

**BOARD OF SUPERVISORS RESPONSE TO
GRAND JURY REPORT NO. 0807:
COUNTY EMPLOYEES MUST KNOW HOW TO RESPOND TO
PUBLIC RECORD REQUESTS**

FINDINGS

1. The California Public Records Act (PRA), Government Code Section 6250, was enacted in 1968 by the state legislature. At that time, the legislature declared, *“that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.”*

Response: *Agree. The current version reads, “In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.”*

2. The PRA has been amended from time to time, and the courts have interpreted and applied its provisions in many published appellate court opinions. In a recent opinion, the California Supreme Court described the importance of access to public records as follows: *“Openness in government is essential to the functioning of a democracy.”* International Federation v. Superior Court, 64 Cal.Rptr.3d 693, 697. (2007)

Response: *Agree.*

3. The PRA provides that the public shall have access to all public records except for selected records that are specifically exempt from disclosure. Exempt records include personnel files, medical records, and many types of records that are part of ongoing criminal investigations.

Response: *Agree, with clarification. There are many kinds of records that are statutorily exempt from public disclosure. For example, exempt County records generally also include but are not limited to preliminary drafts, notes, and inter/intra-agency memoranda that are not retained by the County in the ordinary course of business; certain records pertaining to pending litigation; test questions, scoring keys, and other examination data for employment examination; real estate appraisals or engineering studies relative to the acquisition of property, etc. The majority of the Public Records Act is devoted to describing exempt records, which is why it can be challenging for staff at every level of the County organization to understand the Act and respond with perfect confidence to myriad public records requests.*

4. Contra Costa County (County) and its various departments and functional organizations are subject to the PRA and must comply with its terms.

Response: *Agree.*

5. Grand Jurors, who did not identify themselves as such, visited 12 County offices and asked to inspect or to secure copies of records that were known, or were likely, to be kept in those offices. Grand Jurors made a total of 17 separate record requests. Grand Jurors did not request records that were exempt from disclosure under the PRA. Requests were always made to the person who was the first point of contact at each office, usually a clerk or receptionist.

Response: *Since the Grand Jury did not identify the test departments, the County cannot accurately respond to this finding.*

6. Grand Jurors found that, in some instances, County departments and their staff members responded appropriately to requests for access to or copies of public records.

Response: *Since the Grand Jury did not identify the test departments, the County cannot accurately respond to this finding.*

7. Grand Jurors experienced other instances when the clerk or receptionist expressed no knowledge of the PRA, or the County's duty to provide access to records. On one occasion, a Grand Juror was sent to another office, in a different building, that did not have the requested records. On several other occasions, first point of contact employees posed questions such as: "Why do you want it?" "Are you an attorney?" And, "Who are you with?" Other employees made statements such as: "I'm swamped right now," "I'm very busy," and, "We are an impacted office."

Response: *Since the Grand Jury did not identify the test departments, the County cannot accurately respond to this finding. However, the County would agree that such responses to public record requests as described in the Finding are inappropriate.*

8. On several occasions, Grand Juror requests for records were referred to a more senior clerk or office manager who was able to comply with the request. In one instance, the Deputy Director of Animal Services promptly met with the Grand Juror who made the request and the records were produced for inspection. Not all County offices visited had senior staff members available to handle requests.

Response: *Agree.*

9. The County's Animal Services Department was not always responsive to PRA requests. One Grand Juror made a written request for copies of records on wild animals picked up in 2007, including information as to whether any had tested positive for rabies, and paid the requested \$1.00 copying fee. The request was made at the front desk, on a busy day, and the records had not been received four months after the request. No explanation or refund has been offered.

Response: *Lacking the name of the requestor, the Animal Services Department was unable to verify the finding. However, the County would agree that such lack of response to a public record requests as described in the Finding is unacceptable.*

10. On December 18, 2003, the County Administrator issued Administrative Bulletin 120.4, entitled, "Public Access to County Records." The preamble states, "The purpose of this bulletin is to inform County departments about their legal responsibility under the California Public Records Act... with regard to requests for inspection of or copies of County records." Knowledge of the bulletin's existence, and compliance with the policies and procedures detailed therein, is inconsistent from one County office to another.

Response: *Agree. Maintaining the institutional knowledge of organizational policies and procedures is an ongoing challenge and training issue for many organizations, but particularly for a county government agency with over 9,000 employees and service providers in more than*

450 separate offices. Building a uniform knowledge base among all County employees continues to be a high priority and goal of the County.

11. County Administrative Bulletin 120.4 contains information organized under the following major headings:
 - I. Confidential documents and documents not required to be disclosed
 - II. Confidential legal documents
 - III. Employee information disclosure
 - IV. Access to public records

Sections I through III deal with exceptions to the law requiring disclosure; i.e., the reasons public access to records may be denied. Only section IV outlines how the public is to be afforded its rights under the PRA.

Response: *Agree. The policy is organized in this way in order to avert the release of confidential/exempt documents, which, if it should occur, could compromise someone's privacy and expose the County to liability. Before a County employee discloses County records, he or she must gain a good understanding of what is a disclosable public record and what is a confidential/exempt record, and must also learn to recognize the need to consult legal counsel when that distinction is unclear. If Section IV was moved to the beginning of the policy, an unknowing staff person might read no further than Section IV and mistakenly release a confidential record. The whole policy is important and is organized to encourage staff to read the whole policy and not just the procedures.*

12. California Government Code Section 6253.1 states that the public agency shall assist the member of the public to make a focused and effective request that reasonably describes an identifiable record or records by making certain specified actions to the extent they are reasonable under the circumstances. County Administrative Bulletin 120.4 is silent on this duty.

Response: *Agree.*

13. County Administrative Bulletin 120.4 includes a policy that requests for public records 'should be made in writing.' Grand Jurors found that four of the offices visited, Environmental Health, the Animal Services and Building Inspection departments, and the Assessor required written requests, and had forms available for that purpose.

Response: *Agree. Written requests are not required by County policy but are "recommended". While many public records requests can be filled immediately upon oral request, a written description of the request facilitates an understanding between the requester and County staff as to what documents are being sought. Some County departments have developed forms for this purpose that relate to the types of documents retained by the departments.*

14. A Grand Juror asked representatives of two County law offices to permit inspection of any written policies related to the e-mail transmission of confidential documents. The District Attorney's

office produced County Administrative Bulletin 120.4. The Public Defender's office advised that no policy existed.

***Response:** Agree. County Administrative Bulletin 120.4 provides guidance on public access to county records but does not pertain to the e-mail transmission of confidential documents. The County has a written policy on e-mail but not on the transmission of confidential documents via e-mail. Confidential e-mail documents are treated no differently than other confidential documents.*

15. Some County records are only accessible by computer. The PRA also applies to such records. In one instance, a Grand Juror asked the General Services Department to inspect maintenance records on County automobiles, specifically a hybrid model. An employee in the automotive maintenance office informed the Grand Juror that all the records were computerized. After purportedly conferring with a superior, the employee informed the Grand Juror that the records could not be viewed because no computer terminal was available for use by the public, and that only County employees had access to the database.

***Response:** Partially disagree. The Grand Jury failed to fully describe the staff response in its Finding.*

In an effort to reduce the amount of paper and paper transmittal, the County maintains a significant amount of business information on database systems. Some of these systems can be accessed by the public via a kiosk or internet search site. However, most County data systems are designed for business purposes and/or also store confidential information. Reports can be produced from these data systems in order to tabulate and display data for the public. When a request is made for public information that is stored in an electronic data system, the County produces the information in the electronic format in which it is stored provided its release does not compromise confidential information or proprietary software and the information is available in electronic format. In other circumstances, the County provides copies of responsive data system reports or compiles a report that displays the requested information. The Public Records Act permits the agency to recover its costs associated with electronic media, paper copies, or system programming required to produce the requested records or data.

In the specific example described in this Finding, the requester asked to inspect hybrid vehicle maintenance records. The Fleet Services Manager explained to the requester that physical vehicle maintenance records are not maintained by the County and described the information technology in which the records exist. He offered to compile and print out records from the fleet system to meet the requester's needs. He attempted to assist the requester to define the request by describing the types of data maintained on the system, e.g., types of repairs, dates, etc. He followed up by calling the requester twice in an effort to satisfy the request.

Although County staff was unable to identify the requested information, staff satisfied the requirements of the Public Records Act by making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records (reference Finding No. 12).

RECOMMENDATIONS

The 2007-2008 Contra Costa County Grand Jury recommends that:

1. Within six months of this report, County Administrative Bulletin 120.4 be reviewed and revised as necessary to comply with legislative changes and court decisions. The revised bulletin also should include:
 - a. A requirement that each department's written policy with regard to public record requests be conspicuously posted or otherwise made available at each County office.
 - b. A standard form for use in all County offices for requests to inspect or obtain copies of public records.
 - c. A policy and procedure to allow public access to records that are accessible only by computer.
 - d. The public's rights under the PRA should be emphasized rather than the exceptions to the law. Section IV of County Bulletin 120.4 should appear as section I. The County's duty to assist members of the public should also be described.

Response: *The recommendation will be partially implemented within six months. The Board of Supervisors has directed County staff, under the guidance of the Internal Operations Committee, to develop the following materials:*

- a. *A standard County pamphlet on the County's policies and general procedures on public records requests will be developed and made available at County offices and public reception areas. This is not a statutory requirement for counties, but a good customer service practice.*
 - b. *A standard public records request form will be developed and made available on the County's website and for use by County departments.*
 - c. *County Administrative Bulletin No. 120 will be expanded to include procedures for responding to requests for records that are stored in an electronic data system.*
 - d. *An introduction will be added to Administrative Bulletin No. 120 that more thoroughly explains the County's obligations to provide public records.*
2. Within six months of this report, all County departments be required to have written policies and procedures, based on revised Administrative Bulletin 120.4, intended to ensure consistent, timely, and lawful responses to requests for public records.

Response: *The recommendation will be implemented within six months. The County will update and redistribute its existing policy on public records accessibility and will provide training to staff on procedures for responding to public records requests. A single County policy is the most effective way to achieve consistent and appropriate responses to public records requests. Therefore, departments will be required to utilize the County's written policy on public records accessibility. Departments may supplement the Countywide policy with policies and procedures associated with the specific method in which they store and access County records.*

3. Within six months of this report, all employees that interact with the public at County offices where records are maintained receive training as to the County's responsibilities, including County and department procedures, to comply with the California Public Records Act.

***Response:** The recommendation will be implemented within six months. The County will provide training for County managers and those employees that perform primary reception duties with the general public.*

In response to the Grand Jury report and for the interim period pending implementation of the recommended actions, the County Administrator sent the attached memo to County department heads redistributing current applicable County policies and directing departments to review their operating policies to ensure conformity with County policies. Departments were also asked to re-circulate the County policies with staff most likely to receive or respond to a public records request, such as managers, supervisors, and receptionists.