



**DEPARTMENT OF FAIR EMPLOYMENT  
AND HOUSING  
ENFORCEMENT DIVISION  
DIRECTIVE**

**DIRECTIVE NUMBER  
600  
DISTRIBUTION DATE  
November 9, 2007**

1. **SUBJECT: RESPONSE TO PUBLIC RECORDS ACT REQUESTS**
2. **PURPOSE:** To set forth the time frames and procedures for responding to requests for copying and inspection of records under the California Public Records Act (PRA), Government Code section 6250, et seq. and the Information Practices Act (IPA), Civil Code section 1798, et seq.
3. **BACKGROUND:** The Department of Fair Employment and Housing (DFEH) is required to respond to requests for copying and inspection of public records within specified time frames. "Public records" are generally defined as materials containing information related to the conduct of the public's business which are maintained by a State agency. The Department is further required to specifically identify any exemptions it claims would prohibit the production of the record(s) or segregable portions of the record(s). In setting forth this procedure, the Department has balanced the public's right to information with individual rights to privacy. (*City of San Jose v. Superior Court* (1999) 74 Cal.App.4<sup>th</sup> 1008, 1018.) As appropriate, the Department will err on the side of protecting the identity of complainants to prevent a "chilling effect" on the filing of complaints with the Department. (*City of San Jose*, at 1024.)
4. **PROCEDURES:**
  - A. **General Rules**
    - 1) Requests for the disclosure of information should normally be in writing. However, the PRA does not require a requestor to make a written request for the disclosure of information. Should the requestor not wish to provide a request in writing, the Custodian of Records will document the oral request in order that an appropriate entry may be made in the disclosure log. The documentation should include the specific request, date the request was made, and contact information if the request cannot be provided at the time of the request.
    - 2) Documents requested pursuant to a PRA request must be produced within a reasonable period of time, but no longer than 20 days following receipt of payment.

- 3) Questions regarding disclosure related issues will be promptly referred to the district office's assigned attorney by the District Administrator.
- 4) Prior to disclosing information, determine the manner in which the request is being made, i.e., subpoena, letter or e-mail.
  - a) Where the request is in the form of a subpoena, the request will be handled by the district office in accordance with Directive 603, "Response to Third-Party Subpoenas." A subpoena is not a PRA request.
  - b) Where the request is in the form of a letter, the Custodian of Records will determine who is making the request. If the request is from the individual to whom the information pertains, the request will be processed in accordance with the "Guidelines for Release of Case Information" (Attachment 1). Refer to the column marked "IPA." If the request is from a third party or if the file contains information that does not pertain to the requestor, the request will be processed in accordance with the "PRA column" in the "Guidelines for Release of Case Information" (Attachment 1).
- 5) The Custodian of Records for each district office is designated to handle requests for disclosure, as follows:
  - a) All requests for information from open case files will be referred to the District Administrator, who will assure compliance with this Directive. The District Administrator will contact the assigned attorney if there are questions. The process for requests for information from closed case files is set forth below. (Refer to Chapter 17, "Public Records Act Requests," of the Clerical Manual.)
  - b) The appropriate disclosure notifications will be prepared.
  - c) A "Declaration in Certification of Documents" (DFEH-400-04) will be prepared.
  - d) Disclosure logs will be maintained:
    - (1) A "Personal/Confidential Information Disclosure Log" (DFEH-400-10) will be prepared and placed in the case file being disclosed. All subsequent disclosures on the case will be recorded on this log.

- (2) A district office "Disclosure Log" (DFEH-400-12) will be completed and maintained by the Custodian of Records in a file folder, in disclosure date order for all disclosures.
- 6) When attempting to determine whether a complaint has been filed by an individual or against a certain respondent, the Custodian of Records should locate the individual's or organization's name and alternative spellings of the name, by:
  - a) Conducting a CMIS search.
  - b) Reviewing the list of company names in Chapter 2, "Filing Procedures," Exhibit 2-II, of the Clerical Manual. This list provides the correct spelling of some company names as they are input into CMIS.
  - c) Reviewing the list of respondent representatives and addresses in Chapter 7, "Service," Exhibit 7-II, of the Clerical Manual. This list provides the correct spelling of some company names as requested by the company.
  - d) Reviewing the Equal Employment Opportunity Commission's (EEOC) numeric and alphabetical list of charges that the EEOC originally filed and dual-filed on behalf of the Department.

**B. Time Frame for Written Response**

- 1) The Custodian of Records for each district office is responsible for responding to general PRA requests. However, the Public Affairs Unit is responsible for such requests from the media or members of the Legislature or Congress.
- 2) The district office will acknowledge in writing all requests for copying and inspection of records under the PRA within ten (10) calendar days from the date the request is received by the district office by completing and mailing to the requestor DFEH-200-15. (Gov. Code, § 6253, subd. (c).) The Public Affairs Unit shall respond to requests from the media or members of the Legislature or Congress within ten (10) days, as well.
- 3) In unusual circumstances, the 10-day time limit for initial acknowledgement may be extended by the District Administrator for up to 14 additional days by written notice to the requestor if necessary to properly process the request. (Gov. Code, § 6253, subd. (c).) "Unusual circumstances" are defined as those instances where additional time is needed to:

- a) Search and collect documents from district offices;
  - b) Search, collect and examine a voluminous number of distinct records that are the subject of one request; and
  - c) Consult with another agency having a substantial interest in the determination of the request. (Gov. Code, § 6253, subds. (c)(1), (2) and (3).)
- 4) When circumstances exist as provided under this section, the Custodian of Records will send a letter to the requestor within 10 days of the date the request was received stating the reason for the extension and date upon which the response will be available.

**C. Content of Written Response**

- 1) The written response shall indicate whether the Department has any of the requested records and, if so, whether they will be produced or are exempt from production in whole or in part under the provisions of the PRA. (Gov. Code, § 6253, subd. (c).) In the event no records exist which are responsive to the request, the Custodian of Records will prepare DFEH-400-14, "Certification In Response to Public Records Request," and send it to the requestor. This form will be signed by the District Administrator and mailed the same day the determination has been made that no records exist. This form is not to be used as a Departmental response to subpoenas.
- 2) The written response shall specify any photocopy charges (\$0.10 per page) and applicable postage that are to be remitted to the Department prior to obtaining copies of the requested records. (Gov. Code, § 6253, subd. (b).)
- 3) If a public record is requested in an electronic format, such record shall be provided in the requested format if available. The requestor will be charged an hourly rate for the staff time involved in producing a copy of the record in an electronic format. The requestor may also be charged the cost of any programming and computer services necessary to produce a copy of a record under either the following circumstances:
  - a) The request is for a record that is ordinarily only produced at specified intervals; or
  - b) The request requires data compilation, extraction or programming. (Gov. Code, § 6253.9.)

- 4) If the public records request is unclear or the Custodian of Records is unable to identify the records that are requested with sufficient clarity, the Custodian of Records, rather than deny the request, shall assist the requestor in drafting a request that reasonably identifies the available record or records, to the extent reasonable under the circumstances as described below:
  - a) To identify records and information which are responsive to the request or to the purpose of the request, if stated.
  - b) Describe the information technology and physical location in which the records exist.
  - c) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

**D. Manner and Content of Records Production**

- 1) The Custodian of Records or their designee shall review every document contained in the file requested for production or inspection prior to producing any information. This requirement also applies to records produced in electronic format.
- 2) Under the PRA, a public record must be disclosed, unless it is subject to a specific exemption provided under the Act. The Custodian of Records must specifically identify the exemption(s) under which a record, or portion of a record, is withheld. (Gov. Code, §§ 6253, 6254.) (Gov. Code, § 6254, subd. (k), incorporates privileges or confidentiality provisions from other state and federal laws. There are hundreds of Government Code sections that may apply depending on the type of public record in the Department's possession [see, e.g., Gov. Code, §§ 6275-6277].)
- 3) In all other circumstances, the decision to produce a record, or segregable portion thereof, involves the balancing of the public's right to monitor the functioning of their government against an individual's constitutional right of privacy. (Gov. Code, § 6255.)
- 4) **Note:** It is always proper to release unredacted copies of a record to the provider of the document.
- 5) In determining what portions of the records are exempt from disclosure, the Custodian of Records must consider the identity and status of the requestor (complainant, respondent or third party). The guidelines to be used in determining the portions of the record exempt from disclosure are set forth below.

- 6) Any and all information received from the Equal Employment Opportunity Commission in the course of investigating a case is to be withheld consistent with the confidentiality provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000e-8; Age Discrimination in Employment Act of 1967, 29 U.S.C. section 626; Equal Pay Act of 1963, 29 U.S.C. section 206(d); and Americans with Disabilities Act of 1990, 42 U.S.C. section 12188. EEO-1 reports are not to be produced including, but not limited to, the federal identification number or other information that would identify the reporting entity included on an EEO-1 report.

**E. Guidelines for Record Production: Third-Party Request**

- 1) The name of the complainant, even when the requestor provides the name of the complainant when making the request, will be redacted, unless it appears from the file materials that the complainant has already publicly disclosed the circumstances of his/her complaint. (Gov. Code, §§ 12962, 6255.) The evaluation of whether the complainant has waived his/her right to privacy by publicly disclosing the circumstances surrounding the complaint will not be based on reference to any material not in the case file.
- 2) The name of an individual respondent will be redacted, even if it has been identified by the requestor in the request, unless it appears from the file materials that the respondent's participation or involvement in the circumstances of the complaint have been publicly disclosed. (Gov. Code, § 6255.) It is not necessary to redact the name of the respondent when the respondent is a corporation or a public employee acting in his/her official capacity.
- 3) The name(s) and/or other identifying information of any third-party witness(es) will be redacted, unless the third-party witness is a public employee acting in his/her official capacity. (Cal. Const., Art. I, § 1; Gov. Code, § 6255.)
- 4) Home addresses, home telephone numbers, bank account numbers, social security numbers, driver's license numbers and dates of birth for all individuals will be redacted. (Cal. Const., Art I, § 1; Gov. Code, § 6254, subd. (c).)
- 5) Personal information, the disclosure of which would per se constitute an unwarranted invasion of privacy, will not be produced. Specifically, all personnel/employment files, medical files and banking/financial records will not be produced. (Gov. Code, § 6254, subd. (c).)
- 6) Do not produce any information gathered in the course of efforts to eliminate an unlawful practice through settlement efforts, such as

conference, conciliation, and persuasion. **Note:** Final settlement agreements are not exempt from production, but must be redacted as appropriate. (Gov. Code, §§ 6254, subd. (k), and 12963.7; Evid. Code § 1040, subd. (b)(1).)

- 7) Records that reflect notes, memoranda or legal opinions of any DFEH attorney will not be produced. (Gov. Code, § 6254, subd. (k); Code Civ. Proc., § 2018, subds. (a), (b), (c), and (d); Evid. Code, §§ 1040, subd. (b)(1), and 952 et seq.)
- 8) Information that reflects a communication between DFEH Legal and Enforcement staff or between DFEH Legal and Executive staff will not be produced. Such documents are protected by the attorney/client privilege. (Gov. Code, § 6254, subd.(k); Evid. Code, § 952.) **Note:** Progress memos are not exempt from production, but must be redacted as appropriate. (Gov. Code, § 11507.6. subd. (f).)
- 9) Records pertaining to pending litigation to which the Department is a party will not be produced. Such documents are exempt from disclosure until the pending litigation has been finally adjudicated or otherwise settled. (Gov. Code, § 6254, subd. (b).)
- 10) Preliminary drafts, notes or interagency or intra-agency memoranda that are not retained by the Department in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure, will not be produced. Such documents are exempt from disclosure. (Gov. Code, § 6254, subd. (d)(3).)
- 11) Records of investigations received from other state or local agencies for correctional, law enforcement or licensing purposes will not be produced. Such documents are exempt from disclosure. (Gov. Code, § 6254, subd. (f).)
- 12) Records that were provided to DFEH with a promise of confidentiality will not be produced. Such documents are exempt from disclosure. (Evid. Code, § 1040, subds. (a) and (b)(2).) **Note:** The promise of confidentiality means the Department agreed to keep the information confidential at the time it was received. A party cannot unilaterally designate such information as confidential.

F. **Guidelines for Record Production: Complainant or Complainant's Attorney Request**

- 1) If the complainant provided, prepared, or received the document in an unredacted state, the document does not need to be redacted regardless of the information contained in the document. If none of the above applies, the document will be redacted as set forth below.
- 2) The name(s) and/or other identifying information of any third-party witness(es) will be redacted, unless the third-party witness is a public employee acting in his/her official capacity. (Cal. Const., Art. I, § 1; Gov. Code, § 6255.)
- 3) Home addresses, home telephone numbers, bank account numbers, social security numbers, driver's license numbers and dates of birth for all respondents and witnesses will be redacted. (Cal. Const., Art. I, § 1; Gov. Code, § 6254, subd. (c).)
- 4) Personal information, the disclosure of which would per se constitute an unwarranted invasion of privacy, will not be produced. Specifically, all personnel/employment files, medical files and banking/financial records should not be produced. (Gov. Code, § 6254, subd. (c).)
- 5) Do not produce any information gathered in the course of efforts to eliminate an unlawful practice through settlement efforts, such as conference, conciliation, and persuasion. **Note:** Final settlement agreements are not exempt from production, but must be redacted as appropriate. (Gov. Code, §§ 6254, subd. (k), and 12963.7; Evid. Code § 1040, subd. (b)(1).)
- 6) Any record that reflects notes, memoranda, or legal opinions of any DFEH lawyer will not be produced. Such documents are protected by the attorney/client privilege. (Gov. Code, § 6254, subd. (k); Code Civ. Proc., § 2018, subs. (a), (b), (c), and (d); Evid. Code, §§ 1040, subd. (b)(1), and 952 et seq.)
- 7) Information that reflects a communication between DFEH Legal and Enforcement staff or between DFEH Legal and Executive staff will not be produced. Such documents are protected by the attorney/client privilege. (Gov. Code, § 6254, subd. (k); Evid. Code, § 952.) **Note:** Progress memos are not exempt from production, but must be redacted as appropriate. (Gov. Code, § 11507.6, subd. (f).)

- 8) Records pertaining to pending litigation to which the Department is a party will not be produced. Such documents are exempt from disclosure. (Gov. Code, § 6254, subd. (b).)
- 9) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the Department in the ordinary course of business will not be produced, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure. Such documents are exempt from disclosure. (Gov. Code, § 6254, subd. (a).)
- 10) Records of investigations received from other state or local agencies for correctional, law enforcement, or licensing purposes will not be produced. Such documents are exempt from disclosure. (Gov. Code, § 6254, subd. (f).)
- 11) Records that were provided to DFEH with a promise of confidentiality will not be produced. (Evid. Code, § 1040, subs. (a) and (b)(2).) **Note:** The promise of confidentiality means the Department agreed to keep the information confidential at the time it was received. A party cannot unilaterally designate such information as confidential.

**G. Guidelines for Record Production: Respondent or Respondent's Attorney Request**

- 1) If the respondent provided, prepared, or received the document in an unredacted state, the document does not need to be redacted regardless of the information contained in the document. If none of the above applies, redact the document as set forth below.
- 2) The name(s) and/or other identifying information of any third-party witness(es), unless the third-party witness is a public employee acting in his/her official capacity, will be redacted. (Cal. Const., Art. I, §1; Gov. Code, § 6255.)
- 3) Home addresses, home telephone numbers, bank account numbers, social security numbers, driver's license numbers, and dates of birth for all complainants, witnesses and any co-respondents will be redacted. (Cal. Const., Art. I, § 1; Gov. Code, § 6254, subd. (c).)
- 4) Personal information, the disclosure of which would per se constitute an unwarranted invasion of privacy, will not be produced. Specifically, all personnel/employment files, medical files and banking/financial records should not be produced. (Gov. Code, § 6254, subd. (c).)

- 5) Do not produce any information gathered in the course of efforts to eliminate an unlawful practice through settlement efforts, such as conference, conciliation, and persuasion. **Note:** Final settlement agreements are not exempt from production, but must be redacted as appropriate. (Gov. Code, §§ 6254, subd. (k), and 12963.7; Evid. Code § 1040, subd. (b)(1).)
- 6) Records that reflect notes, memoranda, or legal opinions of any DFEH lawyer will not be produced. Such documents are protected by the attorney/client privilege. (Gov. Code, § 6254, subd. (k); Code Civ. Proc., § 2018, subs. (a), (b), (c), and (d); Evid. Code, §§ 1040, subd. (b)(1), and 952 et seq.)
- 7) Information that reflects a communication between DFEH Legal and Enforcement staff or between DFEH Legal and Executive staff will not be produced. Such documents are protected by the attorney/client privilege. (Gov. Code, § 6254, subd. (k); Evid. Code, § 952.) **Note:** Progress memos are not exempt from production, but must be redacted as appropriate. (Gov. Code, § 11507.6, subd. (f).)
- 8) Records pertaining to pending litigation to which the Department is a party will not be produced. Such documents are exempt from disclosure. (Gov. Code, § 6254, subd. (b).)
- 9) Do not produce any preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the Department in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure. Such documents are exempt from disclosure. (Gov. Code, § 6254, subd. (a).)
- 10) Records of investigations received from other state or local agencies for correctional, law enforcement, or licensing purposes will not be produced. Such documents are exempt from disclosure. (Gov. Code, § 6254, subd. (f).)
- 11) Records that were provided to the Department with a promise of confidentiality will not be produced. (Evid. Code, § 1040, subs. (a) and (b)(2).) **Note:** The promise of confidentiality means the Department agreed to keep the information confidential at the time it was received. A party cannot unilaterally designate such information as confidential.

#### H. **Guidelines for Record Production: Government Entity Request**

- 1) There is no provision in the PRA that accords governmental entities preferential access to public records. Nonetheless, the Information

Practices Act provides for direct transfer of documents from one governmental entity to another (i.e., without redaction) under the following circumstances:

- a) When a transfer is necessary for the transferee entity to perform its constitutional or statutory duties, and the use is compatible for the purpose for which the information was collected. Use is compatible if the use of the information is needed in an investigation of unlawful activity or failure to comply with a specific state law, under the jurisdiction of the requesting entity or for licensing, certification, or regulatory purposes. (Civ. Code, § 1798.24, subds. (e), (o) and (p).)
  - b) Disclosure of information under these circumstances requires the transferring entity to maintain a log containing the date, nature and purpose of the disclosure of each record. (Civ. Code, § 1798.25.)
  - c) Do not produce any information gathered in the course of efforts to eliminate an unlawful practice through settlement efforts, such as conference, conciliation, and persuasion. **Note:** Final settlement agreements are not exempt from production, but must be redacted as appropriate. (Gov. Code, §§ 6254, subd. (k), and 12963.7; Evid. Code § 1040, subd. (b)(1).)
  - d) Records that reflect notes, memoranda, or legal opinions of any DFEH lawyer. Such documents are protected by the attorney/client privilege and will not be produced. (Gov. Code, § 6254, subd. (k); Code Civ. Proc., § 2018, subds. (a), (b), (c), and (d); Evid. Code, §§ 1040, subd. (b)(1), and 952 et seq.)
  - e) Information that reflects a communication between DFEH Legal and Enforcement staff or between DFEH Legal and Executive staff will not be produced. Such documents are protected by the attorney/client privilege. (Gov. Code, § 6254, subd. (k); Evid. Code, § 952.) **Note:** Progress memos are not exempt from production, but must be redacted as appropriate. (Gov. Code § 11507.6. subd. (f).)
- 2) This section does not apply in instances where the government entity or its representative seeks documents in its role as a respondent or representative of a respondent. Such requests will be processed in accordance with section F., above.

I. **Subpoenas**

Subpoenas issued to district offices should be handled by the district office in conformance with Directive 603, "Response to Third-Party Subpoenas."

5. **APPROVAL:**

\_\_\_\_\_  
Wanda J. Kirby, Acting Director

\_\_\_\_\_  
Date