



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
July 16, 2014**

TO: Mayor and City Council
FROM: Alan Shear, Assistant City Manager
SUBJECT: Grand Jury Response to the Public Records Act in Contra Costa County
DATE: July 8, 2014

RECOMMENDATION:

Approve and authorize the Mayor to sign the attached response letter to the Grand Jury Report #1405, "The Public Records Act in Contra Costa County" by the 2013-2014 Contra Costa Grand Jury.

BACKGROUND:

The California Constitution established Grand Juries in each county. With respect to public agencies, Grand Juries are authorized to "investigate and report upon the operations, accounts and records of the officers, departments, functions, and the method of performing the duties of any such city and make such recommendations as it may deem proper. A governing body has 90 days to respond to the presiding judge of the superior court on findings contained in a Grand Jury Report.

In June, the City of Martinez (as well as other public agencies in Contra Costa County) received the attached Grand Jury Report titled "The Public Records Act in Contra Costa County" (Attachment A) which contained recommendations specific to certain jurisdictions.

Accordingly, the attached draft responses (Attachment B) are presented for the City Council's consideration to transmit to the presiding judge. The Grand Jury expects to receive the City's response by September 3, 2014.

FISCAL IMPACT:

Responding to the Grand Jury reports took staff time.

ACTION:

Motion to approve and authorize the Mayor to sign the attached response letter to the Grand Jury Report #1405, "The Public Records Act in Contra Costa County" by the 2013-14 Contra Costa Grand Jury.

Attachments:

- A. Grand Jury Letter & Report
- B. Draft Letter to Contra Costa County Civil Grand Jury

APPROVED BY: 
Interim City Manager

Grand Jury

Contra
Costa
County

June 3, 2014



Anna Gwyn Simpson, Interim City Manager
City of Martinez
525 Henrietta Street
Martinez, CA 94553

Dear Ms. Simpson:

Attached is a copy of **Grand Jury Report No. 1405, 'The Public Records Act In Contra Costa County'** by the "2013-2014" Contra Costa Grand Jury. As the City of Martinez is a subject of the report, this report is being provided to you at least two working days before it is released publicly in accordance with California Penal Code section 933.05(f).

Section 933.05(a) of the California Government Code requires that a person or entity that is the subject of a report shall respond to each finding in the report by indicating one of the following :

- (1) The respondent agrees with the finding;
- (2) The respondent disagrees with the finding; or
- (3) The respondent partially disagrees with the finding.

If the respondent wholly or partially disagrees with a finding, the respondent shall specify the portion of the finding that is disputed, and shall include an explanation of the reasons therefore.

In addition, Section 933.05(b) requires that the respondent reply to each recommendation of the report by stating one of the following actions:

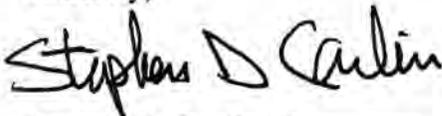
1. The recommendation has been implemented, with a summary describing the implemented action.
2. The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
3. The recommendation requires further analysis. This response should explain the scope and parameters of the analysis or study, and a time frame for the matter to be prepared for discussion. This time frame shall not exceed six months from the date of the publication of the Grand Jury Report.

4. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation thereof.

Please be aware that Section 933.05 specifies that no officer, agency, department or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report. Please ensure that your response to the above noted Grand Jury report complies in form and substance with the legal requirements for such responses. We expect your response, no later than **SEPTEMBER 3, 2014** under the Penal Code.

Please send a copy of your response in hard copy to the Grand Jury, as well as a copy by e-mail in Word to clope2@contracosta.courts.ca.gov.

Sincerely,



Stephen D. Conlin, Foreperson
2013-2014 Contra Costa County Civil Grand Jury

Enclosure

**A REPORT BY
THE 2013-2014 CONTRA COSTA COUNTY GRAND JURY**

725 Court Street
Martinez, California 94553

REPORT 1405

**THE PUBLIC RECORDS ACT IN
CONTRA COSTA COUNTY**

Letting the Sun Shine In

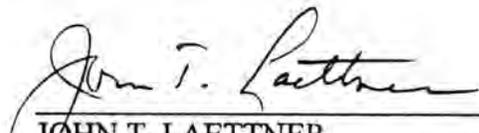
APPROVED BY THE GRAND JURY:

Date: 5/22/2014


STEPHEN D. CONLIN
GRAND JURY FOREPERSON

ACCEPTED FOR FILING:

Date: 5/30/14


JOHN T. LAETTNER
JUDGE OF THE SUPERIOR COURT

Contra Costa County Grand Jury Report 1405

THE PUBLIC RECORDS ACT IN CONTRA COSTA COUNTY

Letting the Sun Shine In

TO: Contra Costa County Board of Supervisors
All Contra Costa County Cities,
All Contra Costa County School Districts,
All Contra Costa County Fire Districts,
Selected Special Districts in Contra Costa County

SUMMARY

The California Public Records Act (the "CPRA" or "Act") is the law that ensures the public has access to records generated by public agencies. The Act, however is complex and flawed. Employees responsible for fulfilling CPRA requests do not always respond in the manner required by the law. Contra Costa County has adopted a Better Government Ordinance; it allows the public even greater access to government records and information and clarifies some of the uncertainties of the ACT. The practice of making public records available on a governmental entity's website is an economical and practical means of complying with the Act.

METHODOLOGY

In preparing this report, the Contra Costa Civil Grand Jury:

- Interviewed an individual who makes frequent requests for public records from agencies in Contra Costa County and one who bears responsibility for insuring compliance with the law.
- E-mailed and made in-person requests for routine public records to a cross-section of agencies within the County.

Reviewed:

- The California Public Records Act, Government Code Section 6250 et seq.;
- The Summary of the California Public Records Act 2004 prepared by the California Attorney General's Office;

- Contra Costa County's Better Government Ordinance, 25-2.202 et seq.;
- Contra Costa County Administration Bulletin Number 120.5, Public Access to County Records;
- The People's Business: A Guide to the California Public Records Act published by the League of California Cities;
- Materials concerning audits of public agencies for Public Records Act compliance published by Californians Aware, the Center for Public Form Rights.

BACKGROUND

The CPRA, enacted in 1968, ensures that the public has access to governmental records, and that those records will be disclosed to the public upon request, unless there is a specific reason provided by the Act not to do so. Access to information concerning the conduct of governmental activities permits the public to better monitor the functioning of government and reduces the likelihood of waste, fraud and corruption.

The Act strongly favors the release of the requested records. For example:

- The request need not be in writing. There may be good reason to do so to establish the exact nature of the documents sought and the time frame for responses, but it is not required by law.
- The person requesting the records does not need to identify him/herself. Although it may be easier for the responding agency to deal with the request and get back to the party making the request, only in a few specified situations need the requester be identified.
- The request need not state the purpose of the request.
- The governmental entity has the burden of justifying the denial of a request.
- The agency must respond to the request within 10 days, or provide notice to the requester within 14 days concerning the existence of the requested records, and the records must be produced within a reasonable time.
- The agency must assist the requester by attempting to identify records that contain the information sought.
- Fees may be charged for the costs of reproduction of the records, but not for the time required to conduct a search.

Despite the CPRA's strong mandate and the important policy that lead to its enactment, members of the public and the press are occasionally rebuffed or given the runaround when making legitimate CPRA request. In some cases this may be the result of imprecise requests:

- The scope of the request must be reasonably clear.
- The requester may ask for records that don't exist. The government entity need not create information or write reports in response to requests under the Act.
- The government entity need only produce records that are reasonably identified.

The CPRA does present problems in its implementation. It is complicated in that it contains many exceptions to disclosure, including such matters as attorney-client communications, code enforcement records, law enforcement records, pending litigation, personnel records, and recipients of public services, among others.

If an agency in or of the County opposes disclosure of the records, it can argue that one or more of the exceptions apply. Unless the person making the request is persistent and challenges the agency's right to withhold the record, the agency may avoid disclosure. The requesting party's only option at that point is to threaten litigation or actually file a lawsuit, a choice that realistically is an option available only to the press or other entities with significant resources but less likely to be exercised by individual members of the public.

The Board of Supervisors has adopted the "Better Government Ordinance," (the "BGO"), that expands the public's access to records beyond those available to the public under the CPRA. The BGO applies to the offices of County government under the authority of the Board of Supervisors. Independent districts are covered only by the Public Records Act.

An increased number of County agencies maintain websites that provide links to public records. This has been of major assistance to citizens seeking information, and it is an efficient and inexpensive way of complying with the Public Records Act.

Among the most valuable classifications of documents whose publication would strengthen integrity in government are: Statements of Economic Interests, Employment Contracts, Annual Audits, Travel and Entertainment reimbursements and agendas and supporting documents for public meetings.

Compliance with the Act in Contra Costa County

Compliance with the Act by those agencies reporting to the Board of Supervisors is generally good, but compliance by cities and special districts is uneven, with some being very forthcoming and others less so. There are several reasons that could account for the failure to comply, from an unwillingness to provide information during the existence of a public controversy to simple ignorance about the requirements and workings of the Act. The County provides annual training about the CPRA and compliance. This, no doubt, accounts for the greater receptiveness of County offices to document requests.

E-mail requests were sent to 41 different cities, special districts and divisions of County government. The same request was made to each entity; a request for a copy of the contract of the highest-ranking official for that entity. The request did not identify the name of the person making the request nor did it reveal any connection with the Grand Jury. In many instances an e-mail response with the appropriate document attached or a reference to the document online was received within an hour or so from the time of the inquiry. Several took from one to three days. Several took seven days; one took 24 days. Several of the e-mails bounced and had to be re-directed to a different e-mail addresses where the response was normally prompt once the request reached the appropriate staff member. There was no response from 12 of the offices.

Visits, including visits to some of the offices that failed to respond to the e-mail requests, resulted usually in positive responses. When the Statement of Economic Interest form (Form 700) was requested, it was produced in a matter of minutes in some instances. At other times, an e-mail was sent to the requester with the document attached.

Requests pursuant to the CPRA do not need to be in writing; the requesters do not have to reveal their identity, explain the purpose of the request or with whom they might be affiliated. However this information was requested on several occasions and one entity insisted that the request be in writing.

Several patterns emerged in response to CPRA requests.

- Requests by e-mail were generally directed to knowledgeable individuals within the office so the resulting response was timely and professional.
- Personal visits to offices, while usually successful (the requested record was provided), often revealed the staff's uncertainty about who in the office should respond to the request.
- In-person visits often resulted in requests for the requestor's name and purpose of the request, disclosures the law does not require.
- The quickest responses came when the information was already on the entity's website and could be referenced easily.
- The requests were for very routine documents that are clearly subject to the Act and should be readily forthcoming.

FINDINGS

1. The State of California's policy of transparency in government is embodied in the California Public Records Act (CPRA).
2. Contra Costa County's policy of transparency in government has been strengthened by its adoption of the Better Government Ordinance.

3. Contra Costa County conducts periodic training of its employees regarding how to respond to requests for records under the CPRA and the Better Government Ordinance.
4. The response to CPRA requests by departments reporting to the Board of Supervisors is generally timely and appropriate.
5. The response to CPRA by cities and special districts within Contra Costa County is uneven. Some entities are responsive, while others have a delayed responses or fail to respond entirely.
6. Employees of cities and some special districts who deal with CPRA requests are unfamiliar with the Act and the responsibilities of their agency when records are requested.
7. Among the most valuable documents that could be included on websites are: Statements of Economic Interests, Employment Contracts, Annual Audits, Travel and Entertainment reimbursements, and agendas and supporting documents for public meetings.

RECOMMENDATIONS

1. Cities and special districts in Contra Costa County should consider adopting a policy similar to the Better Government Ordinance, expanding the right of the public to access to public records.
2. Cities and special districts in Contra Costa County should arrange for periodic training of employees who are responsible for responding to Public Records Act requests.
3. Cities and special districts should consider making certain public records that are clearly disclosable under the CPRA available on their websites:
 - a. Statements of Economic Interests
 - b. Employment Contracts
 - c. Annual Audits
 - d. Travel and Entertainment reimbursements
 - e. Agendas and supporting documents for public meetings.

REQUIRED RESPONSES

	<u>Findings</u>	<u>Recommendations</u>
Contra Costa County Board of Supervisors	1-7	1 - 3
City of Antioch	1-7	1 - 3
City of Brentwood	1-7	1 - 3
City of Clayton	1-7	1 - 3
City of Concord	1-7	1 - 3
Town of Danville	1-7	1 - 3
City of El Cerrito	1-7	1 - 3
City of Hercules	1-7	1 - 3
City of Lafayette	1-7	1 - 3
City of Martinez	1-7	1 - 3
Town of Moraga	1-7	1 - 3
City of Oakley	1-7	1 - 3
City of Orinda	1-7	1 - 3
City of Pinole	1-7	1 - 3
City of Pittsburg	1-7	1 - 3
City of Pleasant Hill	1-7	1 - 3
City of Richmond	1-7	1 - 3
City of San Pablo	1-7	1 - 3
City of San Ramon	1-7	1 - 3
City of Walnut Creek	1-7	1 - 3
Acalanes Union High School District	1-7	1 - 3
Antioch Unified School District	1-7	1 - 3

	<u>FINDINGS</u>	<u>RECOMMENDATIONS</u>
Brentwood Union School District	1-7	1 - 3
Byron Unified School District	1-7	1 - 3
Canyon School District	1-7	1 - 3
Contra Costa Community College District	1-7	1 - 3
John Swett Unified School District	1-7	1 - 3
Knightsen Elementary School District	1-7	1 - 3
Lafayette School District	1-7	1 - 3
Liberty Union High School District	1-7	1 - 3
Martinez Unified School District	1-7	1 - 3
Moraga School District	1-7	1 - 3
Mount Diablo Unified School District	1-7	1 - 3
Oakley Union Elementary School District	1-7	1 - 3
Orinda Union School District	1-7	1 - 3
Pittsburg Unified School District	1-7	1 - 3
San Ramon Valley Unified School District	1-7	1 - 3
Walnut Creek School District	1-7	1 - 3
West Contra Costa Unified School District	1-7	1 - 3
Contra Costa County Office of Education	1-7	1 - 3
Kensington Police Protection and Community Services District	1-7	1 - 3
Pleasant Hill Recreation and Park District	1-7	1 - 3
Contra Costa Water District	1-7	1 - 3
Diablo Water District	1-7	1 - 3

	<u>FINDINGS</u>	<u>RECOMMENDATIONS</u>
West Contra Costa Health Care District	1-7	1 - 3
Contra Costa County Fire Protection District	1-7	1 - 3
Crockett-Carquinez Fire Protection District	1-7	1 - 3
East Contra Costa Fire Protection District	1-7	1 - 3
Kensington Fire Protection District	1-7	1 - 3
Moraga-Orinda Fire District	1-7	1 - 3
Rodeo-Hercules Fire Protection District	1-7	1 - 3
San Ramon Valley Fire Protection District	1-7	1 - 3



City of Martinez

525 Henrietta Street, Martinez, CA 94553-2394

(925) 372-3505
FAX (925) 229-5012

July 17, 2014

2013-2014 Contra Costa County Civil Grand Jury
Attn: Stephen Conlin, Foreperson
725 Court Street
P. O. Box 431
Martinez, CA 94553-0091

Dear Mr. Conlin:

On behalf of the Martinez City Council, this letter responds to Contra Costa County Grand Jury Report: "The Public Records Act in Contra Costa County," (Report 1405). The City Council authorized this response at its meeting on July 16, 2014.

According to page 6 of the Report, the City of Martinez is required to respond to Findings 1 through 7 and Recommendations 1 through 3. Pursuant to California Penal Code Section 933.05, the City will respond to each finding and to each recommendation individually.

CITY'S RESPONSES TO GRAND JURY FINDINGS 1-7

GRAND JURY FINDING #1

The State of California's policy of transparency in government is embodied in the California Public Records Act (CPRA).

City Response: With the information provided by the Grand Jury Report # 1405, the City agrees with this finding.

GRAND JURY FINDING #2

Contra Costa County's policy of transparency in government has been strengthened by its adoption of the Better Government Ordinance.

City Response: With the information provided by the Grand Jury Report # 1405, the City agrees with this finding.

GRAND JURY FINDING #3

Contra Costa County conducts periodic training of its employees regarding how to respond to requests for records under the CPRA and the Better Government Ordinance.

City Response: With the information provided by the Grand Jury Report # 1405, the City agrees with this finding.

GRAND JURY FINDING #4

The response to CPRA requests by departments reporting to the Board of Supervisors is general timely and appropriate.

City Response: With the information provided by the Grand Jury Report # 1405, the City agrees with this finding.

GRAND JURY FINDING #5

The response to CPRA by cities and special districts within Contra Costa County is uneven. Some entities are responsive, while others have delayed responses or fail to respond entirely.

City Response: The City partially disagrees with the finding. While the information in Grand Jury Report # 1405 provides empirical data of uneven responses by cities and special districts within the County, the City of Martinez is consistent in its timely responses to CPRA requests.

GRAND JURY FINDING #6

Employees of cities and some special districts who deal with CPRA requests are unfamiliar with the Act and the responsibilities of their agency when records are requested.

City Response: The City partially disagrees with the finding. While the information in Grand Jury Report # 1405 provides empirical data of uncertainty from cities and special districts within the County about which staff person should respond to a CPRA request, the City of Martinez has a specific and constant approach when responding to CPRA requests.

GRAND JURY FINDING #7

Among the most valuable documents that could be included on websites are: Statements of Economic Interest, Employment Contracts, Annual Audits, Travel and Entertainment reimbursements, and agendas and supporting documents for public meetings.

City Response: The City agrees with this finding.

CITY'S RESPONSES TO GRAND JURY RECOMMENDATIONS 1-3

GRAND JURY RECOMMENDATION #1

Cities and special districts in Contra Costa County should consider adopting a policy similar to the Better Government Ordinance, expanding the right of the public to access to public records.

City Response: The recommendation requires further analysis. The analysis will include review of the Ordinance, costs, and applicability to the City. The City will consider this issue by November 2014.

GRAND JURY RECOMMENDATION #2

Cities and special districts in Contra Costa County should arrange for periodic training of employees who are responsible for responding to Public Records Act requests.

City Response: The recommendation requires further analysis. City staff is knowledgeable with the process of responding to Public Records Act requests. The Deputy City Clerk who is responsible for managing the Public Records Requests completes training through the California City Clerks Association and Northern City Clerks Association. However, the City will consider if additional training is necessary for other employees by November 2014.

GRAND JURY RECOMMENDATION #3

Cities and special districts should consider making certain public records that are clearly disclosable under the CPRA available on their websites.

- a. Statement of Economic Interests
- b. Employment Contracts
- c. Annual Audits
- d. Travel and Entertainment reimbursements
- e. Agendas and supporting documents for public meetings

City Response: The recommendation has been partially implemented. The City's website currently has the annual audits, agendas and supporting documents available online. While the other documents are available through regular PRA requests, the City will consider making those documents available online.

Sincerely,

Robert Schroder
Mayor, City of Martinez

Cc: City Council
Anna Gwyn Simpson, Interim City Manager
Jeffrey Walter, City Attorney
Alan Shear, Assistant City Manager
Mercy Cabral, Deputy City Clerk