiener little or no opportunity to argue for release of particular documents. The most obvious obstacle to effective advocacy is the FBI's decision to state alternatively several possible reasons for withholding documents, without identifying the specific reason or reasons for withholding each particular document. Effective advocacy is possible only if the requester knows the precise basis for nondisclosure. The agency may give alternative reasons for withholding a document only if each reason is applicable to the document at issue.

Moreover, the level of specificity in the index submitted in this case is insufficient. Specificity is the defining requirement of the Vaughn index. Unless the agency discloses as much information as possible without thwarting the [claimed] exemption's purpose, the adversarial process is unnecessarily compromised.

...

The index does not describe any particular withheld document, identify the kind of information found in that document that would expose the confidential sources, or describe the injury to national security that would follow from the disclosure of the confidential source of the particular document. The FBI must have made such an analysis in concluding that disclosure of some informants or classes of informants would damage national security and disclosure of others would not. Yet none of the information and analysis necessarily considered is made available to Wiener or the court. The index simply relies on general assertions that disclosure of certain categories of facts may result in disclosure of the source and disclosure of the source may lead to a variety of consequences detrimental to national security.

*Weiner*, 943 F.2d at 979, 981 (internal citations and quotations omitted). *See also*, *King v. United States Dep't of Justice*, 830 F.2d at 225 (“Categorical description of redacted material coupled with categorical indication of anticipated consequences of disclosure is clearly inadequate.”).<sup>2</sup>

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<sup>2</sup> In addition, the Ninth Circuit stated plainly that an *in camera* review would not suffice to cure a deficient *Vaughn* index. “*In camera* review of the withheld documents by the court is not an acceptable substitute for an adequate *Vaughn*

In *King v. United States DOJ*, 830 F.2d 210, 219 (D.C. Cir. 1987), the D.C. Circuit held that an agency must provide “a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.” *Id.* at 219, *citing Mead Data Cent., Inc. v. U.S. Dep’t of Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977).

Even in the national security context, the agency must show that reasonably segregable portions of non-exempt information have been produced. “The agency must provide a reasonable segregation as to the portions of the document that are involved in each of its claims for exemption. As indicated in *Mead*, it is important that the affidavit indicate the extent to which each document would be claimed as exempt under each of the exemptions. The courts cannot meaningfully exercise their responsibility under the FOIA unless the government affidavits are as specific as possible.” *Ray v. Turner*, 587 F.2d 1187, 1197 (D.C. Cir. 1978).

### III. California Public Records Act - Distinctions

The California Public Records Act, Cal. Gov’t Code §§ 6250, *et seq.* (CPRA) is California’s counterpart to the federal FOIA.

The RCFP provides the following guidance on requests under the CPRA:

"[A]ccess to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." Cal. Gov't Code § 6250. "Every person" can inspect public records. Cal. Gov't Code § 6253(a). "Person" includes any natural person, corporation, partnership, limited liability company, firm or association. Cal. Gov't Code § 6252(c). The CPRA does not differentiate among those who seek access to public information. If a record is public, as defined by or construed under the CPRA, all persons have the same right of access. *County of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1324, 89 Cal. Rptr. 3d 374 (2009); *State Bd. of Equalization v. Superior Court*, 10 Cal. App. 4th 1177, 1190, 13 Cal. Rptr. 2d 342 (1992).

For example, citizens of other states, and foreign as well as domestic corporations are included in the CPRA's definition of "person." *Connell v. Superior Court*, 56 Cal. App. 4th 601, 611-12, 65 Cal. Rptr. 2d 738 (1997). A municipal corporation, as well as its elected city attorney, is also a “person” entitled to request documents from another governmental agency. *Los Angeles Unified Sch. Dist. v. Superior Court*, 151 Cal. App. 4th 759, 771, 60 Cal. Rptr. 3d 445 (2007). Section 6252.5 of the Government Code expressly allows an elected member or official of any state or local agency to access public records of that agency — or any other — on the same basis as any other person. Cal. Gov't Code § 6252.5. Likewise, a plaintiff who files suit against a public agency may utilize the CPRA to obtain

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index. *In camera* review does not permit effective advocacy.” *Weiner*, 943 F.2d at 979, *citing Doyle v. FBI*, 722 F.2d 554, 556 (9th Cir. 1983).

documents for use in litigation to the same extent as any other person. *County of Los Angeles v. Superior Court*, 82 Cal. App. 4th 819, 826, 98 Cal. Rptr. 2d 564 (2000). Members of the media, while "persons" under the CPRA, have no greater right of access than the general public. *Dixon v. Superior Court*, 170 Cal. App. 4th 1271, 1279, 88 Cal. Rptr. 3d 847 (2009); *City of San Jose v. Superior Court*, 74 Cal. App. 4th 1008, 1018, 88 Cal. Rptr. 2d 552 (1999); *City of Hemet v. Superior Court*, 37 Cal. App. 4th 1411, 1417 n.7, 44 Cal. Rptr. 2d 532 (1995). Conversely, a person personally affected by the public record has no greater right of access than other persons under the CPRA. *Los Angeles Police Dept. v. Superior Court*, 65 Cal. App. 3d 661, 668, 135 Cal. Rptr. 575 (1977).

...

There are no limitations on access to public records based on the purpose for which the record is being requested, if the record is otherwise subject to disclosure. Cal. Gov't Code § 6257.5. A member of the public need not state the purpose for requesting records. *See, e.g., CBS Broad. Inc. v. Superior Court*, 91 Cal. App. 4th 892, 909, 110 Cal. Rptr. 2d 889 (2001); *City of San Jose v. Superior Court*, 74 Cal. App. 4th 1008, 1018, 88 Cal. Rptr. 2d 552 (1999); *State Bd. of Equalization v. Superior Court*, 10 Cal. App. 4th 1177, 1191, 13 Cal. Rptr. 2d 342 (1992). This is so because "[t]he motive of the particular requester is irrelevant; the question instead is whether disclosure serves the *public* interest." *County of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1324, 89 Cal. Rptr. 3d 374 (2009) (rejecting county's standing argument that open government group had no particularized interest in GIS basemap data other than "generalized proclamation of the 'public's right to know'..."). Stated another way, what is material is the public interest in disclosure, not the private interest of a requesting party. *State Bd. of Equalization*, 10 Cal. App. 4th at 1191.

There are no restrictions or limitations on the subsequent use of records obtained under the CPRA. In *County of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1333, 89 Cal. Rptr. 3d 374 (2009), the court, as a matter of first impression, rejected as inconsistent with the CPRA the county's claim that it could require requesters of its GIS basemap data to enter into licensing agreements restricting use and dissemination of the data. The court held that copyright protections under the CPRA extend "in a proper case" only to computer software. *Id.* at 1331-36 ("The CPRA contains no provision either for copyrighting the GIS basemap or for conditioning its release on an end user or licensing agreement by the requester."). With one exception, a requester is not required to state the use or purpose for which the records are being requested. Cal. Gov't Code § 6257.5. Under the investigatory records exemption of Section 6254(f)(3), an individual requesting the address of any individual arrested or the current address of the victim of a crime, must declare under penalty of perjury that the request is made for a journalistic, scholarly, political or governmental purpose, or is sought for investigatory purposes by a licensed private investigator. Additionally, the requester must declare that the information obtained pursuant to this subsection will not be used directly or indirectly to sell a product or service. Cal. Gov't Code § 6254(f)(3); *see Los Angeles Police Dept. v. United Reporting Pub. Corp.*, 528

U.S. 32, 120 S.Ct. 483, 488, 145 L.Ed. 2d 451 (1999)(upholding facial constitutional challenge to this provision but noting that the constitutionality of the provision as applied to respondent, a publishing company that provides the names and addresses of arrested individuals to its customers, remained open to challenge); *see also United Reporting Pub. Corp. v. Cal. Hwy. Patrol*, 231 F.3d 483 (9th Cir. 2000)(where Ninth Circuit Court of Appeal remanded action for further district court proceedings addressing the "as applied" constitutionality of this provision).

*See California: Open Government Guide.*

In enacting the CPRA, the legislature found and declared “that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.” Cal. Gov’t Code § 6250. The goal of the CPRA is to give the public an opportunity to monitor the functioning of their government,

As with the federal FOIA, a request under the CPRA must be made to a specific agency, whether state or local, other than legislative or judicial entities. The same elements must be articulated: personal information of the requester (although, as noted above, identity is generally immaterial), a clear description of the requested documents,

Indeed, “[y]ou are not required to explain why you are making a request. However, if you request the disclosure of the address of any individual who has been arrested, or the current address of the victim of a crime, you must state whether the request is made for a journalistic, scholarly, political or governmental purpose, and declare that the information will not be used to sell a product or service. [Cal. Gov't Code § 6254\(f\)\(3\)](#).”

*See Digital Media Law Project, Access to Public Records in California.*

CHRCL has attached a copy of its complaint filed in California Superior Court seeking that the California Department of Corrections and Rehabilitation comply with the CPRA and disclose information it had collected regarding individuals in solitary confinement. The complaint filed in court, as well as the request to the CPRA are attached as a point of reference for practitioners looking to compel the records necessary for their case.

#### IV. Example

*Via certified mail*

Department of Defense  
Address

DRAFT

Re: Freedom of Information Request

To Whom It May Concern:

This request is made pursuant to the Freedom of Information Act (“FOIA”) on behalf of the \_\_\_\_\_ and \_\_\_\_\_ (hereinafter the “Requesting Parties”).

Location of documents sought

This request seeks documents in the possession of the Office of the \_\_\_\_\_.

Purpose of document request

The Requesting Parties seek access to the information described below in order to further their study and assessment of the federal Government’s knowledge of **SUBJECT**.

The assessments arrived at by the Requesting Parties along with documents released or summaries of such documents will be shared with interested non-profit organizations, religious entities, and U.S. policy makers, with the goal of increasing public understanding of the issues addressed in the requested documents and encouraging the formulation of proposals for national security consistent with international human rights norms.

Time to Respond

If expedited treatment is denied, and if you find it impossible to produce all documents called for by this request within the statutorily prescribed time limits, please produce all documents that are located by you within such time and advise us when you believe the remainder of the documents requested will be produced.

Request for fee waiver

Because the CHRCL is a non-profit organization, and because the information sought will be used solely for humanitarian purposes, we request that a fee waiver be granted in this matter. However, in the event a fee waiver is denied, we request you that process this request immediately and the CHRCL agrees to pay all fees reasonable incurred responding to this request while reserving its right to appeal any denial of the fee waiver request.

## Definitions

The terms “Document” or “Documents” as used in this request refer to all forms of communication preserved in some physical form, including, but not limited to, directives, files, indices, orders, reports, cables, telexes, telegrams, notes, letters, instructions, memoranda, data compilations, reviews, photographs, and transcripts, whether maintained in paper, digital, video, audio tape, or any other form.

## Documents requested

The Requesting Parties seek access to inspect and copy or copies the following Documents:

### 1. Detailed listing

## Handling claimed exemptions

If you locate Documents responsive to these requests regarding which you claim an exemption in whole or in part from disclosure, please identify (1) the author and his/her position in the Government, (2) the addressee(s), (3) the date of the document, (4) the general topic of the document, (5) the number of pages in the document, and (6) the specific exemption claimed. If you claim an exemption to part of a document, please produce the portion for which no exemption is claimed and provide the information listed above for the portion for which exemption is claimed. This will permit us to determine whether or not to seek administrative and/or judicial review of your claims of exemption.

If you have any questions please feel free to call Peter Schey at (323) 251-3223 or email at [pschey@centerforhumanrights.org](mailto:pschey@centerforhumanrights.org). If we do not hear from you by the expiration of the statutory time period, we will deem your non-response to be a denial of this request and may seek administrative review. Please advise us to whom the administrative appeal should be addressed.

Thank you for your consideration and assistance.

Sincerely,

Appendix



1. Sample CPRA Complaint
2. Sample FOIA Complaints
3. Sample Vaughn Motions
4. Sample Motion for Attorneys Fees