



SB 615 – California Public Records Disclosure

Summary

SB 615 (Hueso) seeks to strike a delicate balance between the competing important interests of government transparency and government effectiveness. Specifically, SB 615 (Hueso) seeks to make the California Public Records Act request process more efficient by requiring individuals or organizations submitting a PRA request to meet and confer in good faith with the agency in an attempt to informally resolve each issue before instituting any proceeding for injunctive or declarative relief.

Background

The California Public Records Act Statutes (the PRA) of 1968 (currently codified as California Government Code §§ 6250 through 6276.48) was enacted in 1968 to safeguard the accountability of government to the public and to promote maximum disclosure of the conduct of government operations.

The PRA is an essential component of California's strong commitment to open government and transparency.

Achieving Balance

The California Legislature, in enacting the PRA, attempted to strike a fine balance among competing, yet fundamental interests: governing transparency, privacy rights, and government effectiveness. Of the approximately 76 current exemptions from disclosure contained in the PRA, 35 appear intended primarily to support effective governmental operation in the public's interest.

Since the inception of the PRA, the courts have balanced those competing interests in deciding whether to order disclosure of records.

This right of access to public information imposes a duty on local agencies to respond to PRA requests even if the request does not reasonably describe an identifiable record, the record does not exist, the request is ambiguous, or the record is exempt from the disclosure.

To enforce local agencies' compliance with the PRA open government mandate, the PRA provides for the mandatory award of court costs and attorneys' fees to plaintiffs who successfully seek a court ruling ordering disclosure of withheld public records.

Why this bill is needed

In recent years, cities, counties, school districts, state agencies and many other governmental entities under the purview of the PRA have witnessed an exponential increase in the number of PRA requests.

The University of California system, with nearly 45,000 faculty on its campuses, laboratories and medical centers exemplifies the concerns that should be raised over the recent exponential rise in PRA requests.

In 2009, the UC system received a total of 3,266 public records requests. In 2017, it received 16,921, an increase of 418 percent.¹ According to a 2018 New York Times article, Dennis Ventry Jr., a law professor at the University of California, Davis, was the subject of a request submitted by a tax trade coalition. The trade coalition requested everything Professor Ventry had written or said about the

¹ *Industries Turn Freedom of Information Requests on Their Critics*, Elizabeth Williamson, The New York Times, Nov. 5, 2018.



companies that year. The University estimated that it spent 80 to 100 hours complying with the request.²

Counties and municipalities have also witnessed dramatic increases in the amount of PRA requests submitted. The City of San Diego reported that from 2012 (749) to 2018 (4,824) the city saw a 644 percent increase in PRA requests.³

Smaller governmental entities and school districts have also witnessed a significant increase in the number of PRA requests in recent years. The Palo Alto school district reported a 453 percent increase in the number of PRA requests filed in 2017.⁴ Additionally, the small Willow Unified School District estimated that one overly broad PRA request required staff to devote nearly 200 hours reviewing, printing, scanning, and transmitting approximately 60,000 e-mails in response to this request.⁵

Public entities recognize that they must function under the PRA but budget constraints, limited resources and the ever-increasing amount of requests can hamper the effectiveness of government and unnecessarily exhaust taxpayer dollars.

SB 615 (Hueso) seeks to strike the right balance between the competing important interests of government transparency and government effectiveness. SB 615 (Hueso) seeks to strike this balance by requiring individuals or organizations submitting a PRA request to meet and confer in good faith with the agency in an attempt to informally resolve each issue before instituting any proceeding for injunctive or declarative relief. This requirement is not unprecedented and can also be found in the California Code of Civil Procedure ((Secs. 2030.300(b), 2031.310(b), and 2033.290(b)) which requires parties to

“meet and confer” prior to filing a motion to compel further discovery.

At the conclusion of the “meet and confer” process this bill would require the requesting individual or their attorney to file a declaration stating that this has occurred at the time that proceedings are instituted.

The bill would require that in order for a requester to prevail in litigation related to a PRA request, the trial court must find by a preponderance of the evidence that an agency knowingly, willfully, and without substantial justification failed to respond to a request for records, improperly withheld from a member of the public records that were clearly subject to public disclosure, unreasonably delayed providing the contents of a record subject to disclosure in part or in whole, or otherwise did not act in good faith to comply with these provisions.

Support

City Attorney of San Diego (Sponsor)

Opposition

California Newspaper Association

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² *Id.*

³ City of San Diego Clerk and Public Records Administration. (The change in source reflects the City’s creation of a Public Records Administration group)

⁴ *District seeks to limit ‘unduly burdensome’ public records requests*, Elena Kadvanly, Palo Alto Weekly, June 19, 2018

⁵ *Crews v. Willows Unified School District* (2013) 217 Cal.App.4th 1368, 1372.