

ANALYSIS OF APPLICABLE LAW

Submitted for consideration by the Open Information Collective (<https://oic.amyip.net>)

Amy Parker

amy@amyip.net¹

amyipdev@csu.fullerton.edu

(562) 299-8551

Monica Hanson

mhanson@monicarose.tech

mrhanson1s@semo.edu

(618) 521-8178

To Whom it May Concern,

The undersigned are representatives² of the Open Information Collective (OIC), a government transparency and public records availability organization primarily based out of the states of California, Missouri, and Illinois. The primary goal of the Open Information Collective is to promote the dissemination of, and public access to, records held by government agencies across the United States. In addition to the Missouri Sunshine Law, we primarily have experience with the California Public Records Act, currently contained in Division 10 (sections 7920.000-7931.000) of Title 1 of the California Government Code, and previously under Chapter 3.5 (sections 6250-6270) of Division 7 of Title 1 of the California Government Code. Previous organizations we have worked with have included Cerritos College, the North Orange County Community College District, Compton College, Long Beach City College, the ABC Unified School District, the Los Angeles County Sheriff's Department, California State Polytechnic University, Pomona, and the City of Cerritos.

¹ While this address is easily available to receive email, and has an associated PGP key should confidential communications be necessary, it is not able to respond to emails coming from certain providers; while compatible with University email servers, sending is known not to work for other organizations using Microsoft products, to Gmail, and to some G Suite servers. If you are not using a University email address to contact FM Parker, note your reply may come from her University address instead of her amyip.net address.

² Representatives may either be direct members of the Open Information Collective with the necessary rank to be representatives of the OIC in matters with California State University, Fullerton, or those who have received limited authorization to represent the OIC in this particular case.

On August 28, Open Information Collective Founding Member Amy Parker (henceforth referred to as “FM Parker”) initiated a request to view and browse public records pursuant to California Government Code (henceforth cited as GOV) section 7922.525. This request was initially made to the Department of Computer Science, which redirected her to the College of Engineering and Computer Science as they believed they did not have any responsive records.³ The College of Engineering and Computer Science refused to allow access to browse records, or even to view the applicable statutes, instead redirecting her to the Division of Human Resources, Diversity and Inclusion. FM Parker spoke with CAS for Document Retention and Requests Stephanie Mikhail about the request. CAS Mikhail refused to execute the request under the terms of GOV 7922.525, instead requiring that document viewing commence under GOV 7922.535. FM Parker’s objections were clearly stated and noted; due to the local importance of accessing the documents, FM Parker allowed the request to continue under 7922.535, as long as her objections were clearly indicated and not presumed to be waived. CAS Mikhail’s descriptions of University policy on the matter raised several issues, which are addressed later. After the termination of that interaction, FM Parker appealed on some matters to Risk Manager Michael Coughlin, whose office redirected the issue to Compliance Manager Anne Grogan. A few hours later, Manager Grogan called FM Parker to discuss the issue. Two items were addressed: the University’s lack of a policy/scheme to handle requests under GOV 7922.525, and another miscommunication which was resolved. They did state that the University uses the determination limit interpretation instead of the disclosure limit interpretation, which will be addressed later. They also stated that if an employee handling a request is on vacation, extensions

³ Please note that having responsive records is not a requirement for browsing under GOV 7922.525. FM Parker voluntarily provided a description of the records being sought under an offer of assistance by the Department of Computer Science. She was not granted the ability to exercise her right to freely browse records, which does constitute a violation of the Act; the several cases of this occurring are addressed later.

to the determination period would often be issued, which is in direct violation of GOV

7922.535(c):

(c) As used in this section, “unusual circumstances” means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.
- (4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

GOV 7922.535(b) states that extensions may only be granted under those specific circumstances, and only within limited scope.⁴ An employee being out of office, on vacation, or otherwise unavailable, does not comply with this section. If the statement by Manager Grogan is correct, the University should immediately cease implementation of it.

In general, this letter seeks to appeal policies currently being implemented, whether formally or as a result of employee decisions, by the University. Further, it seeks to provide the legal justification for internal policy changes. These changes both reduce the University’s risk, as they eliminate the clear violations of the law which continuously occur, and provide a benefit to the public by properly allowing them to exercise their rights. It is generally addressed, rather than to any specific University employee; it can thus be read, evaluated, and implemented at any level, allowing for review of the contents by higher officers if necessary.

First, the University’s refusal to handle requests under GOV 7922.525 gravely restricts the rights of requesters, and creates substantial risk for the University. There are two cases/statements which must be reviewed here:

⁴ I am not currently aware if California State University, Fullerton, has a policy of, when making extensions, using the full 14 days automatically. Other institutions, such as the Cerritos Community College District, follow such a policy. The limited scope requirement makes such policies illegal; if California State University, Fullerton has such a policy, it should cease such policy immediately.

1. CAS Mikhail indicated that it would be impossible for University Counsel to review documents in a way that could reasonably comply with GOV 7922.525(b), and thus it was unenforceable, forcing requests to go through 7922.535. We respectfully disagree. The Public Records Act is written in a way that is accessible to all, and with the exception of specific agencies (such as the California Victim Compensation Board), which already know their organizational obligations (and would thus still be reasonably able to segregate documents), it is trivial to recognize what categories of documents must be segregated for compliance under GOV 7922.525(b). The partial contents of the documents need not be redacted until an individual selects the record for viewing, at which time it could be expeditiously moved through University Counsel. Documents which would in general be restricted should be easily discernible in most cases, such as student records held by a subagency, and expeditiously run through University Counsel if not. Further, the failure of University Counsel to handle documents in a timely manner should not create a burden on the requester, but rather on the University, which has a responsibility to hire necessary quantities of staff to fulfill its obligations under the law.
2. Manager Grogan made a claim that GOV 7922.525 only applies to agencies which maintain centralized archives/databases of their records, and as the University's records are largely decentralized through its many agencies, that the section does not apply to the University. It should be first noted that such an interpretation would create contradictions with the interpretation used by CAS Mikhail. Regardless, we also respectfully disagree with this interpretation. It is understandable how this mistake arose; among larger agencies, records databases are becoming more common. It also may have been conflated

with the obligations certain agencies have under GOV 7922.635. However, to interpret the section as referring to a database contradicts the following two components:

- a. A database need not be physically stored, and could be online. However, GOV 7922.525(a) is explicitly about how records are “open to inspection at all times *during the office hours of a state or local agency.*”⁵ Manager Grogan interprets this not as referring to the database, but rather as being the provision which grants the right of physical inspection of documents which exist in a physical form. However, among other sections, this right exists as a natural consequence of GOV 7922.580(b), and is not established by GOV 7922.525(a) itself. We respectfully disagree with this interpretation in general as a result; records must be directly browsable post-segregation, as addressed in subdivision (b).
- b. As outlined by Manager Grogan, a database of records would inherently be pre-segregated. However, GOV 7922.525(b) mentions that records “shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.” If it was the case that 7922.525(b) was about records databases, there would be no purpose for this provision. This provision clearly indicates that, upon making a request to browse and directly view records under GOV 7922.525 (as contrasted with the request for a *copy* of records under GOV 7922.535), an agency has a duty to “make the records promptly available” (GOV 7922.530(a)) after segregating the closed portions, a different process from the copy evaluation of GOV 7922.535. Thus, the database claim cannot apply.

⁵ Italicization is added here for the purpose of emphasis; it should not be construed as implying the text itself in the law is italicized, as such formatting does not apply.

The next concern lies with the University's interpretation of the time limits specified in GOV 7922.535. The section specifies the timeline for responding to a request and providing documents. The University's interpretation, as specified by both CAS Mikhail and Manager Grogan, is that the University must respond to a request within 10 days, and can set an arbitrary future date by which the records will be produced. We fundamentally disagree on this, and request an immediate correction and change in University policies and procedures, for several reasons:

1. We understand how the misunderstanding about the effectiveness of the statutes arises.

Looking at GOV 7922.535(a) in isolation, it is not clear whether the time limit applies to the whole request, or just to the initial response and determination of whether records are responsive. However, GOV 7922.535(a) does not exist in isolation; subdivision (b) creates a clear explanation of the effect of the law, and of the intentions of the Legislature. Subdivision (b) handles extensions to the 10-day rule, with terms defined in subdivision (c). The extension is expressly to the 10-day rule; this is uncontested. Next, consider that the initial response determines whether the request *seeks* disclosable records; this clearly means whether the records would generally be exempt, regardless of the specific contents (which would be reviewed prior to provision, and redacted to the extent necessary to comply with the requirements of the division). If this referred to the actual contents of the documents, and not their general nature, then the agency would've already had to evaluate which parts of the document(s) are disclosable and which must be redacted. In such a case, they would be obligated to immediately apply the redactions and disclose the document. Failing to do so would violate GOV 7922.500, as the agency would be "delay[ing] or obstruct[ing] the inspection or copying of public records." Due

to this obligation, there would be no reason to “state the estimated date and time when the records will be made available” (GOV 7922.535(a)). Further note that subdivision (c)(1) specifies a justification for extension being the “need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.” This builds upon the concept that the general type of a document, for the purposes of initial evaluation, does not require the viewing of the contents of the document, as demonstrated above. This creates a logical contradiction, and as a result, the University’s current interpretation fails; to use it would require completely eliminating GOV 7922.535(b-c) from consideration of the law, a selectivity not permitted when evaluating requests under the statutes.

2. The University’s interpretation, in addition to being logically contradictory, is also clearly against the intent of the Legislature. Allowing the setting of an arbitrary future date by which documents will be disclosed allows documents to never be disclosed by setting an extreme date, which directly contradicts the legislative intention specified in GOV 7921.000 and the “right of access to information concerning the conduct of the people’s business” specified in Section 3(b) of Article I of the California Constitution. To demonstrate how this can come into effect, consider the following two cases:

a. The effect of this is clearly visible when considering the case of records under the Los Angeles Sheriff’s Department. When it comes to releasing the full contents of bodycam footage from deputy-involved shootings, the Department continuously extends the date by which they will properly return records, or in other cases, specifies them as extreme dates in the future. This had led to incidents from several years ago still not having the full bodycam footage released, as the

Department has only made available their highly edited versions, changing the narratives around use-of-force incidents. For contrast, when use-of-force cases are significant enough to be investigated by the California Department of Justice (henceforth “DOJ”), the DOJ receives copies of the bodycam footage, and generally makes them available through public records requests within the time limits specified by GOV 7922.535 (in a manner consistent with our interpretation of the provisions).

- b. Providing a contrasting example from another state, on August 2, 2023, FM Parker made a Missouri Sunshine Law request to Southeast Missouri State University. Missouri law does not have a provision specifying the maximum time an agency has to provide records, but rather sets a maximum amount of time to provide an initial response and estimation of records availability date. The University’s interpretation of California law, while demonstrated above to not be correct with regards to the laws in California, would be generally and mostly correct in Missouri.⁶ The request concerned a document that was easily obtainable - in fact, it was being sought because, unlike most documents, it was not being provided through the standard channels for providing copies of bid requests and contracts. Such a document is also naturally and commonly disclosable under the Missouri Sunshine Law; processing the request should’ve taken minutes at most, and the back-and-forth emails which ensued regarding the request likely expended more work hours than simply searching for and providing the record. Despite this, the specified date of provision of the record was made to be September 1, 2023,

⁶ Please note that Missouri law only allows for a maximum of three days to provide an initial response and availability date.

which was significantly in the future from the request (and which in California would not even fall under the theoretical 24 day maximum). Such a date was clearly absurd, and would go directly against the “general principles” (Article 1 (commencing with Section 7922.500) of Chapter 1 of Part 3 of Division 10 of Title 1 of the California Government Code) of the Public Records Act, had the interaction occurred in California. This type of absurdity is what the Legislature clearly sought to protect by limiting the general time for records to be disclosed to 10 days.

3. With the exception of the Los Angeles County Sheriff’s Department, as previously mentioned, there is general consensus among public agencies in California that the limit to disclose documents is ten days. The Open Information Collective has observed that the ten-day limit for disclosure is, within the requests it has made to the agencies, followed⁷ by the Cerritos Community College District, the Los Angeles County Metropolitan Transportation Authority, the ABC Unified School District, the North Orange County Community College District⁸, the Long Beach Community College District, the California Department of Justice, the Compton Community College District, and California State Polytechnic University, Pomona.

As such, in addition to the previous requests for immediate changes to University policy, we also request that policies and procedures be changed to follow the calendar-day-based 10-day limit prescribed by the Public Records Act.

⁷ There is disagreement between some agencies about whether the day count refers to business/instructional days, or calendar days. We hold, along with the majority of agencies we have interacted with, that the law refers to calendar days, as it does not explicitly specify “business” or “instructional” days. The City of Cerritos is most notable for its interpretation of the statute as using business days; the Open Information Collective has had the greatest number of interactions with the Cerritos Community College District, which uses calendar days despite most campus procedures using business/instructional days.

⁸ Requests made to the North Orange County Community College District were regarding both Fullerton College and Cypress College, but not North Orange Continuing Education.

The intention of providing this document is not to “call out” the University, nor any of its employees, for any actions which have been taken. There is no fault that can be assigned when an employee is simply following policies, and the University cannot be blamed for policies made in ignorance of the law. Rather, we seek to lead the University to follow the relevant statutes, and to fulfill its constitutional obligation to make open “information concerning the conduct of the people’s business” and allowing “the writings of public officials and agencies” to be “open to public scrutiny” (Section 3(b) of Article I of the California Constitution). These changes would reduce the University’s risk from lawsuits seeking to uphold the provisions of the Public Records Act, and would provide the people with greater access to public records.

If there are any questions about the analysis made in this document, about the changes being sought, or about the Public Records Act in general, please feel free to contact FM Parker using the contact information listed on the first page of this document. You can also reach out in general to the Open Information Collective at any time with any questions. Contact information for the Open Information Collective, our pre-published advice for requesters and agencies alike (which is currently a work-in-progress and largely unpublished), and our archive of obtained public records can be found at the Open Information Collective’s website at <https://oic.amyip.net>. If you need transcripts of any Open Information Collective conversation that is mentioned in this document, please request them using the contact information on the Open Information Collective’s webpage, and we will do our best to promptly provide it.

We thank you for your consideration of these requests, and hope a satisfactory resolution can be reached regarding these matters.

Signed,

Amy Parker

she/her/hers

Founding Member, Open Information Collective

Dev Board Member, Association of Computing Machinery, CSUF Chapter

Computer Information Systems: Programmer, Cerritos College, 2023

Computer Science, B.S., California State University, Fullerton, 2025

Monica Hanson

she/her/hers

Founding Member, Open Information Collective

Cybersecurity, B.S., Southeast Missouri State University, 2025