THE CALIFORNIA PUBLIC RECORDS ACT

PRACTICAL ADVICE FOR BUSINESS IMPROVEMENT DISTRICTS
A BUSINESS IMPROVEMENT DISTRICT IS A “PUBLIC AGENCY” AND THEREFORE, SUBJECT TO THE CALIFORNIA PUBLIC RECORDS ACT.
WHAT DOES THE CALIFORNIA PUBLIC RECORDS ACT REQUIRE A BID TO DO?
A BID must produce all “records” pertaining to the BID’S business upon request by a member of the public.
“Records” are documents, emails, calendars, texts, blog entries, etc., pertaining to BID business, within the possession, custody, or control of the BID.
A REQUEST FOR PUBLIC RECORDS DOES NOT NEED TO BE MADE IN WRITING, OR ON A PARTICULAR FORM, OR TO A PARTICULAR PERSON.
Let all employees and Board members know that if they receive a request for records, even if verbal, they are to notify a designated person who tracks CPRA requests!
THE BID HAS AN AFFIRMATIVE OBLIGATION TO ASSIST THE PUBLIC IN REASONABLY DESCRIBING AN IDENTIFIABLE RECORD.
A request must reasonable describe an identifiable record. Technically it must be “focused and “specific” and clear enough for the BID to know what is being requested. But if it is not, the BID is required to assist the public in
To accomplish this, the BID can inquire about the purpose (although the purpose need not be disclosed) and must describe the information technology and physical location where the records are kept.
WHEN CAN A BID WITHHOLD RECORDS?
There are exemptions set forth in the CPRA which the BID can rely on to withhold certain records.
THE MOST COMMON EXEMPTIONS FOR A BID TO RELY ON IN WITHHOLDING RECORDS:
Personal contact information

• Home address, private telephone number, private email address, birth dates
• Be cautious of business address, business telephone number, business email address
• Never a government email, never a PID email address
Right to privacy

• Personal information in emails, e.g., birthdays, sick family members, children
Preliminary drafts, notes, or interagency or intra-agency memoranda

It is not normally retained in the course of ordinary business

• It is not kept to document or memorialize the day to day transaction of the BID’s business

• It is in a temporary step in the process of preparing a final document

• Disclosure would expose the BID’s decision making process, and the public benefit in non-disclosure outweighs the public benefit in disclosure
Personnel records

• Performance evaluations
• W-2
• Complaints and investigations—while ongoing investigation exempt, but “where the charges are found true and discipline is imposed” arguably not exempt.
Medical information regarding employee (for example, if the BID is a healthcare provider) or public served
Attorney client communications

- Your attorneys’ bills/retainer agreement (?)
- Check with your attorney!
Litigation records to which the BID is a party

- Only as long as the litigation is ongoing
- Records created by an agency for purposes of defending the litigation is not discoverable.
Deliberative Process

“The key question in every case is whether disclosure of the materials would expose an agency’s decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency’s ability to perform its functions.”
Catchall—The public benefit in non-disclosure outweighs the public interest in disclosure.
PRODUCING A RECORD WAIVES THE EXEMPTION TO PRODUCTION OF THAT RECORD GOING FORWARD.
The BID cannot simply refuse to disclose a document because it contains exempt material. The BID must redact if it can “reasonably segregate” the exempt material from the non-exempt material. If exempt material is “inextricably intertwined with nonexempt information” the record may be withheld in its entirety.
RECORDS MUST BE MADE AVAILABLE “PROMPTLY,” BUT IF NOT REASONABLY POSSIBLE, A RESPONSE MUST BE PROVIDED WITHIN 10 DAYS.

A request received after business hours or on a weekend or holiday is considered received the next business day. If the tenth day for a response falls on a weekend or holiday, then the next business day is the last day to respond.
DO NOT CONFUSE THE DATE TO PRODUCE THE RECORDS WITH THE DATE TO RESPOND. THE RECORDS NEED TO BE PRODUCED “PROMPTLY,’NO SPECIFIC BUT OTHERWISE DATE.

The law requires that production be made in a “reasonable” amount of time, based upon the volume of the records requested and the necessary review process.
IF NO RECORDS ARE NOT PRODUCED BEFORE, YOU MUST RESPOND WITHIN 10 DAYS, WITH ONE OF FOUR POTENTIAL RESPONSES:
Example: The BID is in receipt of your CPRA Request dated. Your request does not seek disclosable records within the meaning of the CPRA. If you need assistance in formulating a request for records that falls within the CPRA, please contact the BID and we will be happy to assist you.
Example: The BID is in receipt of your CPRA Request dated . Your request seeks disclosable records under the CPRA. You may review the records you seek in the format maintained by the BID during normal business hours on a mutually available date and time, at which time you can determine which records if any you would like copies of. Alternatively, the BID can directly make available to you hard-copies of records, and copies of electronic records in their native format on a zip drive. The cost of copies is per page, and the cost of a zip drive is . The cost of mailing will be determined once it is determined the
Example: The BID is in receipt of your CPRA Request dated. I have determined [or Mary Jones, the Executive Director, has determined] that your request seeks records exempt from disclosure under the CPRA, specifically, exempt from disclosure as constituting . Where exempt material is readily segregable, the BID will redact exempt material. You may review the records you seek in the format maintained by the BID during normal business hours on a mutually available date and time, at which time you can determine which records if any you would like copies of. Alternatively, the BID can directly make available to you hard-copies of records, and copies of electronic records in their native format on a zip drive. The cost of copies is per page, and the cost of mailing will be determined once it is determined the manner in which you would like to receive the records.
Example: The BID is in receipt of your CPRA Request dated . The BID will require an additional 14 calendar days to respond to your request because [choose from the following]:

(1) the BID needs to search for and collect the requested records from facilities separate from the
(2) the BID needs to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request. Identification and collection of potentially responsive records are only some of the steps involved in responding to requests. The collected records must be reviewed to ensure that they are in fact responsive to the request and to assess whether they are subject to redaction to protect the privacy rights of others and consistent with applicable legal privileges & exemptions. Each of the steps in the process takes time;
(3) the BID needs to consult with another agency having a substantial interest in the request;

(4) the BID will need to compile data, write programming language or a computer program, or construct a computer report to extract data.
Never say it is because of the press of business, nor that the responsible employee is on vacation or unavailable.

This is not a request for an extension! This is notice that the BID is extending the time.
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THE JUDICIAL PROCESS TO REVIEW AN ALLEGED VIOLATION OF THE CPRA

- Petition for Writ of Mandamus—a lawsuit for injunctive or declaratory relief
- Request the Court to compel compliance with the documents withheld under an exemption.
- The burden to justify any exemption is on the BID.
- No criminal penalties, and no personal exposure.
- There is an award of attorneys’ fees and costs to the prevailing plaintiff. The agency only
SPECIFIC EXAMPLES
Emails
Bank statements/checks
BID Security Reports
CONCLUDING ADVICE

Meet the 10 day and 14 day deadlines, and 90% of litigation can be avoided.