INSTITUTE FOR LOCAL GOVERNMENT℠

THE ABCs OF OPEN GOVERNMENT LAWS

The underlying philosophy of the open government laws is that public agency processes should be as transparent as possible. Such transparency is vital in promoting and sustaining the public's trust in government.

This concept of governmental transparency is so important to the public that 83 percent of voters supported adding it to California's constitution by adopting Proposition 59 in 2004.[1] California's open government laws[2] require public officials to:

A Conduct meetings of public bodies openly, except for limited circumstances under which the law allows the public's business to be conducted privately in closed sessions.

B Allow the public to participate in meetings of public bodies through a public comment process.

C Allow inspection and copying of public records, except when non-disclosure is authorized by law.

Beyond Legal Minimums

It is important to note that the requirements discussed in this pamphlet are legal minimums for local government transparency in decision-making. Local agencies can provide for greater transparency.

In thinking about how an agency might provide for greater transparency, questions local agency officials might ponder include the following:

1) How can the agency make public information more readily available and easily understandable by the public to promote public trust and confidence in the agency and demonstrate the agency's commitment to transparency?

2) Are there kinds of information that are already publicly available in some form, but could be made available more conveniently to the public (for example, through voluntarily posting the information on the agency's website or including links on the agency's website to where information is available on other websites)?[3]

3) What kinds of information might be of interest to a cross-section of the public relating to the agency's operations and decision-making processes? Are there ways this information can be made available without individual members of the public having to ask for it?

Ongoing consideration of these kinds of questions enables a local agency's officials to engage in collective discussion and decision-making about ways in which their agency can set its sights higher than the minimum requirements of the law.

A Conducting the Public's Business in Public

General Rules

Under the Ralph M. Brown Act ("Brown Act"),[4] elected and most appointed local-agency bodies — which include many advisory committees — must conduct their business in open and public meetings.[5]

A "meeting" is any situation involving a majority of a public body in which agency business is transacted or discussed. Therefore, outside of a properly noticed and agendized meeting, a majority of the body cannot talk privately about a matter of agency business no matter how the communication occurs — whether indirectly or directly — by telephone or e-mail, through a social media platform, or at a local coffee shop.[6]

The public must be informed of: (1) the time and place of and (2) the issues to be addressed at each meeting. In general, public officials may only discuss and act on items included on the posted agenda for a meeting. The agenda must be posted at least 72 hours in advance of a regular meeting and written in a way that informs people of what business will be discussed. Members of the public may request a copy of the agenda packet be mailed or emailed to them at the time the agenda is posted or upon distribution to the governing body.[7] Local agencies that have agency websites must also post these materials on their websites.[8]

Either the presiding officer or a majority of the members of a local agency's governing body may call for a "special" meeting of the body to discuss certain matters, which occurs outside the normally scheduled time for a regular meeting. In order to hold a special meeting, the local agency must post the agenda in a location accessible to the public and on the agency's website (if it has one) at least 24 hours before the special meeting is to convene.[9] Moreover, the local agency must deliver at least 24 hours' written notice to each member of the governing body and newspapers and radio or television stations requesting such notice.[10]

Key Things to Know

- Advisory Bodies. Advisory bodies formally created by the governing body are subject to the Brown Act. In some cases, committees of less than a quorum of the public body are also subject to the Brown Act.[11] However, a so-called "ad hoc" committee is generally not subject to the Brown Act if it comprises less than a quorum of the body, serves a discrete purpose, is temporary in nature, and dissolves at the conclusion of its work.[12]

- Serial Meetings. Avoid unintentionally creating a "serial" meeting — a series of communications that result in a majority of the body's members discussing, deliberating, or taking action on a matter of agency business.

Example:

If two members of a five-member public body consult outside of a public meeting (which is not in and of itself a violation) about a matter of agency business and then one of those individuals consults with a third member on the same issue, a majority of the body has consulted on that issue. Note the communication does not need to be in person and can occur through a third party. For example, sending or forwarding e-mail can be sufficient to create a serial meeting, as can a staff member polling the body's members in a way that reveals the members' positions to one another.[13]

Social Media. Members of a public body cannot use social media platforms to discuss among themselves agency business. To that end, one member is prohibited from responding directly to any communication, including "likes" or comments, on social media regarding agency business that is made, posted, or shared by any other member of the same body.[14]

Permissible Gatherings. Not every gathering of a majority of members of a public body outside a noticed meeting violates the law. For example, a violation would not occur if a majority of the members attend the same educational conference or public meeting not organized by the local agency as long as the members do not discuss among themselves agency business[15], except when the discussion of agency business is part of the scheduled program of the conference or public gathering.[16] Nor is attendance at a social or ceremonial event in itself a violation.[17] The basic rule to keep in mind is a majority of the members cannot gather and discuss agency business except at an open and properly noticed meeting.

Closed Sessions. The Brown Act includes provisions for private discussions, known as "closed" sessions, of the members and staff under very limited circumstances (see "Typical Closed Sessions" below).[18] The reasons for holding the closed session must be noted on the agenda and different disclosure requirements apply to different types of closed sessions.[19] A governing body must report in open session certain actions, and the vote of each member, taken by the body in the preceding closed session, including but not limited to: the body's approval of an agreement concluding real estate or labor negotiations; the body's instruction to legal counsel regarding the initiation, defense, or settlement of litigation; pension fund investment transactions authorized by the body; and actions taken by the board affecting the employment status of an agency employee.[20]

Disclosure of Confidential Information Prohibited. The decision to disclose confidential information received in closed session is one that is generally made by the body as a whole, not individual members.[21] Among the consequences for unlawful disclosure is referral to the grand jury, which has authority to remove officials for willful misconduct in office.[22]

Posting and Following the Agenda. In general, public officials may only discuss and act on items included on the posted agenda for a meeting.[23] However, public officials or staff may briefly respond to questions or statements during public comments that are unrelated to the agenda items. Officials can also request staff to look into a matter or place a matter on the agenda for a subsequent meeting.[24] Only under certain circumstances specified by statute, where urgent action is required, and then only upon a 2/3 vote of the body, can matters that are not on a regular meeting agenda be discussed or acted upon.

Taping or Recording of Meetings Is Allowed. Anyone attending a meeting may photograph or record it unless the governing body makes a reasonable finding that the noise, illumination, or obstruction of view will disrupt the meeting.[25] Any meeting tape or film made by the local agency becomes a public record that must be made available to the public for at least 30 days.[26]

Sign-In Must Be Voluntary. Members of the public cannot be required to register their name or satisfy any other condition for attendance. If an attendance list is used, it must clearly state that signing the list is voluntary.[27]

Teleconferencing. A public body may conduct meetings through teleconferencing, provided the public body complies with specified requirements, including conducting all votes by roll call, providing proper notice and agenda posting, and allowing public access and participation. Additionally, agendas must be posted at each teleconference location, each location must be identified in the notice and agenda, and at least a majority of members must participate from within the agency's jurisdiction, unless an exception applies.[28]

Reasonable Accommodations. Public bodies must have a procedure to receive and respond to requests by members of a public body for a reasonable accommodation to attend meetings.[29] Members of public bodies may participate in meetings remotely as an accommodation for a disability.

Eligible Legislative Bodies. Beginning July 1, 2026, eligible legislative bodies include city councils and county boards of supervisors in jurisdictions with populations of 30,000 or more, city councils in counties with populations of 600,000 or more, and certain special districts with large populations, employees, or revenues.[30] Eligible legislative bodies must comply with additional open government requirements.

Eligible Legislative Body Agenda Translation and Meeting Interpretation. Beginning July 1, 2026, eligible legislative bodies must translate meeting agendas into languages that are spoken by at least 20% of the jurisdiction's population with limited English proficiency, provide an accessible webpage detailing the public meeting process and participation methods, and assist members of the public with interpretation requests.[31]

Open-Government-Is-Good-Politics Note

The media are highly vigilant in monitoring compliance with open government requirements — and quick to report on perceived violations.

Typical Closed Sessions

Local agency open meetings laws vary in terms of what kinds of closed sessions are allowed. Consult with agency counsel concerning: (1) whether a particular type of closed session is available to your agency, (2) under what circumstances, and (3) what disclosure requirements apply before and after the closed session. The following list is illustrative of common topics that a public agency may discuss in closed session:

Personnel. To consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee, or to hear complaints against anemployee.[32]

Litigation. To confer with or receive advice from an agency's legal counsel with respect to actual or potential litigation.[33]

Real Estate Negotiations. To provide direction to the agency's negotiator on the price and terms of payment under which the agency will purchase, sell, exchange, or lease real property.[34]

Labor Negotiations. To meet with the agency's labor negotiator regarding salaries and benefits and other matters within the scope of labor negotiations.[35]

Student Disciplinary Issues. (For school districts and community college districts) To consider discipline of a student if a public hearing would result in disclosure of prohibited information, after notifying the student (or parents in the case of minor students) and if they do not request a public hearing.[36]

License Applicants with Criminal Records. To allow an agency to determine whether a would-be licensee with a criminal record is sufficiently rehabilitated to obtain the license.[37]

Public Security. To confer with designated law enforcement officials regarding threats to public facilities and services or the public's right to access those services and facilities, or threats to critical infrastructure controls or critical infrastructure information relating to cybersecurity.[38]

Multi-jurisdictional Law Enforcement Agency. To discuss ongoing criminal investigations.[39]

Hospital Peer Review and Trade Secrets. To discuss issues related to medical quality assurance or trade secrets.[40]

B The Public's Right to Participate in Meetings

General Rules

Democracy in Action. The public has a right to address the public body at any open session meeting. A public official's role is to both hear and evaluate these communications.

The Public's Right to be Heard. Generally, every regular meeting agenda must provide an opportunity for the public to address the governing body on any item within the body's jurisdiction, not just those items listed on the meeting agenda.[41] If the issue of concern is one pending before the body, the opportunity for public comment must be provided before or during the body's consideration of that issue.[42] For a special meeting, the governing body only needs to provide an opportunity for the public to address the body on the specific items listed on the special meeting notice — versus anything within the body's jurisdiction — before or during the board's consideration of those items.[43]

Public Participation in Teleconferenced Meetings. If a public body holds a teleconference meeting, members of the public participating remotely must have the opportunity to provide comments in real-time. The public body cannot require comments to be submitted in advance.[44]

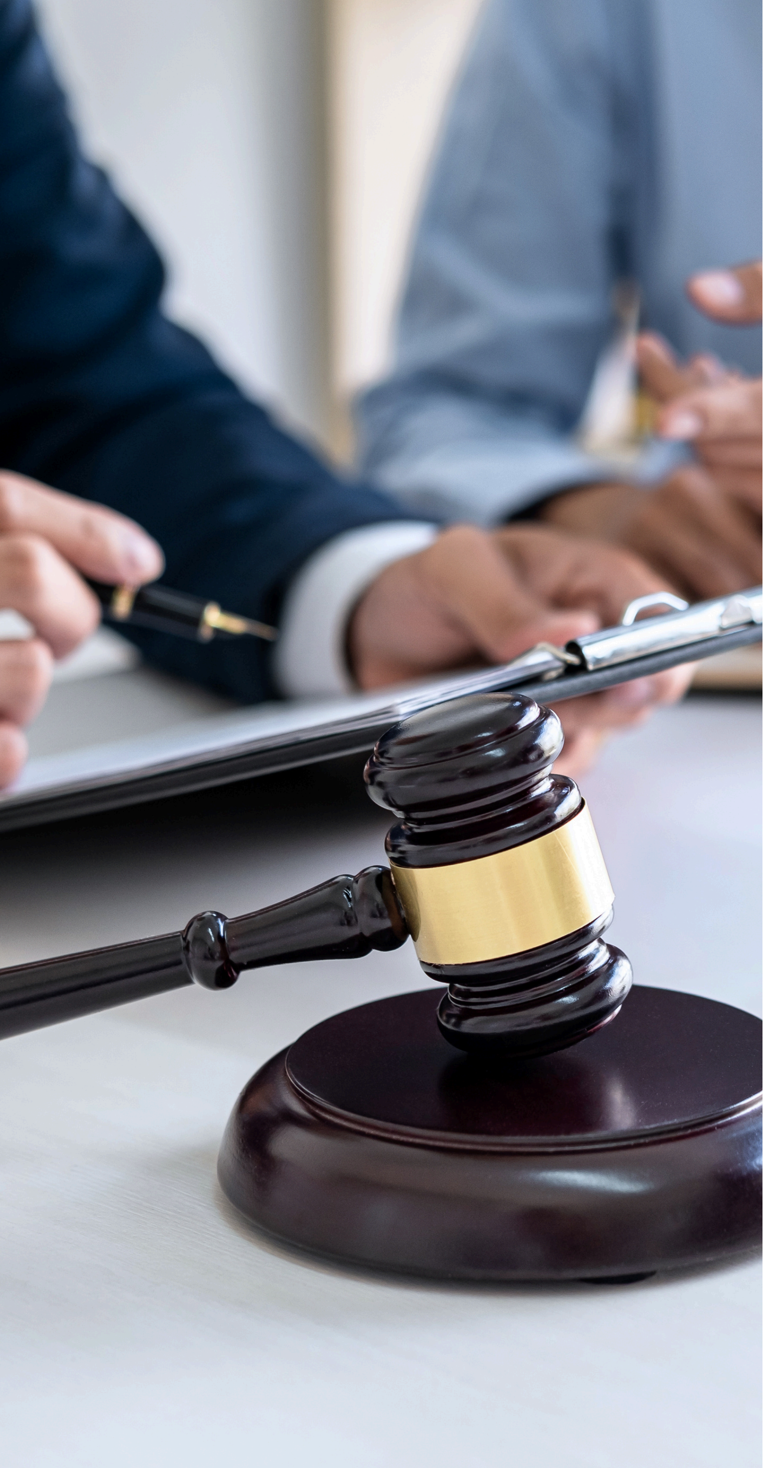
Eligible Legislative Bodies Hybrid Meeting Requirements. Eligible legislative bodies must provide members of the public the option to attend open meetings remotely via telephonic or audiovisual platforms. Eligible legislative bodies must also adopt a policy on how to handle the disruption of telephonic or internet service during a meeting.[45]

Key Things to Know

Anonymous Speech Must Be Permitted. Members of the public cannot be required to give their name or address as a condition of speaking.[46] The clerk or presiding officer may request speakers to complete a speaker card, or identify themselves "for the record," but must respect a speaker's desire for anonymity.

Reasonable Time Limits May Be Imposed. Local agencies may adopt reasonable regulations to ensure everyone has an opportunity to be heard in an orderly manner.[47] For example, some agencies impose a uniform time limit on each person providing public comments on an issue.

Dealing with Dissension. The chair cannot stop speakers from expressing their opinions or their criticism of the body.[48] If an individual or group willfully interrupts a meeting and order cannot be restored, the room may be cleared or the disrupting individual — including an individual taking part in a teleconferenced meeting — may be removed given a warning.[49] The chair may remove an individual for disrupting a meeting, including any teleconferencing meeting.[50] Generally, the chair must first warn an individual that their behavior is disruptive before the individual can be removed, unless the individual has made a threat of violence. Members of the media, except those participating in the disturbance, must be allowed to remain and only matters on the agenda can be discussed. A local agency may establish a procedure for readmitting individuals that did not participate in the disturbance after the room is cleared.[51]



Consequences of Non-Compliance with Open Meeting Requirements

Nullification of Decision. Many decisions that are not made according to the open meeting laws are voidable.[52] After asking the agency to cure the violation, either the district attorney or any interested person may sue to have the action declared invalid.[53]

Criminal Sanctions. Additionally, members of the body who intentionally violate the open meeting laws are guilty of a misdemeanor.[54] The penalty for a misdemeanor conviction is imprisonment in county jail for up to six months or a fine of up to $1,000 or both.[55]

Other Measures. The district attorney or any interested person may sue to remedy past and prevent future violations of the open meeting laws.[56] Another remedy, under certain circumstances, is for a court to order that all closed sessions be tape-recorded.[57] Regulations of public participation beyond those allowed by applicable statutory and constitutional law can be a civil rights violation.

Attorneys' Fees and Costs. Attorneys' fees and costs may be awarded to those who successfully challenge open meeting violations.[58]

A Note on Civility in Public Discourse

For communities to be able to work through difficult issues, it's important that people be able to express differing opinions about what best serves the public's interests in a respectful and civil manner. This includes focusing on the merits of one's position. Even if people disagree about what's best for the community, that doesn't mean that those with different views are bad people. Treat others with the same respect as one would like to be treated. Questioning others' motives or intelligence, being hostile, engaging in name-calling, or making threats undermines one's effectiveness. No matter how passionate one is about an issue, the goal should be to conduct oneself in a manner that will enhance one's credibility and reputation as a thoughtful member of the community.

C The Public's Right To Access Agency Documents and Records

General Rule

Pursuant to the California Public Records Act (CPRA), public agencies must generally make their records available for inspection by the public and provide copies of records upon request.[59] Disclosure is the rule; withholding is the exception. In addition, there are numerous state laws that require affirmative disclosure of certain kinds of information (for example, by posting the information on the agency's website).[60]

Key Things to Know

Agenda and Meeting Materials. The Brown Act states that copies of the agenda materials and other documents not exempt from disclosure that are distributed to the majority of a local agency's governing body, at or before an open meeting, are public records under the CPRA, and consequently must be available to the public.[61] Any nonexempt materials prepared by the local agency or a member of the governing board that are distributed during an open meeting must be available for public inspection at the meeting.[62] Materials prepared and distributed during the meeting by some other person must be made available for public inspection after the meeting.[63]

Scope of Access. The public has the right to see nonexempt materials that are created as part of the conduct of the people's business.[64] These materials include any writing that was prepared, owned, used, or retained by a public agency.[65] This can include documents, computer data, e-mails, facsimiles, and photographs, including public records retained on an employee or official's personal device or account.[66] However, the CPRA does not require agencies to create writings in the first instance or recreate writings that were legally disposed of previous to receiving the request.[67]

Presumption and Exceptions. Written materials are presumed to be a public record unless an exception applies.[68] There are multiple exceptions (see "Common CPRA Exemptions" below). For example, personnel records are typically exempt from disclosure because their release may violate an employee's privacy rights.[69]

Responding to Requests. In most cases, within ten calendar days[70] of receiving a CPRA request, a local agency must respond to the requester notifying them of whether there are nonexempt records responsive to the request that the agency will disclose and the estimated date and time when the records will be made available.[71] If the local agency is unable to determine what records the requester seeks, the local agency must assist the requester with revising the request so that it seeks more easily identifiable records.[72] Although the CPRA sets a specific deadline for responding to a records request, the CPRA simply states that the nonexempt records must be actually disclosed to the requester "promptly."[73] The public's right of access to public records is broadly construed[74] and applies to many documents that public officials might otherwise assume are protected from disclosure.

Consequences of Violation

Anyone can sue the agency to enforce their right to access public records subject to disclosure.[75] If the agency loses or otherwise produces the records as the result of the lawsuit, it must pay costs and attorneys' fees.[76]

Common CPRA Exemptions

A local agency may only refuse to disclose records if one or more of the exemptions in the CPRA applies. If an agency is withholding any records pursuant to one or more applicable exemptions, the response to the requester must be in writing and identify the exemption(s) invoked to justify the nondisclosure.[77] The following list is illustrative of some of the most commonly applicable CPRA exemptions:

Drafts. Exempts preliminary drafts, notes, or other interagency or intra-agency memoranda not retained in the agency's ordinary course of business if the public's interest in nondisclosure clearly outweighs the public's interest in disclosure.[78]

Pending Litigation. Exempts documents prepared in support of ongoing or anticipated litigation.[79]

Personal Privacy. Exempts from disclosure personnel files, medical records, or other such files, the disclosure of which would constitute an unwarranted invasion of personal privacy.[80]

Law Enforcement Records. Generally exempts law enforcement records related to investigations, complaints, and security procedures.[81] In addition, certain types of police records involving officer misconduct or use of force may have to be disclosed under certain conditions.[82]

Public Interest Exemption. This "catchall" exemption allows a local agency to withhold a writing if, given the facts of a particular situation, the agency can demonstrate that the public interest served by not making the writing public clearly outweighs the public interest in disclosing the writing (for instance, not disclosing the personal contact information such as names, addresses, and phone numbers of individuals when anonymity would help to protect their safety and wellbeing.)[83]

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References

[1] See Cal. Const. Art. I, § 3 (Proposition 59 on the 2004 ballot).

[2] See generally Cal. Gov't Code §§ 54950 and following (for cities, counties, special districts and school districts); Cal. Educ. Code § 72121 and following (for community college district governing boards).

[3] See e.g., local agency financial information made available on the State Controller's website: http://www.sco.ca.gov/ard_locrep_annual_financial.html. The State Controller publishes information relating to local official compensation as well. See http://publicpay.ca.gov/.

[4] See generally Cal. Gov't Code §§ 54950-63 (for cities, counties, special districts, and school districts). For community college district governing boards, which are not subject to the Brown Act but have similar opening meeting requirements, see Cal. Educ. Code §§ 72121-29.

[5] See Cal. Gov't Code § 54952.2(a); Cal. Gov't Code § 54954.2(a); Cal Gov't Code § 54953.

[6] See Cal. Gov't Code § 54952.2(b); Cal. Educ. Code § 72121.

[7] Cal. Gov't Code § 54954.1.

[8] Cal. Gov't Code § 54954.2(a).

[9] Cal. Gov't Code § 54956(a).

[10] Cal. Gov't Code § 54956(a).

[11] Cal. Gov't Code § 54952(b).

[12] See Cal. Gov't Code § 54952(b).

[13] See Cal. Gov't Code § 54952.2(b).

[14] Cal. Gov't Code § 54952.2(b)(3).

[15] Agency business means any business of a specific nature that is within the subject matter jurisdiction of the public body.

[16] Cal. Gov't Code §§ 54952.2(c)(2), (3), (4).

[17] Cal. Gov't Code § 54952.2(c)(5).

[18] See generally Cal. Gov't Code §§ 54956.5 – 54957.10; Cal. Educ. Code § 72122.

[19] See Cal. Gov't Code §§ 54957.1, 54957.7.

[20] Cal. Gov't Code § 54957.1(a).

[21] See Cal. Gov't Code § 54963(a).

[22] See Cal. Gov't Code § 54963(c)(3).

[23] Cal. Gov't Code § 54954.2; Cal. Educ. Code § 72121.5.

References (Continued)

[24] Cal. Gov't Code § 54954.2(a)(2)(E)(3); Cal. Educ. Code § 72121.5.

[25] Cal. Gov't Code § 54953.5(a).

[26] Cal. Gov't Code § 54953.5(b).

[27] Cal. Gov't Code § 54953.3.

[28] Cal. Gov't Code § 54953.

[29] Cal. Gov't Code § 54953.

[30] Cal. Gov't Code § 54953.4(e)(2).

[31] Cal. Gov't Code § 54953.4(b)(2)(A).

[32] Cal. Gov't Code § 54957(b).

[33] Cal. Gov't Code § 54956.9.

[34] Cal. Gov't Code § 54956.8.

[35] Cal. Gov't Code §§ 3549.1 (school and community college districts), 54957.6 (other local agencies).

[36] Cal. Educ. Code §§ 35146, 72122.

[37] Cal. Gov't Code § 54956.7.

[38] Cal. Gov't Code § 54957(a).

[39] Cal. Gov't Code § 54957.8.

[40] Cal. Gov't Code §§ 37606, 37624.3; Cal. Health & Safety Code §§ 1461, 1462, 32106, 32155.

[41] Cal. Gov't Code § 54954.3(a); Cal. Educ Code § 72121.5.

[42] Cal. Gov't Code § 54954.3(a).

[43] Cal. Gov't Code § 54954.3(a).

[44] Cal. Gov't Code § 54953.8.

[45] Cal. Gov't Code § 54953.8.

[46] Cal. Gov't Code § 54953.3.

[47] Cal. Gov't Code § 54954.3(b); White v. City of Norwalk, 900 F.2d 1421, 1425 (9th Cir. 1990).

[48] Cal. Gov't Code § 54954.3(c); Perry Educational Association v. Perry Local Educators' Association, 460 U.S. 37, 46 (1983).

[49] Cal. Gov't Code § 54957.95.

[50] Cal. Gov't Code § 54957.95.

[51] Cal. Gov't Code § 54957.9.

[52] Cal. Gov't Code § 54960.1; Cal. Educ Code § 72121(b).

[53] Cal. Gov't Code § 54960.1; Cal. Educ Code § 72121(b).

[54] Cal. Gov't Code § 54959.

[55] See Cal. Penal Code § 19.

56 Cal. Gov't Code § 54960(a).

[57] Cal. Gov't Code § 54960(b).

[58] Cal. Gov't Code § 54960.5.

[59] See Cal. Gov't Code §§ 7920.000 and following.

[60] See e.g., 2 Cal. Code Regs. § 18944(c)(3) (relating to gifts to public agencies). Note that the State Controller compiles and publishes information relating to local official compensation as part of local agencies' annual financial reporting. See generally Cal. Gov't Code §§ 12463(a) (requiring the report), 53892 (describing contents of the report).

[61] Cal. Gov't Code § 54957.5(a).

[62] Cal. Gov't Code § 54957.5(c).

[63] Cal. Gov't Code § 54957.5(c).

[64] See generally Cal. Gov't Code §§ 7920.000 and following.

[65] Cal. Gov't Code § 7920.530.

[66] Cal. Gov't Code § 7920.545; City of San Jose v. Superior Court (2017) 2 Cal.5th 608.

[67] See Cal. Gov't Code § 7920.530 subd. (a) personal device; Haynie v. Superior Court (2001) 26 Cal.4th 1061; 71 Ops.Cal.Atty.Gen. 235 (1988).

[68] International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court (2007) 42 Cal.4th 319, 329; State ex rel. Division of Industrial Safety v. Superior Court (1974) 43 Cal. App. 3d 778; Cook v. Craig (1976) 55 Cal. App. 3d 773.

[69] Cal. Gov't Code § 7927.700.

[70] This can sometimes be extended to 14 calendar days, Cal. Gov't Code, § 7922.535.

[71] Cal. Gov't Code § 7922.535.

[72] Cal. Gov. Code § 7922.600; State Board of Equalization v. Superior Court (1992) 10 Cal.App.4th 1177.

[73] Cal. Gov. Code § 7922.530; 88 Ops.Cal.Atty.Gen. 153 (2005); 89 Ops.Cal.Atty.Gen. 39 (2006).

[74] Getz v. Superior Court of El Dorado County (2021) 72 Cal.App.5th 637.

[75] Cal. Gov't Code § 7923.000.

[76] Cal. Gov't Code § 7923.115.

[77] Cal. Gov't Code § 7922.000.

[78] Cal. Gov't Code § 7927.500.

[79] Cal. Gov't Code § 7927.200.

[80] Cal. Gov't Code § 7927.700.

[81] Cal. Gov't Code § 7923.600–7923.625.

[82] Cal. Pen. Code § 832.7.

[83] Cal. Gov't Code § 7922.000; Times Mirror Co. v. Superior Court (1991) 53 Cal.3d 1325.