

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

COPY

SIERRA CLUB,
Petitioner

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE,
Respondent.

COUNTY OF ORANGE,
Real Party in Interest.

AFTER A DECISION BY THE CALIFORNIA COURT OF APPEAL,
FOURTH APPELLATE DISTRICT, DIVISION 3, No. G044138

ORANGE COUNTY SUPERIOR COURT
Honorable James J. Di Cesare
No. 30-2009-00121878-CU-WM-CJC

**PETITIONER SIERRA CLUB'S MOTION
REQUESTING JUDICIAL NOTICE;
DECLARATION OF SABRINA VENSUS;
EXHIBITS VOLUME 1 OF 3**

Sabrina D. Venskus, SBN 219153; Venskus@lawsv.com
Dean Wallraff, SBN 275908; DWallraff@lawsv.com
Venskus & Associates, P.C.
21 South California Street, Suite 204
Ventura, California 93001
Telephone: (805) 641-0247; Facsimile: (213) 482-4246

Attorneys for Petitioner,
THE SIERRA CLUB

NOV 28 2011
APPELLATE COURT
FOURTH DISTRICT
DIVISION 3

No. S194708

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Attorneys for Petitioner,
THE SIERRA CLUB

**TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE
JUSTICES OF THE SUPREME COURT OF THE STATE OF
CALIFORNIA:**

Petitioner/Appellant The Sierra Club hereby motions and requests, pursuant to California Rules of Court, rule 8.252(a), and California Evidence Code sections 450; 451; 452; 454 and 459, this Court take judicial notice of the following documents:

- Portions of the legislative history of California Assembly Bill No. 2799, (1999-2000 Reg. Sess.), related to the enactment of Government Code § 6253.9;¹
- Selected pages of “GIS Needs Assessment Study,” prepared for County of Orange, California by Geographic Technologies Group;
- Official ballot information for the California 2004 General Election concerning Proposition 59, from “Arguments and Rebuttals” web page, accessed via the internet on the official California Secretary of State web site;

¹ All statutory references are to the Government Code unless otherwise noted.

- Portions of the legislative history of California Assembly Bill No. 3265, (1987-1988 Reg. Sess.), related to the enactment of Government Code § 6254.9.
- American Heritage Dictionary's definition of "program" (4th ed., 2006);
- Excerpts from Paul E. Ceruzzi, *A History of Modern Computing* (MIT Press 1998);
- LexisNexis generated report showing all relevant amendments to the Public Records Act (Cal Gov Code §§ 6250 *et seq.*) and highlighted for ease of the Court's reference;
- Portions of the legislative history of California Assembly Bill No. 1978, (2007-2008, Reg. Sess.) related to § 6254.9.

This motion is brought on the grounds that Evidence Code §§ 450, 451, 452, 454 and 459, confer upon this Court the authority to take judicial notice of the above-referenced documents for the purpose of assisting this Court in evaluating the issues presented in this matter.

Pursuant to Cal. Rules of Court, rule 8.252 (a)(1)(A), the matters to be noticed are relevant to the appeal as follows:

The portions of the legislative history of Assembly Bill Nos. 3265; 2799; and 1978 are relevant to demonstrate the Legislature's intent with regard to § 6254.9, the statutory provision at issue in this

case. A.B. 3265 is the bill which enacted § 6254.9 and A.B. 2799 is the bill which enacted § 6253.9 which is directly relevant to the statutory interpretation of § 6254.9 because § 6253.9 requires an agency to provide the public with electronic records in any format requested, if said agency retains the records in such format. A.B. 1978 was a failed attempt to amend § 6254.9 and thus is relevant to demonstrate the legislative intent to reject the definition of “computer mapping system” Orange County now urges this Court to adopt.

The selected pages from the “GIS Needs Assessment” (“Assessment”) is relevant to show the importance of the GIS data, such as the OC Landbase, to the Orange County government’s activities and thereby to illustrate the public policy matters which may have some bearing on this Court’s statutory interpretation of § 6254.9. (*See People v. Woodhead* (1987) 43 Cal. 3d, 1002, 1008; *Ohio Farmers Ins. Co. v. Quin* (1988) 198 Cal.App.3d 1338, 1348.) The public’s ability to access electronic data, held by the government, especially GIS data, is increasingly important as governments increasingly rely on, and generate, computerized records. Additionally, the Assessment demonstrates how crucial GIS data, such as the OC Landbase, is to citizens’ ability to monitor their government.

The official ballot information for the California 2004 General Election concerning Proposition 59, from the “Arguments and Rebuttals” web page, is relevant to show the voters’ intent in amending, by an overwhelming majority, the California Constitution’s Declaration of Rights, which in turn is relevant to both the proper interpretation of § 6254.9, as well as Article I, 3(b), subsections (2) and (5), of the California Constitution. (*See, e.g., Strauss v. Horton* (2009) 46 Cal. 4th 364, 470; *Allen v. Sully-Miller Contracting Co.* (2002) 28 Cal.4th 222, 229.)

The American Heritage Dictionary’s definition of “program” is relevant to the common and ordinary usage of the term “software” as used in § 6254.9, subd., (a), and therefore the proper statutory interpretation of § 6254.9. (*See, e.g., Cory v. Board of Administration* (1997) 57 Cal.App.4th 1411, 1419-20 [dictionary definition used to determine plain meaning].) Thus, Petitioner requests the Court judicially notice the sixth meaning of the noun “program” in the American Heritage Dictionary, which defines computer program as “A set of coded instructions that enables a machine, especially a computer, to perform a desired sequence of operations.”

The excerpts from Paul E. Ceruzzi, *A History of Modern Computing* (MIT Press 1998) are relevant to show the historical context of computer terminology and thus legislative intent at the

time the California Legislature enacted § 6254.9. More specifically, as argued in the opening brief, this material establishes that, in 1988, the only widely-available computer with a graphical hardware/software user interface was the Apple Macintosh. (See pp. 274-75 (“...no PC [when the Macintosh was introduced in 1984], no matter what software or boards users added, could offer the graphical interface of the Macintosh.” The version of MS Windows that started Windows’ ubiquity was introduced two years later. (See p. 276 “Version 3 of Windows, the breakthrough version, was not introduced until around 1990, so for the next several years, IBM PCs and their clones would be known by the primitive [non-graphical] MS-DOS interface inherited from the minicomputer world.”))

The fact that computer graphics systems, though a rarity in 1988, are now virtually ubiquitous in the form of all desktop, i.e., personal computers, is relevant to the interpretation of § 6254.9, in that by adopting an interpretation of “computer graphics systems” as used in § 6254.9, subd., (b), in the same way Real Party Orange County urges this Court to interpret “computer mapping systems” – i.e., as including data in addition to software – would, taken to its logical conclusion, exclude from Public Records Act disclosure *all computer data* maintained on personal computers, including most government computers.

Finally, the LexisNexis-generated report showing all relevant amendments to the Public Records Act, highlighted, is relevant to demonstrate legislative intent with respect to both §§ 6254.9 and 6253.9 (an associated statute contained in the Public Records Act).

Pursuant to Cal. Rules of Court, rules 8.252(2)(B) and (C), the matters to be noticed were presented to the trial court and appellate court as follows:

With respect to Exhibit 4, portions of the legislative history of California Assembly Bill No. 3265, (1987-1988 Reg. Sess.), Petitioner requested Respondent Superior Court (“Superior Court”) take judicial notice of the documents, which was subsequently granted, and the Court of Appeal, Fourth District (“Fourth District”) took judicial notice of the same material in the record (see Slip Op., attached as Exhibit A to Petitioner’s Opening Brief on the Merits in this case [hereinafter “Opinion”], p. 8, n.6.)

With respect to Exhibit 2, selected pages of the “GIS Needs Assessment” prepared for County of Orange, California by Geographic Technologies Group, were presented to the Superior Court as Exhibit 45 in connection with the Writ of Mandate hearing but the court was not requested to, nor did it, take judicial notice of these documents; Petitioner requested the Fourth District take

judicial notice of these documents, but the request was denied.

(Opinion, p. 4, n. 3.)

None of the other documents of which Petitioner now motions this Court to take judicial notice were presented to the Superior Court. However, Petitioner requested the Fourth District judicially notice the official ballot information for the California 2004 General Election concerning Proposition 59, (Exhibit 3)(Opinion, p. 4, n.3); and portions of the legislative history of California Assembly Bill No. 2799, (1999-2000 Reg. Sess.)(Exhibit 1), both of which were granted. (Id.) Additionally, the Fourth District granted Amici Curiae Media and Open Government's Motion Requesting Judicial Notice of portions of the legislative history of California Assembly Bill No. 1978, (2007-2008, Reg. Sess.)(Exhibit 8)(Id.)

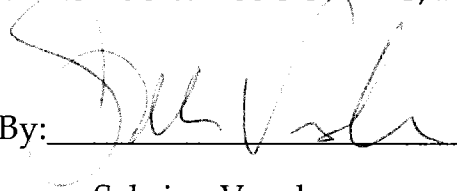
None of the documents herein relate to proceedings occurring after the trial court's judgment.

This motion is based upon the Memorandum of Points and Authorities, the Declaration of Sabrina Venskus, and the exhibits attached thereto.

Dated: November 22, 2011

Respectfully Submitted,

VENSKUS & ASSOCIATES, P.C.

By: 

Sabrina Venskus
Attorney for Petitioner,
The Sierra Club

Memorandum of Points and Authorities

Pursuant to Evidence Code § 459, this Court must take judicial notice of any matter specified in Evidence Code § 451 and may take judicial notice of any matter specified in Evidence Code § 452.

As a threshold matter, Evidence Code § 450 allows this court to take judicial notice of any matter authorized by law;

Under the Evidence Code, as under existing law, courts may consider whatever materials are appropriate in construing statutes, determining constitutional issues, and formulating rules of law. That a court may consider legislative history, discussions by learned writers in treatises and law reviews, materials that contain controversial economic and social facts or findings or that indicate contemporary opinion, and similar materials is inherent in the requirement that it take judicial notice of the law. In many cases, the meaning and validity of statutes, the precise nature of a common law rule, or the correct interpretation of a constitutional provision can be determined only with the help of such extrinsic aids[.]

(Cal. Law Revision Com. com., Evid. Code (2010 ed.) foll. § 450.)

Reports and interpretive opinions of the Law Revision Commission

are entitled to great weight. (*People v. Williams* (1976) 16 Cal.3d 663, 667-668 [superseded by statute on other grounds].)

Pursuant to Evidence Code § 452 (c), Petitioner requests this Court take judicial notice of the legislative history of A.B. 3265 (with respect to § 6254.9), A.B. 2799 (with respect to § 6253.9), and A.B. 1978 (the failed legislative attempt of sponsor Orange County to amend § 6254.9.) (*Conservatorship of Whitley*, (2010) 50 Cal. 4th 1206, 1218, n.3; *Elsner v. Uveges*, (2004) 34 Cal.4th 915, 929 & n.10; *Lytwyn v. Fry's Electronics, Inc.*, (2005) 126 Cal.App.4th 1455, [Court took judicial notice of documents related to a failed legislative attempt to amend the Unfair Competition Law (UCL); the materials were properly subject to judicial notice and could be relied on in interpreting the UCL].)

This Court is also entitled to take judicial notice of selected pages of "GIS Needs Assessment Study," ("Assessment") prepared for County of Orange, California by Geographic Technologies Group, pursuant to Evidence Code § 450, (Cal. Law Revision Com. com., Evid. Code (2010 ed.) foll. § 450, ["courts may consider whatever materials are appropriate in construing statutes," including "economic and social facts."]); and Evidence Code §§ 452 (g) and (h), because the Assessment contains facts and propositions with respect to government's use of GIS technology that are not reasonably

subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

This Court is entitled to take judicial notice of the official ballot information for the California 2004 General Election concerning Proposition 59, pursuant to Evidence Code §§ 452 (a) and (h), for the purpose of discerning voters' legislative intent in enacting Article I, Section 3 (b) and its subsections, which bears directly upon the constitutional question presented in this case.

This Court should take judicial notice of the American Heritage Dictionary's definition of "program" (4th ed., 2006), because Evidence Code § 451 (e) requires a court to take judicial notice of the "true signification of all English words and phrases and of all legal expressions." (*Castro v. State*, (1970) 2 Cal.3d 223, 239 n. 28 & 29; *Joyce v. Ford Motor Co.*, (2011) 198 Cal.App 4th 1478, 1491-92 & n.5.)

This Court is also entitled to take judicial notice of excerpts from Paul E. Ceruzzi, *A History of Modern Computing* (MIT Press 1998), pursuant to Evidence Code §§ 454(a)(1) and 452 (h), respectively, because Mr. Ceruzzi is a learned person in the subject matter of computer technology and its historical context, and the excerpts requested for judicial notice involve facts that are not reasonably subject to dispute and are capable of immediate and accurate

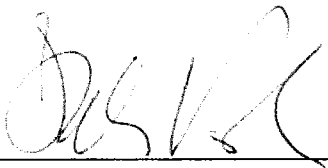
determination by resort to sources of reasonably indisputable accuracy. (*Gould v. Maryland Sound Industries, Inc.*, (1995) 31 Cal.App.4th 1137, 1145, [acknowledging Evidence Code § 452 (h) is intended to cover facts which are “widely accepted as established by experts and specialists in the natural, physical, and social sciences which can be verified by reference to treatises, encyclopedias, almanacs and the like or by persons learned in the subject matter”]; *see also* Cal. Law Revision Com. com., Deering’s Ann. Evid. Code (2010 ed.), foll. § 454. [“Since one of the purposes of judicial notice is to simplify the process of proofmaking, the judge should be given considerable latitude in deciding what sources are trustworthy. This section permits the court to use any source of pertinent information, including the advice of persons learned in the subject matter. It probably restates existing law as found in Section 1875 of the Code of Civil Procedure”].)

This Court should take judicial notice of the proffered LexisNexis generated report showing all relevant amendments to the Public Records Act (Government Code §§ 6250 *et seq.*), highlighted, pursuant to Evidence Code § 451 (a) or § 452 (b) because the report contains a verifiable list of all Public Records Act amendments enacted by the California Legislature. The document is judicially noticeable because it is in a report form generated by an

official and widely known legal research website. In addition, that the subject amendments listed in the report were passed by the Legislature in the specified years is not subject to dispute.

Dated: November 22, 2011

VENSKUS & ASSOCIATES, P.C.

By:  _____

Sabrina D. Venskus

Attorney for Petitioner,
The Sierra Club

Declaration of Sabrina Venskus

I, Sabrina Venskus, declare and state as follows:

1. I am licensed to practice in the state of California and am lead counsel for Petitioner The Sierra Club in this matter. I have personal knowledge of all matters contained herein.
2. On August 7, 2010, my co-counsel Mr. Dean Wallraff, accessed Westlaw via the Internet, and obtained portions of the legislative history of California Assembly Bill No. 2799, (1999-2000 Reg. Sess.,) of which true and correct copies are attached hereto as Exhibit 1, and further Bates stamped RJN1-000001-000020.
3. On December 10, 2009, in response to Petitioner's Request for Production of Documents, Respondent County of Orange produced a document entitled "GIS Needs Assessment Study," prepared for County of Orange, California by Geographic Technologies Group, true and correct copies of *selected pages* from the complete document produced, attached hereto as Exhibit 2, and further Bates stamped OC 00985-88; 01011; 01029; 001188; 001215; 001453-55; 001459; 001461; 001463.

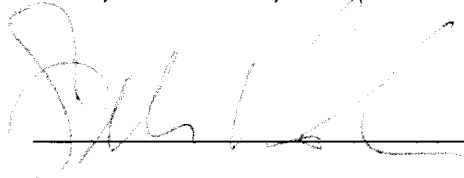
4. On May 7, 2010 my co-counsel Mr. Dean Wallraff accessed the official web site of the California Secretary of State via the internet to obtain the official ballot information for the California 2004 General Election concerning Proposition 59, from the Arguments and Rebuttals web page. The URL Mr. Wallraff accessed was at <http://vote2004.sos.ca.gov/voterguide/propositions/prop59-arguments.htm>. Exhibit 3 attached hereto is a true and correct copy of the web page, and further Bates stamped RJN3-000001-000004.
5. Exhibit 4 attached hereto is a true and correct copy of portions of the legislative history of California Assembly Bill No. 3265, (1987-1988 Reg. Sess.), related to the enactment of Government Code § 6254.9, obtained by my co-counsel Dean Wallraff, and further Bates stamped PA-952-953; 955-957; 959-967; 969-970; 972-977; 979; 981-982; 984-1007; 1009-1010; 1012-1013; 1015-1026; 1028-1029; 1031;1033-1072; 1074-1078; 1080.
6. Attached as Exhibit 5 hereto is a true and correct copy of page 1401 of the American Heritage Dictionary, (4th ed., 2006).
7. Exhibit 6 attached hereto are true and correct copies of the cover page and pages numbered 272 through 277 of Paul E.

Ceruzzi, A History of Modern Computing (MIT Press 1998) and further Bates stamped RJN6-000001-000004.

8. On November 13, 2011, I accessed LexisNexis via the internet and using relevant search terms, I generated a report showing all amendments to the Public Records Act (Cal. Gov. Code §§ 6250 *et seq.*). I then downloaded this report using the instant “download” function on LexisNexis and saved it to my computer hard drive in Microsoft Word format. I further highlighted in yellow, using Microsoft Word, all the relevant statutory amendments since the passage of § 6254.9, for the Court’s ease of reference; a true and correct copy of the report is attached hereto as Exhibit 7, and further Bates stamped RJN7-000001-000021.
9. Exhibit 8 attached hereto are true and correct copies of the legislative history of California Assembly Bill 1978, (2007-2008, Reg. Sess.,) obtained from www.leginfo.ca.gov, and further Bates stamped as RJN8-000001-000003.

I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct.

Executed at Ventura, California, on this 22nd day of November,
2011.



Sabrina D. Venskus

Table of Exhibits

Vol. 1	Exhibit 1	Portions of the legislative history of California Assembly Bill No. 2799, (1999-2000, Regular Session).
	Exhibit 2	Selected pages of "GIS Needs Assessment Study," prepared for County of Orange, California, by Geographic Technologies Group.
	Exhibit 3	Official ballot information for the California 2004 General Election concerning Proposition 59, "Arguments and Rebuttals" web page.
	Exhibit 4 (PA-000952-000953; 955-957; 959-967)	Portions of the legislative history of California Assembly Bill No. 3265, (1987-1988, Regular Session).
Vol. 2	Exhibit 4 (PA-000969-000970; 972-977; 979; 981-982; 984-1007; 1009-1010; 1012-1013; 1015-1026; 1028-1029; 1031)	Portions of the legislative history of California Assembly Bill No. 3265, (1987-1988, Regular Session).
Vol. 3	Exhibit 4 (PA-001033-001072; 1074-1078; 1080)	Portions of the legislative history of California Assembly Bill No. 3265, (1987-1988, Regular Session).
	Exhibit 5	American Heritage Dictionary definition of "program," p.1401, (4 th ed., 2006.)
	Exhibit 6	Excerpts from Paul E. Ceruzzi, <i>A History of Modern Computing</i> , cover page plus pages 272 through 277. (MIT Press 1998.)
	Exhibit 7	LexisNexis generated report showing all relevant amendments to the Public Records Act, and highlighted.
	Exhibit 8	Portions of the legislative history of California Assembly Bill No. 1978, (2007-2008, Regular Session).

Exhibit 1

California Bill History, 1999-2000 Regular Session, **Assembly Bill 2799**
1999-2000

California Assembly
1999-2000 Regular Session

COMPLETE BILL HISTORY

BILL NUMBER: **A.B. No. 2799**

AUTHOR: Shelley

TOPIC: Public records: disclosure.

TYPE OF BILL:

Inactive

Non-Urgency

Non-Appropriations

Majority Vote Required

State-Mandated Local Program

Fiscal

Non-Tax Levy

BILL HISTORY

2000

Sept. 30 Chaptered by Secretary of State - Chapter 982, Statutes of 2000.

Sept. 29 Approved by the Governor.

Sept. 7 Enrolled and to the Governor at 9:30 a.m.

Aug. 25 Senate amendments concurred in. To enrollment. (Ayes 72. Noes 2. Page 8364.)

Aug. 25 In Assembly. Concurrence in Senate amendments pending. Assembly Rule 77 suspended.

Aug. 25 Read third time, passed, and to Assembly. (Ayes 34. Noes 0. Page 5992.)

A.B. 2799

California Assembly Bill History, 1999-2000 A.B. 2799

Aug. 18 From committee: Be placed on second reading file pursuant to Senate Rule 28.8. Read second time. To third reading.

July 6 Read second time, amended, and re-referred to Com. on APPR.

July 5 From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 5. Noes 0.).

June 22 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.

June 22 Read second time, amended, and re-referred to Com. on APPR.

June 8 Referred to Com. on JUD.

May 25 In Senate. Read first time. To Com. on RLS. for assignment.

May 25 Read third time, passed, and to Senate. (Ayes 70. Noes 4. Page 6573.)

May 24 Read second time. To third reading.

May 23 Read second time and amended. Ordered returned to second reading.

May 22 From committee: Amend, and do pass as amended. (Ayes 17. Noes 2.) (May 17).

May 8 From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 12. Noes 2.) (May 8).

May 2 Re-referred to Com. on G.O.

Apr. 27 Joint Rule 61 (b) (5) suspended.

Apr. 27 From committee chair, with author's amendments: Amend, and re-refer to Com. on G.O. Read second time and amended.

Apr. 24 In committee: Set second hearing. Failed passage. Reconsideration granted.

Apr. 10 In committee: Set, first hearing. Hearing canceled at the request of author.

Mar. 16 Referred to Com. on G.O.

Feb. 29 From printer. May be heard in committee March 30.

Feb. 28 Joint Rule 54 suspended. Assembly Rule 49(a) suspended. Read first time. To print.

CA Assem. B. Hist., 1999-2000 A.B. 2799
END OF DOCUMENT

California Bill Analysis, Senate Committee, 1999-2000 Regular Session,
Assembly Bill 2799
June 27, 2000

California Senate

1999-2000 Regular Session

SENATE JUDICIARY COMMITTEE

Adam B. Schiff, Chairman

1999-2000 Regular Session

AB 2799

Assembly Member Shelley

As Amended June 22, 2000

Hearing Date: June 27, 2000

Government Code

GMO:cjt

SUBJECT

Public Records: Disclosure

DESCRIPTION

This bill would revise various provisions in the Public Records Act (PRA) in order to make available public records, not otherwise exempt from disclosure, in an electronic format, if the information or record is kept in electronic format by a public agency. It would specify what costs the requester would bear for obtaining copies of records in an electronic format.

The bill would add, to the unusual circumstances that would permit an extension of time to respond to a request for public records, the need of the agency to compile data, write programming language, or construct a computer report to extract data. The bill would require that a response to a request for public records that includes a denial, in whole or in part, shall be in writing, and provide that the Public Records Act shall not be construed to permit an agency to delay or obstruct inspection or copying of public records.

BACKGROUND

This bill is a blend of two bills that were passed by this Committee last year, AB 1099 (Shelley), and SB 1065 (Bowen).

AB 1099 passed the Senate (and was chaptered) but contained provisions unrelated to electronic records. SB 1065 was vetoed by the Governor, who stated in his veto message that he believes the bill to be well-intentioned, but "the State's information technology resources should be directed towards making sure that its computer systems are year 2000 compliant. The author was unwilling to add language which would ensure the completion of this task before the implementation of the provisions of this bill." Most of SB 1065 was incorporated into AB 2799.

AB 2799 contains those provisions of both bills that were received without much opposition. It is sponsored by the California Newspaper Publishers Association, and is one of several bills moving through both houses that relate to public records or to the use of electronic records by public agencies.

CHANGES TO EXISTING LAW

The Public Records Act allows an agency to provide computer data in any form determined by the agency. The Act directs a public agency, upon request for inspection or for a copy of the records, to respond to a request within 10 days after receipt of the request. In unusual circumstances, which are specified in the Act, this timeline for responding may be extended in writing for 14 days. [Government Code Section 6253.]

This bill would:

a) Require a public agency to make disclosable information available in any electronic format in which it holds the information, unless release of the information would compromise the integrity of the record or any proprietary software in which it is maintained;

b) Add, in the definition of "unusual circumstances" for which the time limit for responding to a request for a copy of records may be extended up to 14 days after the initial 10 days, the need for the agency to compile data, to write programming language or a computer program, or to construct a computer report to extract data;

c) Require a public agency to respond in writing to a written request for public records, including a denial of the request in whole or in part, and requiring that the names and titles of the persons responsible for the denial be stated therein;

d) Provide that nothing in the Act shall be construed to permit the agency to delay or obstruct the inspection or copying of public records;

e) Provide that a requester bear the costs of programming and computer services necessary to produce a record not otherwise readily produced, as specified;

f) Delete the provision in current law that computer data that is a public record shall be provided in a form determined by the agency.

COMMENT

1. Stated need for legislation

With the advent of the electronic age, more and more people want to be able to access information in an electronic format. Apparently, there is not current authority under which a person seeking electronically available records could obtain such records in that format. This means that if an agency makes a CD or disk copies of the records, a member of the public could not obtain records in that format-the public would have to buy copies made out of the printouts from the records. The expense of copying these records in paper format, especially when the records are voluminous, makes those public records practically inaccessible to the public, according to the author and the proponents.

The author also states that the current provision in the PRA that gives a public agency the discretion to determine in which form the information requested should be provided works so that the agency can effectively frustrate the request by providing a copy of the requested record in a form different from the request, which could sometimes render the information useless.

The sponsor of this bill, the California Newspaper Publishers Association (CNPA) also contends that the 10-day period that a public agency has to respond to a request for inspection or copying of public records is not intended to delay access to records. It is intended instead, when there is a legitimate dispute over whether the records requested are covered by an exemption, to provide time for the agency to provide the information or provide the written grounds for a denial. What many state agencies do, the sponsor says, is to use the 10 days as a "grace period" for providing the information, during which time many a requester (members of the public) often gives up and never acquires the record.

These two deficiencies in the Public Records Act are what this bill is intended to cure.

2. Information in electronic form to be provided in same form

This bill would require a public agency that has information constituting a public record in an electronic format to make that information available in an electronic format upon request. Additionally,

a) the agency is required to provide information in any electronic format in which it holds the information; and

b) the agency is required to provide a copy of an electronic record in the format requested if it is the format that had been used by the agency to create copies for its own use or for other agencies.

3. Conditions on providing records in electronic format

The bill would make conditional the requirement that a public agency comply with a request for public records held in an electronic format. These conditions are:

a. An agency would not be required to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

This provision was amended into SB 1065 (Bowen) when it was heard in this Committee last year, in response to concerns raised by the some state agencies.

b. An agency would not be permitted to make information available only in an electronic format.

Even though this bill is intended to make records available to the public in electronic format if kept by an agency in that form, an agency may not, under this bill, frustrate the public's access to information by then converting the non-electronically formatted records into electronic format. As prevalent as electronic data processing is now, there are still those who may not have access to computer equipment to read computer disks or CDs. Thus, if public information is requested in a form other than in an electronic format, a public agency must provide such record in the non-electronic format.

However, this bill would require the agency to provide information in electronic format only if requested by a member of the public. If the record is available in electronic format as well as in printed form, it is not clear whether the public agency has an obligation to tell the requester that the information is available in electronic format.

SHOULD A PUBLIC AGENCY INFORM A REQUESTER THAT THE INFORMATION REQUESTED IS AVAILABLE IN ELECTRONIC FORM?

c. An agency would not be required to release an electronic record in electronic form if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

This limitation was added to the bill in order to alleviate concerns that electronic records, though created with taxpayer money (see Comment 5), may have been produced using software designed specifically for the agency. This bill would give the agency the flexibility to refuse to release a requested record in electronic format, if such a release would mean that the software would also have to be released. Even without the software problem, though, an electronic record containing the data may be deciphered and the software program reconstructed (see below).

The agency also may refuse to provide the information in electronic format if the electronic record, when transmitted or provided to a requester, could be altered and then retransmitted, thus rendering the original record vulnerable.

These two concerns were registered by opponents of SB 1065 last year. Thus, AB 2799 includes a provision that gives the public agency the option not to provide the information if disclosing it would jeopardize the integrity or security of the system.

a) The Department of Motor Vehicles would not be required to provide public access to its records where access is otherwise restricted by statute.

These records would be, among others, personal information on holders of driver's licenses, and other information protected by federal and state privacy statutes.

The Governor's veto message of SB 1065 stated that many of the state's computer systems do not yet have the capacity to implement the provisions of the bill, and that he is concerned that SB 1065 would not be able to protect "the confidentiality of citizens whose personal information is maintained by the state departments including the Employment Development Department, the Department of Motor Vehicles, the Department of Health Services, and the California Highway Patrol."

Only the records of the DMV, where access to the records is restricted by statute, are exempt from this bill.

SHOULD THE OTHER AGENCIES ALSO BE EXEMPTED?

4. Costs of reproduction of records: what requester pays for

This bill would specify the copying costs that a requester would pay:

a) If the record duplicated is an electronic record in a format used by the agency to make its own copies or copies for other agencies, the cost of duplication would be the cost of producing a copy in an electronic format.

b) If the public agency would be required to produce a copy of an electronic record and the record is one that is produced by the public agency at otherwise regularly scheduled intervals, or if the request would require data compilation, extraction, or programming to produce the record, the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce the record.

5. Target records to be duplicated

This bill would target voluminous documents as those public records to which the public should have access in the electronic format, and those public records such as the city budget, environmental impact reports, or minutes from a Board of Su-

pervisors' meeting as documents that should be available on disk or the Internet. Especially because these documents were created a taxpayer expense in the first place, it is argued, a person seeking copies should not be gouged by the public agency for the cost of a person standing in front of a copy machine to duplicate the record when the record could quickly be copied onto a disk or accessed on the Internet. Thus, the bill provides that the cost of duplicating a record in electronic format would be the direct cost of producing that record in electronic format, i.e., the cost of copying the CD or copying records stored in a computer into disks.

Where the records do not lend themselves to electronic format, this bill would not impose a duty on the public agency to convert the records into electronic format (just as the agency would not be permitted to make records available only in electronic format). For example, environmental impact reports, which are voluminous, normally contain maps and other fold-out attachments. Until these documents are actually produced by the public agency or their contractors in electronic format, there would be no obligation for the agency to provide the reports in disk or CD form.

However, if at some point in time these voluminous records do become available in electronic form, it is possible that public agencies will just have to create websites for posting all disclosable records accessible to the public.

6. Public agency may not delay or obstruct access to public records

This bill would provide that "Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records?" [Government Code Section 6253(d).]

Thus, any delay experienced by an agency in responding to a request could be interpreted as a violation of the Public Records Act. Under existing law, the court is required to award reasonable attorney's fees and court costs to a person who prevails in litigation filed under the PRA. But this award would be available only if the requester can prove that the agency "obstructed" the availability of the requested records for inspection or copying. Because of the change this bill would make to the referenced provision, it may invite litigation at every delay in production of records requested.

Proponents of this change, however, point to the fact that when this section was last amended, the word "delay" was replaced with the word "obstruct." The return of the word "delay" to this section, they say, would remove any doubt that the prior substitution of "obstruct" for "delay" in subdivision (d) of Section 6253 was not intended to weaken the PRA's mandate that agencies act in good faith to promptly disclose public records requested under the Act.

An example used by proponent, counsel to The Orange County Register, is the requested records from the University of California, Irvine, for the Register's in-

6/27/2000

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investigation and report on the abuses at the University's fertility clinic (for which the Register earned a Pulitzer Prize). The Register apparently utilized the PRA to obtain public records that were critical to the reporting. Repeated requests met with repeated months of delay, "even where the University readily conceded that the records are not exempt from disclosure." Proponent indicated, however, that the Register "is not so naive as to believe that this amendment will solve the serious problem of administrative delay in responding to CPRA requests?"

7. "Unusual circumstance" would extend time to respond

Existing law provides for an extension of the public agency's deadline for responding to a request from 10 days to no more than 14 days more, if certain "unusual circumstances exist, such as the need to search for and collect data from field facilities separate from the office processing the request or the need for consultation with another agency that has a substantial interest in the determination of the request.

This bill would add to these "unusual circumstances," the need to compile data, write programming language or a computer program, or to construct a computer report to extract data. This provision recognizes that sometimes the information or data requested is not in a central location nor easily accessible to the agency itself, and thus would take time to produce or copy.

8. Denial of request must be in writing

Existing law requires an agency to justify the withholding of its record by demonstrating that the record requested is exempt under the PRA, or that on the facts of the particular case, the public interest served by not disclosing the information outweighs the public interest served by disclosure of the record. The PRA provision does not require this justification or denial of the request to be in writing.

This bill would expressly state that a response to a written request for inspection or copying of public records that includes a determination that the request is denied, in whole or in part, must be in writing.

9. Withdrawn opposition

The following entities initially registered opposition to the bill for various reasons, most of them related to the proprietary software and security exemption from providing information in electronic format and to the earlier version which did not specify that electronic records or electronically formatted information must be disclosable in the first place (or not exempt from the PRA) to be available in electronic format:

The County of Los Angeles; the County of Los Angeles Sheriff's Department; California State Sheriff's Association; California State Association of Counties;

California Association of Clerks and Election Officials.

The amendments last made to this bill shifted these entities' position to neutral.

The one remaining opponent of the bill, the County of Orange, contends that the county, like many others, already provide information to the public on public records and how to access them, 24 hours a day through the Internet. "Without reasonable regulations," the county argues, "County staff could be required to spend considerable time copying and editing records, determining if they are appropriate for public disclosure and responding with written justifications if the requests are denied."

Support: Orange County Register

Opposition: County of Orange

HISTORY

Source: California Newspaper Publishers' Association (CNPA)

Related Pending Legislation: SB 2027 (Sher) would also amend the Public Records Act as it relates to a person's right to litigate in the event of a denial of the person's request. The bill is now in the Assembly Judiciary Committee.

Prior Legislation: AB 1099 (Shelley) and SB 1065 (Bowen), see background)

Prior Vote: Asm. G.O. (Ayes 12, Noes 2)
Asm. Appr. (Ayes 17, Noes 2)
Asm. Flr. (Ayes 70, Noes 4)

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California Bill Analysis, Senate Floor, 1999-2000 Regular Session, **Assembly
Bill 2799**
July 6, 2000

California Senate
1999-2000 Regular Session

SENATE RULES COMMITTEE

Office of Senate Floor Analyses

THIRD READING

Bill No: **AB 2799**

Author: Shelley (D), et al

Amended: 7/6/00 in Senate

Vote: 21

SENATE JUDICIARY COMMITTEE: 5-0, 6/29/00

AYES: Escutia, Morrow, O'Connell, Peace, Schiff

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 70-4, 5/25/00 - See last page for vote

SUBJECT: Public records: disclosure

SOURCE: California Newspaper Publishers Association

DIGEST: This bill revises various provisions in the Public Records Act (PRA) in order to make available public records, not otherwise exempt from disclosure, in an electronic format, if the information or record is kept in electronic format by a public agency. It specifies what costs the requester would bear for obtaining copies of records in an electronic format.

The bill adds, to the unusual circumstances that would permit an extension of time to respond to a request for public records, the need of the agency to compile data, write programming language, or construct a computer report to extract data. The bill requires that a response to a request for public records that includes a denial, in whole or in part, shall be in writing, and provides that the Public Records Act shall not be construed to permit an agency to delay or obstruct inspection or copying of public records.

ANALYSIS: The Public Records Act allows an agency to provide computer data in any form determined by the agency.

The Act directs a public agency, upon request for inspection or for a copy of the records, to respond to a request within 10 days after receipt of the request. In unusual circumstances, which are specified in the Act, this timeline for responding may be extended in writing for 14 days. [Government Code Section 6253.]

This bill would:

1. Require a public agency to make disclosable information available in any electronic format in which it holds the information, unless release of the information would compromise the integrity of the record or any proprietary software in which it is maintained;

2. Add, in the definition of "unusual circumstances" for which the time limit for responding to a request for a copy of records may be extended up to 14 days after the initial 10 days, the need for the agency to compile data, to write programming language or a computer program, or to construct a computer report to extract data;

3. Require a public agency to respond in writing to a written request for public records, including a denial of the request in whole or in part, and requiring that the names and titles of the persons responsible for the denial be stated therein;

4. Provide that nothing in the Act shall be construed to permit the agency to delay or obstruct the inspection or copying of public records;

5. Provide that a requester bear the costs of programming and computer services necessary to produce a record not otherwise readily produced, as specified;

6. Delete the provision in current law that computer data that is a public record shall be provided in a form determined by the agency.

This bill is a blend of two bills that were passed by the Legislature last year, AB 1099 (Shelley), and SB 1065 (Bowen).

AB 1099 passed the Senate (and was chaptered) but contained provisions unrelated to electronic records. SB 1065 was vetoed by the Governor, who stated in his veto message that he believes the bill to be well-intentioned, but "the State's information technology resources should be directed towards making sure that its computer systems are year 2000 compliant. The author was unwilling to add language which would ensure the completion of this task before the implementation of the provisions of this bill." Most of SB 1065 was incorporated into AB 2799.

AB 2799 contains those provisions of both bills that were received without much opposition. It is sponsored by the California Newspaper Publishers Association, and is one of several bills moving through both houses that relate to public re-

ords or to the use of electronic records by public agencies.

Information in electronic form to be provided in same form

This bill would require a public agency that has information constituting a public record in an electronic format to make that information available in an electronic format upon request. Additionally,

1. the agency is required to provide information in any electronic format in which it holds the information; and

2. the agency is required to provide a copy of an electronic record in the format requested if it is the format that had been used by the agency to create copies for its own use or for other agencies.

Conditions on providing records in electronic format

The bill would make conditional the requirement that a public agency comply with a request for public records held in an electronic format. These conditions are:

1. An agency would not be required to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

2. An agency would not be permitted to make information available only in an electronic format.

Even though this bill is intended to make records available to the public in electronic format if kept by an agency in that form, an agency may not, under this bill, frustrate the public's access to information by then converting the non-electronically formatted records into electronic format. As prevalent as electronic data processing is now, there are still those who may not have access to computer equipment to read computer disks or CDs. Thus, if public information is requested in a form other than in an electronic format, a public agency must provide such record in the non-electronic format.

This bill requires a public agency to provide information in electronic format only if requested by a member of the public. If the record is available in electronic format as well as in printed form, the public agency is required to tell the requester that the information is available in electronic format.

3. An agency would not be required to release an electronic record in electronic form if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

This limitation was added to the bill in order to alleviate concerns that electronic records, though created with taxpayer money, may have been produced using software designed specifically for the agency. This bill would give the agency the flexibility to refuse to release a requested record in electronic format, if such

a release would mean that the software would also have to be released. Even without the software problem, though, an electronic record containing the data may be deciphered and the software program reconstructed (see below).

The agency also may refuse to provide the information in electronic format if the electronic record, when transmitted or provided to a requester, could be altered and then retransmitted, thus rendering the original record vulnerable.

These two concerns were registered by opponents of SB 1065 last year. Thus, AB 2799 includes a provision that gives the public agency the option not to provide the information if disclosing it would jeopardize the integrity or security of the system.

4. Any agency would not be required to provide public access to its records where access is otherwise restricted by statute.

These records would be, among others, personal information on holders of driver's licenses, and other information protected by federal and state privacy statutes.

The Governor's veto message of SB 1065 stated that many of the state's computer systems do not yet have the capacity to implement the provisions of the bill, and that he is concerned that SB 1065 would not be able to protect "the confidentiality of citizens whose personal information is maintained by the state departments including the Employment Development Department, the Department of Motor Vehicles, the Department of Health Services, and the California Highway Patrol."

Costs of reproduction of records: what requester pays for

This bill would specify the copying costs that a requester would pay:

1. If the record duplicated is an electronic record in a format used by the agency to make its own copies or copies for other agencies, the cost of duplication would be the cost of producing a copy in an electronic format.

2. If the public agency would be required to produce a copy of an electronic record and the record is one that is produced by the public agency at otherwise regularly scheduled intervals, or if the request would require data compilation, extraction, or programming to produce the record, the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce the record.

Target records to be duplicated

This bill would target voluminous documents as those public records to which the public should have access in the electronic format, and those public records such as the city budget, environmental impact reports, or minutes from a Board of Supervisors' meeting as documents that should be available on disk or the Internet.

Especially because these documents were created a taxpayer expense in the first place, it is argued, a person seeking copies should not be gouged by the public agency for the cost of a person standing in front of a copy machine to duplicate the record when the record could quickly be copied onto a disk or accessed on the Internet. Thus, the bill provides that the cost of duplicating a record in electronic format would be the direct cost of producing that record in electronic format, i.e., the cost of copying the CD or copying records stored in a computer into disks.

Where the records do not lend themselves to electronic format, this bill would not impose a duty on the public agency to convert the records into electronic format (just as the agency would not be permitted to make records available only in electronic format). For example, environmental impact reports, which are voluminous, normally contain maps and other fold-out attachments. Until these documents are actually produced by the public agency or their contractors in electronic format, there would be no obligation for the agency to provide the reports in disk or CD form.

However, if at some point in time these voluminous records do become available in electronic form, it is possible that public agencies will just have to create web-sites for posting all disclosable records accessible to the public.

Public agency may not delay or obstruct access to public records

This bill would provide that "Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records?" [Government Code Section 6253(d).]

Thus, any delay experienced by an agency in responding to a request could be interpreted as a violation of the Public Records Act. Under existing law, the court is required to award reasonable attorney's fees and court costs to a person who prevails in litigation filed under the PRA. But this award would be available only if the requester can prove that the agency "obstructed" the availability of the requested records for inspection or copying. Because of the change this bill would make to the referenced provision, it may invite litigation at every delay in production of records requested.

Proponents of this change, however, point to the fact that when this section was last amended, the word "delay" was replaced with the word "obstruct." The return of the word "delay" to this section, they say, would remove any doubt that the prior substitution of "obstruct" for "delay" in subdivision (d) of Section 6253 was not intended to weaken the PRA's mandate that agencies act in good faith to promptly disclose public records requested under the Act.

An example used by proponent, counsel to The Orange County Register, is the requested records from the University of California, Irvine, for the Register's investigation and report on the abuses at the University's fertility clinic (for

which the Register earned a Pulitzer Prize). The Register apparently utilized the PRA to obtain public records that were critical to the reporting. Repeated requests met with repeated months of delay, "even where the University readily conceded that the records are not exempt from disclosure." Proponent indicated, however, that the Register "is not so naive as to believe that this amendment will solve the serious problem of administrative delay in responding to CPRA requests?"

"Unusual circumstance" would extend time to respond

Existing law provides for an extension of the public agency's deadline for responding to a request from 10 days to no more than 14 days more, if certain "unusual circumstances exist, such as the need to search for and collect data from field facilities separate from the office processing the request or the need for consultation with another agency that has a substantial interest in the determination of the request.

This bill would add to these "unusual circumstances," the need to compile data, write programming language or a computer program, or to construct a computer report to extract data. This provision recognizes that sometimes the information or data requested is not in a central location nor easily accessible to the agency itself, and thus would take time to produce or copy.

Denial of request must be in writing

Existing law requires an agency to justify the withholding of its record by demonstrating that the record requested is exempt under the PRA, or that on the facts of the particular case, the public interest served by not disclosing the information outweighs the public interest served by disclosure of the record. The PRA provision does not require this justification or denial of the request to be in writing.

This bill would expressly state that a response to a written request for inspection or copying of public records that includes a determination that the request is denied, in whole or in part, must be in writing.

Related Pending Legislation:

SB 2027 (Sher) would also amend the Public Records Act as it relates to a person's right to litigate in the event of a denial of the person's request. The bill is now in the Assembly Judiciary Committee.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 8/14/00)

California Newspaper Publishers Association (source)

Orange County Register

State Franchise Tax Board

1st Amendment Coalition

OPPOSITION: (Verified 8/14/00)

County of Orange

ARGUMENTS IN SUPPORT: According to the author's office, with the advent of the electronic age, more and more people want to be able to access information in an electronic format. Apparently, there is not current authority under which a person seeking electronically available records could obtain such records in that format. This means that if an agency makes a CD or disk copies of the records, a member of the public could not obtain records in that format-the public would have to buy copies made out of the printouts from the records. The expense of copying these records in paper format, especially when the records are voluminous, makes those public records practically inaccessible to the public, according to the author and the proponents.

The author also states that the current provision in the PRA that gives a public agency the discretion to determine in which form the information requested should be provided works so that the agency can effectively frustrate the request by providing a copy of the requested record in a form different from the request, which could sometimes render the information useless.

The sponsor of this bill, the California Newspaper Publishers Association (CNPA) also contends that the 10-day period that a public agency has to respond to a request for inspection or copying of public records is not intended to delay access to records. It is intended instead, when there is a legitimate dispute over whether the records requested are covered by an exemption, to provide time for the agency to provide the information or provide the written grounds for a denial. What many state agencies do, the sponsor says, is to use the 10 days as a "grace period" for providing the information, during which time many a requester (members of the public) often gives up and never acquires the record.

ARGUMENTS IN OPPOSITION: The County of Orange, contends that the county, like many others, already provide information to the public on public records and how to access them, 24 hours a day through the Internet. "Without reasonable regulations," the county argues, "County staff could be required to spend considerable time copying and editing records, determining if they are appropriate for public disclosure and responding with written justifications if the requests are denied."

ASSEMBLY FLOOR:

AYES: Aanestad, Alquist, Aroner, Baldwin, Bates, Battin, Bock, Briggs, Calderon, Campbell, Cardenas, Cardoza, Cedillo, Corbett, Correa, Cox, Cunneen, Davis, Dickerson, Ducheny, Dutra, Firebaugh, Florez, Floyd, Gallegos, Granlund, Havice,

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Honda, House, Jackson, Keeley, Knox, Kuehl, Leach, Lempert, Leonard, Longville, Lowenthal, Machado, Maddox, Maldonado, Mazzone, McClintock, Migden, Nakano, Olberg, Robert Pacheco, Rod Pacheco, Papan, Pescetti, Reyes, Romero, Runner, Scott, Shelley, Steinberg, Strickland, Strom-Martin, Thompson, Thomson, Torlakson, Vincent, Washington, Wayne, Wesson, Wiggins, Wildman, Wright, Zettel, Hertzberg

NGES: Ackerman, Ashburn, Brewer, Kaloogian

RJG: jk 8/16/00 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

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California Bill Analysis, Assembly Floor, 1999-2000 Regular Session,
Assembly Bill 2799
July 6, 2000

California Assembly
1999-2000 Regular Session

CONCURRENCE IN SENATE AMENDMENTS

AB 2799 (Shelley)

As Amended July 6, 2000

Majority vote

ASSEMBLY: 70-4 (May 25, 2000) SENATE: 34-0 (August 25, 2000)

Original Committee Reference: G.O.

SUMMARY: Revises various provisions in the Public Records Act (PRA) in order to make available public records, not otherwise exempt from disclosure, in an electronic format, if the information or record is kept in electronic format by a public agency. Requires that a response to a request for public records that includes a denial, in whole or in part, shall be in writing, and provides that PRA may not be construed to permit an agency to delay or obstruct inspection or copying of public records.

The Senate amendments provide that the cost of duplicating an electronic public record must be limited to the direct cost of producing a copy of a record in electronic format, except that the requestor must bear the cost of production if the public agency would have to produce the record at time when the record is not regularly scheduled to be available, or if the request would require data compilation or programming to produce the record.

EXISTING LAW:

1) Defines "public record" to include any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

2) Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to in-

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spect any public record, except as specifically provided.

3) Requires state and local agencies to make an exact copy of a public record available to any person upon payment of fees covering direct costs of duplication.

4) Requires that computer data be provided in a form determined by the agency.

AS PASSED THE ASSEMBLY, this bill deleted the requirement that public records kept on computer be disclosed in a form determined by the public agency. This bill required a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to specified guidelines. This bill additionally required an agency that denies a request for inspection or copies of public records to justify its withholding in writing when the request for public records was in writing.

FISCAL EFFECT:

1) Assuming that agencies generally respond in writing when denying a public records request, there should be negligible fiscal impact.

2) Potential costs to various agencies that currently make and sell copies of public records documents for workload in redacting nondisclosable electronic records from disclosable electronic records.

COMMENTS: PRA permits a state or local agency to provide computer records in any format determined by the agency. This bill would require public agencies to provide computer records in any format that the agency currently uses. This bill would also prohibit an agency from delaying access to the inspection or copying of public records. This bill is an attempt to provide reasonable guidelines for public access to electronically held records and the author believes that this bill will substantially increase the availability of public records and reduce the cost and inconvenience associated with large volumes of paper records.

Analysis Prepared by: George Wiley / G. O. / (916) 319-2531

FN: 0006488

CA B. An., A.B. 2799 Assem., 7/06/2000

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Exhibit 2



County of Orange, California
GIS Needs Assessment Study

In cooperation with:

*Assessor
Auditor-Controller
Clerk Recorder
OC Community Resources
OC Dana Point Harbor
OC Health Care Agency
OC Parks
OC Waste and Recycling
Offices of Public Defender
Probation
OC Public Works
Agricultural Commissioner
Facilities Operations
Flood Control
Geomatics and Land Information Systems
Operations and Maintenance
Planning and Administration
Code Enforcement Unit
Project Management
Road
Watersheds
Registrar of Voters
Sheriff and Emergency Management Bureau
Social Services Agency
Treasurer – Tax Collector*

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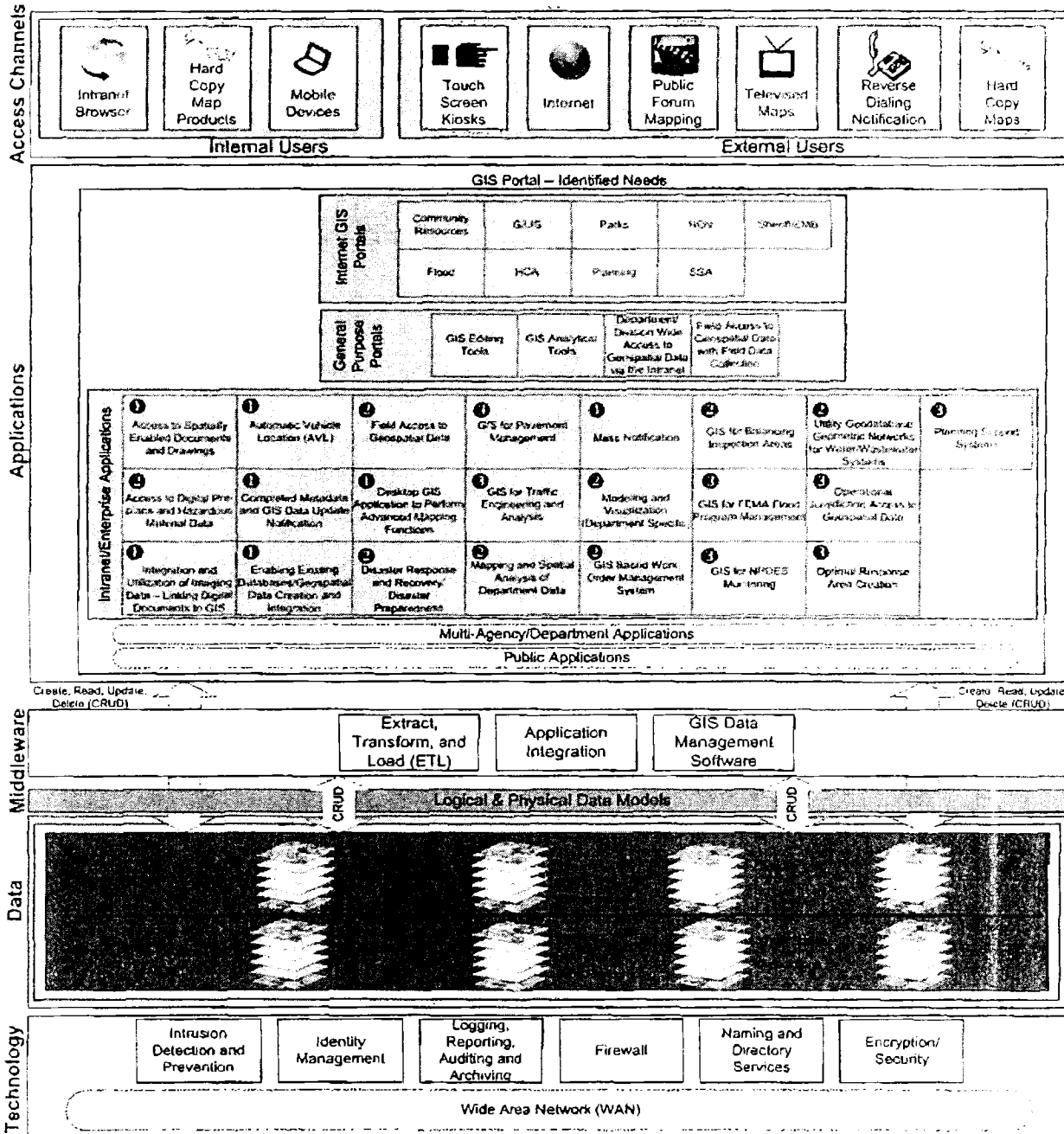
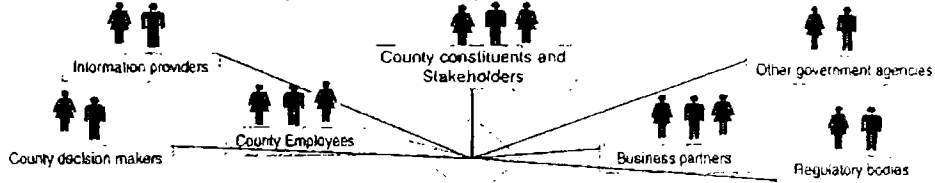


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OC Public Works	
Agricultural Commissioner	
Facilities Operations	
Flood Control	
Geomatics and Land Information Systems	
Operations and Maintenance	
Planning and Administration	
Code Enforcement Unit	
Project Management	
Road	

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 - Introduction to ArcGIS Server
 - Tier 3 Applications
 - GIS Training Matrix
 - Recommended Number of Personnel (by Department / Division) for Training
 - Database Design
 - Logical Database Design
 - Physical Database Design
 - Data Migration
 - Data Indexing Strategies—Metadata
 - Arc Catalog
 - Data Needs and Categories

Conceptual GIS Enterprise Architecture



History

County of Orange departments rely on information to carry out their various missions for public safety, land planning, social services, infrastructure management, taxation, and stewardship of natural and man-made resources. Nearly 90% of the information is location-based, meaning that each information item pertains to a place on the earth. This fact has given rise to the extensive adoption of Geographic Information Systems (GIS) to improve the efficiency and effectiveness of governmental and private sector operations.

The County has been using GIS since the early 1990's to improve the management and analysis of geographic related information. The Geographic Information Systems (GIS) Applications and Mapping Services Unit was formed in late August of 1992 by the County department currently known as the OC Public Works/Geomatics/Land Information Systems (G/LIS) Division. This unit is responsible for analysis, development, construction and quality control of GIS application output and products, providing thematic mapping services and graphic analysis projects for various entities within the County structure. An example of the list of clients requesting GIS analysis and/or mapping services includes:

- The Orange County Board of Supervisors
- County Executive Management
- OC Parks
- OC Public Works
- OC Engineering - Operations and Maintenance
- OC Engineering - Flood Control Program
- OC Planning and Development Services

G/LIS division owns an Oracle 10G geo-spatial database and the Landbase data. ArcGIS tool from ESRI is used to for GIS analysis and mapping projects. The G/LIS Landbase Information Systems Section is where the County Landbase is generated and updated. This unit prepares and maintains an information system consisting of a very accurate; parcel-level digital base map containing over 665,000 parcels. The Landbase contains street centerlines, right-of-way lines, and parcel boundaries, linked to text information, such as owner name, street address, and assessor parcel number. The foundation of this system is the County Control Network consisting of over 2400 control points on an approximate half-mile grid. This strong foundation makes the County Landbase very accurate and allows new map information to be added and increase the accuracy of the Landbase.

The County of Orange Landbase is registered to the California Coordinate System, North American Datum 83. The foundation of this system is the County Geodetic Control Network consisting of over 2700 control points on an approximate half-mile grid. The County Landbase is updated on a daily basis. Final (tract) maps and parcel maps are committed to the Landbase within 4-6 weeks of recordation. Other land information

Introduction

The County of Orange has identified and utilized technology as a means for improving its business processes, infrastructure, services, information and decision-making. County departments rely on information to carry out their various missions for public safety, land planning, social services, infrastructure management, taxation, and stewardship of natural and man-made resources. Nearly 90% of the information is location-based, meaning that each information item pertains to a place on the earth. This fact has given rise to the extensive adoption of Geographic Information Systems (GIS) to improve the efficiency and effectiveness of governmental and private sector operations. The county has recognized the value and importance of an enterprise GIS, thereby taking the necessary action to ensure that its implementation of GIS is efficient, effective, and viable.

As the acquisition, management, and dissemination of information continue to become increasingly valuable functions within local governments, so too has GIS proven to be increasingly valuable. The County of Orange is no exception to this observation, as it too has benefited from its preliminary implementation of GIS. GIS and related output (e.g. maps and analysis) has already contributed to improve the county's business processes, information exchange, and decision-making.

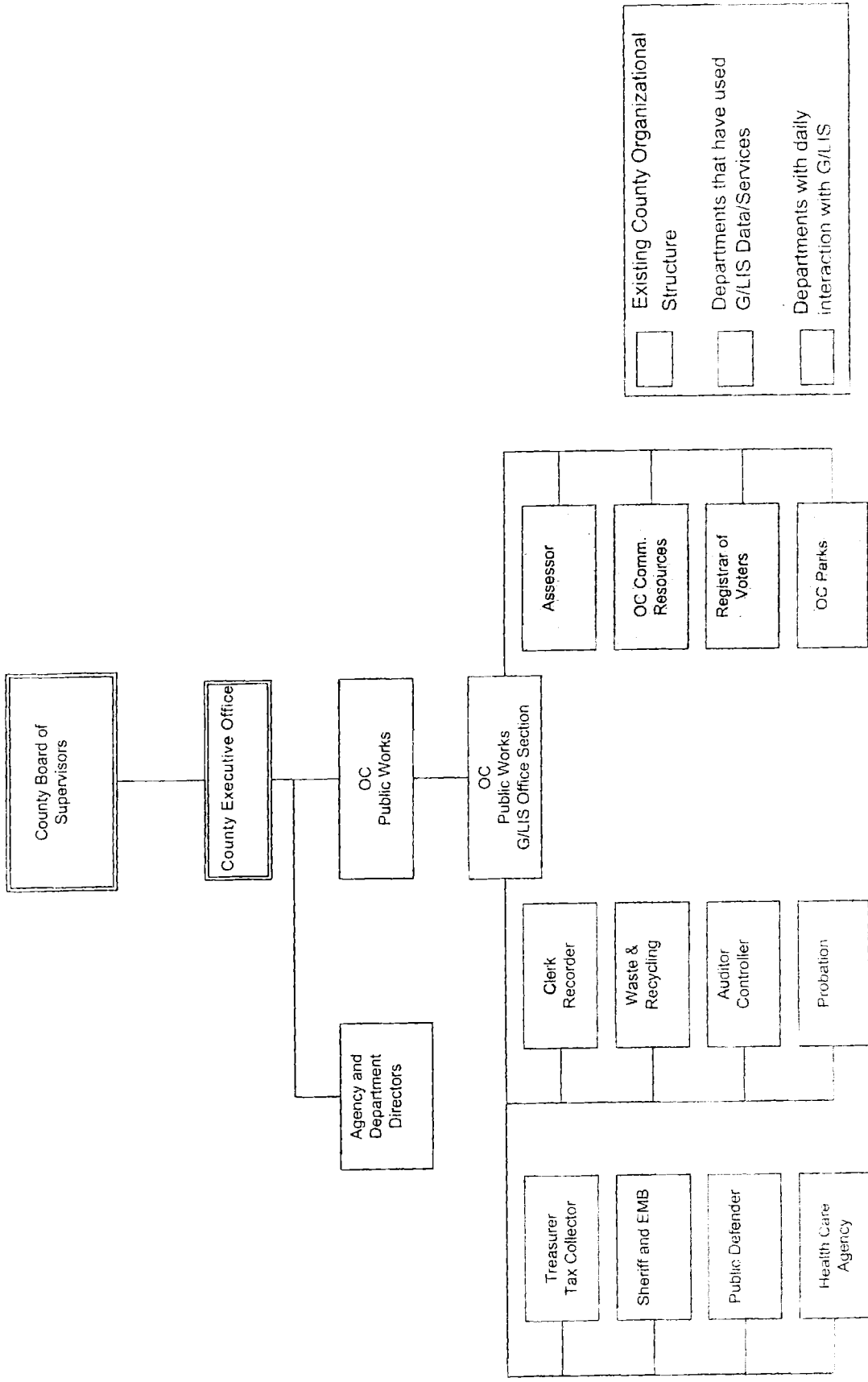
Positive, yet pragmatic, vision, mission, and goals will prove to be critical as the county proceeds with its GIS implementation. The benefits of GIS, especially an optimal return on investment (ROI) and improved efficiency and effectiveness, can only be realized if GIS is adopted and integrated on a countywide basis.

GIS Program Vision

A countywide vision statement was created based on interviews with staff throughout the county. Based on this feedback, the proposed GIS vision statement of the county is:

"The Enterprise-wide Geographic Information System (GIS) will establish an organizational structure that allows county staff to effectively maintain and use high-quality geo-spatial data, while providing for countywide GIS administration and accountability. The Orange County GIS will encourage and value intra-departmental sharing of information resources and coordination while focusing on coordination among cooperating external agencies. Of primary importance is respect for privacy of individuals and choice of organizations to protect sensitive and proprietary data. The GIS will enable Orange County citizens to access data pertinent to them thus providing better customer service and government transparency."

Current Organizational Structure



<input type="checkbox"/>	Existing County Organizational Structure
<input type="checkbox"/>	Departments that have used G/LIS Data/Services
<input type="checkbox"/>	Departments with daily interaction with G/LIS

Geomatics and Land Information Systems (G/LIS) Division



Section Outline

Division Overview

GIS Needs Assessment

GIS Needs

Existing GIS Conditions

Governance of GIS

Hardware & Software

Divisional GIS Gap Analysis

GIS Data Layer Inventory

GAP Analysis Chart

Division Overview

The Division of Geomatics and Land Information Systems (G/LIS) within OC Public Works was created in 1960 under the name Survey Department within the Floods and Roads Division. In the early 1980's the department was re-designated as the CAD/GIS department. In 1991 the CAD/GIS division was renamed as the Division of Geomatics and Land Information Systems and was relocated under the OC Public Works Department. The G/LIS division serves a number of critical needs for the county. G/LIS functions as a survey support unit for engineering projects, reviews subdivision map updates, maintains the counties horizontal and vertical controls system of benchmarks, as well as providing public support with research and filing process of survey related tasks. G/LIS defines itself as "a multi-disciplinary approach to integrated technology systems of spatially-referenced information, including land boundaries, geodetic positioning, photogrammetry, remote sensing, cartography and geographic information systems. Geomatics consists of GPS, computers, software and other related technology used to capture data, maintain, analyze, manipulate and display spatially-referenced information."

The stated mission of the G/LIS division is "to provide quality surveying and mapping services which enhance the public welfare and support the OC Public Works mission and to provide these services in a courteous and professional manner." In addition to engineering and public support the G/LIS division has a substantial GIS role within the county. G/LIS oversees and maintains the county's parcel level Land Information System or "Landbase". This includes, parcel features and attribution, government entity boundaries, street centerlines and county facilities boundaries. At present the G/LIS division has a GIS Application unit located within the Office section designed to provide full service GIS support to all county departments with a focus on supporting Public Works initiatives including contracting and design of specialized GIS applications.

The G/LIS division employs 99 full time staff broken up into four (4) sub-units. The task and mandate of the individual divisions are listed below.

- **Office Section (22 staff)**

G/LIS services are contracted out to other county departments/divisions and the private sector, including Surveying Services, Aerial Photography, Digital Ortho-photography, Mapping, and GIS work. Contract Administration administers those contracts.

- Land Information Systems (Maintenance and update of the county Landbase data set)
- Geodetic Control
- G.I.S. Mapping (GIS support to other county departments)
- Business IT
- Technical support

- **Field Survey Section (32 staff)**

- Alignment Analysis
- Cadastral Surveys
- Claims Investigation Surveys
- Construction Surveys
- Control Surveys
- Deformation Surveys
- GPS Surveys
- High Definition Surveys
- Hydrographic Surveys
- Legal Descriptions
- Pavement Management
- Photogrammetric Control
- Topographic Surveys
- Volume/Quality Calculations

- **Boundary Section (26 staff)**
 - Subdivision Map Checking
 - Public Services/Survey Records
 - Boundary Analysis
 - Boundary Annexations

- **Rights-of-Way Engineering Section (11 staff)**
 - Process real property transactions
 - Determination of parcel boundaries and acreage
 - Preparation and review of legal descriptions and maps
 - Review and assessment of existing title matters
 - Maintain a public service counter and the real property records

GIS Needs Assessment

GIS Needs

There are generally three tiers of GIS users. A Tier 1 - Flagship GIS user typically conducts GIS administration and coordination at the enterprise level (county wide or department wide), has access to a fully functioning GIS toolset to create and maintain enterprise data, and manages the enterprise database. A Tier 2 - Analytical GIS user focuses on data analysis, complex querying and data modeling, along with department level data maintenance. A Tier 3 - Browser GIS user requires only general browsing GIS data functions to create reports, query standard data sets, create tasks like mailing labels, and produce maps.

G/LIS is a very significant and key contributor in the implementation of enterprise-wide GIS throughout the county. Outside of an enterprise GIS implementation, the structure and usage of GIS within G/LIS is excellent and needs little modification. It is recommended that the two main GIS functions of the division stay the same with a few minor improvements. G/LIS currently creates and maintains the most essential data set in the county (Landbase dataset), and it is recommended that G/LIS continue to maintain and update this data set. This is a large and highly accurate data set and is the foundation for much of the counties GIS. G/LIS should work closely with the future enterprise GIS governance authority to provide this spatially accurate GIS data for countywide use in mapping, design and modeling. Upon the initial enterprise GIS implementation, frequent coordination between the future enterprise GIS governance authority and G/LIS is mission critical. In the GIS System Design phase of this project, enterprise governance will be discussed in detail. The division should work closely with the CEO-IT to integrate the selected enterprise GIS governance model for the countywide authority of GIS data models and processes into its daily departmental workflows.

sets may be maintained in other software but will need to be replicated to the central data repository. The suggested structure and technology is described in detail in later chapters.

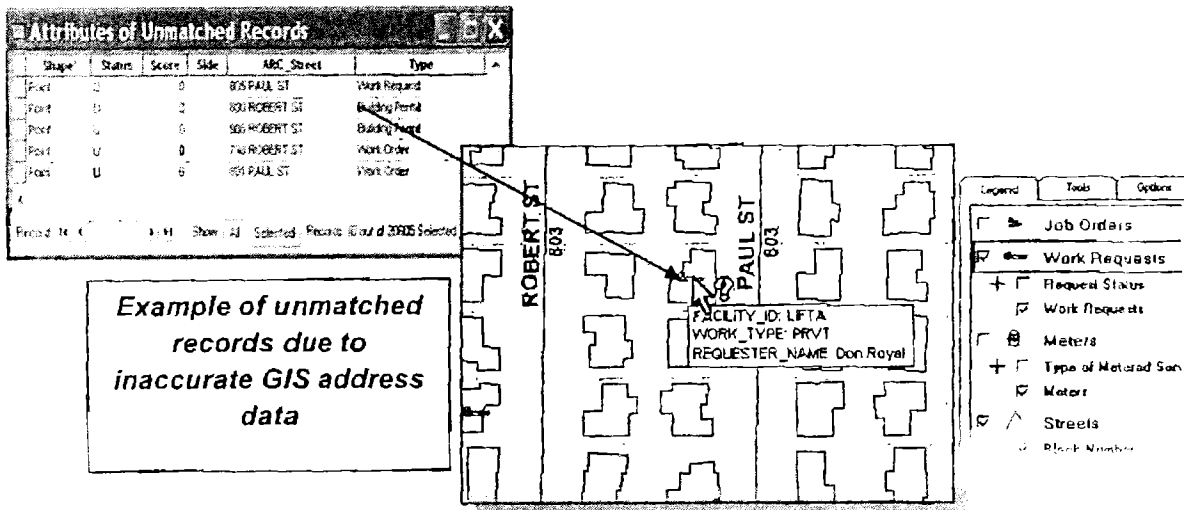
GIS Need

Enabling Existing Databases – Geospatial Data Creation and Data Integration, Emphasizing the Creation of a Countywide Address Point Layer

As stated in the Governance portion of the section, G/LIS currently maintains the Landbase as its primary parcel-level digital basemap (which contains over 665,000 parcels). An important attribute, the records within Landbase have an address as an informational geographic location base. As such, it is imperative that the county pursue the establishment of a countywide address point GIS data layer for geocoding purposes, as outlined below. Once accomplished existing data residing in other databases countywide can then be geocoded to their actual location (preferably - physical structure) within the county (if address in an attribute contained within that database).

Are accurate address points and street centerlines that important?

Why do we need address points that are so accurate? Why are we so concerned with cleaning up the address database? The county is faced with the challenge of accurately mapping the location of records throughout the county (using geocoding as a. If an accurate address point layer does not exist, unfavorable results will occur when attempting to map records using an address. Lack of an accurate address point layer will often result in unmatched records. The organization will then need to invest additional time and resources trying to determine the location of the information manually.



Shape	Status	Score	Side	ABC_Street	Type
Point	U	0		805 PAUL ST	Work Request
Point	U	2		800 ROBERT ST	Building Permit
Point	U	6		806 ROBERT ST	Building Permit
Point	U	0		796 ROBERT ST	Work Order
Point	U	6		801 PAUL ST	Work Order

Example of unmatched records due to inaccurate GIS address data

Map Callout:
 FACILITY_ID: LFTA
 WORK_TYPE: PRVT
 REQUESTER_NAME: Don Royal

Legend:
 Job Orders
 Work Requests
 Request Status
 Work Requests
 Meters
 Type of Metered San
 Meters
 Streets
 Block Number

- 2) Place the address layer in the central GIS repository – data should no longer be maintained in separate “stovepipes” of data storage per department (as described earlier), but should be moved to the central GIS repository and maintained as a geodatabase. By keeping the address point data layer in the central geodatabase repository, all county departments will have immediate access to the latest set of countywide addresses.
- 3) Identify gatekeepers that have the authority to update the layer (county only) – only a select few employees should have the ability to add, change, or delete records from the address point data layer. An initial recommendation is to have a representative from the OC Geomatics, Landbase maintenance unit, and the future enterprise GIS governance authority be given the training and capability to edit the address point data layer. The future enterprise GIS governance authority in should review each entry to insure that GIS and enterprise address database rules and compliance are met.
- 4) Provide an address update GIS application – this application should allow for the update of the critical GIS layers. This application is described later in this section.
- 5) Integrate the process with core applications such as Landbase – optimally the address point GIS application will have integration points with information from enterprise applications such as Landbase.

**Future chapters of the Implementation Plan will address possible methods for Inter-Agency agreements with outside entities within Orange County.

One of the big impetuses for this layer is integration with existing systems. The centerpiece for this integration should be the Landbase system. The other IT systems should use the address point layer data to populate their address tables and validate address data entry. It is assumed that this process will not only validate the current address and create new address points but also clean up Landbase address records and integrate with the enterprise system. Not much of this has been accomplished and participation by Landbase and some programmatic integration will be required.

Address Validation and Landbase Integration

It is highly recommended that the county create and validate a digital address point GIS data layer. Once the county has gone through many of the appropriate steps to create the current address point layer, the following information is included as documentation on the optimal process for 100% validation of the layer. Address information stored within Landbase should be used as a source for address point creation and validation.

Once address points are validated and finalized, a GIS based application should be used by identified gatekeepers to update all new addresses and create or modify all address points. Optimally, the GIS

GIS Need

Division-Wide Access to Geospatial Data

A key need identified by OC personnel was increased and improved access to shared GIS data within the county. This includes the most recent parcel, address, and street centerline data as well as high-resolution ortho-photography. Using the most recent, accurate GIS layers provides staff members with an invaluable tool for everyday tasks. OC Public Works currently uses CityGIS™ but it offers only limited control over the data layers available and is currently license limited. CityGIS™ is an outsourced solution with county data stored offsite and managed offsite. A more functional, countywide application is needed. Collaboration with all departments/ divisions will be instrumental in establishing GIS as a complementary technology. Initial efforts should be aimed at increasing GIS awareness within the county, allowing staff to become familiar with the efficiencies that can be gained using GIS for mapping, analyzing, and tracking information.

This application has been hugely successful for Orange County. However, more targeted applications need to be deployed for specific functions within the organization. The centralized database should serve as a springboard for a variety of targeted applications.

Application to Meet Need

Intranet GIS Data Browser

The county should implement the recommended Intranet GIS Data Browser to provide all staff with access to mapping, imaging, and spatial analysis functionality. This application will serve as the primary GIS application for the entire county and enable staff to accomplish about 90% of their GIS tasks. These tasks will include the quick query and search of data; as well as, more intricate uses such as citizen notifications and map production. Departmental Intranet GIS Data Browser solutions are web or service based GIS applications that provide data dissemination services by departmental function across an Intranet. Intranet browsers represent a step forward in enterprise-wide GIS technology as it offers a "right-sized" set of spatial analysis tools, geographical viewing and map production tools, as well as external database links. The departmental browser should include:

- Advance Search Criteria
- Automated Mailing Labels
- Customized Departmental Query Control
- On-Line Help and Tutorial
- Enhanced Text Placement
- Link to external web Databases
- Easy-to-Use interface
- Citizen Notifications

The county's intranet site should be configured to present users with pertinent GIS data and custom defined queries for easy end-user interaction.

Exhibit 3



OFFICIAL VOTER INFORMATION GUIDE

CALIFORNIA GENERAL ELECTION NOVEMBER 2004

Propositions

Title and Summary | Analysis | Text of Proposed Laws

ARGUMENTS AND REBUTTALS

Proposition 59

Public Records, Open Meetings. Legislative Constitutional Amendment.

ARGUMENT in Favor of Proposition 59

Proposition 59 is about open and responsible government. A government that can hide what it does will never be accountable to the public it is supposed to serve. We need to know what the government is doing and how decisions are made in order to make the government work for us.

Everyone needs access to information from the government. Why was a building permit granted, or denied? Who is the Governor considering for appointment to a vacancy on the County Board of Supervisors? Why was the superintendent of the school district fired, and who is being considered as a replacement? Who did the City Council talk to before awarding a no-bid contract?

People all across the State ask these questions—and dozens of others—every day. And what they find out is that answers are hard to get.

California has laws that are supposed to help you get answers. But over the years they have been eroded by special interest legislation, by courts putting the burden on the public to justify disclosure, and by government

ARGUMENT Against Proposition 59

This measure does not go far enough in guaranteeing the people access to information and documents possessed by state and local government agencies.

In fact, this measure only provides for a general "right of access to information concerning the conduct of the people's business" and that laws in California "shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access."

Laws are construed (i.e., interpreted) by officials charged with following them—and by courts when asked. The rule of interpretation contained in this measure would probably have a very limited effect.

Indeed, this measure explicitly states that it does not supersede or modify any "right to privacy guaranteed by Section 1" of Article I of the California Constitution.

While a right to privacy—especially against government intrusion—is critical in today's society—government employee groups are using the state constitution's "right to privacy" to hide the amount of

Ballot Measure Summary

Proposition 1A

Proposition 59

Proposition 60

Proposition 60A

Proposition 61

Proposition 62

Proposition 63

Proposition 64

Proposition 65

Proposition 66

Proposition 67

Proposition 68

Proposition 69

Proposition 70

Proposition 71

Proposition 72

Bond Overview

officials who want to avoid scrutiny and keep secrets. Proposition 59 will help reverse that trend.

What will Proposition 59 do? It will create a new civil right: a constitutional right to know what the government is doing, why it is doing it, and how. It will ensure that public agencies, officials, and courts broadly apply laws that promote public knowledge. It will compel them to narrowly apply laws that limit openness in government—including discretionary privileges and exemptions that are routinely invoked even when there is no need for secrecy. It will create a high hurdle for restrictions on your right to information, requiring a clear demonstration of the need for any new limitation. It will permit the courts to limit or eliminate laws that don't clear that hurdle. It will allow the public to see and understand the deliberative process through which decisions are made. It will put the burden on the government to show there is a real and legitimate need for secrecy before it denies you information.

At the same time, Proposition 59 ensures that private information about ordinary citizens will remain just that—private. It specifically says that your constitutional right to privacy won't be affected.

You have the right to decide how open your government should be. That's why Proposition 59 was unanimously passed by the Legislature and it is the reason widely diverse organizations support the Sunshine Amendment, including the American Federation of State, County and Municipal Employees and the League of California Cities.

As James Madison, a founding father and America's fourth President, said: "Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power which knowledge gives." Tell the government that it's ordinary citizens—not bureaucrats—who ought to decide what we need to

money, benefits, and perks they receive at public expense!

Proposition 59 may be better than nothing, but it does not go far enough. The question is whether to vote "yes" and hope for more or vote "no" and demand more.

GARY B. WESLEY, *Attorney at Law*

REBUTTAL to Argument Against Proposition 59

Mr. Wesley's skepticism of open government laws is understandable. Several years ago, when he sued his city council under the open meeting law alleging it had illegally used a closed session to discuss a topic not mentioned on the agenda, the court would not let him question the council members about what they had discussed behind closed doors.

The court concluded that because the law did not expressly authorize such questioning and because it contained other provisions protecting closed session discussions, government officials could not be asked about what they discussed even to obtain evidence for trial, and even if there was no other way of proving a violation of the law.

In other words, he lost because the court applied the general rule of access narrowly, and the exception allowing secrecy broadly—precisely what Proposition 59 would reverse.

As for privacy, the constitution has never been interpreted to protect the abuse of official authority or the wasting of public resources by anyone, and Proposition 59 will not create a screen for anyone to use in hiding fraud, waste, or other serious misconduct.

On the contrary, Proposition 59 will add independent force to the state's laws requiring government

know. Vote yes on Proposition 59.

MIKE MACHADO, *State Senator*

JACQUELINE JACOBBERGER,
President
League of Women Voters of
California

PETER SCHEER, *Executive Director*
California First Amendment Coalition

REBUTTAL to Argument in Favor of Proposition 59

As an attorney who has attempted for many years to use California laws to identify and weed out waste and corruption in local government, I am quite sympathetic to Proposition 59.

It is important, however, for voters to know what Proposition 59 would NOT do.

As written (by the State Legislature), Proposition 59 would continue to exempt from disclosure government records deemed "private" by the courts and would not apply at all to the "confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses . . .".

Voters should also consider that insofar as electing some top persons in government (i.e., having a representative democracy) is key to making career government bureaucrats more accountable, elections (especially for State Assembly, State Senate, and Congress) have been undermined by:

(1) the dependence on private, special interest campaign money (sometimes called "legalized bribes"); and

(2) the self-serving creation (every 10 years) of gerrymandered legislative districts that protect incumbents from competition.

transparency. It will create a window on how all public bodies and officials conduct the public's business, for well or ill, while sparing the dignity and reputations of ordinary people, public employees, and even high officials who have done nothing to merit public censure or concern.

MIKE MACHADO, *State Senator*

THOMAS W. NEWTON, *General Counsel, California Newspaper Publishers Association*

JOHN RUSSO, *City Attorney*
City of Oakland

Moreover, anyone who blindly trusts a computer program to count votes (without any "paper trail" for potential verification) is foolish.

Sadly, we are a long way from having true representative democracy in California—and across America.

Government is getting bigger and becoming more wasteful, insular, and abusive. Proposition 59 would not do much to reverse that alarming trend.

GARY B. WESLEY, *Attorney at Law*

Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

[Back to Top](#)

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RJN3-000004

Exhibit 4

LEGISLATIVE
INTENT SERVICE, INC.

712 Main Street, Suite 200, Woodland, CA 95695
(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

LEGISLATIVE HISTORY REPORT AND ANALYSIS

Re: **Assembly Bill 3265 (Cortese – 1988)**
Chapter 447, Statutes of 1988

Our file no.: 0826738

The legislative history of the legislative measure referenced above is documented by materials itemized in one declaration.

To comprehend quickly the presentation and order of the documents and obtain important information on our research policies and procedures and request for judicial notice, please visit our web site at www.legintent.com and click on the links “Points and Authorities” and “Research Aids and Policies.”

ASSEMBLY BILL 3265 (CORTESE – 1988)
CHAPTER 447, STATUTES OF 1988

Government Code section 6254.9 was enacted in 1988 following legislative passage of Assembly Bill 3265, a single-section bill that enacted section 6254.9 only. (See Exhibits #1a through #1e) Assembly member Dominic L. Cortese introduced the bill on February 11, 1988 at the request of the City of San Jose. (See Exhibits #1a and #3, page 1)

While before the Assembly, the measure was heard in the Assembly Committee on Governmental Organization and the Assembly Committee on Ways and Means. (See Exhibits #3 and #5) In the Senate, the bill was heard in the Committee on Governmental Organization and the Committee on Appropriations. (See Exhibits #8 and #10)

Assembly Bill 3265 was amended once while pending in the Assembly, and twice while pending in the Senate before being approved by the Legislature on August 4, 1988. (See Exhibits #1b and #2) The bill was signed by Governor George Deukmejian on August 22, 1988, and recorded by the Secretary of State on that day as Chapter 447 of the Statutes of 1988. (See Exhibits #1e and #2)

The Third Reading Analysis prepared by the Office of Senate Floor Analyses described Assembly Bill 3265 as it was last amended on June 15, 1988:

DIGEST: This bill would provide that computer software developed by a state or local agency is not itself a public record under the California Public Records Act and would authorize the agency to sell, lease, or license the software for commercial or noncommercial use.
(Exhibit #11, page 1)

The purpose of the bill was set forth as follows in the Assembly Committee on Governmental Organization Analysis of this measure as it was proposed to be amended on April 4, 1988:

The City of San Jose, the sponsor of the bill, has developed various computer readable mapping systems, graphics systems, and other computer programs for civic planning purposes. A number of utility companies, engineering firms, private consultants and other commercial interests are requesting the city's software under the California Public Records Act. The city introduced the bill in order to:

- a) make it clear that the software is not itself a public record;
- b) allow the City to sell, lease, or license the software at a cost greater than the "direct costs of duplication", as specified by the Public Records Act (Government Code §6257).

The City is concerned about recouping the cost of developing the software."
(See Exhibit #3, page 1)

Virtually identical discussion was contained in the Senate Committee on Governmental Organization's analysis. (See Exhibit #8, page 1)

The legislative bill files of the Assembly and the Senate Committees on Governmental Organization contain documents providing further details regarding the problems faced by the City of San Jose and other governmental entities that the bill sought to resolve. (See Exhibits #4 and #9) You will also find helpful materials in the legislative bill file of Assembly member Cortese. (See Exhibit #15)

As introduced, Assembly Bill 3265 proposed to amend Government Code section 6257 only. (See Exhibit #1a) The Assembly amendments of April 4, 1988 deleted the introduced version of the bill and proposed to add a new Government Code section 6254.9. (See Exhibit #1b) A full understanding of legislative intent may be dependent upon knowing about the various proposals as introduced into the bill and

then as amended throughout the bill's consideration by the Assembly and the Senate Committees reviewing this measure. (See Exhibits #1a through #1e) This can be particularly helpful where your focus is on specific language; by contrasting that enacted with the prior proposals in the bill one can gain insight as to the intended meaning or the apparent controversy generated by the language of interest. (Id.)

After the April 4th amendments, the language of section 6254.9 was amended during the subsequent two amendments to the bill. (See Exhibits #1c and #1d) These last two amendments might be explained by the following comment contained in the Senate Committee on Governmental Organization "Background Information Request" sheet regarding proposed amendments:

Amendments to address concerns of TRW; Assoc. Credit Bureaus; and Neff/Thomas, Incorporated. These amendments will clarify "data bases."
(See Exhibit #9, document SP-11)

The Concurrence in Senate Amendments analysis described the bill as it was passed by the Assembly and the Senate, stating also that:

- 3) The bill draws a distinction between computer software and computer-stored information. The bill declares that information is not shielded from the California Public Records Act "merely because it is stored on a computer."

In addition, current law also provides that "computer data shall be provided in a form determined by the agency."
(See Exhibit #13, page 2)

There were no further amendments and the new section was enacted into law. (See Exhibit #1e)

The language you are investigating may be affected by bills, pending or enacted, in the current legislative session. *We do not ordinarily review for current session bills, but will do so upon request.*

Any analysis provided in this report is based upon the nature and extent of your request to us, as well as a brief review of the enclosed documents. As such, it must be considered tentative in nature. A more conclusive statement of the impact of the legislative history in your case would be dependent upon a complete understanding of all of the factual issues involved and the applicable legal principles.

You may wish to separately retain one of our Directors to utilize their skills as a consultant or expert witness. They have extensive experience in analyzing and presenting legislative documents to the courts. An independent agreement directly with the individual Director will be necessary.

We appreciate the opportunity to provide this assistance and hope that these efforts will be of value to you.

LEGISLATIVE INTENT SERVICE, INC.

712 Main Street, Suite 200, Woodland, CA 95695
(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

DECLARATION OF FILOMENA M. YEROSHEK

I, Filomena M. Yeroshek, declare:

I am an attorney licensed to practice before the courts of the State of California, State Bar No. 125625, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Assembly Bill 3265 of 1988. Assembly Bill 3265 was approved by the Legislature and was enacted as Chapter 447 of the Statutes of 1988.

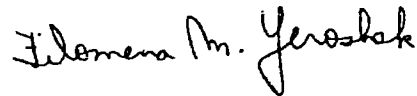
The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Assembly Bill 3265 of 1988. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

ASSEMBLY BILL 3265 OF 1988:

1. All versions of Assembly Bill 3265 (Cortese-1988);
2. Procedural history of Assembly Bill 3265 from the 1987-88 Assembly Final History;
3. Analysis of Assembly Bill 3265 prepared for the Assembly Committee on Governmental Organization;
4. Material from the legislative bill file of the Assembly Committee on Governmental Organization on Assembly Bill 3265;
5. Analysis of Assembly Bill 3265 prepared for the Assembly Committee on Ways and Means;
6. Document from the legislative bill file of the Assembly Committee on Ways and Means on Assembly Bill 3265;

7. Material from the legislative bill file of the Assembly Republican Caucus on Assembly Bill 3265;
8. Analysis of Assembly Bill 3265 prepared for the Senate Committee on Governmental Organization;
9. Material from the legislative bill file of the Senate Committee on Governmental Organization on Assembly Bill 3265;
10. Analysis of Assembly Bill 3265 prepared by the Legislative Analyst;
11. Third Reading analysis of Assembly Bill 3265 prepared by the Office of Senate Floor Analyses;
12. Material from the legislative bill file of the Office of Senate Floor Analyses on Assembly Bill 3265;
13. Concurrence in Senate Amendments analysis of Assembly Bill 3265 prepared by the Assembly Office of Research;
14. Legislative Counsel's Rule 26.5 analysis of Assembly Bill 3265;
15. Material from the legislative bill file of Assemblyman Dominic L. Cortese on Assembly Bill 3265;
16. Post-enrollment documents regarding Assembly Bill 3265;
17. Press Release #593 dated August 22, 1988, prepared by the Office of the Governor announcing the signing of Assembly Bill 3265.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 2nd day of June, 2008 at Woodland, California.



FILOMENA M. YEROSHEK

W:\WDOCS\ABLYBILL\ab\3265\00036829

Introduced by Assembly Member Cortese

February 11, 1988

An act to amend Section 6257 of the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 3265, as introduced, Cortese. Public records: proprietary information.

The existing California Public Records Act requires each state or local agency, upon receiving any request for a copy of records in its possession which are subject to public disclosure, to make the records promptly available upon payment of fees covering direct costs of duplication or any applicable statutory fee.

This bill would provide that the act does not prohibit an agency from selling proprietary information or requiring a licensing agreement for payment of royalties to the agency prior to any subsequent sale, distribution, or commercial use of the information.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6257 of the Government Code is
- 2 amended to read:
- 3 6257. (a) Except with respect to public records
- 4 exempt by express provisions of law from disclosure, each
- 5 state or local agency, upon any request for a copy of
- 6 records, which reasonably describes an identifiable
- 7 record, or information produced therefrom, shall make

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PA-000941

1 the records promptly available to any person, upon
2 payment of fees covering direct costs of duplication, or a
3 statutory fee, if applicable. Any reasonably segregable
4 portion of a record shall be provided to any person
5 requesting such record after deletion of the portions
6 which are exempt by law.

7 *(b) Nothing in this chapter prohibits an agency from*
8 *selling proprietary information or requiring a licensing*
9 *agreement for payment of royalties to the agency prior*
10 *to any subsequent sale, distribution, or commercial use of*
11 *the proprietary information by any person receiving the*
12 *information. For purposes of this subdivision,*
13 *"proprietary information" includes computer readable*
14 *data bases, computer programs, and computer graphics*
15 *systems. Any fee or royalty imposed for proprietary*
16 *information shall be based on the cost of developing and*
17 *maintaining the information and shall take into*
18 *consideration whether the person requesting the*
19 *information contributed to the development of the*
20 *information.*

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AMENDED IN ASSEMBLY APRIL 4, 1988

CALIFORNIA LEGISLATURE—1987-88 REGULAR SESSION

ASSEMBLY BILL

No. 3265

Introduced by Assembly Member Cortese

February 11, 1988

An act to ~~amend Section 6257~~ of add Section 6254.9 to the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 3265, as amended, Cortese. Public records: ~~proprietary information~~ computer software.

The existing California Public Records Act requires each state or local agency, upon receiving any request for a copy of records in its possession which are subject to public disclosure, to make the records promptly available upon payment of fees covering direct costs of duplication or any applicable statutory fee.

This bill would provide that the act does not prohibit an agency from selling proprietary information or requiring a licensing agreement for payment of royalties to the agency prior to any subsequent sale, distribution, or commercial use of the information.

This bill would provide that computer software developed or maintained by a state or local agency is not itself a public record under the act and would authorize the agency to sell, lease, or license the software for commercial or noncommercial use.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 6257 of the Government Code is~~
2 *SECTION 1. Section 6254.9 is added to the*
3 *Government Code, to read:*
4 *6254.9. (a) Computer software developed or*
5 *maintained by a state or local agency is not itself a public*
6 *record under this chapter. The agency may sell, lease, or*
7 *license the software for commercial or noncommercial*
8 *use.*
9 *(b) Nothing in this section is intended to affect the*
10 *public record status of information merely because it is*
11 *stored in a computer.*
12 *(c) As used in this section, "computer software"*
13 *includes computer readable data bases, computer*
14 *programs, and computer graphics systems.*

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**All matter omitted in this version of the
bill appears in the bill as introduced in the
Assembly, February 11, 1988 (J.R. 11).**

LEGISLATIVE INTENT SERVICE (800) 666-1917



AMENDED IN SENATE JUNE 9, 1988
AMENDED IN ASSEMBLY APRIL 4, 1988
CALIFORNIA LEGISLATURE--1987-88 REGULAR SESSION

ASSEMBLY BILL

No. 3265

Introduced by Assembly Member Cortese

February 11, 1988

An act to add Section 6254.9 to the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 3265, as amended, Cortese. Public records: computer software.

The existing California Public Records Act requires each state or local agency, upon receiving any request for a copy of records in its possession which are subject to public disclosure, to make the records promptly available upon payment of fees covering direct costs of duplication or any applicable statutory fee.

This bill would provide that computer software developed or maintained by a state or local agency is not itself a public record under the act and would authorize the agency to sell, lease, or license the software for commercial or noncommercial use.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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LEGISLATIVE INTENT SERVICE



The people of the State of California do enact as follows:

1 SECTION 1. Section 6254.9 is added to the
2 Government Code, to read:

3 6254.9. (a) Computer software developed or
4 ~~maintained~~ by a state or local agency is not itself a public
5 record under this chapter. The agency may sell, lease, or
6 license the software for commercial or noncommercial
7 use.

8 ~~(b) Nothing in this section is intended to affect the~~
9 ~~public record status of information merely because it is~~
10 ~~stored in a computer.~~

11 ~~(c)~~
12 (b) As used in this section, "computer software"
13 includes computer readable data bases mapping systems,
14 computer programs, and computer graphics systems.

15 (c) *This section shall not be construed to create an*
16 *implied warranty on the part of the State of California or*
17 *any local agency for errors, omissions, or other defects in*
18 *any computer software as provided pursuant to this*
19 *section.*

20 (d) *Nothing in this section is intended to affect the*
21 *public record status of information merely because it is*
22 *stored in a computer.*

23 (e) *Nothing in this section is intended to limit any*
24 *copyright protections.*

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AMENDED IN SENATE JUNE 15, 1988
AMENDED IN SENATE JUNE 9, 1988
AMENDED IN ASSEMBLY APRIL 4, 1988
CALIFORNIA LEGISLATURE—1987-88 REGULAR SESSION

ASSEMBLY BILL

No. 3265

Introduced by Assembly Member Cortese

February 11, 1988

An act to add Section 6254.9 to the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 3265, as amended, Cortese. Public records: computer software.

The existing California Public Records Act requires each state or local agency, upon receiving any request for a copy of records in its possession which are subject to public disclosure, to make the records promptly available upon payment of fees covering direct costs of duplication or any applicable statutory fee.

This bill would provide that computer software developed by a state or local agency is not itself a public record under the act and would authorize the agency to sell, lease, or license the software for commercial or noncommercial use.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6254.9 is added to the
2 Government Code, to read:
3 6254.9. (a) Computer software developed by a state
4 or local agency is not itself a public record under this
5 chapter. The agency may sell, lease, or license the
6 software for commercial or noncommercial use.
7 (b) As used in this section, "computer software"
8 includes computer mapping systems, computer
9 programs, and computer graphics systems.
10 (c) This section shall not be construed to create an
11 implied warranty on the part of the State of California or
12 any local agency for errors, omissions, or other defects in
13 any computer software as provided pursuant to this
14 section.
15 (d) Nothing in this section is intended to affect the
16 public record status of information merely because it is
17 stored in a computer. *Public records stored in a*
18 *computer shall be disclosed as required by this chapter.*
19 (e) Nothing in this section is intended to limit any
20 copyright protections.

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CHAPTER 447

(Assembly Bill No. 3265)

An act to add Section 6254.9 to the Government Code, relating to public records.

[Approved by Governor August 20, 1988.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3265, Cortese. Public records: computer software.

The existing California Public Records Act requires each state or local agency, upon receiving any request for a copy of records in its possession which are subject to public disclosure, to make the records promptly available upon payment of fees covering direct costs of duplication or any applicable statutory fee.

This bill would provide that computer software developed by a state or local agency is not itself a public record under the act and would authorize the agency to sell, lease, or license the software for commercial or noncommercial use.

The people of the State of California do enact as follows:

SECTION 1. Section 6254.9 is added to the Government Code, to read:

§ 6254.9. (a) Computer software developed by a state or local agency is not itself a public record under this chapter. The agency may sell, lease, or license the software for commercial or noncommercial use.

(b) As used in this section, "computer software" includes computer mapping systems, computer programs, and computer graphics systems.

(c) This section shall not be construed to create an implied warranty on the part of the State of California or any local agency for errors, omissions, or other defects in any computer software as provided pursuant to this section.

(d) Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer. Public records stored in a computer shall be disclosed as required by this chapter.

(e) Nothing in this section is intended to limit any copyright protections.

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VOLUME 2
CALIFORNIA LEGISLATURE
AT SACRAMENTO
1987-88 REGULAR SESSION
1987-88 FIRST EXTRAORDINARY SESSION

ASSEMBLY FINAL HISTORY

SYNOPSIS OF
ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT,
JOINT, AND HOUSE RESOLUTIONS

Assembly Convened December 1, 1986
Recessed December 3, 1986
Recessed April 9, 1987
Recessed July 16, 1987
Recessed September 11, 1987
Recessed March 24, 1988
Recessed June 30, 1988
Adjourned September 1, 1988
Adjourned Sine Die November 30, 1988
Legislative Days..... 246

Reconvened January 5, 1987
Reconvened April 20, 1987
Reconvened August 17, 1987
Reconvened January 4, 1988
Reconvened April 4, 1988
Reconvened August 1, 1988

HON. WILLIE L. BROWN JR.
Speaker

HON. MIKE ROOS
Speaker pro Tempore

HON. THOMAS HANNIGAN
Majority Floor Leader

HON. PHILLIP ISENBERG
Assistant Speaker pro Tempore

HON. PAT NOLAN
Minority Floor Leader

Compiled Under the Direction of
R. BRIAN KIDNEY
Chief Clerk

GUNVOR ENGLE
History Clerk

52-AFF-1247



A.B. No. 3264—Frazee.

An act to add Section 27279 to the Government Code, relating to real property.
1988

- Feb. 11—Read first time. To print.
- Feb. 12—From printer. May be heard in committee March 13.
- Feb. 18—Referred to Com. on JUD.
- Mar. 17—From committee: Do pass. (Ayes 6. Noes 1.) (March 16).
- Mar. 21—Read second time. To third reading.
- Mar. 24—Read third time, passed, and to Senate. (Ayes 75. Noes 0. Page 6508.)
- Mar. 24—In Senate. Read first time. To Com. on RLS. for assignment.
- April 7—Referred to Com. on JUD.
- May 24—In committee: Hearing postponed by committee.
- May 25—From committee chairman, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.
- June 22—From committee: Amend, and do pass as amended. (Ayes 7. Noes 0.)
- June 23—Read second time, amended, and to third reading.
- June 30—Read third time, passed, and to Assembly. (Ayes 37. Noes 0. Page 6888.)
- June 30—In Assembly. Concurrence in Senate amendments pending.
- Aug. 1—Senate amendments concurred in. To enrollment. (Ayes 68. Noes 0. Page 9111.)
- Aug. 3—Enrolled and to the Governor at 5 p.m.
- Aug. 11—Approved by the Governor.
- Aug. 11—Chaptered by Secretary of State - Chapter 400, Statutes of 1988.

A.B. No. 3265—Cortese.

An act to add Section 6254.9 to the Government Code, relating to public records.
1988

- Feb. 11—Read first time. To print.
- Feb. 12—From printer. May be heard in committee March 13.
- Feb. 18—Referred to Com. on G.O.
- Mar. 22—In committee: Set, first hearing. Hearing canceled at the request of author.
- April 4—From committee chairman, with author's amendments: Amend, and re-refer to Com. on G.O. Read second time and amended.
- April 5—In committee: Hearing postponed by committee.
- April 6—Re-referred to Com. on G.O.
- April 13—From committee: Do pass, and re-refer to Com. on W. & M. Re-referred. (Ayes 17. Noes 0.) (April 12).
- May 4—From committee: Do pass. To Consent Calendar. (May 3).
- May 5—Read second time. To Consent Calendar.
- May 12—Read third time, passed, and to Senate. (Ayes 79. Noes 0. Page 7422.)
- May 12—In Senate. Read first time. To Com. on RLS. for assignment.
- May 19—Referred to Com. on G.O.
- June 9—From committee chairman, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on G.O.
- June 14—From committee: Amend, and do pass as amended, and re-refer to Com. on APPR. with recommendation: To Consent Calendar. (Ayes 6. Noes 0.)
- June 15—Read second time, amended, and re-referred to Com. on APPR.
- June 22—From committee: Be placed on second reading file pursuant to Senate Rule 28.8.
- June 23—Read second time. To third reading.
- June 30—Read third time, passed, and to Assembly. (Ayes 37. Noes 0. Page 6884.)
- June 30—In Assembly. Concurrence in Senate amendments pending.
- Aug. 4—Senate amendments concurred in. To enrollment. (Ayes 75. Noes 0. Page 9210.)
- Aug. 9—Enrolled and to the Governor at 11 a.m.
- Aug. 20—Approved by the Governor.
- Aug. 22—Chaptered by Secretary of State - Chapter 447, Statutes of 1988.



Date of Hearing: April 5, 1988

AB 3265

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION
Richard E. Floyd, Chairman

AB 3265 (Cortese) - As Proposed to be Amended: April 4, 1988

SUBJECT

Should computer software be exempt from the California Public Records Act?

DIGEST

Existing law, the California Public Records Act, requires state and local agencies to furnish a copy of records to people who request them at a reasonable cost.

This bill would specify that "computer software", as defined, which is developed or maintained by a public agency is not a "public record" for purposes of the California Public Records Act, but that information stored on computers retains its public record character.

The bill further specifies that a public agency may sell, license, or lease its software for any purpose.

FISCAL EFFECT

Potential revenue to state and local agencies from marketing of software.

COMMENTS

1) Purpose

The City of San Jose, the sponsor of the bill, has developed various computer readable mapping systems, graphics systems, and other computer programs for civic planning purposes. A number of utility companies, engineering firms, private consultants and other commercial interests are requesting the city's software under the California Public Records Act. The city introduced the bill in order to:

- a) make it clear that the software is not itself a public record;
- b) allow the City to sell, lease, or license the software at a cost greater than the "direct costs of duplication", as specified by the Public Records Act (Government Code §6257).

The City is concerned about recouping the cost of developing the software.

LIS - 3

- continued -

AB 3265

PA-000955

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2) Status of Computer Data

The bill draws a distinction between computer software and computer-stored information. The bill declares that information is not shielded from the California Public Records Act "merely because it is stored on a computer".

In addition, current law also provides that "computer data shall be provided in a form determined by the agency" (Government Code §6256).

Date of Hearing: April 5, 1988

AB 3265

SUPPORT

City of San Jose
San Diego Association of Governments
California Association of Licensed Investigators

OPPOSITION

None registered

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PA-000957

61700
RECORD #

30 BF:

MAR 24 1988

RN 88 006898

88084 16:2
PAGE NO.

Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 3265

Amendment 1

In line 1 of the title, strike out "amend
Section 6257 of" and insert: ---

add Section 6254.9 to

Amendment 2

On page 1, strike out line 1 and insert:

SECTION 1. Section 6254.9 is added to the
Government Code, to read:

6254.9. (a) Computer software developed or
maintained by a state or local agency is not itself a
public record under this chapter. The agency may sell,
lease, or license the software for commercial or
noncommercial use.

(b) Nothing in this section is intended to
affect the public record status of information merely
because it is stored in a computer.

(c) As used in this section, "computer software"
includes computer readable data bases, computer programs,
and computer graphics systems.

Amendment 3

On page 1, strike out lines 2 to 7, inclusive,
and strike out page 2

- 0 -

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LIS - 4

AP-1

PA-000959

GOVERNMENTAL ORGANIZATION

Date of Hearing: 04/12/88

BILL NO.	AB 3265	AB 3399	AB 3400	AB 3401
ACTION VOTED ON	Do pass; re-refer to Com on W. & M.	Do pass as amended and re-refer to Com on W. & M.	Do pass; re-refer to Com on W. & M.	Do pass
			FAIL PASSAGE:	
	Aye : No :	Aye : No :	Aye : No :	Aye : No :
Baker	X :	X :	X :	X :
Costa	X :	X :	N.V. :	X :
Cortese	X :	X :	N.V. :	X :
Frizzelle	X :	X :	X :	N.V. :
Grisham	X :	X :	N.V. :	X :
Harris	X :	X :	X :	X :
Johnson	X :	X :	Ab. :	Ab. :
Klehs	X :	X :	X :	X :
Mojonnier	X :	X :	Ab. :	X :
Mountjoy	X :	X :	X :	X :
Polanco	X :	X :	X :	X :
Statham	X :	X :	X :	X :
Tanner	X :	X :	X :	X :
Tucker	X :	X :	X :	X :
Maxine Waters	Ab. :	X :	N.V. :	X :
Norman Waters	X :	X :	X :	X :
Hill(V.Chair)	X :	X :	X :	X :
Floyd(Chair)	X :	X :	X :	X :
	Ayes: 17 Noes: 0	Ayes: 17 Noes: 1	Ayes: 8 Noes: 4	Ayes: 16 Noes: 0

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N.V. - Not voting
Ab. - Absent

Abst - Abstain

RECEIVED: _____

R. E. FGD, Chairman



AP-2

BIDDLE & HAMILTON

HOTEL SENATOR BUILDING
SUITE 510
1121 L STREET
SACRAMENTO, CALIFORNIA 95814
916-442-7401

MAR 17 1988

ORANGE COUNTY
51 TOWN & COUNTRY BUSINESS PLAZA
1111 TOWN & COUNTRY ROAD
ORANGE, CALIFORNIA 92668
714-541-3588

W. CRAIG BIDDLE*
RICHARD L. HAMILTON
CHRISTIAN M. KEINER
TERRI A. DeMITCHELL

March 15, 1988

*Professional Corporation

Honorable Dominic Cortese
State Capitol
Sacramento, CA 95814

Re: [AB 3265]

Dear Assembly Member Cortese:

I am pleased to inform you that our clients, the California Association of Licensed Investigators, are in support of your AB 3265 which would allow governmental agencies to sell proprietary information under certain circumstances.

The Association believes that the ability to sell this information would provide economic assistance to governmental agencies and would be beneficial to those groups or organizations desiring access to this information.

Very truly yours,

BIDDLE & HAMILTON



W. Craig Biddle

cc: Consultant, Assembly Governmental Organization Committee

LEGISLATIVE INTENT SERVICE (800) 666-1917



AP-3

PA-000961

San Diego
ASSOCIATION OF
GOVERNMENTS

Suite 524, Security Pacific Plaza
1200 Third Avenue
San Diego, California 92101
(619) 236-5300

MAR 21 1988

MAR 22 1988

March 17, 1988

*cc Randy -
cc GO Com.*

Assemblyman Dominic Cortese
6031 State Capitol
Sacramento, CA 95814

RE: AB 3265 (Cortese) - Support

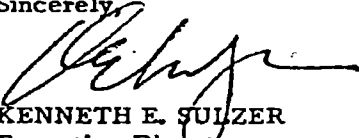
Dear Assemblyman Cortese:

The Executive Committee of the San Diego Association of Governments unanimously approved Resolution 88-57 (attached hereto along with the staff report) supporting AB 3265. This bill is of great importance to SANDAG because it would provide the option under the California Public Records Act to recover development and maintenance costs by selling or licensing computer programs and computer readable data bases which have been developed at great public expense to those who are requesting them for business oriented purposes.

This bill is a fair and reasonable amendment to the act which does not invade the public's right to freely access public information for the cost of reproduction.

We appreciate your efforts in proposing this legislation and strongly urge the legislature to support it.

Sincerely,


KENNETH E. SULZER
Executive Director

KES/rw

Enclosures

cc: Assemblyman Bill Bradley, 76th District
Assemblyman Peter R. Chacon, 79th District
Assemblyman Robert Frazee, 74th District
Assemblywoman Lucy Killea, 78th District
Assemblyman Steve Peace, 80th District
Assemblyman Larry Stirling, 77th District

MEMBER AGENCIES: Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, Vista and County of San Diego
ADVISORY/LIAISON MEMBERS: California Department of Transportation, U.S. Department of Defense and Tijuana Bay, California Norte

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AP-4

PA-000962



CITY OF SAN JOSE, CALIFORNIA

APR 04 1988

801 NORTH FIRST STREET
SAN JOSE, CALIFORNIA 95110
(408) 277-4000

March 31, 1988

CITY MANAGER

Assembly Member Richard Floyd
Chair, Assembly Governmental Organization Committee
Room 4016, State Capitol
Sacramento, California 95814

RE: Assembly Bill 3265 (Cortese) - SUPPORT

Dear Assembly Member Floyd:

Assembly Bill 3265 relating to public records: proprietary information
was introduced by Assembly Member Cortese at the request of the City
of San Jose. It is our understanding that the bill is now scheduled
for hearing on Tuesday, April 5 before the Assembly Governmental
Organization Committee.

Assembly Bill 3265 proposes to amend the Public Records Act to clarify
the distinction between public records subject to mandatory disclosure
under the Act and public investments in creative programs and
proprietary information systems.

The City of San Jose, as well as many other governmental agencies, have
developed various computer readable data bases and other computer
stored information at considerable research and development expense.
As you are aware, the Public Records Act requires state and local
governmental agencies to make any identifiable public record promptly
available to any person so requesting, upon payment to cover the direct
costs of duplication, or a statutory fee, if applicable. Although the
Act does not obligate governmental agencies to provide computer stored
or generated information in computer readable form, there is not clear
authority for the sale or licensing of the computer information in
computer readable forms such as tapes or discs.

Passage of AB 3265 will clarify under the Public Records Act an exemption
of proprietary information from disclosure under the Act and authorize
government agencies to recoup public investments of creativity, manpower
and public funds required for development.

Your "aye" vote on AB 3265 would be appreciated.

Sincerely,

[Handwritten signature of Roxanne L. Miller]

ROXANNE L. MILLER
Legislative Representative
Sacramento Office (916) 443-3946

RLM:sc
cc: Members of Assembly
Governmental Organization Committee
Jeff Ruch, Committee Consultant
Assembly Member Dominic Cortese

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AP-5

San Diego
ASSOCIATION OF
GOVERNMENTS

Suite 524, Security Pacific Plaza
1200 Third Avenue
San Diego, California 92101
(619) 236-5300

MAR 21 1988

March 17, 1988

Assemblyman Richard Floyd, Chairman
Assembly Governmental Organization Committee
4016 Capitol Building
Sacramento, CA 95814

RE: AB 3265 (Cortese) - Support


Dear Assemblyman Floyd:

The Executive Committee of the San Diego Association of Governments unanimously approved Resolution 88-57 (attached hereto along with the staff report) supporting AB 3265. This bill is of great importance to SANDAG because it would provide the option under the California Public Records Act to recover development and maintenance costs by selling or licensing computer programs and computer readable data bases which have been developed at great public expense to those who are requesting them for business oriented purposes.

This bill is a fair and reasonable amendment to the act which does not invade the public's right to freely access public information for the cost of reproduction.

We strongly urge your support for AB 3265 when it is heard in the Assembly Governmental Organization Committee.

Sincerely,


KENNETH E. SULZER
Executive Director

KES/rw

Enclosures

cc: Assemblyman Frank Hill
Assemblyman Rusty Areias
Assemblyman Jim Costa
Assemblyman Elihu Harris
Assemblywoman Sally Tanner
Assemblyman Curtis Tucker
Assemblywoman Maxine Waters
Assemblyman Norman Waters
Assemblyman William Baker
Assemblyman Nolan Frizzelle
Assemblyman Wayne Grisham
Assemblyman Ross Johnson
Assemblyman Richard Mountjoy
Assemblyman Stan Statham

MEMBER AGENCIES: Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, Vista and County of San Diego.
ADVISORY/LIAISON MEMBERS: California Department of Transportation, U.S. Department of Defense and Transportation, Baja California Norte

(800) 666-1917

LEGISLATIVE INTENT SERVICE



AP-6

PA-000964



CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION

u

1213 K STREET, SUITE 103 • SACRAMENTO, CALIFORNIA 95814 • (916) 441-1733 • FAX 441-4053

JERRY JORDAN, Executive Director

March 4, 1988

MAR 8 1988

cc Bundy

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President
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San Francisco

Secretary
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Riverside

DON VON RAESFELD
Santa Clara

Honorable Dominic L. Cortese
State Capitol, Rm. 6031
Sacramento, CA 95814

Dear Assemblymember Cortese:

The California Municipal Utilities Association supports your
A.B. 3265, relating to public records.

Please let us know if we can be of assistance in securing
passage of this legislation.

Sincerely,

Jerry Jordan
Jerry Jordan

JJ/ael

3/14

LEGISLATIVE INTENT SERVICE (800) 666-1917

*San Diego
Assoc. of Government
also supports.
They are sending
out their letter
today.*

*Per Deborah
Greenfield
(619) 236-5300*
LINDA GOLDBERG
Legislative Secretary

Assemblyman Dominic L. Cortese
Room 6031 (916) 445-8243

An organization
C. M. U. A. members prov

AP-7

PA-000965

How DMV sells your name to car repair chains

Marketing firm will send coupon right when your vehicle needs smog check

By Henry Ungar
 Herald Examiner staff writer. - 3/8

Every other year, Los Angeles car owners get the order in bold letters: "SMOG CERTIFICATE REQUIRED" is stamped on the top of their registration renewal notices. Just days later, as they consider where to get the mandatory pollution checkup, the mail delivery suddenly carries advertising with coupons offering price breaks on smog checks.

A mere coincidence? Not at all. It's a carefully planned sales pitch. Here's how it works. The state Department of Motor Vehicles sells its registration lists to companies and individuals. The information, considered public record, includes expiration dates and vehicle identification numbers indicating whether a smog check is due in an odd or even year. The biggest buyer of registration information is the marketing firm of I.L. Ink & Co., according to DMV spokesman Bill Gengler. Last April, Detroit-based Polk spent about \$400,000 for a DMV list of 13 million California vehicles, and it pays some \$7,000 a month for updates, he said.

Polk uses the list to mail smog-check promotions for automotive repair chains, such as Montgomery Ward and MP&G Tune-Up. Polk also does other auto-related direct mail. Smog promotions for smaller businesses, such as service stations, car dealers and independent repair outlets, generally are handled by other marketing firms — which obtain registration information from Polk.

"It's one of the best uses of direct mail that we've ever seen," said Daniel Jackson, vice president of sales for a Polk division in Culver City. "It's growing in popularity as a solid market tool to promote (smog check) inspections and tune-ups."

The key ingredient is timing. MP&G, for example, tries to time its special smog check letter so it reaches mailboxes no later than three days after car owners receive their renewal notices.

The promotions are mailed to car owners who live within five miles of an MP&G center.

Telling owners they can "breathe a little easier," MP&G's promotion offers a \$3 discount on smog checks. "We have a high rate of redemption with this letter," said Robert Filler, manager of new marketing programs for ARCO, which franchises its MP&G centers. "Our customers have raved about it."

Montgomery Ward also sends out smog mailers to potential customers in Los Angeles and Orange counties. The letters, which go to those living within six miles of a Montgomery Ward auto center, offer a \$4 discount

Smog, A-11 ▶

HOW AUTO MECHANICS TRACK YOU DOWN

1 The driver registers his car with the state Department of Motor Vehicles. His registration information is a public record.

2 The DMV sells registration information, including addresses and when smog certificates are due, to a marketing firm for more than \$400,000 a year.

3 The marketing firm, I.L. Ink & Co., prepares mailings for auto repair chains like Montgomery Ward and MP&G Tune-Up.

4 Auto repair companies that hire Polk can target a select audience for their mailings: drivers who need a new smog certificate to renew their registration.

About 10,000 California

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Smog

► From A-10

and one-stop shopping. After the car passes the smog test, customers can immediately get new registration stickers at Montgomery Ward, said John Adams, marketing director for the chain's smog check program.

"It's been a very successful program," Adams said. "We're very dependent on R.L. Polk."

But that could change, he

added. As more and more auto repair centers mail out smog promotions, they will become less and less effective.

That's why Montgomery Ward expects to use other promotional avenues.

"(Polk) is a very costly form of advertising," Adams said. Montgomery Ward pays Polk more than \$300 for every 1,000 pieces of mail it sends out, he said.

"You can use alternative newspaper advertising to blanket a community," he said. Those rates might run as little as \$3 to \$4 per

1,000. With continual repetition, he said, that form of advertising eventually might be as effective as the more carefully targeted Polk approach.

One Long Beach gas station owner already has reduced his dependence on smog-check mailers. Bob Kasravi, owner of Bob's Chevron, said the promotions have become less effective recently. As a result, he has limited the number of mailings.

Kasravi's mailings are prepared by National Image of Costa Mesa, which pays about 20 cents a

name to Polk for registration information. It then charges an average of 50 cents a name to prepare, print and mail the promotions for service stations.

Michael Moriarty, a partner in National Image, said the success of the promotions depends largely on the deals that consumers are offered by the smog centers.

"Price is the determining factor, just like it is for gas," he said. "I've been in the service station promotion business for eight years and this is the best program."



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