



Fagen Friedman & Fulfroft LLP

California Public Records Act Workshop

Santa Monica-Malibu Unified School District
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What We Will Cover

- The California Public Records Act
- Personal Accounts and Devices are Now Subject to the California Public Records Act. What next?



What Is A Public Record?

Definition in the law:

- "any writing[s] 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."



What Is A Public Record?

A “writing,” including:

- Handwritten, typewritten, emailed
- Photographs or video
- Letters, symbols, sounds
- Electronic documents
- “or combinations thereof . . . regardless of the manner in which the record has been stored.”



Really, What Is A Public Record?

- “Any record required by law to be kept by an officer, or which he keeps as necessary or convenient to the discharge of his official duty, is a public record.”
- “On the other hand, the mere fact that a writing is in the custody of a public agency does not make it a public record.”



City of San Jose v. Superior Court of Santa Clara County (2 Cal.5th 608)

- June 2009 – Records requestor Ted Smith sought 32 categories of public records from the City of San Jose, redevelopment agency and elected officials and staff.
- Documents concerned redevelopment in downtown San Jose.



City of San Jose

- Requests included emails and text messages “sent or received on private electronic devices used by” the mayor, two city council members, and their staffs.
- City disclosed communications made using City telephone numbers and email accounts but did not disclose communications made using individuals’ personal accounts.
- Smith sued.



City of San Jose – What Is A Public Record?

■ CA Supreme Court:

- “[W]riting must “contain[] information relating to the conduct of the public’s business.”
- “Generally, any “record kept by an officer because it is necessary or convenient to the discharge of his official duty . . . is a public record.” (Emphasis added.)
- “[A]n email to a spouse/partner complaining “my coworker is an idiot” would likely not be a public record.”



City of San Jose – Okay, What Now?

- CA Supreme Court:

- Focus on content over location or medium.
- Searches can be conducted in a manner that respects individual privacy.
- Search need only be “reasonably calculated to locate responsive documents.”



City of San Jose – Okay, What Now?

■ CA Supreme Court:

- Communicate requests to the custodian of records and the affected employees.
- Employees may search their own personal files, accounts, and devices for responsive records.
- As long as employees are trained to distinguish between public and personal records.
- Adopt policies that address *City of San Jose*.



City of San Jose – Don't Forget!

CPRA may apply to all platforms:

- Text messages
- Emails
- Whatsapp
- Snapchat
- Facebook
- Instagram



Legitimate Request under CPRA

- Reasonably describes identifiable record(s)
- Seeks *existing records*
- No obligation to answer questions but...



District's Duty to Assist

- District has duty to reasonably assist Requestor in clarifying request, and in identifying responsive records.
- Duty to assist no longer applies once records are provided, or exempted from disclosure by Govt. Code section 6254.



City of San Jose – Privacy Exemption

- Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.



CPRA Legal Action – Risks

- If a public agency withholds records, a requestor can challenge the public agency in court.
- The court decides whether or not the records must be disclosed.
- The court will award costs and reasonable attorney fees to a prevailing plaintiff.



Remember The CPRA's Purpose

- Transparency concerning the conduct of the people's business.
- Provide access to record.
- General policy of the PRA favors disclosure.



Best Practices

- Assume 99% of documents you create, read, and receive are public records.
- Public Records include: VIRTUALLY EVERYTHING.



San Jose Guidelines

- Well, is it a public record?
 - What's the content?
 - What's the context?
 - Purpose?
 - Audience?
 - Writing prepared by an employee within the scope of employment?



IS THIS A PUBLIC RECORD?

Ask yourself...	If "yes," then it is a Public Record
Was the message prepared while you were acting within the scope of your employment?	X
Was the message sent/received by you because it was necessary or convenient to the discharge of your job duties?	X
Does the message relate "in some substantive way to the conduct of the public's business"?	X
Is the message about "official agency business"?	X
Does the message appear to be sent/received as part of your role as a District employee, administrator or Board member?	X



Consider these factors:	If “yes,” then the record is likely a Personal Record
Was the message completely unrelated to the discharge of your job duties?	X
Does the message relate solely to you as a private citizen?	X
Was the message sent/read solely in your capacity as a private citizen and not as an administrator?	X
Was the purpose of the message purely personal rather than public?	X
Did the message “relate to the conduct of the people’s business” or your personal business?	X



The California Supreme Court related that these factors need to be examined in each instance:

- (1) The content of the record;
- (2) The context in, or purpose for, which it was written;
- (3) The audience to whom it was directed; and
- (4) Whether the writing was prepared by an employee acting or purporting to act within the scope of his or her employment.

“Whether a writing is sufficiently related to public business will not always be clear.”





Thank You!





Resources

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