Public Records Act vs. Information Practices Act

How to Request and Protect Government Records

Presented by:
Misty Miller
Staff Services Manager
(916) 326-8481
mmiller@calhfa.ca.gov

This presentation is the view of the author, not of CalHFA, was prepared solely for ARMA Greater Sacramento Capitol Chapter, and does not constitute legal advice.

March 21, 2017
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.

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

This presentation is the view of the author, not of CalHFA, was prepared solely for ARMA Sacramento Chapter, and does not constitute legal advice.

March 21, 2017

This presentation is the view of the author, not of CalHFA, was prepared solely for ARMA Sacramento Chapter, and does not constitute legal advice.

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.

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.

Any “member of the public” may file a PRA.
- 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.”
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.

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.

This presentation is the view of the author, not of CalHFA, was prepared solely for ARMA Sacramento Chapter, and does not constitute legal advice.
Public Records Act vs. Information
Practices Act: How to Request and
Protect Government Records

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.

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.

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!

This presentation is the view of the author, not of CalHFA, was prepared solely for ARMA Sacramento Chapter, and does not constitute legal advice.

March 21, 2017

This presentation is the view of the author, not of CalHFA, was prepared solely for ARMA Sacramento Chapter, and does not constitute legal advice.

This presentation is the view of the author, not of CalHFA, was prepared solely for ARMA Sacramento Chapter, and does not constitute legal advice.
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.

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.

Request from law firm in Washington DC:
- Send me your conflict-of-interest code and policy statement on ethics and incompatible activities.

This presentation is the view of the author, not of CalHFA, was prepared solely for ARMA Sacramento Chapter, and does not constitute legal advice.

March 21, 2017

This presentation is the view of the author, not of CalHFA, was prepared solely for ARMA Sacramento Chapter, and does not constitute legal advice.
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.

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?

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.
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.

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.

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.
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.

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)
  - El cetera ...

This presentation is the view of the author, not of CalHFA, was prepared solely for ARMA Sacramento Chapter, and does not constitute legal advice.
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.

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!

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.
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.

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.

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.

This presentation is the view of the author, not of CalHFA, was prepared solely for ARMA Sacramento Chapter, and does not constitute legal advice.
IPA – Sample Requests

Request from a single family borrower:

Send me all documents maintained by your agency about me.

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.
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

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.

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.

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.

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.

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
  - Privacy Statement and Notices Standard SIMM 5310-A (CA Department of Technology)
  - CalHFA Privacy and Safeguarding Policy
  - CalHFA Information Practices Act Policy (published guidelines)

This presentation is the view of the author, not of CalHFA, was prepared solely for ARMA Sacramento Chapter, and does not constitute legal advice.
Public Records Act vs. Information Practices Act

Contact Information:

- Misty Miller
  Staff Services Manager
  Office of General Counsel
  California Housing Finance Agency ("CalHFA")
  500 Capitol Mall, Suite 1400
  Sacramento, CA 95814
  Phone: (916) 326-8481
  Fax: (916) 322-3151
  Email: mmiller@calhfa.ca.gov
  Website: www.calhfa.ca.gov

This presentation is the view of the author, not of CalHFA, was prepared solely for ARMA Sacramento Chapter, and does not constitute legal advice.