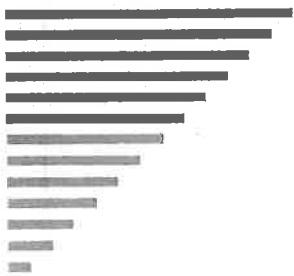


Section IV

The Ralph M. Brown Act





The Ralph M. Brown Act

- Enacted in 1951 in response to stories of backroom dealings published by the SF Chronicle
- Found in Government Code Section 54950 et seq.
- Ralph M. Brown was Speaker of the Assembly (1959-61)



Intent of the Brown Act

(Government Code Section 54950)

- **Public agencies in this state exist to aid in the conduct of the people's business**
- **It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly**





Come in **WE'RE**
OPEN

Definition of Meeting

(Government Code Section 54952.2(a))

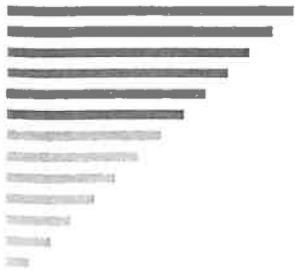
- ☐ Any **congregation** of a **majority** of the members of a legislative body at the **same time and place** to hear, **discuss**, or **deliberate** upon any item that is **within the subject matter jurisdiction** of the legislative body or the local agency to which it pertains.
- ☐ Applies to committees
- ☐ Includes serial meetings



U.S. should take action to address climate change

Response	Percentage
U.S. should take action to address climate change	95%
U.S. should not take action to address climate change	5%

-
- Board Meeting
- ©C. Inc. & from <http://www.lictr.com/phone/855041210/N02821543252>



Meetings (cont.)

☐ **Regular Meeting:**

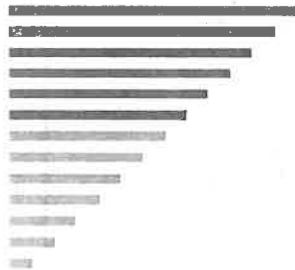
- Scheduled at a set place and time as set by ordinance or resolution. Requires 72 hours notice and posting of agenda.

☐ **Special Meeting:**

- Occasional and called as needed. Typically for workshops, single topics or to allow time for focused discussion. Requires 24 hours notice and posting of agenda.

☐ **Emergency Meeting:**

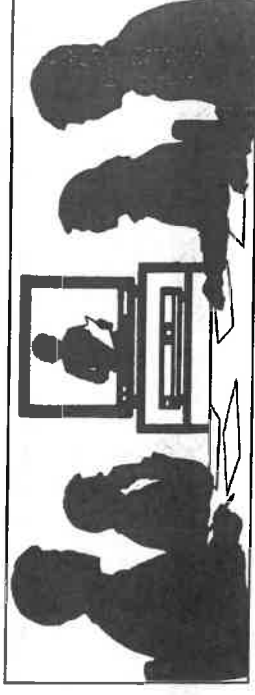
- Prompt action required due to activity/disaster that severely impairs public health or safety. Telephonic notice to media outlets.



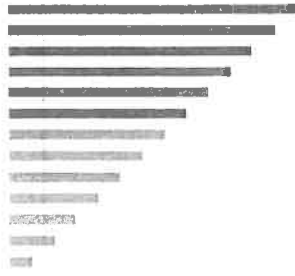
Meetings (cont.)

- Brown Act applies to:
 - Collective briefings of a majority of the legislative body
 - Retreats or workshops conducted by the legislative body
 - Informal gatherings where business of the agency is discussed
 - Advisory committees created by formal action of the legislative body
 - Serial Meetings
 - Standing committees which have either:
 - (i) continuing *subject matter jurisdiction*, or
 - (ii) a meeting fixed by ordinance, resolution or formal action

Meetings (cont.)



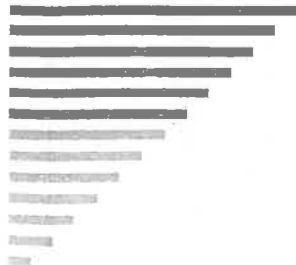
- Brown Act also applies to:
 - Video teleconferencing
 - Audio teleconferencing
 - Notice of remote location
 - Allow public access/ ADA accessible
 - Quorum within agency area
 - Remote site for a member permitted outside the jurisdiction of agency



Meetings (cont.)

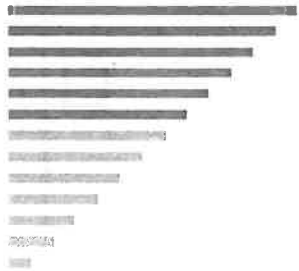
What is not a meeting under the Brown Act?

- Individual contacts
- Meeting of less than a quorum
- Conferences
- Community meetings
- Meetings of other agencies
- Social or ceremonial events
- Ad hoc advisory committees
- Meetings with agency staff (as long as there is no consensus building)



Agenda Requirements

- ☐ Identify time and location of meeting
- ☐ Brief description of each item of business
 - 20 words or less
 - Must inform reasonable person of matters to be discussed and/or action to be taken
- ☐ Matters not on the agenda cannot be discussed
 - Exceptions-emergency items, brief response to public comment, commendations
- ☐ Remember - ***Stay on the Agenda!***



Internet Posting of Agenda

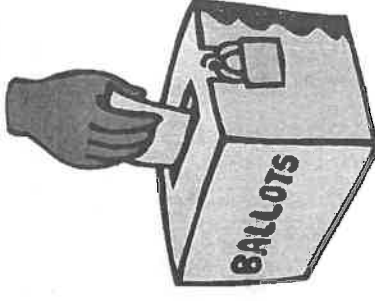
- Gov. Code Section 54954.2: Requires an agency to post its regular agenda on the agency's website, if it has one
- Gov. Code Section 54960.1: Failure to post renders actions taken subject to invalidation (with an award of attorney's fees)

Problem: Agency's website is down at time for posting agenda and agenda is not posted. Can the agency meeting go forward or should it be postponed?

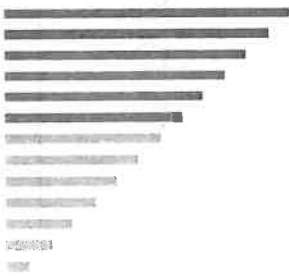


Voting

(Government Code Section 54953)



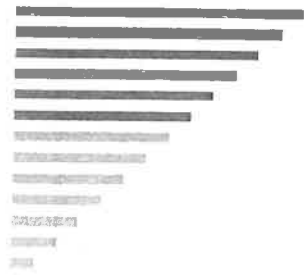
- Agency Board must publically report any action taken and the vote or abstention of each member present
- Some Closed Session votes must be reported
- No secret ballots allowed



Documents Available

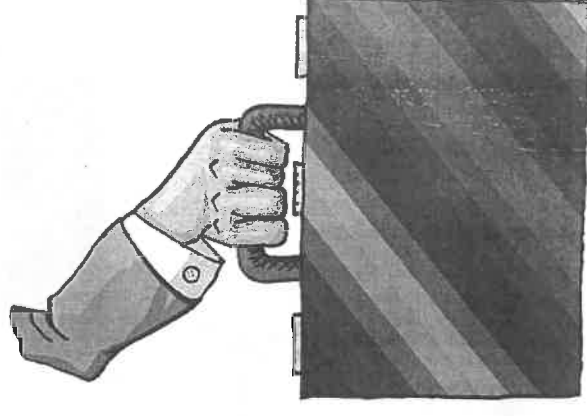
- ☐ Documents related to the Agenda:
 - Agenda must contain information as to location where documents related to the agenda can be inspected
 - Written material to the Board after the agenda is delivered must be made available to the public at the same time
 - Materials provided by the public at the meeting must be made available as soon as possible after the meeting





Closed Sessions

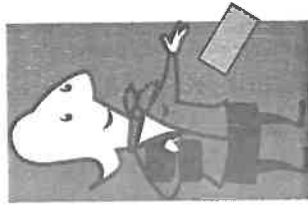
- May only be held for purposes identified in the Brown Act and the purposes are narrowly construed
 - Anticipated/pending litigation
 - Real Property negotiations
 - Labor negotiations





Closed Sessions (cont.)

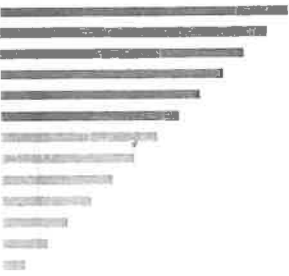
- Public Employment
 - ✓ Appointment, Employment, Performance Evaluation
 - ✓ Discipline, Dismissal, Release
 - ✓ Salary may not be discussed in Closed Session
- Threat to the Security of Public Buildings or Public Services





Closed Session Agenda

- ☐ Brown Act provides “safe harbor” wording for closed sessions
- ☐ Closed Session agenda description should be approved by agency counsel
- ☐ Report out of closed session when required
- ☐ Only Board and necessary staff to attend
- ☐ Confidential information from closed session cannot be disclosed without Board authorization

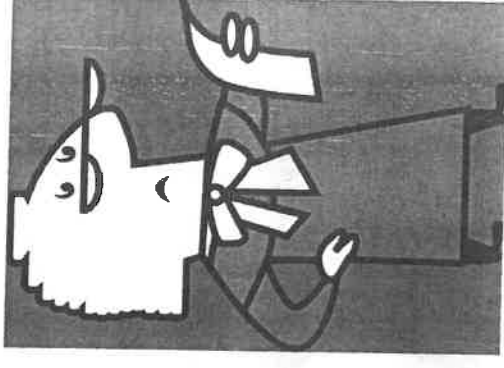


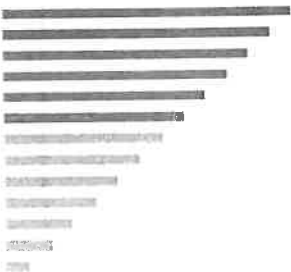
The Problem Citizen: Your Worst Nightmare—loud, threatening, abusive

- Cease and desist letter: Agency rule—demand that citizen discontinue the offensive conduct
- Arrest: PC §602.1—intentional interference with public's business (exception for exercise of 1st Amendment rights)
- Harassment Restraining Order: CCP §527.6—person poses a credible threat of violence or serious annoyance serving no legitimate purpose
- Workplace Violence Protective Order: CCP §527.8—employer obtains order to prevent violence or threat of violence towards employee at agency

Violation of Brown Act

- ☐ Can be a crime: a misdemeanor
 - Requires deliberate violation
- ☐ Voiding transaction
 - Requires a demand to correct within 90 days of action
 - Board then has 30 days to cure
- ☐ Civil action
 - Prevailing plaintiff entitled to award of attorney's fees & costs
- ☐ Media reports lots of "Apparent Violations"

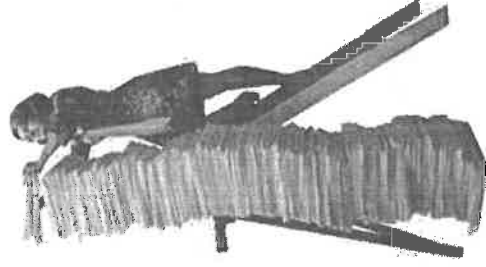


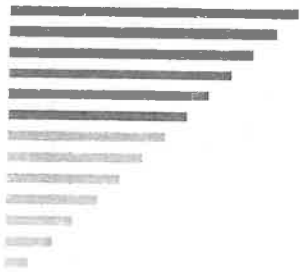


Section V

The Public Records Act

(California Government Code Sections 6250-6276.40)





Public Records Act

- ☐ Enacted in 1968
- ☐ Codified at Gov. Code Sections 6250-6276.40
- ☐ Generally provides that all government documents are public records and subject to disclosure
- ☐ Numerous Exceptions from Disclosure



Overview and Purpose

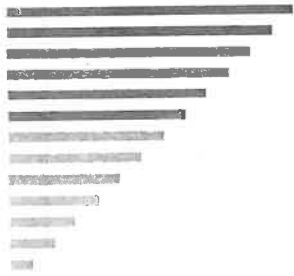
- The California Public Records Act declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this State, that public records are open to inspection at all times during regular office hours, and are subject to inspection and copying by every person except as provided in the Act
- The Public Records Act is to be broadly construed if it furthers the public's right of access, and narrowly construed if it limits the right of access



Records Subject To The Public Records Act

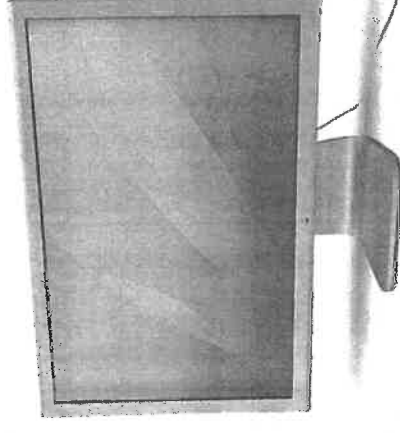
- ☐ A public record is any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by an agency regardless of the physical form or characteristics

- ☐ A writing includes any handwriting, typewriting, printing, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds or symbols, and any record thereby created regardless of the manner in which it has been stored

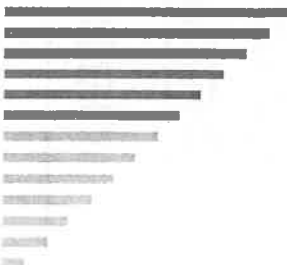


Computer and Electronic Records

Upon request, records must be provided in the electronic format in which the agency holds the information. The requester must bear the cost of providing the copy



- Includes e-mails, text messages and any other correspondence sent via electronic device



Records on Personal Electronic Devices

City of San Jose v. Santa Clara Superior Court
(2014) 225 Cal.App.4th 75

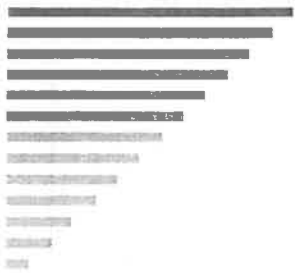
- Court of Appeal ruled that text messages/e-mails on official's PEDs using their own accounts not subject to disclosure
- Court held that such messages are not "public records" because they were not "prepared, owned, used or retained by any...local agency." (Gov. Code Section 6252(e))



Records on PEDs

City of San Jose Ruling:

- “Local agency” does not include agency members or government officials (GC §6252(a))
- Court noted the dangers presented by the ruling—the conduct of the public’s business in private
- Court also noted instances where officials use PEDs during meetings to send/receive messages—could be public records



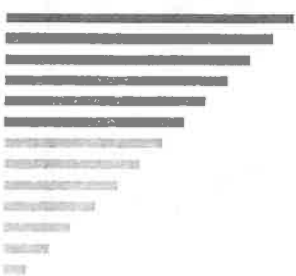
Exemptions From Disclosure

- The Public Records Act contains numerous specific exemptions and a catch-all exemption
 - Personnel records relating to personnel, medical or similar files that would constitute an unwarranted invasion of personal privacy. *Note: Employment contracts, however, are public records*
 - Confidential legal advice and correspondence provided to the District
 - Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure



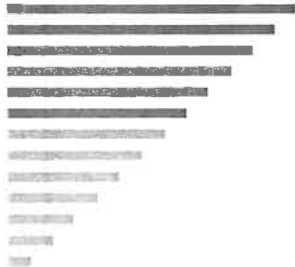
Exemptions From Disclosure

- ☐ Records pertaining to pending litigation or claims against the agency, until the litigation or claim has been finally resolved
- ☐ Generally, the name, credit history, utility usage data, home address, and telephone number of the utility customers of local agencies
- ☐ Records regarding a board member's deliberative process where the public interest in maintaining the privilege outweighs the public interest in disclosure of the information
- ☐ "Catch-all" exemption where the public interest served by not disclosing the record *clearly* outweighs the public interest served by disclosing the record



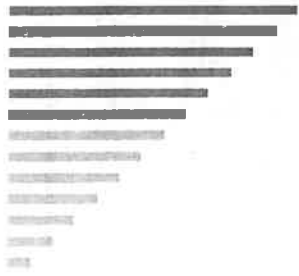
Responding to a Records Request

- ☐ Request: Need not be in writing & can be submitted to any agency employee
- ☐ Inspection: An inspection of public records may occur at all times during agency office hours at no cost
- ☐ Response: Within 10 days of a request for copy of a record, an agency must respond indicating whether the record is subject to disclosure. The response may be extended for 14 additional days under specified circumstances



Responding To A Records Request (cont.)

- ☐ **Copies:** The agency must make the copies promptly available after payment of the direct cost of duplication
- ☐ **Denial:** Denial of a request for inspection or copies of exempt records must be in writing & provide the reason for withholding the record
- ☐ **Assistance:** The Act requires an agency to assist any member of the public requesting documents to make an effective request
- ☐ **Redaction:** Exempt information within a disclosable document may be obliterated



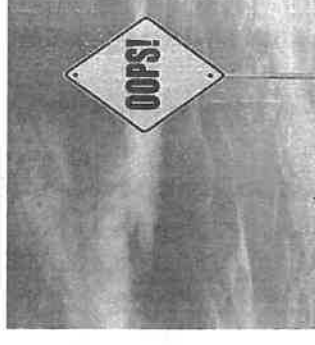
Burdensome PRA Requests

Bertoli v. City of Sebastopol (2015) 182 Cal.Rptr. 308,
California 1st Amendment Coalition v. Superior Court (1998)
67 Cal.App.4th 159

- Courts generally reluctant to impose limitations on disclosure of public records
- Overly burdensome request: Where request requires agency to search an enormous volume of data for a “needle in a haystack” or which compels the production of a huge volume of material
- An agency is only obliged to disclose public records that can be located with a reasonable effort and cannot be subjected to a limitless disclosure obligation

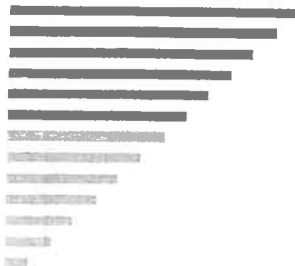


Inadvertent Disclosure of Exempt Documents



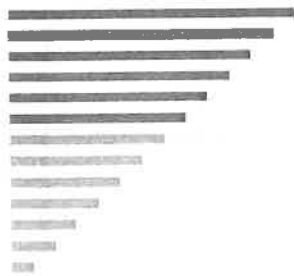
Ardon v. City of Los Angeles (2014) 232
Cal.App4th 175

- Court of Appeal ruled that inadvertent disclosure of confidential/privileged document constitutes a waiver under Gov. Code Section 6254.5
- City of LA filed a Petition for Review with California Supreme Court, supported by California League of Cities and California Association of Counties



Violations of The Public Records Act

- ☐ Any person may sue a local agency to enforce his or her right to records under the Act
- ☐ Court may review records “in camera” to determine if they are subject to disclosure
- ☐ If a court finds that an agency’s refusal to provide access to a record is not justified, it must award plaintiff/citizen attorneys’ fees and costs, which can be substantial
- ☐ “Headline factor” - in addition to legal liability, violations can generate embarrassing press



In General ...

- Most public agency records are subject to disclosure, unless they fall within a specific exemption
- Disclosure is construed broadly, and withholding is construed narrowly
- Responses to requests must be timely, in the manner set forth in the Act, and agencies must assist the public in making effective requests
- Consult your legal counsel, stay out of court and the news