

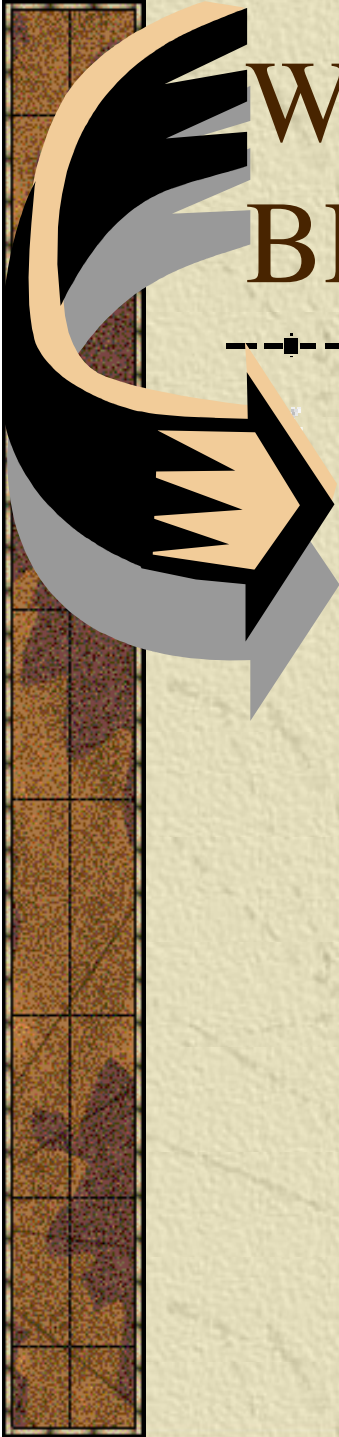
# California Sunshine Laws



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The Brown Act  
California Public Records Act

August 13, 2009  
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# WHO IS SUBJECT TO THE BROWN ACT

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All decision making committees,  
commissions, boards and councils  
must comply with Brown Act  
provisions



# MEETING ISSUES

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- ✦ Face to face meetings
- ✦ Serial meetings
- ✦ Individual contacts between public and member of board
- ✦ Teleconferencing
- ✦ Writings

# NOTICE AND AGENDA ISSUES

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- ✦ Regular Meetings
- ✦ Special Meetings
- ✦ Emergency Meetings
- ✦ Closed Sessions
- ✦ Adjournments and Continuances
- ✦ Location
- ✦ Special Procedures



# CLOSED SESSIONS

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## ✦ Authorized Exceptions to Brown Act

- ◆ Personnel
- ◆ Pending/Potential Litigation
- ◆ Health Authority Trade Secrets
- ◆ Health Authority Peer Review Body

## ✦ Narrow Interpretation

## ✦ Minute Book and Confidential Information

# PENALTIES, REMEDIES AND TIME LINES

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## ✦ Criminal Penalties

### ✦ Civil Penalties

- Injunction
- Void Action
- Attorney Fees

## ✦ Time Lines

- Open Meeting
- Closed Session
- Agency Response
- 15 Days





# The Public Records Act

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How It Affects Health Authority  
Officials and Employees  
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# The Rule for Public Records (Gov. Code section 6253)

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- ✦ Public records are open to inspection and copying at all times during the office hours of a local agency, and...
- ✦ Every person (including businesses and associations) has a right to inspect and copy any public record, unless...
- ✦ The agency shows a specific exemption from inspection and copying.



# What is a Public Record?

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✦ Any writing containing information related to the conduct of the public's business that is prepared, owned, used, or retained by any local agency.

✦ "Writing" = virtually every form of recording, including photographs and e-mails (not just words on paper)

# When E-mail is Public Record

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- ✦ When created or received by you in connection with your official business
- ✦ Initiating or authorizing transactions
- ✦ When documenting the formation or execution of policies and decisions



# When E-mail Not Public Record

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- ✦ Personal messages not related to official agency business
- ✦ Work-related, but not decision-making – distribution slips, cover sheets
- ✦ Drafts and notes
- ✦ Inter- or intra-agency memos not usually retained in ordinary business

# Prepared, Owned, Used, or Retained

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- ✦ Did you keep a writing because it's necessary or convenient for carrying out your duties? If "yes," then it's a public record.
- ✦ Merely keeping a writing isn't enough. It has to be linked to your duties!



# What's a Local Agency?

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✦ Counties

✦ Cities

✦ Special Districts

✦ School Districts

✦ Joint Powers Authorities, such as  
Health Authority

# Open to Inspection and Copying by Members of the Public

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- ✦ Any person can request a record
- ✦ Motive is irrelevant
- ✦ Usually must provide exact copies
- ✦ Request must reasonably describe an identifiable record
- ✦ Can it be found with reasonable effort?



# Open to Inspection and Copying by Members of the Public

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- ✦ People can ask for computer data – but you get to choose which format
- ✦ Cost is either a statutory fee or direct costs of copying (set by resolution)
- ✦ You cannot charge for *inspection*, only for *copying*
- ✦ No duty to create a record in order to respond to a request for records

# Personnel, Medical and Similar Files (Gov. Code 6254(c))

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- ✦ No blanket ban on personnel, medical or similar files
- ✦ Disclosure blocked only if it's *unwarranted invasion of privacy*.
- ✦ Employment contracts are public records



# Other Main Exceptions

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- ✦ Welfare and Medi-Cal records
- ✦ Mental health records
- ✦ Medical records – “protected health information” (HIPAA)

# The Catchall Exception (Gov. Code 6255)

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- ✦ When you can't find a specific exemption to disclosure
- ✦ On the facts of the particular case, the interest of secrecy *clearly outweighs* the interest served by disclosure.



# Bidding for Contracts

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- ✦ Agency issues a request for proposals.  
When are bids open to public inspection?
- ✦ Answer: After close of negotiations, but before Agency signs contract with winning bidder
- ✦ Best time for opening bids for inspection:  
When agenda is posted for meeting at which contract will be awarded

# Bidding for Contracts (cont.)

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- ✦ When agenda is posted and supporting materials, such as proposed contract, are made available to public, the bids can be made available for inspection
- ✦ Allows bidders to submit their best proposals so that Agency can have all the information it needs



# Health Authority Exception 1

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- ✦ Records revealing Health Authority's trade secrets are confidential for limited time
- ✦ "Trade secret" = information that has independent economic value from being secret, and is the subject of reasonable efforts to maintain its secrecy
- ✦ Secrecy is necessary for Health Authority to start a service, program, strategy, or plan, or add benefit or product

# Health Authority Exception 1 (continued)

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- ✦ Premature disclosure of trade secret would make it very likely that Health Authority would lose substantial economic benefit or opportunity
- ✦ This exception lasts for 2 years after Health Authority adopts service, program, benefit, etc. that is subject of trade secret
- ✦ After 2 years, open to public inspection



# Health Authority Exception 2

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- ✦ Records revealing Health Authority's payment rates for health care services are confidential, but...
- ✦ Payment rates listed in a contract are open to inspection 3 years after contract is signed
- ✦ Records of discussions, communications, and negotiations with health-care providers for payment rates are confidential forever



# Can You Waive an Exception to Disclosure?

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Yes – if you disclose a record that is  
otherwise exempt from disclosure!

(Gov. Code 6254.5)

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# What to Do When You Get a Request For Public Record

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Putting it all together

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# Checklist

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- ✦ Does the record exist?
- ✦ Is the request specific enough?
- ✦ Do any exceptions to disclosure apply?
- ✦ Send written notice of receipt of request to person requesting record (within 10 to 24 days)



## Checklist (cont.)

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- ✦ If requested records are exempt from disclosure, send a written denial of request that explains what records are withheld, why withheld
- ✦ If records can be disclosed, make available promptly