

# Media Law Handouts

## First Amendment

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# **U.S. Constitution: First Amendment**

## **Religion and Expression**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

# California Public Records Act

GOVT. CODE §§ 6250 -6276.48

## THE BASICS

The Public Records Act is designed to give the public access to information in possession of public agencies: "public records are open to inspection at all times during the office hours of the...agency and every person has a right to inspect any public record, except as provided, [and to receive] an exact copy" of an identifiable record unless impracticable. (§ 6253). Specific exceptions to disclosure are listed in sections 6253.2, 6253.5, 6253.6, 6254, 6254.1-6254.22, 6255, 6267, 6268, 6276.02-6276.48; to ensure maximum access, they are read narrowly. The agency always bears the burden of justifying nondisclosure, and "any reasonably segregable portion . . . shall be available for inspection...after deletion of the portions which are exempt." (§ 6253(a))

## WHO'S COVERED

All state and local agencies, including: (1) any officer, bureau, or department.; (2) any "board, commission or agency" created by the agency (including advisory boards); and (3) nonprofit entities that are legislative bod-ies of a local agency. (§ 6252(a),(b)). Many state and regional agencies are required to have written public record policies. A list ap-pears in § 6253.4.

## WHO'S NOT COVERED

Courts (except itemized statements of total expenditures and disbursement).(§§ 6252(a), 6261)

The Legislature. (§ 6252) See Legislative Open Records Act, Govt. Code §§ 9070-9080

Private non-profit corporations and entities.

Federal agencies. See Federal Freedom Of Information Act, 5 U.S.C. § 552.

ACCESS TIP L Look to access laws (e.g. Legislative Open Records Act, IRS rules, court cases) that permit inspection and copying of records of agencies not subject to the Public Records Act. Many local jurisdictions also have "Sunshine" laws that grant greater rights of access to records.

## WHAT'S COVERED

"Records" include all communications related to public business "regardless of physical form or characteristics, including any writing, picture, sound, or symbol, whether paper,..., magnetic or other media." (§ 6252(e)) Electronic records are included, but software may be exempt. (§§ 6253.9(a),(g), 6254.9 (a),(d))

## WHAT MUST HAPPEN

Access is immediate and allowed at all times during business hours. (§ 6253(a)) Staff need not disrupt operations to allow immediate ac-cess, but a decision whether to grant access must be prompt. An agency may not adopt rules that limit the hours records are open for viewing and inspection. (§§ 6253(d); 6253.4(b)) •

The agency must provide assistance by help-ing to identify records and information relevant to the request and suggesting ways to overcome any practical basis for denying access. (§ 6253.1)

An agency has 10 days to decide if copies will be provided. In "unusual" cases (request is "voluminous," seeks records held off-site, OR requires consultation with other agencies), the agency may, upon written notice to the request-ers, give itself an additional 14 days to respond. (§ 6253(c)) These time periods may not be used solely to delay access to the records. (§ 6253(d))

The agency may never make records available only in electronic form. (§ 6253.9(e)) • Access is always free. Fees for "inspection" or "processing" are prohibited. (§ 6253) • Copy costs are limited to "statutory fees" set by the Legislature (not by local ordinance) or the "direct cost of duplication", usually 10 to 25 cents per page. Charges for search, review or deletion are not allowed. (§ 6253(b); North County Parents v. D.O.E., 23 Cal.App.4th 144 (1994)) If a request for electronic records either (1) is for a record normally issued only periodically, or (2) requires data compilation, extraction, or programming, copying costs may include the cost of the programming. (§ 6253.9(a),(b)) The agency must justify the withholding of any record by demonstrating that the record is exempt or that the public interest in confidentiality outweighs the public interest in disclosure. (§6255)

ACCESS TIP L Always ask for both copies and access; after inspection you can reduce the copy request (and associated costs) to the materials you need.

## REQUESTING PUBLIC RECORDS

Plan your request; know what exemptions may apply.

Ask informally before invoking the law. If necessary, use this guide to state your rights under the Act.

Don't ask the agency to create a record or list.

A written request is not required, but may help if your request is complex, or you anticipate trouble.

Put date limits on any search.

If the agency claims the records don't exist, ask what files were searched; offer any search clues you can.

Limit pre-authorized costs (or ask for a cost waiver), and pay only copying charges.

Demand a written response within 10 days.

## IF YOUR REQUEST IS DENIED

Keep a log of to whom you speak and the stated reason for the denial.

Employ the following six-step DENIAL strategy: D = Discretionary: Exemptions are permissive, never mandatory. Ask the agency if it will waive the exemption and release the record. E = Explanation: Insist that the agency explain in a written denial why the exemption applies to the requested record. N = Narrow Application: The Act favors access. Exemptions must be narrowly construed.

I = Isolate : Request the release of any non-exempt portions of the record. A = Appeal:

State your rights, using this guide, and ask to speak to a higher agency official. L =

Lawsuit: File suit to enforce your rights. If you win, the agency must pay your costs and legal fees. (§ 6259(d)); Belth v. Garamendi 232 Cal.App.3d 896 (1991).

Write a news story or Letter to the Editor about the denial.

Consult your supervisor or lawyer, or contact one of the groups listed on this brochure.

## WHAT'S NOT COVERED

Employees' private papers, unless they "re-lat[e] to the conduct of the public's business [and are] prepared, owned, used, or retained by the agency." (§ 6252(e))

Computer software "developed by a state or local agency ... includ[ing] computer mapping systems, computer programs, and computer graphic systems." (§§ 6254.9(a),(b))

Records not yet in existence: The PRA covers only records that already exist, and an agency cannot be required to create a record, list, or compilation. "Rolling requests" for future-generated records are not permitted

## RECORDS EXEMPT FROM DISCLOSURE

The Act exempts certain records from disclosure in whole or in part. This does not mean they are not public records or that disclosure is prohibited. An agency may withhold the records, but can allow greater access if it wishes. (§ 6253(e)). However, "selective" or "favored" access is prohibited; once it is disclosed to one requester, the record is public for all. (§ 6254.5) Many categories of records are exempt, some by the Act itself, (§§ 6254(a)-(z)) and some by other laws (§§ 6275-6276.48). These include:

Attorney-Client discussions are confidential, even if the agency is the client, but the agency (not the lawyer) may waive secrecy. (§§ 6254(k), 6254.25, 6276.04)

Appointment calendars and applications, phone records, and other records which impair the deliberative process by revealing the thought process of government decision-makers may be withheld only if "the public interest served by not making the record[s] public clearly outweighs the public interest served by disclosure of the record[s]." (§ 6255; *Times Mirror v. Superior Ct.*, 53 Cal.3d 1325 (1991); *CFAC v. Superior Ct.*, 67 Cal.App.4th 159 (1998); *Rogers v. Superior Ct.*, 19 Cal.App.4th 469 (1993)) If the interest in secrecy does not clearly outweigh the interest in disclosure, the records must be disclosed, "whatever the incidental impact on the deliberative process." (*Times Mirror v. Superior Ct.*) The agency must explain, not merely state, why the public interest does not favor disclosure.

Preliminary drafts, notes and memos may be withheld only if: (1) they are "not retained...in the ordinary course of business" and (2) "the public interest in withholding clearly outweighs the public interest in disclosure." Drafts are not exempted if: (1) staff normally keep copies; or (2) the report or document is final even if a decision is not. (§ 6254(a)) Where a draft contains both facts and recommendations, only the latter may be withheld. The facts must be disclosed. (*CBE v. CDF.A.*, 171 Cal.App.3d 704 (1985))

Home Addresses in DMV, voter registration, gun license, public housing, local agency utility and public employee records are exempt, as are addresses of certain crime victims. (§§ 6254(f),(u), 6254.1, 6254.3, 6254.4, 6254.16, 6254.21)

Records concerning agency litigation are exempt, but only until the claim is resolved or settled. The complaint, claim, or records filed in court, records that pre-date the suit (e.g., reports about projects that eventually end in litigation), and settlement records are public. (§§ 6254(b), 6254.25; *Register Div. of Freedom Newspapers, Inc. v. County of Orange*, 158 Cal. App. 3d 893 (1984))

Personnel, medical and similar files are exempt only if disclosure would reveal intimate, private details. (§ 6254(c)) Employment contracts are not exempt. (§ 6254.8)

Police Incident reports, rap sheets and arrest records are exempt (Penal Code §§ 11075, 11105, 11105.1), but information in the "police blotter" (time and circumstances of calls to police; name and details of arrests, warrants, charges, hearing dates, etc.) must be

disclosed unless disclosure would endanger an investigation or the life of an investigator. Investigative files may be withheld, even after an investigation is over. (Gov. Code § 6254(f); Williams v. Superior Ct., 5 Cal. 4th 337 (1993); County of L.A. v. Superior Ct., 18 Cal. App. 4th 588 (1994). Identifying data in police personnel files and misconduct complaints are exempt, but disclosure may be obtained using special procedures under Evidence Code section 1043.

Financial data submitted for licenses, certificates, or permits, or given in confidence to agencies that oversee insurance, securities, or banking firms; tax, welfare, and family/adoption/ birth records are all exempt. (§§ 6254(d),(k),(l), 6276)

## **The Freedom of Information Act - Summary**

The Freedom of Information Act (FOIA), which can be found in Title 5 of the United States Code, section 552, was signed into law in 1966 and provides that any person has the right of access to federal agency records or information. The law carries a presumption of disclosure; the burden is on the government—not the public—to substantiate why information may not be released. Upon written request, agencies of the United States government are required to disclose those records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in the FOIA. This right of access is ultimately enforceable by filing a complaint in federal court.

The federal FOIA does not, however, provide access to records held by the US Congress, nor that of the federal judiciary. Nor does it provide access to records of state or local government agencies, or those held by private businesses or individuals. Each state and the District of Columbia have statutes governing public access to their records.

The 1996 Electronic Freedom of Information Act (EFOIA) Amendments to the Freedom of Information Act require each agency to post on their agency website guides to making requests under the FOIA to that agency. An agency can only respond to requests for records it has created. For more information about filing a FOIA request, see: <http://www.gwu.edu/~nsarchiv/nsa/foia/howtofoia.html>.

## **Penal Code 409.5**

### **Authority of peace officers, life guard or marine safety officer to close disaster area; exclusion from police command post area; entry; exception**

**(A)** Whenever a menace to the public health or safety is created by a calamity including a flood, storm, fire, earthquake, explosion, accident, or other disaster, officers of the Department of the California Highway Patrol, police departments, marshal's office or sheriff's office, any officer or employee of the Department of Forestry and Fire Protection designated a peace officer by subdivision (g) of Section 830.2, any officer or employee of the Department of Parks and Recreation designated a peace officer by subdivision (f) of Section 830.2, any officer or employee of the Department of Fish and Game designated a peace officer under subdivision (e) of Section 830.2, and any publicly employed full-time lifeguard or publicly employed full-time marine safety officer while acting in a supervisory position in the performance of his or her official duties, may close the area where the menace exists for the duration thereof by means of ropes, markers, or guards to any and all persons not authorized by the lifeguard or officer to enter or remain within the enclosed area. If the calamity creates an immediate menace to the public health, the local health officer may close the area where the menace exists pursuant to the conditions set forth in this section.

**(B)** Officers of the Department of the California Highway Patrol, police departments, marshal's office or sheriff's office, officers of the Department of Fish and Game designated as peace officers by subdivision (e) of Section 830.2, or officers of the Department of Forestry and Fire Protection designated as peace officers by subdivision (g) of Section 830.2 may close the immediate area surrounding any emergency field command post or any other command post activated for the purpose of abating any calamity enumerated in this section or any riot or other civil disturbance to any and all unauthorized persons pursuant to the conditions set forth in this section whether or not the field command post or other command post is located near to the actual calamity or riot or other civil disturbance.

**(C)** Any unauthorized person who willfully and knowingly enters an area closed pursuant to subdivision (a) or (b) and who willfully remains within the area after receiving notice to evacuate or leave shall be guilty of a misdemeanor.

**(D)** Nothing in this section shall prevent a duly authorized representative of any news service, newspaper, or radio or television station or network from entering the areas closed pursuant to this section.

## California Penal Code Section 409.6

**(a)** Whenever a menace to the public health or safety is created by an avalanche, officers of the Department of the California Highway Patrol, police departments, or sheriff's offices, any officer or employee of the Department of Forestry and Fire Protection designated a peace officer by subdivision (g) of Section 830.2, and any officer or employee of the Department of Parks and Recreation designated a peace officer by subdivision (f) of Section 830.2, may close the area where the menace exists for the duration thereof by means of ropes, markers, or guards to any and all persons not authorized by that officer to enter or remain within the closed area. If an avalanche creates an immediate menace to the public health, the local health officer may close the area where the menace exists pursuant to the conditions which are set forth above in this section.

**(b)** Officers of the Department of the California Highway Patrol, police departments, or sheriff's offices, or officers of the Department of Forestry and Fire Protection designated as peace officers by subdivision (g) of Section 830.2, may close the immediate area surrounding any emergency field command post or any other command post activated for the purpose of abating hazardous conditions created by an avalanche to any and all unauthorized persons pursuant to the conditions which are set forth in this section whether or not that field command post or other command post is located near the avalanche.

**(c)** Any unauthorized person who willfully and knowingly enters an area closed pursuant to subdivision (a) or (b) and who willfully remains within that area, or any unauthorized person who willfully remains within an area closed pursuant to subdivision (a) or (b), after receiving notice to evacuate or leave from a peace officer named in subdivision (a) or (b), shall be guilty of a misdemeanor. If necessary, a peace officer named in subdivision (a) or (b) may use reasonable force to remove from the closed area any unauthorized person who willfully remains within that area after receiving notice to evacuate or leave.

**(d)** Nothing in this section shall prevent a duly authorized representative of any news service, newspaper, or radio or television station or network from entering the areas closed pursuant to this section.

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## **Sec. 91.137 - Temporary Flight Restrictions in the vicinity of disaster/hazard areas**

**(a)** The Administrator will issue a Notice to Airmen (NOTAM) designating an area within which temporary flight restrictions apply and specifying the hazard or condition requiring their imposition, whenever he determines it is necessary in order to --

- (1)** Protect persons and property on the surface or in the air from a hazard associated with an incident on the surface;
- (2)** Provide a safe environment for the operation of disaster relief aircraft; or
- (3)** Prevent an unsafe congestion of sightseeing and other aircraft above an incident or event which may generate a high degree of public interest.

The Notice to Airmen will specify the hazard or condition that requires the imposition of temporary flight restrictions.

**(b)** When a NOTAM has been issued under paragraph (a)(1) of this section, no person may operate an aircraft within the designated area unless that aircraft is participating in the hazard relief activities and is being operated under the direction of the official in charge of on scene emergency response activities.

**(c)** When a NOTAM has been issued under paragraph (a)(2) of this section, no person may operate an aircraft within the designated area unless at least one of the following conditions are met:

- (1)** The aircraft is participating in hazard relief activities and is being operated under the direction of the official in charge of on scene emergency response activities.
- (2)** The aircraft is carrying law enforcement officials.
- (3)** The aircraft is operating under the ATC approved IFR flight plan.
- (4)** The operation is conducted directly to or from an airport within the area, or is necessitated by the impracticability of VFR flight above or around the area due to weather, or terrain; notification is given to the Flight Service Station (FSS) or ATC facility specified in the NOTAM to receive advisories concerning disaster relief aircraft operations; and the operation does not hamper or endanger relief activities and is not conducted for the purpose of observing the disaster.
- (5)** The aircraft is carrying properly accredited news representatives, and, prior to entering the area, a flight plan is filed with the appropriate FAA or ATC facility specified in the Notice to Airmen and the operation is conducted above the altitude used by the disaster relief aircraft, unless otherwise authorized by the official in charge of on scene emergency response activities.

**(d)** When a NOTAM has been issued under paragraph (a)(3) of this section, no person may operate an aircraft within the designated area unless at least one of the following conditions is met:

- (1)** The operation is conducted directly to or from an airport within the area, or is necessitated by the impracticability of VFR flight above or around the area due to weather or terrain, and the operation is not conducted for the purpose of observing the incident or event.

**(2)** The aircraft is operating under an ATC approved IFR flight plan.

**(3)** The aircraft is carrying incident or event personnel, or law enforcement officials.

**(4)** The aircraft is carrying properly accredited news representatives and, prior to entering that area, a flight plan is filed with the appropriate FSS or ATC facility specified in the NOTAM.

**(e)** Flight plans filed and notifications made with an FSS or ATC facility under this section shall include the following information:

- (1)** Aircraft identification, type and color.
- (2)** Radio communications frequencies to be used.
- (3)** Proposed times of entry of, and exit from, the designated area.
- (4)** Name of news media or organization and purpose of flight.
- (5)** Any other information requested by ATC.

## **Penal Code 402**

### **Sightseeing at scene of emergency; impeding activities; emergency defined**

**402. (a)** Every person who goes to the scene of an emergency, or stops at the scene of an emergency, for the purpose of viewing the scene or the activities of police officers, firefighters, emergency medical, or other emergency personnel, or military personnel coping with the emergency in the course of their duties during the time it is necessary for emergency vehicles or those personnel to be at the scene of the emergency or to be moving to or from the scene of the emergency for the purpose of protecting lives or property, **unless it is part of the duties of that person's employment to view that scene or activities**, and thereby impedes police officers, firefighters, emergency medical, or other emergency personnel or military personnel, in the performance of their duties in coping with the emergency, is guilty of a misdemeanor.

**(b)** Every person who knowingly resists or interferes with the lawful efforts of a lifeguard in the discharge or attempted discharge of an official duty in an emergency situation, when the person knows or reasonably should know that the lifeguard is engaged in the performance of his or her official duty, is guilty of a misdemeanor.

**(c)** For the purposes of this section, an emergency includes a condition or situation involving injury to persons, damage to property, or peril to the safety of persons or property, which results from a fire, an explosion, an airplane crash, flooding, windstorm damage, a railroad accident, a traffic accident, a power plant accident, a toxic chemical or biological spill, or any other natural or human-caused event.

## **Penal Code 148**

**148 – Resisting, delaying or obstructing officer or emergency medical technicians; removal or taking of weapon; punishment.**

**148.2 – Illegal conduct at burning of building; misdemeanor.**

**148. (a) (1)** Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

**(2)** Except as provided by subdivision (d) of Section 653t, every person who knowingly and maliciously interrupts, disrupts, impedes, or otherwise interferes with the transmission of a communication over a public safety radio frequency shall be punished by a fine not exceeding one thousand dollars (\$1,000), imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

**(b)** Every person who, during the commission of any offense described in subdivision (a), removes or takes any weapon, other than a firearm, from the person of, or immediate presence of, a public officer or peace officer shall be punished by imprisonment in a county jail not to exceed one year or in the state prison.

**(c)** Every person who, during the commission of any offense described in subdivision (a), removes or takes a firearm from the person of, or immediate presence of, a public officer or peace officer shall be punished by imprisonment in the state prison.

**(d)** Except as provided in subdivision (c) and notwithstanding subdivision (a) of Section 489, every person who removes or takes without intent to permanently deprive, or who attempts to remove or take a firearm from the person of, or immediate presence of, a public officer or peace officer, while the officer is engaged in the performance of his or her lawful duties, shall be punished by imprisonment in a county jail not to exceed one year or in the state prison. In order to prove a violation of this subdivision, the prosecution shall establish that the defendant had the specific intent to remove or take the firearm by demonstrating that any of the following direct, but ineffectual, acts occurred:

**(1)** The officer's holster strap was unfastened by the defendant.

**(2)** The firearm was partially removed from the officer's holster by the defendant.

**(3)** The firearm safety was released by the defendant.

**(4)** An independent witness corroborates that the defendant stated that he or she intended to remove the firearm and the defendant actually touched the firearm.

**(5)** An independent witness corroborates that the defendant actually had his or her hand on the firearm and tried to take the firearm away from the officer who was holding it.

**(6)** The defendant's fingerprint was found on the firearm or holster.

**(7)** Physical evidence authenticated by a scientifically verifiable procedure established that the defendant touched the firearm.

**(8)** In the course of any struggle, the officer's firearm fell and the defendant attempted to pick it up.

**(e)** A person shall not be convicted of a violation of subdivision (a) in addition to a conviction of a violation of subdivision (b), (c), or (d) when the resistance, delay, or obstruction, and the removal or taking of the weapon or firearm or attempt thereof, was committed against the same public officer, peace officer, or emergency medical technician. A person may be convicted of multiple violations of this section if more than one public officer, peace officer, or emergency medical technician are victims.

**(f)** This section shall not apply if the public officer, peace officer, or emergency medical technician is disarmed while engaged in a criminal act.

**148.2** Every person who willfully commits any of the following acts at the burning of a building or at any other time and place where any fireman or firemen or emergency rescue personnel are discharging or attempting to discharge an official duty, is guilty of a misdemeanor:

1. Resists or interferes with the lawful efforts of any fireman or firemen or emergency rescue personnel in the discharge or attempt to discharge an official duty.
2. Disobeys the lawful orders of any firemen or public officer.
3. Engages in any disorderly conduct which delays or prevents a fire from being timely extinguished.

Forbids or prevents others from assisting in extinguishing a fire or exhorts another person, as to whom he has no legal right or obligation to protect or control, from assisting in extinguishing a fire.

## **PUBLIC RESOURCES CODE**

**4165** – Misdemeanors at forest fire

**4166** – Penalty for violating article

**4165.** Every person is guilty of a misdemeanor who, at a forest fire, does any of the following:

- (a) Disobeys the lawful orders of any public officer or fireman.
- (b) Offers any resistance to, or interference with, the lawful efforts of any fireman or company of firemen to extinguish the fire.
- (c) engages in any disorderly conduct which is calculated to prevent the fire from being extinguished.
- (d) Forbids, prevents, or dissuades others from assisting to extinguish the fire.
- (e) Rides, drives, or propels any vehicle or conveyance upon, over, or across any fire hose or chemical hose which is used by, or in charge of, any public officer or fireman, or injures or damages in any manner any such hose or apparatus of any kind which is in use by, or in charge of, any public officer or fireman.

**4166.** Every person who violates this article is guilty of a misdemeanor, which is punishable by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000). If the defendant refuses, on conviction, to pay the fine, he shall be confined in the county jail of the county in which conviction is had for a period not to exceed one day for every five dollars (\$5) of the fine imposed, or may be subject to both such fine and imprisonment.

## **Vehicle Code 2801**

### **Obedience to firemen**

**2801.** It is unlawful to willfully fail or refuse to comply with any lawful order, signal, or direction of any member of any fire department, paid, volunteer, or company operated, when wearing the badge or insignia of a fireman and when in the course of his duties he is protecting the personnel and fire department equipment.

# CALIFORNIA DEPARTMENT OF CORRECTIONS



The following California Penal Codes pertain to contact with inmates committed to the California Department of Corrections. They are printed in their entirety.

## **2790. Interference With or Giving Article to Convict ---Officer May---Arrest--- Misdemeanor**

Any person, who, without authority, interferes with or in any way interrupts the work of any convict used pursuant to this article and any person not authorized by law, who gives or attempts to give to any state prison convict so employed any controlled substances, or any intoxicating liquors of any kind whatever, or firearms, weapons or explosives of any kind is guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison and shall be disqualified from holding any state office or position in the employ of the state. Any person who interferes with the discipline or good conduct of any convict used pursuant to this article, while such convict is in such camps is guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for a term not more than six months, or by a fine of not more than four hundred dollars (\$400), or by both such fine and imprisonment. Any peace officer or any officer or guard of any state prison or any superintendent of such work, having in charge the convicts used in such camps, may arrest without warrant any person violating any provisions of this article.

## **4570. Penalty for Unauthorized Communication with Prisoners, or Taking from or Bringing in Letters, Etc.**

Every person who, without the permission of the warden or other officer in charge of any State prison, or prison road camp, or prison forestry camp, or other prison camp or prison farm or any other place where prisoners of the State prison are located under the custody of prison officials, officers or employees, or any jail, or any county road camp in this State, communicates with any prisoner or person detained therein, or brings therein or takes therefrom any letter, writing, literature, or reading matter to or from any prisoner or person confined therein, is guilty of a misdemeanor.

<b>GUIDELINES FOR MEDIA CONTACT WITH</b>
<b>CALIFORNIA DEPARTMENT OF CORRECTIONS INMATES</b>

The Department of Corrections is proud of the job that our inmate firefighters and custodial staff do on emergencies throughout the State of California. On fires, floods, earthquakes, natural or man made disasters, you will find fire crews comprised of inmates committed to the Department of Corrections. Under the supervision of Department of Forestry and Fire Protection (CDF), the Los Angeles County Fire Department (LAC) and the California Department of Corrections (CDC) staff, the inmates work alongside other emergency personnel to help alleviate these threats to the safety of the citizens of the State of California.

The Department of Corrections appreciates the media's interest regarding the contribution inmate fire crews make to our society. We will assist the media in the gathering of newsworthy material where our fire crews are concerned. However, there are State laws and guidelines that must be complied with.

When the inmate crews are on a fire line they will be under the supervision of a CDF Fire Captain and they will be wearing orange Nomex clothing or fire suits. When at the incident base, the inmates will be wearing blue denim pants with a blue chambray shirt. They will normally have on a baseball style cap which denotes the conservation camp to which they are assigned. While at the incident base, the inmates will be under the supervision of CDC and/or CDF staff members at all times.

Prior to any communication with inmates, whether it be at the incident base or on a fire line, permission must be obtained from the staff member in charge. There are California Penal Code sections which prohibit direct contact with Inmates. When an interview is granted, a CDC-146 Form, Inmate Declaration to News Media Contact, must be completed prior the interview. This form can be obtained from the staff member in charge.

Photos or videotape may be obtained on the fire line as long as it does not interrupt, or interfere with the work of the inmate crew. Delaying or interrupting work must not occur without the permission of the person in charge. Photos or videotapes identifying a specific inmate crew member must have a CDC-146 Form completed prior to the photo. When at the incident base, photos or videotape may be made of inmates in all areas with the following restrictions: Inmates in bedding areas must be photographed or videotaped from outside the restricted area. To enter the bedding area or restricted area, permission must be obtained from the CDC representative in charge.

**REFERENCES:**

**p.c. 4570** Communicating with prisoners without the permission of the officer in charge.

**p.c. 2790** Any person without authority, interferes with, or in any way interrupts the work of any convict, is guilty of a misdemeanor and may be arrested by any peace officer without a warrant.

The Department of Corrections is pleased to work with the media within the above guidelines whenever an emergency situation occurs and our inmate fire crews are involved.

## **Health Insurance Portability and Accountability Act (HIPAA)**

The Health Insurance Portability and Accountability Act (HIPAA) provides patients with sweeping privacy protections. Through HIPAA, Congress intended to improve the management of healthcare information by standardizing electronic claims submissions, improving data security, and providing patients with greater control over their medical information.

“Protected health information” (PHI) includes a patient’s health and demographic information, such as a person’s name, address, Social Security number and birth date, and information that relates to the past, present or future physical, mental health, or condition of a person.

Entities (and their employees) regulated by HIPAA may only use and disclose, (PHI) under specific conditions. Of greatest concern for journalists accustomed to obtaining information from healthcare workers is the effect recent regulations have on these trusted sources of information.

HIPAA regulates the conduct of “Covered Entities.” Covered Entities include healthcare plans, healthcare clearing houses, and healthcare providers (e.g., hospitals and their employees, doctors, nurses, paramedics, pharmacists).

**Civil and Criminal Penalties.** Congress provided civil and criminal penalties for covered entities that misuse personal health information. For civil violations of the standards, Office for Civil Rights (OCR) may impose monetary penalties up to \$100 per violation, up to \$25,000 per year, for each requirement or prohibition violated. Criminal penalties apply for certain actions such as knowingly obtaining protected health information in violation of the law. Criminal penalties can range up to \$50,000 and one year in prison for certain offenses; up to \$100,000 and up to five years in prison if the offenses are committed under "false pretenses"; and up to \$250,000 and up to 10 years in prison if the offenses are committed with the intent to sell, transfer or use protected health information for commercial advantage, personal gain or malicious harm.

*The above is official language pertaining to HIPAA. What does it mean in plain English? Simply put, those who are regulated by HIPAA do not identify or release information about anyone that is being treated or transported for medical reasons without the patient’s permission. Reporters will ask for the patient’s name, medical condition and what hospital they are being transported to. The best answer is “The law prohibits me from providing that information without the patient’s approval.”*

For information regarding HIPAA visit: [www.hipaa.org](http://www.hipaa.org)

Also the California Office of HIPAA Implementation has a web site ([www.calohi.ca.gov](http://www.calohi.ca.gov)) that is very informative.

## **Bagley-Keene and Brown Acts Open Meetings**

**The Bagley-Keene Open Meeting Act (Bagley-Keene Act or “Act”) governs both notice and open meeting requirements for state bodies. The intent and philosophy behind the law is that public agencies exist to aid in the conduct of the people’s business and the proceedings of public agencies be conducted openly so that the public may remain informed about that business. To that end the actions of state agencies are to be taken openly and the deliberations conducted openly. The Act is applicable to all state bodies except for state agencies provided for in Article VI of the California Constitution. As a practical matter, this means that the public and the media are allowed notice of and access to “meetings” of “state bodies” when there is to be “action taken.” The Act also allows the recording of the meeting of the state body. The state body may hold “closed session” (or a session not open to the public) on certain subjects such as discipline matters involving public employees, pending litigation, licensing actions, purchase of real estate, etc. Finally, the Act provides for legal remedies to stop or prohibit violations of the Act including but not limited to criminal misdemeanor violations.**

**The Brown Act is similar in intent and philosophy to the Bagley-Keene Act except that the Brown Act applies only to local legislative bodies. Accordingly, many of the rules and provisions of the Brown Act are similar if not identical to the rules and provisions of the Bagley-Keene Act.**

# CALIFORNIA SHIELD LAW

## THE BASICS

The California Shield Law provides legal protections to journalists seeking to maintain the confidentiality of an unnamed source or unpublished information obtained during newsgathering.

## WHO IT PROTECTS

The Shield Law protects a "publisher, editor, reporter, or other person connected with or employed upon a newspaper, magazine, or other periodical publication, or by a press association or wire service" and a "radio or television news reporter or other person connected with or employed by a radio or television station." The Shield Law also likely applies to stringers, freelancers, and perhaps authors.

## WHAT INFORMATION IS PROTECTED

- The source of any information. There need be no assurance or expectation of confidentiality.
- Unpublished information:
  - Specific information obtained during newsgathering but not disclosed to the public.
  - Includes "all notes, outlines, photographs, tapes or other data of whatever sort".
  - Includes news gatherer's eyewitness observations in a public place.
  - Applies even if published information was based upon or related to unpublished information.
- Protects only information obtained during newsgathering.

## WHAT IT PROTECTS FROM

The Shield Law only protects a journalist from being adjudged in contempt by a judicial, legislative, or administrative body, or any other body having the power to issue subpoenas, for the failure to comply with a subpoena. The Shield Law does not protect the journalist from other legal sanctions. Thus the Shield Law generally does not apply when the journalist or news organization is a party to a lawsuit and other sanctions are available.

## EXCEPTIONS

- The Shield Law is a provision of the California Constitution. Therefore, there are no statutory exceptions.
- However, the California Supreme Court recognized a situation in which the Shield law provides only qualified, not absolute, protection from contempt: When the information is sought by a criminal defendant or upon cross-examination by the prosecution if the journalist has testified for the defendant. In this circumstance, the defendant's federal 6th Amendment right to fair trial preempts the state constitutional shield law. *Delaney v. Superior Court*, 50 Cal.3d 785 (1990); *Miller v. Superior Court*, 21 Cal.4th 883 (1999); *Fost v. Superior Court*, 80 Cal.App.4th 724 (2000).

### **In this situation, a journalist may be subject to contempt for not disclosing information if:**

1. The defendant demonstrates a reasonable possibility that the information would materially assist the defense; and
2. The defendant's fair trial rights outweigh the journalist's rights. In deciding this, a court will consider:
  - A. The degree of importance of the information to the defendant.
  - B. Whether the information is otherwise available from another source and the defendant has attempted to obtain it.
  - C. If testifying would hinder the newsgathering ability of the reporter.
  - D. If the information is confidential or sensitive.

# CALIFORNIA SHIELD LAW

## "REPORTER'S PRIVILEGE"

### THE BASICS

The Reporter's Privilege is a non-statutory doctrine that also offers protection to those seeking to protect the identity of confidential sources and unpublished information. The Reporter's Privilege is recognized in most federal and many state courts, including California.

### WHEN TO USE IT

The Reporter's Privilege should be invoked in situations in which the Shield law does not apply, such as:

- Federal Law or the law of a state without a shield law.
- The threatened sanction is something other than contempt.
- The one seeking protection is not one to whom the Shield Law applies.

### HOW IT WORKS

The Reporter's Privilege is a qualified, not absolute, privilege in all situations. In California, a court will only require a news gatherer to reveal sources and unpublished information if:

1. The information is relevant and goes to the heart of the plaintiff's claim.
2. The plaintiff has exhausted all other alternative means of obtaining the information.
3. The plaintiff's need for the information outweighs the public interest in protecting confidentiality, including, for example, the need to protect whistle blowers; and
4. The plaintiff has made a showing of merit of the case (in libel cases, present evidence of falsity) *Mitchell v. Superior Court*, 37 Cal.3d 268 (1984).