csba LEGAL UPDATE

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What to do when you receive a California Public Records Act request

A large number of CSBA members recently received a request by Capitol Resource Institute, a California-based organization, for records regarding how each of them responded to Education Code Section 51930-51937, the California Healthy Youth Act.

The following information is intended to provide a concise explanation of the statute governing requests for public records and may be helpful as school districts and county offices of education approach this particular request and other similar requests.

CRI's requests are not unusual or remarkable. Rather, the chatter they generated among public school leaders stemmed from the nature of the subject matter — comprehensive sexual health education — which includes controversial topics such as education on pregnancy, contraception, and sexually transmitted infections and HIV prevention education.

Under Government Code Section 6250-6270.7, the **California Public Records Act , members of the public have a right to inspect and request a copy of records maintained by state, local and other public agencies to ensure that those agencies operate in a transparent manner.** In exercise of that right, a member of the public may request records maintained by a public agency in the normal course of its business, and that agency is under a legal obligation to produce the records promptly, without delay. However, some public records are exempted from that requirement and may be withheld from disclosure. **Distinguishing between public records that must be disclosed and those that may be withheld is the main task for school districts when a CPRA request is received.** Fortunately, Government Code Section 6253 provides some guidance on this, particularly with regards to the timing of a response when a request for public records is received.

Within 10 days from receiving a CPRA request, the district must make a determination whether the request, in whole or in part, seeks disclosable records in the district's possession, and promptly notify the person who made the request of its determination and the reasons for that determination. If the district's determination is that the records are disclosable public records, the district's notice to the person who made the request must state the estimated date and time when the records will be made available. While disclosure of records may not be unreasonably delayed, districts and county offices should understand that the 10 days specified in law is only a limit as to when response to a request must be given, not a deadline for producing the records.

Once the disclosable records have been identified and are ready for production, an exact copy of an identifiable record must be provided to the person who made the request unless it is impracticable to do so, and information maintained in electronic format must be made available in electronic format. Additionally, a district or county office may respond to a CPRA request by posting related public records on its internet website and directing a person who requests the record to the location on its website where the record is posted. If the person who requested the record is then unable to access or reproduce the record from the website, the district or county office must provide a copy of the public record to the person.

When the district determines that a CPRA request should be denied because the records, in whole or in part, are exempted from disclosure, the district must provide to the person who made the request, a written notification that includes a demonstration that the record in question is exempt by law or, in the case of the particular request, the public interest served by withholding the record clearly outweighs the public interest served by disclosure of the records requested. The notification must include the names and titles or positions of individuals responsible for the denial.

Other important considerations:

1) In "unusual circumstances," a district may extend the time for determining whether a request involves disclosable public records, by up to 14 days. To do so, the district must, in writing, notify the person who made the request of its reasons for the extension and the date on which the determination is expected to be made. Districts may not use "unusual circumstances" as a delay tactic. Any extension on account of an unusual circumstance is only permitted to the extent that the extension is reasonably necessary for the proper processing of the particular request involved. Government Code Section 6253 defines "unusual circumstances" as:

    a) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
    b) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
    c) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.
    d) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

2) Under certain circumstances, a district must, to a reasonable extent, assist a member of the public to make a focused and effective CPRA request that describes an identifiable record by:

    a) Assisting the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.
    b) Describing the information technology and physical location in which the records exist.
    c) Providing suggestions for overcoming any practical basis for denying access to the records or information sought.

3) There are costs associated with any release of public records, and districts and county offices are permitted, though not required, to charge a fee that reflects the direct cost of duplicating records to be disclosed. Generally, the cost of duplication of electronic records is limited to the direct cost of producing a copy of the record in electronic format. However, the person who made the request is required to bear additional costs, including the cost of constructing the record and the cost of programming and computer services necessary to produce a copy of the record, in either of the following circumstances:

   a) When, in order to make information maintained in electronic format available, the district or county office would have to produce a copy of the electronic record other than at a regularly scheduled interval.

   b) When the request would require data compilation, extraction or programming to produce the record.

Therefore, when any district or county office receives a CPRA request such as the CRI request, focus need not be on how controversial the issue involved is, but rather on analyzing the request in light of the agency's particular situation or circumstance, the dictates of the law, and adopted policy or regulation. CSBA's model BP and AR 1340 - Access to District Records contain necessary information for dealing with a CPRA request. CSBA model policies are available as a subscription service. Please contact the Policy Service Department for access to CSBA model policies.

NOTE: Determining whether a public record is disclosable may sometimes involve a complicated legal analysis. Legal counsel should be consulted in such situations.