

Public Records Act vs. Information Practices Act

How to Request and Protect Government Records

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Public Records Act vs. Information Practices Act

❖ This workshop will:

- Discuss the laws (PRA and IPA) from both the government's and citizen's perspectives.
- Provide side-by-side comparisons of the laws.
- Present actual PRA and IPA requests received and processed by CalHFA.
- Provide you with the tools you need for getting the government records you want.

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Public Records Act vs. Information Practices Act

❖ Outline

- Public Records Act (PRA)
 - Government's Perspective (Slides 4-11)
 - Citizen's Rights (Slides 12-19)
 - Sample Requests (Slides 20-27)
- Information Practices Act (IPA)
 - Government's Perspective (Slides 28-35)
 - Citizen's Rights (Slides 36-43)
 - Sample Requests (Slides 44-51)


❖ Handout

- PRA vs. IPA side-by-side comparison

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PRA – Government's Perspective



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PRA – Government’s Perspective

❖ If it looks like a PRA and quacks like a PRA then it probably is a PRA.

For example:

- Can you send me a copy of this?
- Have you published a report on this?
- How do I get information on this?
- What is your policy on this?
- Where can I find statistics on this?



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PRA – Government’s Perspective

❖ All CA state (executive branch) and local gov’t agencies are covered by the PRA.

Includes:


- Agency
- Department
- Commission
- Bureau
- Board
- Office

Does not include:

- Legislative Branch
- Judicial Branch

Legislative Open Records Act (Gov’t Code §§ 9070-9080)

Public rights of access to courts (CA Judicial Council Rules of Court)



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PRA – Government’s Perspective

❖ Every gov’t record is a **public** record unless there’s a statute that says it isn’t!

Includes:

- Paper records
- Electronic records
- Voicemail
- Photographs
- Videos
- Sticky notes

Records that are NOT government records are not public records, e.g., family photo on your desk.




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PRA – Government’s Perspective

- ❖ Common exemptions to disclosure:
 - Privacy
 - Trade Secrets
 - Attorney-client privilege
 - Attorney work-product privilege
 - Communications with the governor
- ❖ Read narrowly to provide maximum access.
- ❖ Burden to justify nondisclosure is on Gov’t.




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PRA – Government’s Perspective

- ❖ Records must be “currently existing” at the time the PRA request is made.
- ❖ You are not required to “create” records in response to a PRA request.
- ❖ You are not required to “retain” records for the sole purpose of anticipating a PRA.
- ❖ Information that is only “in your head” is not a PRA.




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PRA – Government’s Perspective

- ❖ Any “member of the public” may file a PRA.
Includes:
 - Natural persons anywhere in the world (e.g., Californians, residents of other states/countries, prisoners)
 - Business entities
 - Representatives of the news media
- ❖ Gov’t employees acting in their official capacity are not “members of the public.”



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PRA – Government’s Perspective

- ❖ You have 10 calendar days to **respond** to most PRA’s.
- ❖ You must produce the records “promptly” thereafter (e.g., within 1 to 2 weeks).
Exception:
 - Form 700 (Statement of Economic Interest) must be **produced** within 2 business days.
- ❖ You cannot require the requestor to accept the records electronically.

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PRA – Citizen’s Rights



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PRA – Citizen’s Rights

- ❖ You may submit your request in any format.

For example:

- In person
- U.S. Mail
- Fax
- Phone
- Email

- ❖ Gov’t cannot require you to submit in writing.



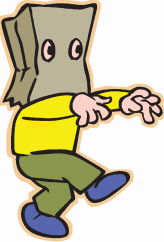
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PRA – Citizen’s Rights

- ❖ You may submit your request anonymously.



- ❖ Gov’t cannot ask for your name, company name, why you want the records, or what you plan to do with the records.

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PRA – Citizen’s Rights


- ❖ Gov’t must provide assistance to help you identify records and information relevant to your request.
- ❖ Gov’t cannot expect you to know how its files are set up.
- ❖ You may provide additional information, such as what you are trying to accomplish, but you are not required to do so.

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PRA – Citizen’s Rights

- ❖ You may request someone else’s PRA request via your own PRA request, for example, “Send me the last five PRA requests from the Sacramento Bee.”

 **Caution!**

- ❖ Your PRA request is a public record!
- ❖ Do not put anything in your request that you would not want to see on a billboard!

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PRA – Citizen’s Rights


- ❖ Access is always free. **
- ❖ Fees for “inspection” or “processing” are prohibited.
- ❖ You only pay “direct cost of duplication” if you want copies (e.g., 10¢ per page for paper; actual postage costs if mailed).

** If records are stored offsite, and the gov’t incurs a retrieval cost, the actual cost may be charged to you.

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PRA – Citizen’s Rights


 **Helpful Hints . . .**



- ✓ Search the gov’t agency’s website for “Public Records Act” to find a copy of their written guidelines for accessibility, which will typically tell you who to contact.
- ✓ Submit your request directly to the gov’t agency’s “Public Records Coordinator” to avoid delays.

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PRA – Citizen’s Rights

 **Helpful Hints . . . (continued)**


- ✓ Requests are “received” during regular business hours: Monday through Friday, 8am to 5pm, except CA gov’t holidays.
 **Public Note** Request faxed at 5:01pm Friday is “received” at 8am Monday.
- ✓ 10 days start to count the day after received.
 **Public Note** Request “received” at 8am Monday is day zero; Tuesday is day 1; next Thursday is day 10.
- ✓ If due date is weekend/holiday, gov’t agency has until next business day to respond.

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PRA – Sample Requests




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PRA – Sample Requests

- ❖ Request from Political Party “X” National Committee:
 - Send us all incoming/outgoing communications between Candidate “Y” and your office.




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PRA – Sample Requests

- ❖ Request from CA state agency:
 - I am a new attorney at a CA state agency. We are developing employee training in PRA and other legal subjects. Send me videos of your most recent employee training.



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PRA – Sample Requests

❖ Request from graduate student doing a paper on West Nile Virus:

- Send me demographic data on all foreclosures of single family homes with swimming pools in Southern CA from 2007 to 2012.




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PRA – Sample Requests

❖ Request from affordable housing advisor:

- Send me a list with the project name, address, owner and manager contact information, for all multifamily properties in your portfolio.




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PRA – Sample Requests

❖ Request from law firm in Washington DC:

- Send me your conflict-of-interest code and policy statement on ethics and incompatible activities.



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PRA – Sample Requests

❖ Request from a private citizen:

- Send me your org chart with each employee's name, job title, and supervisor, and your directory with each employee's email and direct dial phone number.




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PRA – Sample Requests

❖ Request from a daily newspaper in Orange County, CA:

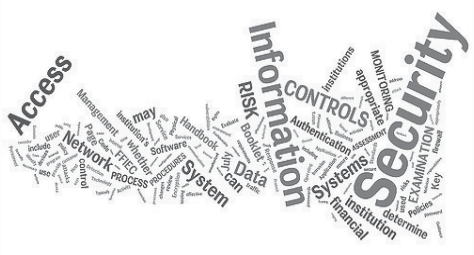
- Send me a list of all Public Records Act requests you received from 2008 through 2013.



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IPA – Government's Perspective



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IPA – Government’s Perspective

❖ Four key criteria that subject records to IPA:

- Non-public, *i.e.*, not subject to PRA.
- Collected and maintained by gov’t.
- Contain privacy-protected “personal information” relating to individuals.
 - “Personal information” is any information maintained by a CA gov’t agency that identifies or describes an individual.
- Not subject to statutory exemption.

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IPA – Government’s Perspective

❖ Three major concerns of the IPA:

- Collection. What information can the gov’t legitimately collect on individuals, and how?
- Disclosure. What information can the gov’t disclose, and to whom?
- Access. What must the gov’t do to meet an individual’s statutory access rights?

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IPA – Government’s Perspective

❖ Collection.

- Information must be “relevant and necessary.”
 - Maintain only that personal information which is relevant and necessary to accomplish the gov’t agency’s purpose.
- Collect information directly from individual when possible; maintain record of info source.
- Provide “notice” when collecting information.
 - Notice must include purpose of collection, whether it is mandatory, circumstance of not providing information, *etc.*

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IPA – Government’s Perspective

❖ Disclosure.

- No disclosure of personal information unless specific statutory basis exists for disclosure.

Key disclosure categories:

- To the individual to whom the information pertains.
- To third party with consent of the individual.
- To guardian, conservator, executor, trustee, *etc.*, with official legal authorizing documents.
- To gov’t entities when required by state or federal law.

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IPA – Government’s Perspective

❖ Disclosure. (continued)

Key disclosure categories (continued)

- To officers, employees, attorneys, agents, volunteers of the gov’t agency, if disclosure is:
 - Necessary & relevant in the ordinary course of performance of official duties; and,
 - Related to the purpose for which the information was acquired.
- Pursuant to subpoena, court order, search warrant, or other compulsory legal process.
 - You must attempt to notify individual, unless judge has signed order not to notify.
- To the State Archives as a record that has sufficient historical or other value to warrant its continued preservation.

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IPA – Government’s Perspective

❖ Access.

- Individuals have broad access rights with limited exceptions.
- Inspection must be provided within 30 days of request (60 days if records are offsite); copies within 15 days of inspection.
- No fees for search and review.
- Statutory limit of 10¢ per page for copies.

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IPA – Government’s Perspective


❖ Access. (continued)

- Gov’t must verify the requestor’s identity.
- Information must be provided to the individual “in a form reasonably comprehensible to the general public” (*i.e.*, no cryptic printouts!).
- Gov’t must have procedures (*i.e.*, regs or guidelines) to implement access rights.
- Safeguards: physical, technical, administrative.

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IPA – Citizen’s Rights



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IPA – Citizen’s Rights

❖ Which state and local gov’t agencies may have your personal information?

- Sacramento County Registrar of Voters (registered voter)
- Sacramento County Animal Care (pet license)
- CA Franchise Tax Board (income tax)
- CA Department of Motor Vehicles (driver’s license)
- Sacramento City Building Department (building permit)
- Sacramento City Fire Department (ambulance service)

Et cetera ...

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IPA – Citizen’s Rights

- ❖ Depending on the laws applying to the particular agency, some of your personal information may be public records!
 - Registrar of Voters shares their computer screen with your info (name, address, phone, political party) to anyone who stops by.
 - City Building Department publishes your info (name, address, phone, building permit) on their website.

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IPA – Citizen’s Rights

- ❖ If you have a public license of any type ...
(lawyer, doctor, accountant, auto repair, cosmetologist, funeral director, court reporter, midwife, real estate agent, security guard, alarm company employee, dental hygienist, etc.)
...then some of your information is public, but some is still privacy-protected.

Helpful Hint . . .


- ✓ Leave the “optional” fields blank when completing forms, e.g., don’t provide your phone number on voter registration unless you want to get calls from pollsters and politicians!

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IPA – Citizen’s Rights

- ❖ You have the right to inquire and be notified as to whether a gov’t agency maintains a record about you.



Helpful Hints . . .

- ✓ Download the org chart for the city, county, or state executive branch; assess which departments might have information about you; check their websites for “public information office” or “disclosure office”; and then call to inquire.
- ✓ You may be asked personal questions, and/or to complete and return a form, to authenticate that you are really you.

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IPA – Citizen’s Rights

❖ You should receive a “Privacy Notice” before personal information is collected.

➤ Notice will typically state:


- Name of gov’t agency collecting the information.
- Specific authority for collecting the information.
- Statement that information is subject to the IPA.
- Principal purpose for which information will be used.
- Any known or foreseeable disclosures of information.
- Whether submission of information is mandatory or voluntary.
- Your rights to access records containing your personal information.
- Who you should contact if you want to file an IPA request.
- A reference to the gov’t agency’s privacy policy.



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IPA – Citizen’s Rights

 **Helpful Hints . . .**

- ✓ Request a copy of the gov’t agency’s “Privacy Policy” and “Information Practices Act Guidelines” or download a copy from the website.
- ✓ Read the policy and guidelines! If you do not understand something, then ask for assistance.
- ✓ Read all privacy notices before you complete any forms, and keep copies for your file.
- ✓ After you receive copies of your records, carefully review for accuracy, and notify the gov’t agency in writing if you believe the records are not accurate, relevant, timely, or complete.

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IPA – Citizen’s Rights


- ❖ You have the right to receive gov’t records about you.
- ❖ You have the right to contest the accuracy of gov’t records about you.
- ❖ You have the right to appeal gov’t agency refusal to amend your records.
- ❖ You have the right to file a statement in your file if your appeal is denied.

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IPA – Sample Requests




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IPA – Sample Requests

❖ Request from a single family borrower:

- Send me all documents maintained by your agency about me.




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IPA – Sample Requests

❖ Request from a single family borrower:

- Send me a copy of the real estate appraisal report concerning my current loss mitigation application.



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IPA – Sample Requests

❖ Request from a multifamily tenant:

- Send me copies of all asset management site inspection reports which include comments and/or problems related to my apartment unit

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IPA – Sample Requests

❖ Request from a multifamily tenant:

- Send me all of my HUD project-based Section 8 assistance rent calculations and all related correspondence.

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IPA – Sample Requests

❖ Request from employment applicant:

- I applied for a job with you last year and was not called for an interview. Send me a copy of my employment application.

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IPA – Sample Requests

❖ Request from current employee:

- I would like to schedule a time to meet with the Human Resources Officer to view my personnel file.




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IPA – Sample Requests

❖ Request from CalHFA approved lender:

- Send me the credit report and compliance checklist prepared for my company's application to become a CalHFA approved lender.



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Public Records Act vs. Information Practices Act

❖ Statutory References:

- Public Records Act**
- Public Records Act (Gov't Code §§ 6250-6276.48)
- Political Reform Act – Form 700 PRA (Gov't Code § 81008)
- Information Practices Act**
- Information Practices Act (Civil Code §§ 1798-1798.78)
- Privacy Policy Posting and Principles (Gov't Code § 11019.9)

❖ Other References:

- Public Records Act**
- Summary of the California Public Records Act 2004 (CA Attorney General)
- CalHFA Public Records Act Policy
- CalHFA Written Guidelines for Accessibility of Public Records
- Information Practices Act**
- Privacy Statement and Notices Standard SIMM 5310-A (CA Department of Technology)
- CalHFA Privacy and Safeguarding Policy
- CalHFA Information Practices Act Policy (published guidelines)

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❖ Contact Information:

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Questions

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