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Let the sunshine in

Understanding and enforcing California Public Records Act requests


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By Miles B. Cooper

The lawyer was mystified. The lawyer represented a family whose son was shot by a security guard. The local sheriffs had investigated the incident and turned it over to the district attorney. The DA declined to prosecute the security guard. The sheriffs' department now refused to release the incident report after the DA's decision. The reasons given changed in each correspondence round. "It might be time to get a judge involved," thought the lawyer.

We the people

As democratic citizens, we have broad access to our government's activities and decision-making process. In California, the California Public Records Act, colloquially known as the Sunshine Act, governs information access. Our federal government is equally beholden to the people under the Freedom of Information Act. While FOIA is fascinating, we'll focus on California here. California's Government Code sections 6250-6270.1 govern state, county, and municipal information requests as well as enforcing requests.

The rules are lengthy but straightforward. Under Government Code section 6253, subdivision (c), an agency must respond to a request within 10 days. In unusual circumstances, records archived in a field office for example, the time limit can be extended for up to 14 additional days, provided the requester is given a written explanation why. In articulating the disclosure process, the statute includes words like "assist," and "[p]rovide suggestions for overcoming any practical basis for denying access…" (Govt. Code § 6253.1, subds. (a)(1)-(3).) The Sunshine Act's general tenor? Help deliver information. On costs, the information disclosure must be limited to the direct cost of copying the records in electronic format (i.e., a thumb drive or disk plus mailing) unless the request requires data compilation, extraction, or programming. (Govt. Code § 6253.9.)

Disclosure exceptions

Not everything is subject to disclosure. Most of the exceptions are contained in Government Code section 6254. The exceptions are lengthy and include predictable categories – personal privacy matters, security issues, and strategy. One cannot request a City Attorney's litigation file in an ongoing matter, no matter how nice that might be. One could, however, request all information on claims made and paid for bicyclist injuries on Main Street. Read the section before making an esoteric request. If an agency denies a request, the agency must provide written justification and expressly explain why the requested items are exempt. (Govt. Code § 6255.)

Making the request

How does one structure a successful request? Make the request in writing, with clarity, and offer to answer questions to assist in the response. A request for, "The security video from San Francisco MUNI bus line 38 that was at the intersection of Geary Street and Webster Street around 1:00 p.m. on December 22, 2020," is sufficient. Adding, "We are looking for video of a bicycle versus car incident at that time believed to be captured by a passing bus given witness reports," ups the likelihood of success even if it is not required.

What we've got here is failure to communicate

Some agencies deny access to objectively accessible material. There's a cottage Sunshine Act legal industry – just ask any investigative journalist digging around City Hall about the spurious denials they've received. Fortunately, the court enforcement procedure is simple and toothy. Under Government Code sections 6258-6259, filing a verified petition in the county's Superior Court starts the process. The court orders the officer or person charged with withholding the records to disclose the records, conducts an in camera review, and allows for briefing, evidence, and oral argument. If the court finds the agency's refusal unjustified under Government Code sections 6254 or 6255, the public official is ordered to make the record public. The code specifies that the objective is to secure a decision in the earliest possible time.

The teeth? Costs and reasonable attorneys' fees. Under Government Code section 6259, subdivision (d), if the record is ordered disclosed, the requester is entitled to court costs and reasonable attorneys' fees. The teeth can bite both ways, though. If the requester's case is "clearly frivolous," the court shall award court costs and reasonable attorneys' fees to the public entity.

Don't immediately respond to a denial with court action. Just like a discovery dispute, engage in written efforts to help the agency see the error of its ways. Be polite and direct. The goals are twofold: ideally to obtain the material without a court fight but moreover to have some nice exhibits to the petition demonstrating the agency's failures and one's own reasonableness.

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Back to our lawyer and the difficult sheriffs. The lawyer made a final written attempt to obtain the material without court intervention. The sheriffs' inconsistent denials became the verified petition's exhibits. A filing, some briefing, and a hearing later and the report was in the lawyer's hands. And with it a bill for the needless cost and wasted time required to slice through the agency's improper denial.

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