

County of Monterey Board Policy Manual

Policy Name New California Public Record Act Request Management Policy	Policy Number O-8	Page 1 of 9
Policy Category Operations and Maintenance		

I. Purpose

This policy will provide information and procedures for employees to follow in managing requests for inspection of, or copies of, records under the California Public Records Act (“CPRA”). This policy is to be reviewed consistently with, and interpreted in conformance with, the regulations and definitions contained in the CPRA, set forth at Government Code, section 7920.000 *et seq.* Any questions regarding the interpretation of this policy should be directed to the County Counsel’s Office.

The CPRA declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person. In accordance with the CPRA, any person is entitled to inspect and to receive copies of the public records held by the County of Monterey (“County”), unless an express exemption applies. Unless an express exemption applies, staff shall make requested records promptly available to any requestor upon payment of applicable fees, as appropriate.

II. Background

- A. The CPRA declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person.
- B. On January 17, 2024, the County of Monterey conducted a survey of the volume of CPRA requests it has handled from 2018 through 2023 and determined the approximate number of requests were 14,406 and the approximate staff time expended in these requests was 563,169 hours during that period.
- C. On February 5, 2024, the County of Monterey implemented NextRequest, an internet-based solution to assist it in the processing, tracking, managing, and coordinating CPRA requests. All County staff benefits from a uniform policy on the handling of CPRA requests and the use of NextRequest.

III. Definitions

As used in this policy, the following words and phrases shall have the meanings respectively ascribed to them in this article:

- A. “**Disclosable public records**” are those records that are not exempt from public disclosure under a specific exemption provided in the CPRA or another state or federal law and are to be provided to requesters pursuant to the terms of this policy.
- B. “**Public records**” are any writings containing information relating to the conduct of the public’s business prepared, owned, used, or retained by an employee regardless of physical form or characteristics.

- C. **“Writing”** means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored. Writings can include, but are not limited to, papers, books, maps, charts, photographs, audiotapes/files, videotapes/files, information stored in non-paper form on a computer or other electronic media, such as text messages or e-mails, and other material.

IV. Policy and General Requirements

It is the policy of the County that the following general requirements and guidelines shall be followed in responding to CPRA requests:

- A. Public records are open to inspection at all times during the hours that the County offices are open for business, and every person has a right to inspect any disclosable public record, subject to the County’s rights to protect the security and integrity of records. If a record can be divided into disclosable and non-disclosable portions, the non-disclosable portions should be redacted and the disclosable portions should be produced for inspection. [Gov. Code, § 7922.525](#), subd. (a).
- B. Employees may not ask a requester to provide a reason for a request, except under very limited circumstances explicitly allowed under the Government Code. Compare [Gov. Code, § 7921.300](#) (no duty of requestor to describe purpose of request if disclosure is warranted), with [Gov. Code, § 7922.600](#) (duty to assist).
- C. Employees may not require a requester to provide their identity in order to inspect or obtain copies of disclosable public records. See [Gov. Code, § 7920.520](#).
- D. Employees may not turn away a requester because they are at the “wrong department.” Instead, employees must take actions to connect the requester with the correct department and where possible, the CPRA Request Manager for that department (see section 1200.070) and facilitate the requester’s effort to make the request efficiently. See [Gov. Code, § 7922.600](#) (duty to assist).
- E. Employees may not require a requester to put a request in writing. Oral requests are permissible. [Los Angeles Times v. Alameda Corridor Transportation Authority \(2001\) 88 Cal.App.4th 1381, 1392](#).
- F. **Memorializing Oral Requests.** Generally, employees should memorialize oral Requests in writing as the employee understands it, and follow the procedures set forth in this policy in responding to the request. Wherever possible, employees should obtain agreement from the requester that the request is accurate as documented.
- G. **Non-NextRequest requests.** Requests will come to the County in a variety of formats, including email, over the phone, or through facsimile. The County may not deny requests based upon the format of the request; therefore, departments cannot condition their response to requests on the use of the NextRequest Platform. Generally, Department should upload all non-NextRequest requests into the NextRequest platform using the “Make A Request” page.
- H. **No Responsive Records at the Time of Request.** If a requested writing does not exist at the time of the request, employees have no duty to create such a writing. See [Gov. Code, § 7922.535](#), subd. (a). However, at times, creating a writing may be a more efficient way to transmit requested information to a requester. Employees should use their best judgment, keeping in mind the principles of transparency promoted by the state statutory scheme, in determining how to respond to a particular request most efficiently. Staff should consult with County Counsel’s Office as to any questions

regarding this issue.

- I. Generally, staff is required to make information that is held in an electronic format available to the public in that format where possible, provided that doing so will not jeopardize or compromise the security or integrity of such records. [Gov. Code, § 7922.570](#) (formatting), [Gov. Code, § 7922.580](#) (security). Staff should consult with County Counsel's Office as to any questions regarding this issue.
- J. Employees should know the difference between a CPRA request and a subpoena. Different rules are required for responses to subpoenas. Any questions should be referred to County Counsel's Office.
- K. Many exemptions to disclosure exist under the CPRA, and they can be found starting at Government Code, section 7923.600 and thereafter. If a staff member is unclear about whether a certain exemption applies, the staff member should consult County Counsel's Office.
- L. Generally, all requests for public records fall under the CPRA, except for rare exceptions, including Form 700 Statements of Economic Interest; Vehicle Code, sections [20012](#) and [16005](#); [Family Code, section 6228](#); [Welfare and Institutions Code, section 827](#); and [Penal Code, section 832.7](#) [AKA Senate Bill [1421](#) (Chapter 402, Statutes of 2021-2022 and Assembly Bill [134](#) (Chapter 47, Statutes of 2021-2022))].

V. Procedure

A. Designation of Departmental CPRA Request Manager; Responsibilities

- 1. Each department shall assign a member of its staff and back-up to act as the CPRA Request Manager for that department to accomplish CPRA management duties in the absence of the principal CPRA Request Manager. Larger departments may have more than one CPRA Request Manager or may split the duties up among subdivisions within the department.
- 2. The CPRA Request Manager shall be responsible for all aspects of responding to a Request made to a department, including interacting with the requester to narrow the request, collecting fees where appropriate, and producing records. The CPRA Request Manager shall be responsible for overseeing the NextRequest Platform software program for the department, interacting with the County Administrative Office on requests that involve multiple departments, and consulting with the County Counsel's Office regarding legal issues, as needed.
- 3. Any employee designated as a CPRA Request Manager shall review this policy at least **twice per year** and attend available training on CPRA principles, issues, and obligations.
- 4. The County Administrative Office shall maintain a list of names and contact information for all departmental CPRA Request Managers and their back-ups. Departments shall promptly notify the County Administrative Office regarding any change in staffing the CPRA Request Manager assignment.
- 5. If the request appears to come from a law firm, staff shall notify the Office of County Counsel immediately.
- 6. If the request appears to come from a news or media outlet, staff shall notify the County Administrative Office immediately, who should in turn notify the appropriate department or countywide communications staff.

B. Managing Multi-Department Requests

1. The County Administrative Office shall manage any Request that involves multiple departments.
2. Any CPRA Request Manager that receives a Request involving multiple departments shall immediately notify the County Administrative Office and the County Counsel's Office. Each department shall compile, review, and redact responsive documents from its department. To have one point of contact between the County and the requester, the County Administrative Office shall communicate with the requester on behalf of the multiple departments that are responding to the request. On any request that involves multiple departments, a department's CPRA Request Manager should work cooperatively with the County Administrative Office to obtain maximum efficiency. Unless producing its pertinent records as part of the response, the County Administrative Office is not responsible for searching and obtaining responsive documents (this remains a responsibility of the department that retains the responsive records). Departments will note in the NextRequest Platform when it has completed its portion of the request.
3. In the course of responding to a Multi-Department Request, if the number of Departments with responsive record dwindles to one, then that department will assume the duties of responding to the Request.

C. Maintenance of Departmental CPRA Log.

Each Department should maintain a Log of CPRA requests. NextRequest can function as a Department's CPRA Log. Each Department should use NextRequest because NextRequest automatically captures the following information for all Requests:

1. Date the request is received;
2. Contact information for the requester, if available;
3. Subject matter of the request;
4. Due date for the initial response (ten-day) and the date the response was sent;
5. Any extension of the statutory deadlines regarding the request (by statutory authority or agreement);
6. Date documents were produced and a summary of what was produced;
7. Any exemptions to disclosure asserted;
8. Copies of any related correspondence; and
9. Any relevant notes.

If the Department fails to use NextRequest, the Department must manually record this information (item A through I above) in a Log and keep the Log for a minimum of 3 calendar years after the Log's creation. Multi-department requests shall be added to the NextRequest Platform.

D. Response Procedures

1. General
 - a. The Department's CPRA Request Manager will handle all requests with the assistance of department staff. The Department must enter all Requests into the NextRequest Platform.

2. Assisting the Public and Narrowing the Request

- a. All requests for public records must be specific and focused enough to allow the County to identify the information being requested. If the request is unclear, overly broad, or unduly burdensome based on the way the request is drafted, staff should respond to the requester to ask that the request be clarified. Under the CPRA, the County has a duty to assist the public in making effective requests for records. Staff can satisfy this duty by following the procedure below (Gov. Code, § [7922.600](#)).
- b. When a requestor asks to inspect or obtain a copy of a public record, staff shall assist the requestor to make a focused and effective request that reasonably describes an identifiable public record. This includes, to the extent reasonable under the circumstances:
 - i. Assisting the requestor to identify records and information that are responsive to the request or to the purpose of the request, if stated;
 - ii. Describing the information technology and physical location in which the records exist; and
 - iii. Providing suggestions for overcoming any practical basis for denying access to the records or information sought.
- c. When the requester asks for “all” records, communications, or files regarding a subject matter when they are only looking for specific documents, or documents produced within a specific date range. The requester may not realize that drafting requests in such a broad manner results in delays and unwanted records. Where a request is not naturally narrow and specific, staff should interact with the requester to explain the process, the County’s expenses in the search, and the desire to assist the requester. To do this, one might ask the requester:
 - i. “Can you narrow the scope of this request to a specific date?”
 - ii. “Do you know what County department may have created the document?”
- d. **Please note:** A requester is not required to agree to any suggested restriction or provide the County with assistance; however, the requester may agree to a restriction initially but may make another, broader request later. Any questions or concerns regarding whether a request is overly broad or unduly burdensome should be referred to the Office of County Counsel.

3. Deadlines for Responding

Where possible, documents should be produced for inspection or copying immediately upon request. However, as a practical matter, staff may need time to identify and locate records and determine whether any exemptions apply. The deadlines associated with responding to a request take this issue into account and provide the County with extra time to identify and produce records depending on the complexity of the request.

- a. **Contact Information:** Adding the request information into the NextRequest Platform will autogenerate a file number that the requester will be able to access for updates to their record. If a record cannot be produced for inspection or copying immediately, staff should

ask the requester for contact information to keep the requester updated about the production status. If the requester prefers not to provide contact information, they will be able to access the platform using the autogenerated number. If the requestor is unable to access the platform arrangements can be made for the requestor to pick up the documents, etc.

- b. **Ten-Day Response:** Within ten calendar days (not business days) from the date the request is received, the CPRA Request Manager (or the County Administrative Office for multi-department requests) shall determine whether the request, in whole or in part, seeks copies of disclosable public records and shall notify the requester of what is available for production and the costs, if applicable, associated with the request, any applicable exemptions under which public records will be withheld, and when the County will next communicate with the requester (Gov. Code, § 7922.535). The ten-day response should not be used to catalog exempt records and staff should not create such a catalog without the guidance of the Office of County Counsel. If the department has an estimated date, it will produce the records, the response may contain that estimated date.
 - i. The County and the requester may negotiate an agreement to extend the time for the County to issue the ten-day response. Any such extension should be documented in writing.
 - ii. **NOTE:** The clock for a ten-day response begins to run on the day *after* the request is received. For instance, if a request is received on January 1, the initial ten-day response must be made before close of business on January 11. Staff should consider weekends and holidays when calendaring responses and should manage workflow accordingly to ensure that the response is issued within ten calendar days of the request. Ten-day responses should be sent through the NextRequest Platform, or, if there is no email address for the Requestor, sent by U.S. mail so long as the letter is dated and post-marked prior to the expiration of the ten-day deadline. If the 10th day falls on a weekend or county holiday, the response may be provided on the next business day; this is the *only* time the deadline can be extended due to a weekend or holiday (Code Civ. Pro. §§ [12](#), [12a](#), and [12b](#)).
 - iii. **NOTE:** Production of the requested records within ten (10) days of the date of receipt is NOT required. The ten-day deadline is the deadline for communicating to the requester whether documents will be produced. Staff has a reasonable amount of time to compile, review, and produce the documents. A “reasonable” time is not defined by law but should be justifiable based on the scope of the request and the amount of disclosable records; barring unusual circumstances, it should not take longer than two to three weeks after the ten-day response is issued to produce responsive records.
- c. **Fourteen-Day Extension:** In unusual circumstances, the ten-day notification requirement may be extended without negotiation by up to an additional fourteen days (for a total of 24 days) ([Gov. Code, § 7922.535](#)). Any such extension must be documented in writing to the requester, and the notification must include the reason the extension is needed and the date the County on which a determination is expected to be made. **NOTE:** It is recommended, but not required, that staff consult with the Office of County Counsel whenever sending a Fourteen-Day Extension. For purposes of this analysis, “unusual circumstances” means:
 - i. 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;

- ii. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request;
 - iii. 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; or
 - iv. The need to compile data related to existing records or write programming language or construct a computer report necessary to extract existing records.
- d. **Use of Templates.** Each department may draft templates in NextRequest with the assistance of the Office of County Counsel. CPRA Request Managers should use the NextRequest Platform to input templates.
4. Determining Whether Responsive Records Exist
- a. Conducting a Search
 - i. Upon receiving a request, the CPRA Request Manager shall determine whether responsive public records exist. As part of this effort, staff must make reasonable efforts to determine all locations where responsive documents are likely to exist and determine the identity of the particular individuals likely to possess or maintain the responsive documents. The CPRA Request Manager must also make reasonable efforts to contact individuals likely to hold responsive records to determine whether they have responsive public records, including any records contained in non-county-controlled locations such as private electronic media or mail accounts, private servers, or personal cell phones. All employees should remember that a public record maintains its inherent character as a public record regardless of where it is located.
 - ii. Consult the Information Technology Department for requests where an “email pull” may disclose additional records. If there are possibly responsive records, please consult with the Office of County Counsel to create a cost estimate (See Gov. Code, §§ [7922.535](#), [7922.575](#), and *Nat’l Lawyers Guild v. City of Hayward* (2020) 9 Cal.5th 488).
 - iii. In determining whether a record kept on a private device or private server is a “public record”, the CPRA Request Manager should consider several factors, including 1) the content of the record; 2) the context of the record; 3) the purpose of the record; 4) the audience; and 5) whether the employee was acting within the scope of employment in preparing or receiving the communication (*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 618-19).
 - iv. If an employee responds that they have no responsive documents held on private accounts or devices, absent any contradictory information, the CPRA Request Manager should accept the employee’s response and act accordingly. If contradictory information indicates that the employee does have responsive records but is not cooperating in producing them for review, the CPRA Request Manager should consult with the Office of County Counsel to determine next steps.

- v. Under no circumstances may an employee demand access to another employee's private accounts or devices to search for responsive documents. Although it is not anticipated that employees will refuse to produce responsive documents held in a private account or on a private device, if an employee acknowledges that documents exist but refuses to produce them, the CPRA Request Manager should consult with the Office of County Counsel to determine next steps.

b. Exemptions

- i. Whether exemptions apply to a public record is a staff determination. In responding to a request, staff should distinguish between “public records” and “disclosable public records.” Just because a public record exists does not mean that it is disclosable. A record is only a disclosable public record if it is not exempt from disclosure. For example, the CPRA contains exemptions for:
 - * Preliminary drafts, notes, or memoranda not retained by the County in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure ([Gov. Code, § 7927.500](#));
 - * Privileged legal writings and records pertaining to pending litigation ([Gov. Code, § 7927.705](#));
 - * Personal, medical, or similar files the disclosure of which would constitute an “unwarranted” invasion of personal privacy ([Gov. Code, § 7927.700](#));
 - * Law enforcement investigatory records and security records ([Gov. Code, § 7923.600](#)); and
 - * Many other specific topics in the Government Code (see [Government Code, §§ 7923.600 through 7929.610](#)) and elsewhere in California law (alphabetical list available at [Gov. Code, §§ 7930.100 – 7930.215](#)).
- ii. An additional exemption exists for any record for which it can be demonstrated that, on the facts of the particular case, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record; however, staff should consult with the Office of County Counsel before asserting this particular exception (Gov. Code, § [7922.000](#), also known as the “Deliberative Process” (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1339–44)).
- iii. Also, California law specifically requires the County to withhold certain information from disclosure, such as:
 - * Social Security Numbers ([Gov. Code, § 7922.200](#));
 - * Juvenile Information ([Welf. & Inst. Code, § 827](#));
 - * Criminal Information (Penal Code, §§ [841.5](#), [1054.2](#), and [13302](#));
 - * Abuse Reports (Welf. & Inst. Code, § [15633](#) and Penal Code, § [11167.5](#));
 - * “5150,” Mental Health, or Behavioral Health information (e.g., [Welf. & Inst. Code, § 5328](#), [42 CFR Part 2](#));
 - * Medical Information, including the Confidentiality of Medical Information Act (“CMIA”) (Civil Code, § [56.10](#)), Human-Immunodeficiency-Virus Information (Health & Saf. Code, § [120980](#)), Health Insurance Portability and Accountability Act (“HIPAA”); and
 - * Some coroner records (Code Civ. Pro. § [129](#)).

iv. Specific criteria dictate whether exemptions are available in certain instances. Oftentimes these criteria are based on changing case law or statutory revisions. Staff should consult with the Office of County Counsel if they are unsure whether a public record is or is not exempt from disclosure.

c. E-mails. Staff must consult with the County Counsel’s Office whenever handling a request for e-mails.

5. Collection of Costs

Where costs are collectible, staff should collect before producing responsive records.

VI. Cost Recovery

A. Generally, the costs the County expends responding to requests cannot be recovered, unless specifically authorized by law.

B. Copies of Records. Where a charge for providing a copy of a public record is not already specifically defined under state law, staff should charge the requester the following amounts for any work done in responding to a request (Gov. Code, § [7922.530](#)):

1. A per page charge for duplication based on the fee set forth in the Unified Fee Schedule (currently ten (10) cents). If the response requires duplication to a medium other than 8 ½ by 11-inch copy paper, the amount reasonably necessary to recover the cost of that medium and the use of any equipment required for the duplication shall be used in place of the per page cost. Please note that if a record is available electronically, staff should offer to produce the record electronically at no cost to the requester.

2. All other costs incurred in providing the copy including, without limitation, storage retrieval, mailing, shipping, etc. The costs of a small external flash drive or a portable storage device, if applicable should be charged in full.

C. Costs may not be collected for fees or charges specified in Government Code, section [54985\(c\)](#) (staff should contact the Office of County Counsel with any questions regarding this).

D. Staff is encouraged to contact the Office of County Counsel for assistance as early as possible if a dispute arises regarding cost recovery.

VII. Review Date

A. This Policy will be reviewed for continuance by _____, 2029.

VIII. Board Action

A. Legistar File Number: _____, _____, 2024.