

THE INFORMATION PRACTICES ACT OF 1977

WITH GUIDELINES AND COMMENTARY

OFFICE OF INFORMATION PRACTICES
STATE PERSONNEL BOARD
801 Capitol Mall
P.O. Box 944201
Sacramento, California 94244-2010
(800) 952-5562/ CALDEX (916) 653-1341
CALNET 453-1341
TDD (916) 653-1498 (For The Hearing Impaired Only)
FAX Public (916) 653-0927/ CALNET 453-0927

1 9 9 1

State of California

Memorandum

Date: September 9, 1991

TO: Information Practices Coordinators
and Other Interested Persons

FROM: State Personnel Board -- Office of Information Practices

SUBJECT: Amendments to the Information Practices Act (IPA), Civil Code Section 1798 et seq.,
and Revisions to the Guidelines.

This is the eighth edition of the guidelines to the IPA together with a reprint of the statutory provisions in effect as of January 1991.

There was one amendment to the IPA in 1989. Chapter 1213 amended Section 1798.26 to provide for a ten-day waiting period in the release of registration and drivers' license information from the Department of Motor Vehicles. This amendment became effective January 1, 1990.

There were three amendments to the IPA in 1990. Chapter 478 amended Section 1789.9 so that the portion of the annual notices specified in subdivisions (a) and (b) of Section 1798.10 will serve as each agency's public directory for its records containing personal information. It also amended Section 1798.10 to modify the annual report contents requirements to include (1) an agency's list/index of each record system, (2) an agency's description of the procedures to access and to contest contents of personal information records, (3) known instances within the agency of obtaining or distributing personal information in an unlawful manner, and (4) a new item - known instances within the agency where requests to access records under the Information Practices Act or the California Public Records Act were delayed or denied and the reasons or statutory bases for those actions. In addition, it reduced from 60 to 30 days the period for filing late annual notices. Finally, it amended Section 1798.11 to omit the language relating to the Office of Information Practices reporting to the Legislature the agencies' annual costs of compliance with the Information Practices Act and the California Public Records Act since the requirement for agencies to include these cost figures in the annual notice has been amended out of 1798.10. These amendments went into effect January 1991.

The format of the booklet is the same as the last edition, i.e., the code sections are followed by the comments which are in italics in order to distinguish between the law and the guidelines and comments. Appendices 5 and 6 have been modified to serve as the new Annual Notice forms.



KAREN AARON, Manager
Office of Information Practices
(916) 653-1341
CALNET 453-1341
Toll Free (800) 952-5562
TDD (916) 653-1498

THE INFORMATION PRACTICES ACT OF 1977 WITH GUIDELINES AND COMMENTARY

INTRODUCTION

The Information Practices Act of 1977 (Civil Code Section 1798, et seq.) provides measures to assure fair treatment of individuals who are the subjects of State agency records.

The Act places specific requirements on State agencies in the collection, use, maintenance and dissemination of information relating to individuals.

With exceptions, individuals may review, obtain copies, request amendments and corrections, and dispute information pertaining to them in State records.

Civil remedies and penalties are provided for violations which adversely affect individuals who are the subjects of State agency records.

An Office of Information Practices is established to assist individuals in exercising their rights under the Act, to provide guidance to State agencies in implementing the Act, and to mediate disputes between individuals and State agencies.

The Act was introduced as SB 170 (Roberti) and became Chapter 709 of the Statutes of 1977. It took effect on July 1, 1978, except for the prohibitions relating to the transfer, alteration and destruction of records to avoid compliance with the Act, which became effective January 1, 1978. It has been amended as follows:

- 1978 - Chapter 874 (SB 1429)
- 1979 - Chapters 143 and 601 (SB 242 and AB 350)
- 1980 - Chapter 174 (A 6 502)
- 1982 - Chapters 604, 957 and 1001
(SB 1849, SB 1586 and AB 1355)
- 1984 - Chapters 2 and 724
(AB 1512 and SB 1232)

- 1985 - Chapter 595 (SB 626)
- 1986 - Chapter 94 (SB 1461)
- 1987 - Chapters 961, 1113 and 1453
(SB 1510, AB 2011 and SB 1024)
- 1989 - Chapter 1213 (AB 1779)
- 1991 - Chapter 478 (SB 2466)

INFORMATION PRACTICES ACT OF 1977

TABLE OF CONTENTS

	Page
ARTICLE I	
GENERAL PROVISIONS AND LEGISLATIVE FINDINGS	
Section	
1798	2
1798.1	2
1798.2	2
ARTICLE 2	
DEFINITIONS	
Section	
1798.3 (a)	2
1798.3 (b)	2
1798.3 (c)	2
1798.3 (d)	3
1798.3 (e)	3
1798.3 (f)	3
1798.3 (g)	3
1798.3 (h)	3
1798.3 (i)	3
1798.3(u)	3
1798.3 (k)	3
ARTICLE 3	
OFFICE OF INFORMATION PRACTICES	
Section	
1798.4	3
1798.5	3
1798.6	3
1798.7	4
1798.8	4

TABLE OF CONTENTS - contd.

Page

ARTICLE 4

NOTIFICATION REQUIREMENTS

Section

1798.9	- Notices of Systems of Records.	4
1798.10	- Notice Specifications.	4
1798.11	- Report to the Legislature.	6

ARTICLE 5

AGENCY REQUIREMENTS

Section

1798.14	- Relevance and Necessity	6
1798.15	- Collection from Subject Individual	7
1798.16	- Record of Sources	7
1798.17	- Notice to Individuals	7
1798.18	- Requirements for Accuracy, Relevance, etc..	8
1798.19	- Application of Chapter to State Contracts	9
1798.20	- Rules of Conduct for Persons Responsible for Personal Information	9
1798.21	- Safeguards for Personal Information Required.	10
1798.22	- Designation of Responsible Employee	10
1798.23	- Review of Information Maintained by Department of Justice.	10

ARTICLE 6

CONDITIONS OF DISCLOSURE

Section

1798.24	- Permissible Disclosures	10
1798.24 (a)	- To Individual to Whom the Record Pertains	10
1798.24 (b)	- With Individual's Consent	10
1798.24 (c)	- To Individual's Guardian, Conservator, or Representative	10

TABLE OF CONTENTS _contd.

Page

ARTICLE 6 _contd.

Section

1798.24 (d)	- For Intra-Agency Purposes.	10
1798.24 (e)	- For Compatible Purposes	11
1798.24 (f)	- To Governmental Entities	11
1798.24 (g)	- Pursuant to the California PublicRecords Act	11
1798.24 (h)	- For Statistical Research or Reporting Purposes	11
1798.24 (i)	- For Compelling Circumstances Affecting Individual's Health or Safety	11
1798.24 (j)	- To State Archives or Director of General Services	11
1798.24 (k)	- Pursuant to Compulsory Legal Processes	11
1798.24 (l)	- Pursuant to Search Warrants	11
1798.24 (m)	- Pursuant to Vehicle Code	11
1798.24 (n)	- For Verifying Government Health Care Service Claims.	11
1798.24 (o)	- To Law Enforcement and Regulatory Agencies	11
1798.24 (p)	- To Obtain Information	11
1798.24 (q)	- To the Office of Information Practices	11
1798.24 (r)	- To an Adopted Person	11
1798.24 (s)	- To a Child or Grandchild of an Adopted Person	11
1798.24 (t)	- To Legislators	12
1798.24 (u)	- For Scientific Research.	12
1798.24 (v)	- To Insurers of Motor Vehicles	12

ARTICLE 7

ACCOUNTING OF DISCLOSURES

Section

1798.25	- When Accounting is Required	15
1798.26	- Vehicle Registration and Drivers' License Information-Sale-Safeguards	16
1798.27	- Retention of Disclosure Accounting	16
1798.28	- Requirement to Inform of Corrections or Disputes	16

TABLE OF CONTENTS .contd .

	Page
ARTICLE 8	
ACCESS TO RECORDS AND ADMINISTRATIVE REMEDIES	
Section	
1798.30	- Agency Regulations or Guidelines 17
1798.31	- Repealed by Chapter 595. Statutes of 1985 17
1798.32	- Inquiries Regarding Personal Information 17
1798.33	- Fees for Copies 18
1798.34	- Individual's Right of Access to Personal Information 18
1798.35	- Requests for Amendments 20
1798.36	- Review of Refusal to Amend 20
1798.37	- Requirements for Disclosure of Disputed Information . . . 21
1798.38	- Deletion of Source 21
1798.39	- Records Evidencing Property Rights 21
1798.40	- Exempt Information 21
1798.41	- Requests for Exempt Information 23
1798.42	- Deletion of Personal Information About Others. 24
1798.43	- Disclosure of Exempt Information Not Required 24
1798.44	- Application of Article to Individual 25
ARTICLE 9	
CIVIL REMEDIES	
Section	
1798.45	- Causes of Action 25
1798.46	- Options of the Court in Suits for Access 25
1798.47	- Injunctions 26
1798.48	- Damages, Costs, and Fees 26
1798.49	- Jurisdiction; Remedies Nonexclusive. 26
1798.50	- When Subjective Opinions Are Not a Cause of Action 26
1798.51	- Correction of Record Does Not Restore Lapsed Rights and Remedies 27
1798.52	- No Section With This Number 27
1798.53	- Liability for Disclosure of Information Not Otherwise Public. 27

TABLE OF CONTENTS -contd.

Page

ARTICLE 10

PENALTIES

Section

1798.55	- Intentional Violations by Officers or Employees	27
1798.56	- Requesting or Obtaining Information Under False Pretenses a Misdemeanor . . . ,	27
1798.57	- Intentional Disclosure of Medical, Psychiatric or Psychological Information May Be Punishable as a Misdemeanor. . ,	27

ARTICLE 11

MISCELLANEOUS PROVISIONS

Section

1798.60	- Release of Names and Addresses for Commercial Purposes Prohibited.	28
1798.61	- Release of Names and Addresses of Licensees and Applicants.	28
1798.62	- Removal of Names from Mailing Lists	28
1798.63	- Liberal Construction of Chapter to Protect Privacy	29
1798.64	- Control of Records	29
1798.65	- Repealed by Chapter 595, Statutes of 1985	29
1798.66	- Extension of Time Limits by Franchise Tax Board	29
1798.67	- RealProperty Lien and Encumbrance Records	29
1798.68	- Disclosures to District Attorney.	29

ARTICLE 12

CONSTRUCTION WITH OTHER LAWS

Section

1798.70	- Chapter Supersedes Other State Law as to Access Provisions.	30
1798.71	- Rights of Litigants Not Affected by This Chapter.	30

TABLE OF CONTENTS -contd.

	Page
ARTICLE 12 " contd.	
Section	
1798.72	- Disclosures in Violation of Other Law 31
1798.73	- Constitutional Right of Privacy Not Limited by This Chapter 31
1798.74	- Student Records 31
1798.75	- California Public Records Act Not Superseded by this Chapter; Exceptions 31
1798.76	- Access to Law Enforcement Records; Discovery 31
1798.77	- Practices to Avoid Compliance Prohibited 32
1798.7a	- California State University Employee Records 32

UNCODIFIED

SEC. 6.	- University of California Employee Records. 32
(Ch. 709, Stats. of 1977)	

APPENDICES

1	- Example Privacy Notice 35
2	- Example Access, Amendment and Dispute Procedures 37
3	- Example Disclosure Log 41
4	- Example Rules of Conduct for Employees 43
5	- Record System Report Form SPB-14 with Instructions . . 45
6	- Example "No Change" Annual Notice to OIP. 47
7	- Public Records Act/Information Practices Act Comparative Features. 49

**CALIFORNIA CIVIL CODE
DIVISION 3
PART 4**

**TITLE 1.8.
PERSONAL DATA**

**CHAPTER 1.
INFORMATION PRACTICES ACT
OF 1977**

ARTICLE 1
GENERAL PROVISIONS AND
LEGISLATIVE FINDINGS

Citation

1798. This chapter shall be known and may be cited as the Information Practices Act of 1977.

Declarations and Findings

1798.1. The Legislature declares that the right to privacy is a personal and fundamental right protected by Section 1 of Article I of the Constitution of California and by the United States Constitution and that all individuals have a right of privacy in information pertaining to them. The Legislature further makes the following findings:

- (a) The right to privacy is being threatened by the indiscriminate collection, maintenance, and dissemination of personal information and the lack of effective laws and legal remedies.
- (b) The increasing use of computers and other sophisticated information technology has greatly magnified the potential risk to individual privacy that can occur from the maintenance of personal information.
- (c) In order to protect the privacy of individuals, it is necessary that the maintenance and dissemination of personal information be subject to strict limits.

* * * * *

Section 1 of Article I of the Constitution of the State of California states:

'All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.'

United States constitutional protections of privacy, while not specifically articulated as in the State Constitution, have been interpreted by the courts to exist in the 1st, 3rd, 4th, 5th, 9th and 14th Amendments.

* * * * *

1798.2. Repealed by Chapter 595, Statutes of 1985.

ARTICLE 2

DEFINITIONS

1798.3. As used in this chapter:

- (a) The term "personal information" means any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual.
- (b) The term "agency" means every state office, officer, department, division, bureau, board, commission, or other state agency, except that the term agency shall not include:
 - (1) The California Legislature.
 - (2) Any agency established under Article VI of the California Constitution.
 - (3) The State Compensation Insurance Fund, except as to any records which contain personal information about the employees of the State Compensation Insurance Fund.
 - (4) A local agency, as defined in subdivision (b) of Section 6252 of the Government Code.
- (c) The term "disclose" means to disclose, release, transfer, disseminate, or otherwise communicate all or any part of any record orally, in writing, or by electronic or any other means to any person or entity.

- (d) The term "individual" means a natural person.
- (e) The term "maintain" includes maintain, acquire, use, or disclose.
- (f) The term "person" means any natural person, corporation, partnership, firm, or association.
- (g) The term "record" means any file or grouping of information about an individual that is maintained by an agency by reference to an identifying particular such as the individual's name, photograph, finger or voice print, or a number or symbol assigned to the individual.
- (h) The term "system of records" means one or more records, which pertain to one or more individuals, which is maintained by any agency, from which information is retrieved by the name of an individual or by some identifying number, symbol or other identifying particular assigned to the individual.
- (i) The term "governmental entity," except as used in Section 1798.26, means any branch of the federal government or of the local government.
- (j) The term "commercial purpose" means any purpose which has financial gain as a major objective. It does not include the gathering or dissemination of newsworthy facts by a publisher or broadcaster.
- (k) The term "regulatory agency" means the State Banking Department, the Department of Corporations, the Department of Insurance, the Department of Savings and Loan, the Department of Real Estate, and agencies of the United States or of any other state responsible for regulating financial institutions.

* * * * *

Agencies established under Article VI of the Constitution are those falling within the Judicial Branch of State Government.

Section 6252 of the Government Code defines local agency as "a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision;

or any board, commission or agency thereof; or other local public agency:

ARTICLE 3

OFFICE OF INFORMATION PRACTICES

Establishment

1798.4. There is in the Executive Office of the State Personnel Board an Office of Information Practices. The Executive Officer of the State Personnel Board shall appoint the program director and staff of this office.

* * * * *

Placement of the Office of Information Practices in the Executive Office of the Personnel Board was a legislative expedient stemming from the Executive Officer's oversight of the Governor's Executive Order 8-22-76. The law was issued in lieu of prior enactments of the /PA which had been vetoed by the Governor in 1975 and 1976.

* * * * *

Assistance to Individuals

1798.5. The Office of Information Practices shall assist individuals in identifying records which may contain information about them and shall, in accordance with the provisions of this chapter, assist individuals in securing access to such records. The Office of Information Practices shall provide toll free telephone lines or other comparably effective means and procedures for individuals to use this service effectively at a low cost to themselves.

Investigating Complaints and Reporting Violations

1798.6.

- (a) Upon receiving a complaint, the Office of Information Practices may investigate, determine, and report any violation of any provision of this chapter, or any regulation adopted pursuant thereto. The Office of Information Practices shall not have access to personal information except pursuant to the written voluntary consent of the individual to whom the information pertains.
- (b) The Office of Information Practices shall report on violations of this chapter, of which it has knowledge, to the affected agency and if the violation is not corrected within 60 days, to the Office of the Governor, the Legislature, and the appropriate law enforcement agency.

Assistance to Agencies

1798.7. The Office of Information Practices may develop model guidelines to assist departments in the implementation of this chapter and, upon request, shall otherwise assist agencies in preparing regulations and meeting technical and administrative requirements. Every agency requesting such assistance may be charged consulting fees.

* * * * *

In complying with this section, the Office of Information Practices will not charge fees for day-to-day consultation with State agencies. Charging fees for such consultation would chill the free flow of information between agencies and the Office of Information Practices and impede compliance with the Act. Fees will be charged only when significant amounts of staff time are requested by an agency and mutually agreed to in advance of any commitment.

* * * * *

Mediation

1798.8. The Office of Information Practices may attempt to mediate any dispute between the agency and a complaining individual regarding the provisions of this chapter. In the event that mediation fails, the Office of Information Practices shall issue a statement of its findings and recommendations to the parties. Mediation under this section is not a precondition to an individual's utilization of other administrative or civil remedies provided by this chapter.

* * * * *

The resolution of conflicts between individuals and State agencies typically will be an informal process conducted by telephone and written communications in response to a specific written request.

* * * * *

ARTICLE 4

NOTIFICATION REQUIREMENTS

Notices of Systems of Records

1798.9. Each agency maintaining a system of records containing personal information shall file with the Office of Information Practices the notice specified in Section 1798.10. The notices shall be filed with that office by the agencies on March 31 of each year. The notices shall be retained by the originating agency and the office until superseded or until after the record system to which the notice applies is abolished. That portion of the notices specified in subdivisions (a) and (b) of Section 1798.10 shall serve as the public directory to agency records containing personal information. The Office of Information Practices shall prescribe the form for filing and method of updating the notices required by Section 1798.10 to implement this section.

Notice Specifications

* * * * *

1798.10. Notices required to be filed by Section 1798.9 shall specify each of the following:

- (a) An index or list showing each record system by name or title.
- (b) The procedures to be followed for an individual to gain access to, and contest the contents of, records containing personal information. The procedures shall include the name or title and business address of the agency's designated contact person for each record system.
- (c) Each known instance during the reporting period in which personal information has been distributed by the agency or obtained by any person in a manner not in accord with law.
- (d) Each known instance during the reporting period where access to records requested under this chapter or the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, has been denied, and each known instance of delay in providing access to, or copies of, records beyond the statutory limits imposed by the applicable provisions of this chapter or the California Public Records Act, and the statutory basis or other reasons therefor.

If an agency fails to file such a report, the office promptly shall inform the agency and if the agency fails to comply within 30 days thereafter, the office shall report the failure as a violation in its annual report to the Legislature pursuant to Section 1798.11.

In addition, upon the request of an individual who is identified in a record system, or upon the request of the Office of Information Practices, an agency shall, with respect to any personal information in the record system, explain the authority and purpose for maintaining the information, the routine or probable disclosures of the information, and the retention and disposal policies pertaining to the information.

In the past, it was necessary for agencies to include in their annual notices: 1) the purpose for maintaining the information, 2) routine or probable disclosures of the information, 3) the authority for maintaining the information, and 4) the retention and disposal policies pertaining to the information. This requirement formerly was incorporated in subsections (c), (d), (e), and (f) of Section 1798.10. Although, as of January 1, 1991, it is no longer necessary to report this information, it should be maintained by the contact person for each personal information system since it must be provided upon request.

Beginning with 1991, the notice (report) required by Section 1798.9 and 1798.10 consists of two parts. The first part consists of information specified in subsections (a) and (b) of Section 1798.10, an index or list of all record systems as defined in 1798.3(h) and a description of access and amendment procedures. All agencies must submit this information to comply with these two subsections which also will serve as the agencies' public directories for their personal information. The second part consists of information requested in subsections (c) and (d) of Section 1798.10. Not all agencies will have reportable instances of unlawful accessing or distributing of personal information and/or reportable instances in which delays or denials occurred with respect to accessing information under the Information Practices Act or the California Public Records Act. If that is the case, the agency need only provide statements to that effect on Part 6 of Form SPB-14. (See Appendix 5) However, those agencies with reportable instances pursuant to subsections (c) and (d) must provide information on them on the second part of Form SPB-14. The annual report is due on March 31 of each year.

After an agency's initial report, only record system changes need be reported to comply with subsections (a) and (b) of Section 1798.10, together with a statement that the

remainder of the record systems are unchanged. If there are no changes to any of the record systems, a statement to that effect shall suffice as the required notice. In determining whether to update a notice, consider the following:

1. The Office of Information Practices has found that the notices previously submitted require correction or clarification and notifies you to that effect.
2. You discover that a record system that should have been reported was overlooked.
3. New systems were created.
4. Existing systems were discontinued.
5. Two or more systems were combined into one.
6. A record system previously reported as one is separated into two or more.
7. The addition or deletion of kinds of data maintained.
8. New uses or new disclosures of information.
9. Transfers of custody of the record system(s) organizationally or geographically (city).
10. Changes in procedures to access, request an amendment, or file a statement of dispute.

If it is discovered between filing periods that a record system was omitted from the notice reported to the Office of Information Practices, an amended notice should be filed right away to bring the system into compliance. For assistance in determining significant changes, contact the Office of Information Practices. (See Appendix 6, page 47, for an example "No Change" Notice.)

Agencies are urged to regard carefully the content of their systems of records in filing their reports. Names or titles of record systems must be descriptive of the contents in order to facilitate location of information by both individuals and agency staff. If an agency has reported its record systems under very broad titles, it should not require the individual seeking access to be more specific in

describing the record system to which he or she seeks access.

Where practical, subsystems may be included in one report to eliminate the need for separate reports. Two important considerations in determining whether or not to combine systems of records in one notice are:

1. Does the combined record system's name/title adequately characterize the nature of its contents? and
2. Does the name/title allow agency personnel to locate the information with a minimum of relayed messages and delay in response to an inquiry?

* * * * *

Report to the Legislature

51798.11. The Office of Information Practices shall, on or before June 30, 1988, and annually thereafter, transmit a report to the Legislature regarding the compliance of state agencies with the provisions of this chapter and the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code and recommendations for legislation to improve state agencies' compliance with these acts.

ARTICLE 5

AGENCY REQUIREMENTS

Relevance and Necessity

1798.14. Each agency shall maintain in its records only personal information which is relevant and necessary to accomplish a purpose of the agency required or authorized by the California Constitution or statute or mandated by the federal government.

* * * * *

In determining the relevance and necessity of information, an agency must carefully weigh the information needed to fulfill its statutory or constitutional mandate with the individual's right to privacy. Key questions in this process are "How do we use the information?" and "How would our program be impaired if we did not have it?" (See also the comments following Section 1798.17 regarding requiring individuals to divulge their social security account numbers.)

* * * * *

Collection from Subject Individual

1798.15. Each agency shall collect personal information to the greatest extent practicable directly from the individual who is the subject of the information rather than from another source.

* * * * *

Common sense should be the best guide in complying with this section. Obviously when information is gathered in an investigation of any kind, third parties may furnish much of the personal information about the individual to whom the information pertains.

* * * * *

Record of Sources

1798.16. Whenever an agency collects personal information, the agency shall maintain the source or sources of the information, unless the source is the data subject or he has received a copy of the source document, including, but not limited to, the name of any source who is an individual acting in his or her own private or individual capacity. If the source is an agency, governmental entity or other organization, such as a corporation or association, this requirement can be met by maintaining the name of the agency, governmental entity, or organization, as long as the smallest reasonably identifiable unit of that agency, governmental entity, or organization is named.

The agency shall maintain the source or sources of the information in a readily accessible form so as to be able to provide it to the data subject when they inspect any record pursuant to Section 1798.34. This section shall not apply if the source or sources are exempt from disclosure under the provisions of this chapter.

* * * * *

The identities of sources may be exempt from the individual's right of access under Sections 1798.38 and 1798.40, but there may be other reasons to maintain the source of information, such as where necessary to support an administrative or judicial proceeding. The source might then become the proper subject of a discovery motion.

* * * * *

Notice to Individuals

1798.17. Each agency shall provide on or with any form used to collect personal information from individuals the notice specified in this section. When contact with the individual is of a regularly recurring nature, an initial notice followed by a periodic notice of not more than one-year intervals shall satisfy this requirement. This requirement is also satisfied by notification to individuals of the availability of the notice in annual tax-related pamphlets or booklets provided for them. The notice shall include all of the following:

- (a) The name of the agency and the division within the agency that is requesting the information.
- (b) The title, business address, and telephone number of the agency official who is responsible for the system of records and who shall, upon request, inform an individual regarding the location of his or her records and the categories of any persons who use the information in those records.
- (c) The authority, whether granted by statute, regulation, or executive order which

- authorizes the maintenance of the information.
- (d) With respect to each item of information, whether submission of such information is mandatory or voluntary.
 - (e) The consequences, if any, of not providing all or any part of the requested information.
 - (f) The principal purpose or purposes within the agency for which the information is to be used.
 - (g) Any known or foreseeable disclosures which may be made of the information pursuant to subdivision (e) or (f) of Section 1798.24.
 - (h) The individual's right of access to records containing personal information which are maintained by the agency.

This section does not apply to any enforcement document issued by an employee of a law enforcement agency in the performance of his or her duties wherein the violator is provided an exact copy of the document, or to accident reports whereby the parties of interest may obtain a copy of the report pursuant to Section 20012 of the Vehicle Code.

The notice required by this section does not apply to agency requirements for an individual to provide his or her name, identifying number, photograph, address, or similar identifying information, if this information is used only for the purpose of identification and communication with the individual by the agency, except that requirements for an individual's social security number shall conform with the provisions of the Federal Privacy Act of 1974 (Public Law 93-579).

* * * * *

One comprehensive notice may be used to meet these requirements for a package or series of closely related forms. (See the example, Appendix 1, page 35.)

The Federal Privacy Act of 1974, P.L. 93-579, also requires federal, state and local agencies to inform an individual whose social security account number is requested by that

agency whether disclosure is mandatory or voluntary, by what statutory or other authority the number is solicited, and what uses will be made of it.

The federal law prohibits federal, state and local government agencies from denying an individual any right, benefit or privilege provided by law based on that individual's refusal to disclose his or her social security account number. Exceptions are made in situations where disclosure is required by federal statute or where the agency had a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to that date to verify the identity of the individual. This provision is found in Section 7 of the Act and is not part of the codified law, 5 United States Code 552 (a) which contains the principal part of the Act. Amendments to the Social Security Act, 42 United States Code 405 and 408 by the Tax Reform Act of 1976 [Public Law 94-455 at Section 1211 (b)], also allow agencies administering any tax, general public assistance, driver's license and motor vehicle registration programs to require disclosure of the social security account number.

* * * * *

Requirements for Accuracy, Relevance, etc.

1798.18. Each agency shall maintain all records, to the maximum extent possible, with accuracy, relevance, timeliness, and completeness.

Such standard need not be met except when such records are used to make any determination about the individual. When an agency transfers a record outside of state government, it shall correct, update, withhold, or delete any portion of the record that it knows or has reason to believe is inaccurate or untimely.

* * * * *

The second paragraph of this Section should be interpreted so as to relieve an agency from having to constantly go through its files to make sure that all information is accurate, relevant, timely and complete. It should not be interpreted to deny a legitimate request pursuant to Section 1798.35 to amend the record.

Each agency is responsible for determining its own record retention and destruction policies consistent with the body of law specifically governing each record system. The Records Management Act (Government Code Sections 14740-14768), the State Administrative Manual (Section 1600 et seq.), and Government Code Sections 6200 and 6201, which provide penalties for the unlawful destruction or alteration of public records, also apply to most agencies in the executive branch of State Government.

Government Code Section 19589 prohibits the maintenance of letters of reprimand in a State civil service employee's personnel file for longer than 3 years. Government Code Section 19635 prohibits bringing punitive action against an employee after three years from the cause of action, or discovery of the cause, in cases of fraud, etc. Collective bargaining agreements may also deal with this subject and must be considered in any decision relating thereto.

Copies of, or references to, grievances and complaints filed by an employee should not, as a general rule, be kept in the employee's personnel file. Unless there is some good reason to do so, such practice could be construed as an unfair employment practice, or to be discriminatory.

* * * * *

Application of Chapter to State Contracts

1798.19. Each agency when it provides by contract for the operation or maintenance of records containing personal information to accomplish an agency function, shall cause

consistent with its authority, the requirements of this chapter to be applied to those records. For purposes of Article 10 (commencing with Section 1798.55), any contractor and any employee of the contractor, if the contract is agreed to on or after July 1, 1978, shall be considered to be an employee of an agency. Local government functions mandated by the state are not deemed agency functions within the meaning of this section.

* * * * *

For the purpose of applying this section, three considerations are appropriate:

- (a) A contract in this context is a voluntary agreement between a State agency and some other person or entity to perform a function that the State would otherwise perform. State mandated local programs are not contractual in this sense.*
- (b) Records maintained under contract must be specified in the contract and central to its purpose in order to be covered by the Act.*
- (c) An "agency function" for the purpose of compliance with this Section is a function the State is authorized by constitutional provision or statute to perform and would perform directly, but for delegation by contract as the term is used in (a) above.*

* * * * *

Rules of Conduct for Persons Responsible for Personal Information

1798.20. Each agency shall establish rules of conduct for persons involved in the design, development, operation, disclosure, or maintenance of records containing personal information and instruct each such person with respect to such rules and the requirements of this chapter, including any other rules and procedures adopted pursuant to this chapter and the remedies and penalties for noncompliance.

* * * * *

Rules of conduct serve as the agency's statement of policy and instruction to its employees regarding the Information Practices Act and its implementation. (See Appendix 4, page 43, for an example.)

* * * * *

**Safeguards for
Personal information Required**

1798.21. Each agency shall establish appropriate and reasonable administrative, technical, and physical safeguards to ensure compliance with the provisions of this chapter, to ensure the security and confidentiality of records, and to protect against anticipated threats or hazards to their security or integrity which could result in any injury.

* * * * *

Records that contain personal information in identifiable form should not be kept on desk tops, cardboard boxes and other ununlockable equipment where it is subject to perusal by persons who have no legitimate business with it.

See also S.A.M, Sections 4841-4845, relating to safeguards suggested by the Office of Information Technology for electronically maintained records.

* * * * *

Designation of Responsible Employee

1798.22. Each agency shall designate an agency employee to be responsible for ensuring that the agency complies with all of the provisions of this chapter.

* * * * *

The individual designated by the agency should have sufficient stature within the agency to assure prompt action to alleviate problems and avoid violations to the greatest extent possible.

* * * * *

**Review of Information
Maintained by Department of Justice**

1798.23. The Department of Justice shall review all personal information in its possession every five years commencing July 1, 1978, to determine whether it should continue to be exempt from access pursuant to Section 1798.40.

ARTICLE 6

CONDITIONS OF DISCLOSURE

Permissible Disclosures

1798.24. No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

- (a) To the individual to whom the information pertains.
- (b) With the prior written voluntary consent of the individual to whom the record pertains, but only if such consent has been obtained not more than 30 days before the disclosure, or in the time limit agreed to by the individual in the written consent.
- (c) To the duly appointed guardian or conservator of the individual or a person representing the individual provided that it can be proven with reasonable certainty through the possession of agency forms, documents or correspondence that such person is the authorized representative of the individual to whom the information pertains.
- (d) To those officers, employees, attorneys, agents, or volunteers of the agency which has custody of the information if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired.

- (e) To a person, or to another agency where the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected and the use or transfer is listed in the notice provided pursuant to Section 1798.9 or accounted for in accordance with Section 1798.25. With respect to information transferred from a law enforcement or regulatory agency, or information transferred to another law enforcement or regulatory agency, a use is compatible if the use of the information requested is needed in an investigation of unlawful activity under the jurisdiction of the requesting agency or for licensing, certification, or regulatory purposes by that agency.
- (f) To a governmental entity when required by state or federal law.
- (g) Pursuant to the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.
- (h) To a person who has provided the agency with advance adequate written assurance that the information will be used solely for statistical research or reporting purposes, but only if the information to be disclosed is in a form that will not identify any individual.
- (i) Pursuant to a determination by the agency which maintains information that compelling circumstances exist which affect the health or safety of an individual, if upon the disclosure notification is transmitted to the individual to whom the information pertains at his or her last known address. Disclosure shall not be made if it is in conflict with other state or federal law.
- (j) To the State Archives of the State of California as a record which has sufficient historical or other value to warrant its continued preservation by the California state government, or for evaluation by the Director of General Services or his or her designee to determine whether the record has further administrative, legal, or fiscal value.
- (k) To any person pursuant to a subpoena, court order, or other compulsory legal process if, before the disclosure, the agency reasonably attempts to notify the individual to whom the record pertains, and if the notification is not prohibited by law.
- (l) To any person pursuant to a search warrant.
- (m) Pursuant to Article 3 (commencing with Section 1800) of Chapter 1 of Division 2 of the Vehicle Code.
- (n) For the sole purpose of verifying and paying government health care service claims made pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code.
- (o) To a law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes, unless the disclosure is otherwise prohibited by law.
- (p) To another person or governmental organization to the extent necessary to obtain information from the person or governmental organization as necessary for an investigation by the agency of a failure to comply with a specific state law which the agency is responsible for enforcing.
- (q) To the Office of Information Practices when the transfer is necessary for that office to investigate a complaint it has received regarding an alleged violation of this chapter or to perform its mediation functions, provided that the Office of Information Practices has received the written voluntary consent of the individual to whom the information pertains for such a transfer.
- (r) To an adopted person and is limited to general background information pertaining to the adopted person's natural parents, provided that the information does not include or reveal the identity of the natural parents.
- (s) To a child or a grandchild of an adopted person and disclosure is limited to medically necessary information pertaining to the adopted person's natural parents.

However the information, or the process for obtaining the information, shall not include or reveal the identity of the natural parents. The State Department of Social Services shall adopt regulations governing the release of information pursuant to this subdivision by July 1, 1985. The regulations shall require licensed adoption agencies to provide the same services provided by the department as established by this subdivision.

- (t) To a committee of the Legislature or to a Member of the Legislature, or his or her staff when authorized in writing by the member, where such member has permission to obtain the information from the individual to whom it pertains or where the member provides reasonable assurance that he or she is acting in behalf of the individual.
- (u) To the University of California or a non-profit educational institution conducting scientific research, provided the request for information includes assurances of the need for personal information, procedures for protecting the confidentiality of the information and assurances that the personal identity of the subject shall not be further disclosed in individually identifiable form.
- (v) To an insurer if authorized by Chapter 5 (commencing with Section 10900) of Division 4 of the Vehicle Code.

This article shall not be construed to require the disclosure of personal information to the individual to whom the information pertains when that information may otherwise be withheld as set forth in Section 1798.40.

* * * * *

This section permits, but does not require, the disclosures listed within it. It would defer to other statutes requiring disclosure. Section 1798.34 requires disclosure to the individual to whom the information pertains, or his or her representative, unless the information may be withheld pursuant to Sections 1798.38 and

1798.40. *Section 1798.68 requires disclosure to a district attorney when subdivision (e), (f) or (o) applies to the district attorney's request for disclosure.*

Subdivision (6) protects individuals from pressure to consent to disclosures of personal data against their wishes when disclosure is not necessary. An example might be where they would be asked to permit disclosure of their participation in contributions to charity. This would be regarded as coercive by some individuals.

If the individual initiates the action requiring disclosure, such as by applying for a loan or insurance, subdivision (b) is not violated by confirming with the individual that he or she will permit disclosure of the personal data necessary to process the loan or insurance policy. Permission to disclose should be confirmed in such cases.

Authorizations for the disclosure of medical information are governed by the Confidentiality of Medical Information Act, Section 56 et seq. of the Civil Code. This statute specifies the conditions under which health care providers may disclose medical information and the conditions under which employers and third party administrators (of health care plans) may use and redisclose it. It specifies what constitutes a valid authorization (release) for disclosure.

Subdivision (c) should be interpreted to include the parents of minor children within the term "guardian". However, the privacy of wards, conservatees and minor children, if assertable by them, must be respected. An agency should be certain that the parent, guardian or conservator has the legal right to assert these rights for the child, ward or conservatee, or has the right to specific information such as under Section 45 14 or 5328 of the Welfare and Institutions Code.

In applying subdivision (d) to a question of disclosure of personal information within an agency, the key consideration is whether the information is relevant and necessary for the

officer, employee, attorney or agent of the agency to do his or her job. The "related to the purpose" requirement will usually be met if the disclosure relates to a legitimate purpose of the agency.

For example, in order to resolve a discrimination complaint, it may be necessary for the investigator to consider the qualifications and performance evaluations of other employees comparable to the employee who filed the complaint. In order to resolve a claim for work-related injury or illness, it may be relevant and necessary to consider the medical history and performance evaluations of the claimant. In order to make an appointment decision, it is usually necessary to compare the qualifications and performance evaluations of the competitors for the position. Disclosures between State agencies would come under subdivision (e) and should follow the same rationale.

Disclosures of employment information to employers outside the state service could be considered to fall under either subdivision (e), (compatible purpose) or (g) (public record), however caution is advisable when providing negative information to prospective employers outside the state service. The preferred practice would be to require a release from the (former) employee. However, since punitive actions, including termination, are accessible information under the Public Records Act, it may be appropriate to respond factually to prospective employers when asked, unless there is a stipulation in a settlement to the contrary. See the comments below relating to disclosures under subdivision (9).

Subdivision (e) should be interpreted to require that when a disclosure of personal information is made to another State agency, it must be:

- a. necessary for the receiving agency to perform its constitutional or statutory duties, and
- b. compatible with a purpose for which the information was collected, and

- c. either listed in the notice to the Office of Information Practices pursuant to Section 1798.70 or accounted for each time it is disclosed pursuant to Section 1798.25.

Disclosures to persons and entities other than State agencies under this subdivision must comply with b. and c.. Requirement a. applies only to State agencies.

"Compatible with a purpose" should be interpreted to mean the use of information for any purpose specifically authorized or required by law, or a use which would relate so closely to a declared purpose for which information is collected and maintained that a reasonable person would foresee that this type of additional use might be made of the information at the time it was gathered, for example, exchanges of performance related data between state employers.

Subdivision (f) applies to disclosures to entities of federal and local government which are required by law. Examples are where a county welfare department or district attorney requests information to assist them in locating parents of children on welfare (Section 11478 Welfare and Institutions Code), or where the federal Equal Employment Opportunity Commission requests information relating to a discrimination complaint (42 U.S.C.2000e et seq.). The Information Practices Act defers to other laws which require disclosure. An agency should ask the requesting governmental entity to cite its legal authority to require disclosure if there is any doubt. If the restrictions on disclosure of personal information under the IPA are explained to the requesting entity, they should not object to citing their authority. The authority for the information request should not be demanded when the information would normally be disclosed under the Public Records Act.

Note that disclosures pursuant to subdivisions (e) and (f) must be described on the notice furnished to individuals when they are asked to provide information about themselves, (Civil Code Section 1798.17).

Subdivision (9) allows disclosures of personal information in accord with the Public Records Act. Section 1798.75 provides that the Information Practices Act does not supersede the Public Records Act, except where the PRA would allow selling lists of names and addresses for commercial purposes (see Civil Code Section 1798.60) and where the PRA would allow withholding information from the individual to whom it pertains when the information is otherwise accessible under the IPA (Civil Code Section 1798.70).

The Public Records Act is based on the premise that government records should be open to public inspection. It makes exceptions to that general premise to protect other important public interests, such as personal privacy, [Government Code Section 6254 (c)]. The exceptions are for the most part discretionary, i.e., an agency does not violate the PRA by disclosing a record that the law permits it to withhold. Conversely, an agency does not violate the PRA by disclosing personal information pursuant to the PRA [see 64 Ops. Cal. Atty. Gen. 588 (1981)]. An agency could violate the individual's constitutional right of privacy or create a cause of action on other grounds, however, if reasonable care is not exercised in disclosing personal information to the public. When to disclose and when to withhold must be based on guidance in statute, case law, legal opinions, contemporary societal values and common sense.

Generally speaking, as the information bears less on public activities, plans; decisions and policy, and more on the private life of individuals, including public officers and employees, the more likely it is that the privacy exemption in the Public Records Act may and should be invoked, [see 53 Ops. Cal. Atty. Gen., 146 (1970)].

A state employee's home address and home telephone number are exempt from disclosure under the Public Records Act, with specific exemptions, (G.C. Section 6254.3). This codifies what had been the advice of the Office of Information Practices since 1978 and general state policy before that.

Individuals licensed by the State to practice a trade or profession are generally accorded the same consideration in State policy unless the address of record with the licensing agency is also the licensee's home address, and is thus regarded as the official place from which the licensee conducts business with the public.

With respect to information the public is entitled to concerning state employees, the following general policy has been in effect for years, at least with respect to the State Civil Service:

- a. name
- b. employing agency and name of unit
- c. work location
- d. classification
- e. job description, duties and responsibilities
- f. gross salary rate
- g. date appointed/separated
- h. time base, e.g., full time, part time
- i. tenure, e.g., permanent, probationary
- j. cost to the state for training, travel, attendance at conferences, etc.

When an employee is subject to harm because of the nature of his or her job or unique personal circumstances, exceptions to the general policy are called for. Some employers allow the use of pseudonyms, for example, so long as the employee is accountable to his or her superiors.

Performance evaluations should not be considered open to public inspection unless they are at issue in an adversary proceeding. Records of adverse actions may not always be a matter of public concern, but it should be borne in mind that a notice of such action filed with the State Personnel Board is considered to be accessible to the public, just as hearings on appeals are considered open to the public, with rare exceptions to protect minors, wards and patients under special circumstances.

Disclosure of personal information to the individual to whom it pertains does not waive the privilege to withhold it from another member

of the public (G.C. Section 6254.5). Disclosure to public officers and employees acting within the scope of their public responsibilities also does not waive the privilege because they are not members of the public for the purposes of the PRA G.C. Section 6252 (f)].

Just because personal information is in a public record somewhere, e.g., the county courthouse, does not mean that it may forever be redisclosed with impunity [Briscoe v. Reader's Digest Association, Inc., 483 P. 2d 34, (1971)]. In deciding cases of complaints of this nature, the courts weigh the "newsworthiness", of the information, e.g., relevance to a significant public concern, against the plaintiffs' own efforts to live a law-abiding and private life. The courts recognize that there is a de facto protection of privacy with respect to such records, Le., with the passage of time they fall into obscurity and only someone with very specific knowledge would be likely to gain access to them. [See also Melvin v. Reid, 712 Cal.App.285(1937)].

See the comparison of the general features of the Information Practices Act and the Public Records Act, Appendix 7, page 49.

Disclosures under subdivisions (i), (k), (l), (o) and (p) should be logged (accounted for) in accord with Section 1798.25. Disclosures under subdivisions (e) and (f) must also be accounted for as they occur if they are not listed by type on the notice pursuant to Sections 1798.9 and 1798.70 (form SPB-74).

The phrase in subdivision (k), "the individual to whom the record pertains" should be interpreted to include any individual identified in the record, if the information would not normally be disclosed under the Public Records Act.

* * * * *

ARTICLE 7

ACCOUNTING OF DISCLOSURES

When Accounting Is Required

1798.25. Each agency shall keep an accurate accounting of the date, nature, and purpose of each disclosure of a record made pursuant to subdivision (i), (k), (l), (o), or (p) of Section 1798.24. This accounting shall also be required for disclosures made pursuant to subdivision (e) or (f) of Section 1798.24 unless notice of the type of disclosure has been provided pursuant to Sections 1798.9 and 1798.10. The accounting shall also include the name, title, and business address of the person or agency to whom the disclosure was made. For the purpose of an accounting of a disclosure made under subdivision (o) of Section 1798.24, it shall be sufficient for a law enforcement or regulatory agency to record the date of disclosure, the law enforcement or regulatory agency requesting the disclosure, and whether the purpose of the disclosure is for an investigation of unlawful activity under the jurisdiction of the requesting agency, or for licensing, certification, or regulatory purposes by that agency.

Routine disclosures of information pertaining to crimes, offenders, and suspected offenders to law enforcement or regulatory agencies of federal, state, and local government shall be deemed to be disclosures pursuant to subdivision (e) of Section 1798.24 for the purpose of meeting this requirement.

* * * * *

The logging of (accounting for) disclosures may be in any form which meets an agency's convenience, so long as:

1. The date, nature and purpose of each disclosure is accounted for, and
2. the accounting includes the name, title and business address of the person or agency to whom the disclosure was made, and

3. *the accounting is identifiable with, and traceable to, the information disclosed, and*
4. *the accounting is made available to the subject when access to the pertinent records is requested.*

An example form for logging disclosures is included as Appendix 3, page 41. Agencies are free to use this form or develop one more appropriate to their needs, so long as it meets the requirements as in 1 through 4, above. A copy of a memo transmitting information from the file makes an acceptable accounting if it contains the four necessary elements. Some agencies keep the record of disclosures only in the file from which disclosures are made. Others keep a dual record, i.e., a chronological log plus a record in each file. If only a chronological log is kept, an individual must not be allowed access to the record of disclosures relating to other individuals.

If the record of disclosure itself meets a definition of exempt information in Section 1798.40, as for example reflecting a disclosure to a law enforcement agency for a confidential criminal investigation, it may be withheld from disclosure to the individual to whom the information pertains in accord with the applicable subsection of Section 1798.40.

* * * * *

Vehicle Registration and Drivers' License Information-Sale-Safeguards

1798.26. With respect to the sale of information concerning the registration of any vehicle or the sale of information from the files of drivers' licenses, the Department of Motor Vehicles shall, by regulation, establish administrative procedures under which any person making a request for information shall be required to identify himself or herself and state the reason for making the request. These procedures shall provide for the verification of

the name and address of the person making a request for the information and the department may require the person to produce the information as it determines is necessary in order to ensure that the name and address of the person are his or her true name and address. These procedures may provide for a 10-day delay in the release of the requested information. These procedures shall also provide for notification to the person to whom the information primarily relates, as to what information was provided and to whom it was provided. The department shall, by regulation, establish a reasonable period of time for which a record of all the foregoing shall be maintained.

The procedures required by this subdivision do not apply to any governmental entity, any person who has applied for and has been issued a requester code by the department, or any court of competent jurisdiction.

Retention of Disclosure Accounting

1798.27. Each agency shall retain the accounting made pursuant to Section 1798.25 for at least three years after the disclosure for which the accounting is made, or until the record is destroyed, whichever is shorter.

Nothing in this section shall be construed to require retention of the original documents for a three-year period, providing that the agency can otherwise comply with the requirements of this section.

Requirement to Inform of Corrections or Disputes

1798.28. Each agency, after July 1, 1978, shall inform any person or agency to whom a record containing personal information has been disclosed during the preceding three years of any correction of an error or notation of dispute made pursuant to Sections 1798.35 and 1798.36 if (1) an accounting of the disclosure is required by Section 1798.25 or 1798.26, and the accounting has not been destroyed

pursuant to Section 1798.27, or (2) the information provides the name of the person or agency to whom the disclosure was made, or (3) the person who is the subject of the disclosed record provides the name of the person or agency to whom the information was disclosed.

ARTICLE 8

ACCESS TO RECORDS AND ADMINISTRATIVE REMEDIES

Agency Regulations or Guidelines

1798.30. Each agency shall either adopt regulations or publish guidelines specifying procedures to be followed in order fully to implement each of the rights of individuals set forth in this article.

* * * * *

Agency procedures for individuals to inspect, obtain copies, request amendments and file statements disputing information about them should include:

- a. *Who to contact (name or title and business address) for each record system, and who to appeal to if all or any part of the request is denied.*
- b. *Whether requests need be in writing.*
- c. *Where and when records may be inspected in person (reasonable office hours).*
- d. *Fees, if any, for copies of records (see comments after Section 1798.33).*
- e. *Proof of identity that will be required when the individual's identity (or his or her representative's) is not certain, for example a driver's license for personal appearance, a notarized signature for written requests. For sensitive (e.g.,*

medical) records you might consider having the requester sign an acknowledgment of the penalties for requesting or obtaining records under false pretenses (Civil Code Section 1798.56).

- f. *What information is likely to be exempt, if any, from the individual's right of access in accord with Civil Code Sections 1798.38, 1798.40 and 1798.42.*
- g. *Approximate time the agency will respond to the request for inspection, copies, amendments, appeals, etc. (within the limits specified in Sections 1798.34, 1798.35, 1798.36 and 1798.41).*
- h. *Limitations on what will be accepted as a rebuttal to information in the file (see the comments after Section 1798.36).*

See Appendix 2, beginning at page 37 for an example of an agency's procedures implementing the rights under this Article.

* * * * *

1798.31. Repealed by Chapter 595, Statutes of 1985.

Inquiries Regarding Personal Information

1798.32. Each individual shall have the right to inquire and be notified as to whether the agency maintains a record about himself or herself. Inquiries shall specify the name or title of the system of records as filed under Section 1798.9. Agencies shall allow individuals to review the notices that they have submitted to the Office of Information Practices pursuant to Section 1798.9, and shall take other reasonable steps to assist individuals in making their requests sufficiently specific.

Any such notice sent to an individual which in any way indicates that the agency maintains any such record shall include the title and

business address of the agency official responsible for maintaining the records, the procedures to be followed to gain access to the records, and the procedures to be followed for an individual to contest the contents of such records unless the individual has received this notice from the agency during the past year.

In implementing the right conferred by this section, an agency may specify in its rules or regulations reasonable times, places, and requirements for identifying an individual who requests access to a record, and for disclosing the contents of a record.

Fees for Copies

1798.33. Each agency may establish fees to be charged, if any, to an individual for making copies of a record. Such fees shall exclude the cost of any search for and review of the record, and shall not exceed ten cents (\$0.10) per page, unless the agency fee for copying is established by statute.

* * * * *

Fees may be charged for copies of records only when the individual wishes to take possession of copies.

Fees for providing copies of records must not exceed ten cents (\$.10) per page unless a higher fee is established by statute. If the statute clearly sets the fees to be charged or provides that the agency will establish the fee and such fee was established under administrative law prior to July 1, 1978, (effective date of the IPA) then the established fee applies. If no fee was established by statute or administrative law prior to July 1, 1978 only a specific and more recent statute would take precedence over the IPA provision for the ten-cent limit.

Since tape recordings of interviews and hearings can be reproduced and maintain their comprehensibility, this method of furnishing copies is preferable from a cost perspective to producing a transcript, if the latter has not

already been produced for the agency's purposes. Fees charged for tapes may be sufficient to recover the costs of making copies.

Copies of X-rays and electronic tracings may be charged for sufficient to recover the copy costs.

It is suggested that for the purpose of assessing a fee for computer printouts, each perforated section be considered a page.

Inability to pay fees should not be a reason for denial of copies to an individual. Where a credible claim of inability to pay is made by the individual, as for example, by a person on public financial assistance or a meager pension, fees should be reduced or waived entirely unless this is precluded by law. Some agencies also waive fees for copies where the cost of collecting and accounting for the fees exceeds the amount that would be collected. Note that Civil Code Section 1798.33 implies that fees may be waived, i.e., "Each agency may establish fees to be charged, if any, . . . etc." (emphasis added.)

4 4 4 4 4

Individual's Right of Access to Personal Information

1798.34.

- (a) Except as otherwise provided in this chapter, each agency shall permit any individual upon request and proper identification to inspect all the personal information in any record containing personal information and maintained by reference to an identifying particular assigned to the individual within 30 days of the agency's receipt of the request for active records, and within 60 days of the agency's receipt of the request for records that are geographically dispersed or which are inactive and in central storage. Failure to respond within these time limits shall be deemed denial. In addition, the individual shall be permit-

ted to inspect any personal information about himself or herself where it is maintained by reference to an identifying particular other than that of the individual, if the agency knows or should know that the information exists. The individual also shall be permitted to inspect the accounting made pursuant to Article 7 (commencing with Section 1798.25).

- (b) The agency shall permit the individual, and, upon the individual's request, another person of the individual's own choosing to inspect all the personal information in the record and have an exact copy made of all or any portion thereof within 15 days of the inspection. It may require the individual to furnish a written statement authorizing disclosure of the individual's record to another person of the individual's choosing.
- (c) The agency shall present the information in the record in a form reasonably comprehensible to the general public.
- (d) Whenever an agency is unable to access a record by reference to name only, or when access by name only would impose an unreasonable administrative burden, it may require the individual to submit such other identifying information as will facilitate access to the record.
- (e) When an individual is entitled under this chapter to gain access to the information in a record containing personal information, the information or a true copy thereof shall be made available to the individual at a location near the residence of the individual or by mail, whenever reasonable.

* * * * *

Note that subdivision (a) gives an individual a right to information pertaining to them even when it might be kept under the name of another person, entity, event, or by date, among other possible reference systems. Reason should prevail in determining the extent of an agency's responsibility to locate all the personal information about the individual. The individual has some responsibility to assist the agency in locating the information

[Section 1798.34 (d)]. It would be unreasonable for an agency to search all of its files based on an individual's vague contention that they were "in there somewhere". It would not be unreasonable to search the XYZ Corporation files based on an individual's contention that they were an officer of the corporation at a specified time.

State employees have the right of access to any information recorded about them maintained by, or under the control of, the State. This includes information maintained about them by their supervisors and managers as well as their "official" personnel files. Applicants for State employment who are the subjects of background investigations conducted by the hiring agency have the right, upon their request, to be provided with a copy or a comprehensive summary of the report of the background investigation. The only exceptions are provided by Section 1798.40, or in the case of the identities of confidential informants, as provided by Section 1798.38.

While an agency may wish to incorporate into its regulations the time limits for access to records provided under law, an effort should be made to provide access as quickly as is reasonable. Access procedures may differ for each system of records and, in some cases, it may be preferable to proceed carefully and use more time (within prescribed limits) rather than make a costly mistake in an effort to be accommodating.

The Information Practices Act does not specify calendar or working days in computing time. Therefore, consecutive calendar days are counted. The first day is excluded, and the last day is included in the computation, unless it falls on a weekend or holiday, then the next regular working day counts as the "deadline". (See Civil Code Section 70 and Government Code Section 6800.)

Copies and explanations of information in agency records must meet the "comprehensible to the general public" requirement [Section 1798.34 (c)]. This phrase may be interpreted to mean the English language,

free of esoteric symbols and words, comprehensible to a person at the eighth grade reading level. However, a genuine effort must be made to assist the individual whose comprehension of English is insufficient to enable them to understand the information.

Subdivision (e) is usually satisfied by forwarding larger files to an office of the agency nearest the individual's residence for his or her inspection. For smaller files, it may be less costly to mail copies directly to the individual, bearing in mind that the individual may not be charged for the copies unless they request possession, as opposed to mere inspection, of the copies.

* * * * *

Requests for Amendments

1798.35. Each agency shall permit an individual to request in writing an amendment of a record and, shall within 30 days of the date of receipt of such request:

- (a) Make each correction in accordance with the individual's request of any portion of a record which the individual believes is not accurate, relevant, timely, or complete and inform the individual of the corrections made in accordance with their request; or
- (b) Inform the individual of its refusal to amend the record in accordance with such individual's request, the reason for the refusal, the procedures established by the agency for the individual to request a review by the head of the agency or an official specifically designated by the head of the agency of the refusal to amend, and the name, title, and business address of the reviewing official.

Review of Refusal to Amend

1798.36. Each agency shall permit any individual who disagrees with the refusal of the agency to amend a record to request a

review of such refusal by the head of the agency or an official specifically designated by the head of such agency, and, not later than 30 days from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such review period by 30 days. If, after such review, the reviewing official refuses to amend the record in accordance with the request, the agency shall permit the individual to file with the agency a statement of reasonable length setting forth the reasons for the individual's disagreement.

* * * * *

If the disputed information is an opinion, diagnosis, statement, etc., of another person sometimes the only logical way to comply with the requirements of this Section is to allow the individual to file a rebuttal or provide a counter opinion, diagnosis, etc.

*In hard-copy files, amendments and notations of disputes can be made directly. If the agency refuses to amend, the individual must be allowed to file a statement of **reasonable length**. An arbitrary limit, such as not more than 100 words, is not appropriate since reasonable length will vary with circumstances. However, in most cases, a one- to three-page statement should suffice. Amendments and statements of dispute must be kept as long as the basic information is kept and disclosed whenever that information is disclosed. (Section 1798.37.)*

For computer records, some device must be employed which indicates to all users that information in the files is under dispute and/or additional information must be considered before any decision based on the information is made about the subject individual. This may be accomplished by cross-referencing to another file which contains the amended or disputed information.

An individual may dispute information introduced into evidence at an administrative hearing, or the results of the hearing, but the

official record of the hearing itself may not be altered except by the formal process of a petition for rehearing or an appeal to the courts. Nothing suggests against accepting the individual's statement of rebuttal to be filed and disclosed with the official record of the hearing, however.

* * * * *

Requirements for Disclosure of Disputed Information

1798.37. The agency, with respect to any disclosure containing information about which the individual has filed a statement of disagreement, shall clearly note any portion of the record which is disputed and make available copies of such individual's statement and copies of a concise statement of the reasons of the agency for not making the amendment to any person or agency to whom the disputed record has been or is disclosed.

Deletion of Source

1798.38. If information, including letters of recommendation, compiled for the purpose of determining suitability, eligibility, or qualifications for employment, advancement, renewal of appointment or promotion, status as adoptive parents, or for the receipt of state contracts, or for licensing purposes, was received with the promise or, prior to July 1, 1978, with the understanding that the identity of the source of the information would be held in confidence and the source is not in a supervisory position with respect to the individual to whom the record pertains, the agency shall fully inform the individual of all personal information about that individual without identification of the source. This may be done by providing a copy of the text of the material with only such deletions as are necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. Whichever method is used, the agency shall insure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect

or convey anything detrimental, disparaging, or threatening to an individual's reputation, rights, benefits, privileges, or qualifications, or be used by an agency to make a determination that would affect an individual's rights, benefits, privileges, or qualifications. In institutions of higher education, "supervisory positions" shall not be deemed to include chairpersons of academic departments.

* * * * *

*Restating the law, where the source person, who is **not in a supervisory relationship** to the individual, provided information to an agency, **under a promise of confidentiality** and the information relates to one of the purposes specified in this Section or in subdivision (d) of Section 7798.40, the identity of the source may be withheld. The individual must either be allowed access to an exact copy of the information with only deletion of the source person's identity, or be provided a comprehensive summary of the substance of the information with particular attention to providing any personal information that could affect the individual's reputation, rights, benefits or privileges. This requirement to provide information to the individual does not apply to criminal law enforcement information, as set forth in subdivisions (a), (b) and (c) of Section 1798.40.*

It should be noted that the identities of sources of information may be discoverable in litigation and the Act would defer to the applicable law in such cases (Sections 1798.71 and 1798.76).

* * * * *

Records Evidencing Property Rights

1798.39. Sections 1798.35, 1798.36, and 1798.37 shall not apply to any record evidencing property rights.

Exempt Information

1798.40. This chapter shall not be construed to require an agency to disclose per-

sonal information to the individual to whom the information pertains, if the information meets any of the following criteria:

- (a) Is compiled for the purpose of identifying individual criminal offenders and alleged offenders and consists only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status.
- (b) Is compiled for the purpose of a criminal investigation of suspected criminal activities, including reports of informants and investigators, and associated with an identifiable individual.
- (c) Is contained in any record which could identify an individual and which is compiled at any stage of the process of enforcement of the criminal laws, from the arrest or indictment stage through release from supervision and including the process of extradition or the exercise of executive clemency.
- (d) Is maintained for the purpose of an investigation of an individual's fitness for licensure or public employment, or of a grievance or complaint, or a suspected civil offense, so long as the information is withheld only so as not to compromise the investigation, or a related investigation. The identities of individuals who provided information for the investigation may be withheld pursuant to Section 1798.38.
- (e) Would compromise the objectivity or fairness of a competitive examination for appointment or promotion in public service, or to determine fitness for licensure, or to determine scholastic aptitude.
- (f) Pertains to the physical or psychological condition of the individual, if the agency determines that disclosure would be detrimental to the individual. The information shall, upon the individual's written authorization, be disclosed to a licensed medical practitioner or psychologist designated by the individual.

- (g) Relates to the settlement of claims for work-related illnesses or injuries and is maintained exclusively by the State Compensation Insurance Fund.
- (h) Is required by statute to be withheld from the individual to whom it pertains.

This section shall not be construed to deny an individual access to information relating to him or her if access is allowed by another statute or decisional law of this state.

* * * * *

This section fulfills the purpose previously served by the term "confidential information". This term was confused with the normal meaning of the term, i.e., information given in confidence, but not necessarily (usually not) inaccessible to the individual to whom it pertained. The term "exempt" is a more logical term in the context of being an exception to the individual's ordinary right of access.

Subdivisions (a), (b) and (c) exempt information gathered for the purpose of enforcing the criminal law from the individual's right of access under Section 1798.34. These subdivisions do not apply to the personnel files of peace officer employees or applicants for peace officer positions, except to documents relating to violations of the criminal law and resulting enforcement proceedings against the employees or applicants.

Investigations of noncriminal matters, including background investigations of prospective employees, are protected for the duration of the investigation by subdivision (d). The identities of sources of information used in noncriminal investigations, including background investigations, may be protected as provided by Section 1798.38; i.e., disclose either the exact information with the identity of the source deleted or provide a comprehensive summary. Once the investigation is completed, all individuals identified in the record have the right of access to any information personal to them, whether they are the

accused party, the accuser, or a witness. In providing access to one individual, the personal information about others should be deleted, otherwise the privilege to withhold the record from the general public may be waived.

Other statutes and case law may allow an individual access to information that is exempt from their right of access under the IPA and such other law prevails. See Sections 1798.70, 1798.71 and 1798.76, pages 30 and 31, and the pertinent comments.

Subdivision (e) protects examination materials so as to preserve the integrity of the examination process. Normally this applies when an examination uses the same questions and answers on a continuous basis. If that is the case, the questions (items, problems, etc.), the correct or preferred answers and the scoring keys may be withheld. The examinees' own responses should not be withheld, even though they are of questionable value to him or her without the questions and correct answers. In the case of oral examinations it may be necessary to delete the questions from the recording.

Scores assigned to an examinee, including by individual examiners, should be accessible to the examinee.

Subdivision (f) is intended to protect the subject of the information from harm and typically applies to psychiatric information. It is appropriate to assume that if the information could reasonably upset the individual to the point of motivating them to harm either themselves or others, the consequences of disclosure would be detrimental to the individual within the subsection's meaning. Consult a trained professional if there is some doubt about releasing medical/psychiatric information to the individual it relates to. It may also be a good idea to discuss the situation with the practitioner designated by the individual before referring the record to that person pursuant to the individual's request.

With respect to subsection (h), we know of no statute specifically requiring an agency to withhold information from the individual it pertains to, but the IPA would defer to such a statute if and when it applied.

*The attorney-client privilege is often cited as an agency's authority for withholding information from an individual. Notwithstanding Section 1798.70, which provides that the IPA supersedes any other provision of state law that authorizes an agency to withhold information from an individual which is otherwise accessible under the Act, competent legal authority advises us that this privilege is not superseded by the IPA. It is the communication that is protected by the privilege, not necessarily the personal information communicated. In other words, an individual has no right to know what an agency asks of its legal counsel, or what counsel advises the agency, but the agency also has no right to shield information existing independent of the communication between client and counsel as being privileged just because it becomes the subject of such communication. See **Wilson v. Superior Court** (1964) 226 CA2d 715 38 Cal. Rptr. 255, and Evidence Code Section 950 et seq. See also Section 1798.71 and the comments following it, page 30, regarding the rights of litigants.*

* * * * *

Requests for Exempt Information

1798.41.

Except as provided in subdivision (c), if the agency determines that information requested pursuant to Section 1798.34 is exempt from access, it shall inform the individual in writing of the agency's finding that disclosure is not required by law.

Except as provided in subdivision (c), each agency shall conduct a review of its determination that particular information is exempt from access pursuant to Section 1798.40, within 30 days from

the receipt of a request by an individual directly affected by the determination, and inform the individual in writing of the findings of the review. The review shall be conducted by the head of the agency or an official specifically designated by the head of the agency.

- (c) If the agency believes that compliance with subdivision (a) would seriously interfere with attempts to apprehend persons who are wanted for committing a crime or attempts to prevent the commission of a crime or would endanger the life of an informant or other person submitting information contained in the record, it may petition the presiding judge of the superior court of the county in which the record is maintained to issue an ex parte order authorizing the agency to respond to the individual that no record is maintained. All proceedings before the court shall be in camera. If the presiding judge finds that there are reasonable grounds to believe that compliance with subdivision (a) will seriously interfere with attempts to apprehend persons who are wanted for committing a crime or attempts to prevent the commission of a crime or will endanger the life of an informant or other person submitting information contained in the record, the judge shall issue an order authorizing the agency to respond to the individual that no record is maintained by the agency. The order shall not be issued for longer than 30 days but can be renewed at 30-day intervals. If a request pursuant to this section is received after the expiration of the order, the agency must either respond pursuant to subdivision (a) or seek a new order pursuant to this subdivision.

* * * * *

In complying with subdivision (a), an agency should inform the individual of the statutory authority supporting its denial of access to information relating to the individual. Don't cite the exceptions in the Public Records Act

(G.C. Sections 6254 and 6255) as the basis for denial as these provisions do not apply to requests by the individual who is the subject of the information. See Section 1798.70, page 30.

The review required by subsection (b) follows a request by the individual for such a review; i.e., it need not be automatic.

* * * * *

Deletion of Personal Information About Others

1798.42. In disclosing information contained in a record to an individual, an agency shall not disclose any personal information relating to another individual which may be contained in the record. To comply with this section, an agency shall, in disclosing information, delete from disclosure such information as may be necessary. This section shall not be construed to authorize withholding the identities of sources except as provided in Sections 1798.38 and 1798.40.

* * * * *

When making information available to one person where the information identifies individuals besides the person receiving the record, the identities and other personal information about the other individuals should be deleted, unless, with respect to their identities only, they are sources of information about the first person not protected by Sections 1798.38 and 1798.40, or unless the personal information concerning the other individuals is considered properly disclosed under the Public Records Act.

* * * * *

Disclosure of Exempt Information Not Required

1798.43. In disclosing information contained in a record to an individual, an agency need not disclose any information pertaining to that individual which is exempt under

Section 1798.40. To comply with this section, an agency may, in disclosing personal information contained in a record, delete from the disclosure any exempt information.

* * * * *

If information exempt from the individual's right of access pursuant to Section 1798.40 is disclosed to a third party under the Public Records Act, the agency may not subsequently deny the individual (or anyone else) access to the same information. The agency has waived its privilege to withhold the information. (Government Code Section 6254.5). Disclosures to federal, state and local government entities for official purposes would not waive the privilege.

* * * * *

Application of Article to Individual

1798.44. This article applies to the rights of an individual to whom personal information pertains and not to the authority or right of any other person, agency, other state governmental entity, or governmental entity to obtain this information.

* * * * *

*We view this section to mean, among other things, that the next of kin of a deceased person have no right under this Article to access records of the deceased. On the other hand, we don't believe that Article 6 prohibits disclosures to next of kin of the deceased. Case law holds that personal privacy is a right that dies with the person, e.g., **Melvin v. Reid**, 112 Cal. App. 285,290 (1931). However, in a recent federal Freedom of Information Act case, the court implied that the privacy protection provision [exemption 7(C)] relating to investigation records does not lapse with the individual's death, (**William Kraly v. Federal Bureau of Investigation**, No. 82-3265, U.S. Court of Appeals, Sixth Circuit, Feb. 16, 1984), as reported in **Access Reports** March 28, 1984.*

* * * * *

ARTICLE 9

CIVIL REMEDIES

Causes of Action

1798.45. An individual may bring a civil action against an agency whenever such agency does any of the following:

- (a) Refuses to comply with an individual's lawful request to inspect pursuant to subdivision (a) of Section 1798.34.
- (b) Fails to maintain any record concerning any individual with such accuracy, relevancy, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, opportunities of, or benefits to the individual that may be made on the basis of such record, if, as a proximate result of such failure, a determination is made which is adverse to the individual.
- (c) Fails to comply with any other provision of this chapter, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual.

Options of the Court In Suits for Access

1798.46. In any suit brought under the provisions of subdivision (a) of Section 1798.45:

- (a) The court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from the complainant. In such a suit the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld as being exempt from the individual's right of access and the burden is on the agency to sustain its action.

- (b) The court shall assess against the agency reasonable attorney's fees and other litigation costs reasonably incurred in any suit under this section in which the complainant has prevailed. A party may be considered to have prevailed even though he or she does not prevail on all issues or against all parties.

Injunctions

1798.47. Any agency that fails to comply with any provision of this chapter may be enjoined by any court of competent jurisdiction. The court may make such order or judgment as may be necessary to prevent the use or employment by an agency of any practices which violate this chapter.

Actions for injunction under this section may be prosecuted by the Attorney General, or any district attorney in this state, in the name of the people of the State of California whether upon his or her own complaint, or upon the complaint of the Office of Information Practices, or of a member of the general public, or by any individual acting in his own behalf.

Damages, Costs, and Fees

1798.48. In any suit brought under the provisions of subdivision (b) or (c) of Section 1798.45, the agency shall be liable to the individual in an amount equal to the sum of:

- (a) Actual damages sustained by the individual, including damages for mental suffering.
- (b) The costs of the action together with reasonable attorney's fees as determined by the court.

Jurisdiction; Remedies Nonexclusive

1798.49. An action to enforce any liability created under Sections 1798.45 to 1798.48, inclusive, may be brought in any court of competent jurisdiction in the county in which the complainant resides, or has his principal place of business, or in which the defendant's

records are situated, within two years from the date on which the cause of action arises, except that where a defendant has materially and willfully misrepresented any information required under this section to be disclosed to an individual who is the subject of the information and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this section, the action may be brought at any time within two years after discovery by the complainant of the misrepresentation. Nothing in Sections 1798.45 to 1798.48, inclusive, shall be construed to authorize any civil action by reason of any injury sustained as the result of any information practice covered by this chapter prior to July 1, 1978.

The rights and remedies set forth in this chapter shall be deemed to be nonexclusive and are in addition to all those rights and remedies which are otherwise available under any other provision of law.

**When Subjective Opinions
Are Not a Cause of Action**

1798.50. A civil action shall not lie under this Article based upon an allegation that an opinion which is subjective in nature, as distinguished from a factual assertion, about an individual's qualifications, in connection with a personnel action concerning such an individual, was not accurate, relevant, timely, or complete.

* * * * *

Labor Code Section 1050 makes it a misdemeanor to misrepresent an employee or former employee so as to prevent or attempt to prevent him or her from obtaining employment. The applicability of the statute to the State as an employer is uncertain, however.

* * * * *

**Correction of Record Does Not
Restore Lapsed Rights and Remedies**

1798.51. Where a remedy other than those provided in Articles 8 and 9 is provided by law

but is not available because of lapse of time an individual may obtain a correction to a record under this chapter but such correction shall not operate to revise or restore a right or remedy not provided by this chapter that has been barred because of lapse of time.

1798.52. No section with this number.

**Liability for Disclosure of Information
Not Otherwise Public**

1798.53. Any person, other than an employee of the state or of a local government agency acting solely in his or her official capacity, who intentionally discloses information, not otherwise public, which they know or should reasonably know was obtained from personal information maintained by a state agency or from "records" within a "system of records" [as these terms are defined in the Federal Privacy Act of 1974 (P.L. 93-579; 5 U.S.C. 552(a)] maintained by a federal government agency, shall be subject to a civil action, for invasion of privacy, by the individual to whom the information pertains.

In any successful action brought under this section, the complainant, in addition to any special or general damages awarded, shall be awarded a minimum of two thousand five hundred dollars (\$2,500) in exemplary damages as well as attorney's fees and other litigation costs reasonably incurred in the suit.

The right, remedy, and cause of action set forth in this section shall be nonexclusive and is in addition to all other rights, remedies, and causes of action for invasion of privacy, inherent in Section 1 of Article 1 of the California Constitution.

* * * * *

State agencies should advise persons and agencies receiving personal information from State files that they may be subject to civil or criminal penalties if they redisclose it. See Sections 1798.53 and 1798.57. This advice would not apply to disclosures of personal information that would be properly disclosed

information that would be properly disclosed under the California Public Records Act.

* * * * *

**ARTICLE 10
PENALTIES**

**Intentional Violations by
Officers or Employees**

1798.55. The intentional violation of any provision of this chapter or of any rules or regulations adopted thereunder, by an officer or employee of any agency shall constitute a cause for discipline, including termination of employment.

* * * * *

Generally, public employees acting in good faith, without fraudulent or malicious intent, are not individually liable for acts or omissions within the scope of their employment. They also have the right to request that they be defended and/or remunerated for claims against them. This is a complicated area of law dealt with in the Government Code, Title 1, Division 3.6, Section 810 et seq., and numerous case decisions.

Discipline of employees for violations of the Act should be commensurate with the severity of the consequences of the violation and the degree of intent or negligence of the employee in the act or omission.

* * * * *

**Requesting or Obtaining Information
under False Pretenses a Misdemeanor**

1798.56. Any person who willfully requests or obtains any record containing personal information from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than five thousand dollars (\$5,000), or imprisoned not more than one year, or both.

**Intentional Disclosure of Medical,
Psychiatric or Psychological Information
May Be Punishable as a Misdemeanor**

1798.57. Except for disclosures which are

otherwise required or permitted by law, the intentional disclosure of medical, psychiatric, or psychological information in violation of the disclosure provisions of this chapter is punishable as a misdemeanor if the wrongful disclosure results in economic loss or personal injury to the individual to whom the information pertains.

ARTICLE 11

MISCELLANEOUS PROVISIONS

Release of Names and Addresses for Commercial Purposes Prohibited

1798.60. An individual's name and address may not be distributed for commercial purposes, sold, or rented by an agency unless such action is specifically authorized by law.

* * * * *

Note that Section 1798.75 provides that this Section supersedes the California Public Records Act.

The definition of "commercial purpose" in subdivision (j) of Section 1798.3 is "any purpose which has financial gain as a major objective". News gathering and dissemination by publishers and broadcasters is excepted from this definition.

Subdivision (a) of Vehicle Code Section 1810 is an example of a statute specifically authorizing the sale of names and addresses of individuals. Subdivision (a) of Section 1798.61 (see below) also permits disclosure of the names and addresses of licensees and holders of seller's permits for any purpose, including a commercial purpose.

* * * * *

Release of Names and Addresses of Licensees and Applicants

1798.61.
(a) Nothing in this chapter shall prohibit the

release of only names and addresses of persons possessing licenses to engage in professional occupations or of persons who are registered with, or are holding licenses or permits issued by, the State Board of Equalization.

(b) Nothing in this chapter shall prohibit the release of only names and addresses of persons applying for licenses to engage in professional occupations for the sole purpose of providing those persons with informational materials relating to available professional educational materials or courses.

* * * * *

The term "professional occupation" would include any occupation requiring a license; e.g., "professional" prize fighter.

Note that in subdivision (b), applicants for licensure are treated somewhat differently than individuals who are in possession of a license or permit. It is assumed that courses and materials offered to applicants would relate to, and enhance, the applicant's opportunities in the profession to which the license sought applies. Subdivision (b) does not permit the disclosure of the names and addresses of applicants for licensure to persons and firms offering employment, insurance, or tools and supplies merely related to the practice of the profession for which licensure is sought. Where the licensee or permittee has a business address different from his or her home address and indicates that the business address is the "official" address, we support the traditional policy of most licensing agencies which considers only the business address as the accessible public record. See pages 13 and 14 for further discussion of home addresses.

* * * * *

Removal of Names from Mailing Lists

1798.62. Upon written request of any individual, any agency which maintains a mailing

list shall remove the individual's name and address from such list, except that such agency need not remove the individual's name if such name is exclusively used by the agency to directly contact the individual.

Liberal Construction of Chapter to Protect Privacy

1798.63. The provisions of this chapter shall be liberally construed so as to protect the rights of privacy arising under this chapter or under the Federal or State Constitution.

Control of Records

1798.64.

- (a) Each agency record which is accepted by the Director of General Services for storage, processing, and servicing in accordance with provisions of the State Administrative Manual for the purposes of this chapter shall be considered to be maintained by the agency which deposited the record and shall continue to be subject to the provisions of this chapter. The Director of General Services shall not disclose the record except to the agency which maintains the record, or pursuant to rules established by such agency which are not inconsistent with the provisions of this chapter.
- (b) Each agency record pertaining to an identifiable individual which was or is transferred to the State Archives as a record which has sufficient historical or other value to warrant its continued preservation by the California state government, prior to or after July 1, 1978, shall, for the purposes of this chapter, be considered to be maintained by the archives.

51798.65. Repealed by Chapter 595, Statutes of 1985.

Extension of Time Limits by Franchise Tax Board

1798.66. The time limits specified in Article

8 (commencing with Section 1798.30) may be extended to 60 days by the Franchise Tax Board if the following conditions exist:

- (a) The request is made during the period January 1 through June 30; and
- (b) The records requested are stored on magnetic tape.

Real Property Lien and Encumbrance Records

1798.67. Where an agency has recorded a document creating a lien or encumbrance on real property in favor of the state, nothing herein shall prohibit any such agency from disclosing information relating to the identity of the person against whom such lien or encumbrance has been recorded for the purpose of distinguishing such person from another person bearing the same or a similar name.

Disclosures to District Attorney

1798.68.

- (a) Information which is permitted to be disclosed under the provisions of subdivision (e), (f), or (o) of Section 1798.24 shall be provided when requested by a district attorney. A district attorney may petition a court of competent jurisdiction to require disclosure of information when an agency fails or refuses to provide the requested information within 10 working days of a request. The court may require the agency to permit inspection unless the public interest or good cause in withholding such records clearly outweighs the public interest in disclosure.
- (b) Disclosure of information to a district attorney under the provisions of this chapter shall effect no change in the status of the records under any other provision of law.

* * * * *

This is the only provision of the Act that makes disclosure mandatory to a third party other

than the representative of the individual who is the subject of the information.

* * * * *

ARTICLE 12

CONSTRUCTION WITH OTHER LAWS

Chapter Supersedes Other State Law as to Access Provisions

1798.70. This chapter shall be construed to supersede any other provision of state law, including Section 6253.5 of the Government Code, or any exemption in Section 6254 or 6255 of the Government Code, which authorizes any agency to withhold from an individual any record containing personal information which is otherwise accessible under the provisions of this chapter.

* * * * *

In order for information to be withheld from the individual to whom it pertains, reasons would have to be found in this Act as well as other law. Don't cite the exemptions in the California Public Records Act as the basis for denying access to information when the requester is the person to whom the information pertains; the IPA supersedes the CPRA in such cases.

Conversely, the Information Practices Act should not be interpreted to deny access to a data subject where other law would allow access. For example, "rap sheets" and inmates' case files are exempt under the IPA but are available under provisions of the Penal Code and case law [P.C. Section 11105, et seq., and in re Olson, 37 Cal. App. 3d 783 (1974), respectively]. It is also quite possible that an individual would have greater access to information pertaining to himself or herself maintained by a State criminal law enforcement agency by seeking the information under the California Public Records Act, rather than

the IPA. The IPA exempts law enforcement records almost entirely, whereas decisional law under the CPRA requires a more specific justification for nondisclosure. [See Johnson v. Winter, 127 Cal. App. 3d 435, 179 Cal. Rptr. 585 (1982), and South Coast Newspapers, Inc. v. City of Oceanside, 160 Cal. App. 3d 261, 206 Cal. Rptr. 527 (1984)].

See also the comments relating to attorney-client privilege at the last paragraph of comments relating to Section 1798.40, page 23.

* * * * *

Rights of Litigants Not Affected by This Chapter

1798.71. This chapter shall not be deemed to abridge or limit the rights of litigants, including parties to administrative proceedings, under the laws, or case law, of discovery of this state.

* * * * *

This Section should be interpreted to protect existing rights of litigants to resist discovery as well as to discover information under litigation.

The Office of Information Practices has determined that once an action has been filed in court, records pertinent to the matter in litigation are more properly sought under discovery than under Civil Code Section 1798.34.

As a general rule, when the information practices of a state agency are at issue in litigation, the OIP will not investigate the complaint before the court. Our decision whether to involve this office will depend in part on the relationship of the particular information practice to the issue in litigation and the advice of our legal counsel. If an information practices issue remains unresolved at the conclusion of litigation, the OIP will look into the matter upon request.

* * * * *

Disclosures in Violation of Other Law

1798.72. Nothing in this chapter shall be construed to authorize the disclosure of any record containing personal information, other than to the subject of such records, in violation of any other law.

**Constitutional Right of Privacy
Not Limited by This Chapter**

1798.73. Nothing in this chapter shall be construed to deny or limit any right of privacy arising under Section 1 of Article I of the California Constitution.

* * * * *

An individual may have a cause of action under the constitutional right of privacy even though no violation of this Act occurred.

* * * * *

Student Records

1798.74. The provisions of Chapter 13 (commencing with Section 67110) of Part 40 of the Education Code shall, with regard to student records, prevail over the provisions of this chapter.

* * * * *

Generally, student records are covered by provisions of the federal Family Educational Rights and Privacy Act [FERPA, 20 U.S.C. 1232 (g)] and State law. With respect to the University of California and the State University and Colleges, the applicable state law begins at Section 67100 of the Education Code. Local school and community college districts are not state agencies and are not subject to the IPA.

Some records relating to students are excluded from the definition of student records in Education Code Section 67110, and to that extent the individual's rights and remedies are under the Information Practices Act. Circum-

stances surrounding these records change their classification, but generally they include medical records, campus police records not made available to others and applications of individuals who do not subsequently matriculate.

Education Code Section 67147.5 provides that Education Code shall not be construed to limit the privacy rights which any other provision of law affords to students or parents of students. Therefore, where the Information Practices Act is not in conflict with the Education Code, it may apply to students. For example, the Information Practices Act may apply to the student's right to be free from the collection and retention of unnecessary personal information, since the Education Code is silent on the question.

* * * * *

**California Public Records Act
Not Superseded by this Chapter;
Exceptions**

1798.75. This chapter shall not be deemed to supersede Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, except as to the provisions of Sections 1798.60 and 1798.70.

* * * * *

The IPA supersedes the Public Records Act only where the latter could be interpreted to deny access to a State record accessible to the individual under the IPA (Section 1798.70), or where disclosure is for a commercial purpose not provided for by subdivisions (a) and (b) of Section 1798.61 or a specific statute such as subdivision (a) of Vehicle Code Section 1810.

**Access to Law Enforcement
Records; Discovery**

1798.76. Nothing in this chapter shall be construed to revoke, modify, or alter in any manner any statutory provision or any judicial

decision which (a) authorizes an individual to gain access to any law enforcement record, or (b) authorizes discovery in criminal or civil litigation.

* * * * *

See also the comments after Section 1798.40, page 21, and Sections 1798.70 and 1798.71, page 30.

* * * * *

Practices to Avoid Compliance Prohibited

1798.77. Each agency shall ensure that no record containing personal information shall be modified, transferred, or destroyed to avoid compliance with any of the provisions of this chapter. In the event that an agency fails to comply with the provisions of this section, an individual may bring a civil action and seek the appropriate remedies and damages in accordance with the provisions of Article 9 (commencing with Section 1798.45).

An agency shall not remove or destroy personal information about an individual who has requested access to the information before allowing the individual access to the record containing the information.

* * * * *

This provision, with minor differences, was previously contained in Chapter 709 of the Statutes of 1977. Chapter 595, Statutes of 1985 added this section and repealed the earlier provision.

The second paragraph of this section should not be interpreted to require an agency either to release exempt information when requested by the person to whom it pertains or to maintain it beyond its normally scheduled destruction date, i.e., if it is exempt under Sections 1798.38 or 1798.40, it may remain exempt until properly destroyed. The OIP does believe it to be inadvisable to destroy a record

after an agency learns that it has, or is about to become, the subject of discovery in litigation, however.

See also the prohibitions against modifying and destroying records in Government Code Sections 6200 and 6201.

* * * * *

California State University Employee Records

1798.78. This chapter shall not be deemed to supersede the provisions of Chapter 1299 of the Statutes of 1976.

* * * * *

Chapter 1299 added Section 24317 to the Education Code. This section was later re-numbered 89546. It provides employees of the State University and Colleges with the right to access, obtain copies, request amendments and file disputes against information in their records. The Information Practices Act does not supersede this statute but does apply to CSUC employees where it does not conflict with the Education Code. Since the Education Code is silent on the initial collection and disclosure of information about employees, the IPA would apply to such activities.

* * * * *

UNCODIFIED

(See Ch. 709, Stats. of 1977)

University of California Employee Records

SEC. 6. It is the intent of the Legislature that if this bill and S.B. 251 are both chaptered, Section 1798.38 of the Civil Code, as added by Section 1 of this act shall not apply to the University of California.

* * * * *

S.B. 251, Chapter 1398, Statutes of 1978, added Section 926 12 to the Education Code. This statute pertains to the right of employees of the University of California to access their records. However, it has been ruled unconstitutional in the Los Angeles Superior Court (**Regents of the University of California v. Deukmejian**, Case #C266242, 1980). There has been no challenge to the applicability of the Information Practices Act to employees of the University of California, to our knowledge.

* * * * *

PRIVACY NOTICE * EXAMPLE

Privacy Notice*

The Information Practices Act of 1977 and the Federal Privacy Act require this department to provide the following to individuals who are asked by the Self Assessment Division of the Franchise Tax Board to supply information:

The principal purpose for requesting tax return information is to administer the Personal Income Tax Law of the State of California. Additional information may be requested if your return is audited and/or a collection action is taken.

The California Revenue and Taxation Code requires every individual taxable under Part 10 (Personal Income Tax) meeting the income requirements to file a return or statement in such form as prescribed by the Franchise Tax Board (Sections 18401 and 18431). Individuals filing tax returns, statements, or other documents are required to include their social security numbers for proper identification and return processing (Section 18934; see also Section 205(c)(2) of the Federal Social Security Act as amended by Section 1211 of the Federal Tax Reform Act of 1976). It is mandatory to furnish all the appropriate information requested by the return forms and related data when a return or statement is required to be filed. The law provides penalties for failure to file a return, failure to supply information required by law or regulations, failure to furnish specific information requested on return forms or for furnishing fraudulent information. Failure to provide all or part of the requested information may also result in disallowance of claimed exemptions, exclusions, credits, deductions, or adjustments which may result in increased tax liability, loss or delay in issuance of a refund for overpayment, interest and penalty charges

on unpaid taxes, and other sanctions against the taxpayer.

As authorized by law, information furnished on this form may be given to the United States Internal Revenue Service, the proper official of any state imposing an income tax or a tax measured by income, the Multistate Tax Commission, and to the following governmental agencies and officials of the State: Attorney General, Auditor General, Board of Control, Board of Equalization, California Parent Locator Service, county welfare departments and probation officers, Department of Finance, Department of Social Services, District Attorneys, Employment Development Department, Legislative Analyst, Legislative Committees, local tax administrators, Office of the State Controller, and the Registry of Charitable Trusts.

For the purpose of collecting the amount due from individuals with outstanding tax liabilities, the total amount due may be disclosed to: employers, financial institutions, County Recorder, vacation trust funds, process agents, and other payers.

An Individual has a right of access to records containing his/her personal information that are maintained by the Franchise Tax Board. The officials responsible for maintaining the information are: 1) Filing of returns - Director, Taxpayer Services; 2) Auditing of returns - Manager, Personal Income Tax Audit Section; and 3) Collection of monies - Director, Enforcement Bureau. The address is Franchise Tax Board, P.O. Box 942840, Sacramento, CA 94240-1040 and the telephone number is (916) 369-0500.

**Taken from Form FTB 1131 (Rev. 4-87) and the Privacy Notice which appears in the Franchise Tax Boards 540 Tax Booklet.*

**INFORMATION PRACTICES ACT
HOW TO INSPECT AND CORRECT YOUR RECORDS**

The following information is provided to assist individuals who wish to gain access to and/or correct personal information about themselves in records maintained by the California State Department of Health Services.

NOTICE

SECTION 1798.56 OF THE INFORMATION PRACTICES ACT PROVIDES THAT ANY PERSON WHO WILLFULLY REQUESTS OR OBTAINS ANY RECORD CONTAINING PERSONAL OR CONFIDENTIAL INFORMATION FROM A STATE AGENCY UNDER FALSE PRETENSES SHALL BE GUILTY OF A MISDEMEANOR AND FINED \$5,000 OR IMPRISONED NOT MORE THAN ONE YEAR, OR BOTH.

INTRODUCTION

You have the right to inspect personal information about yourself in records maintained by the Department of Health Services.

You can also request the amendment or correction of such records and can file a statement of disagreement as part of your record if the Department refuses to comply with your request.

When you inspect records containing personal information about yourself, you are also entitled to inspect records of sources and an accounting of certain disclosures, if any, of the information.

These rights are provided for in the Information Practices Act, Civil Code Division 3, Part 4, Title 1.8, Section 1798 et seq.

SPECIAL REQUIREMENTS AND EXCEPTIONS

You may inspect personal information about yourself if the request is for a specific record and if it is feasible to retrieve the record by individual name or other method of identification assigned to the individual.

Official records of administrative hearings and records used for statistical purposes only are not covered by the Information Practices Act.*

Individuals are not authorized by law to inspect certain kinds of information, including:

Information maintained for criminal law enforcement.

Information maintained for the purpose of investigating specific violations of state law, until after the investigation and remedial action, if any, are completed.

NOTE: See the comments following Section 1798.36, page 20.

APPENDIX 2

Information that would compromise the objectivity or fairness of a test or examination.

Medical, psychiatric, or psychological information, if the holder of the record determines that disclosure would be medically or psychologically detrimental to the individual.

Information used solely for verifying and paying government health care service claims. (*Deleted by Chapt. 595, Statutes of 1985.*)

Any information required by statute to be withheld from the individual to whom it pertains.

Personal information about other individuals.

The names of sources of personal information, when confidentiality is authorized or required.

REQUESTS TO INSPECT RECORDS

You can inquire and be notified as to whether the Department maintains a record containing personal information about you. Inquiries must specify the name or title of the system of records that contains your record, as reported by the Department under the Information Practices Act. Address your inquiry to the official responsible for maintaining the record system, if you have this information.

If you need assistance in identifying and locating the record and the responsible official, address your inquiry to:

Administrative Services Unit
Administrative and Business Services Section
Department of Health Services
744 P Street
Sacramento, CA 95814

Your inquiry should provide as much information as possible to assist in identifying the record, such as: name, Social Security number, or other method that might be used to identify the individual record; departmental program, activity, or purpose for which the information was obtained; description of the kinds of information in the record; person, organization, or agency that collected the information.

Upon receiving the name or title of the record system and the title and address of the official responsible for maintaining the records, address a request to inspect your record to the responsible official.

REFUSAL OF A REQUEST TO INSPECT A RECORD

If your request to inspect a record is refused because disclosure of the contents to the subject individual is not authorized by law, you can request a review of such a determination. Send your request for review, with a copy of the letter stating the reason(s) for the refusal, to the Administrative Services Unit at the address shown above. You will be notified as to the results of the review within 30 days after receipt of the request.

INSPECTION OF RECORDS

If it is determined that you are legally entitled to inspect your record, you will be granted access without undue delay and no later than 30 days after receipt of a request for active records, or 60 days if the records are in storage.

You may inspect the records during regular business hours at a time and office designated by the official in charge. The record, or a true copy, may be made available at a location near your place of residence or by mail, if it is reasonable to do so.

You must give satisfactory proof of identity before the record is presented to you for inspection.

Another person may accompany you to inspect your record if you furnish a written statement authorizing disclosure of your record in the other person's presence.

When you inspect your record, you may request a copy of all or any portion of the personal information in the record. Copies will be made within 15 days after the request. The charge for copies is ten cents per page unless a different rate has been established by law. For copies of records in other forms, fees will be charged sufficient to cover the costs of making copies.

REQUEST FOR AMENDMENT OF A RECORD

If you believe that any significant personal information in your record, which could affect your status or rights, is not accurate, relevant, timely, or complete, you are entitled to submit a request for amendment or correction of the record.

Address your request to the official responsible for maintaining the record, and include the following information:

Name or title of the record system that contains the information.

Name of the subject individual and any identifying particular as shown in the record.

Details of the requested amendment or corrections.

Reasons why the record should be amended or why each correction should be made.

The official responsible for maintaining the record will notify you, within 30 days after receipt of the request, that corrections have been made as requested or that all or part of the request has been rejected. Reasons for refusing to amend the record will be given.

APPENDIX 2

DEPARTMENTAL REVIEW

If you disagree with the refusal to amend any part of your record, you are entitled to request a departmental review. Submit your request for a review in writing to the Administrative Services Unit at the address shown above. Include the following information:

Copy of the original request for amendment or correction of your record.

Copy of the notification of denial of your request, with the Department official's reasons for refusing to amend your record.

Your reasons for disagreeing with the refusal, and any additional information.

If the departmental review determines that your request should be complied with, your record will be amended accordingly. Notice of the results will be sent to you within 30 days after receipt of your request, or within 60 days if circumstances make it necessary to extend the review period.

FILING A STATEMENT OF DISAGREEMENT

If the departmental review concludes that all or part of your request for amendment or correction should not be granted, the notification will include a statement of reasons for the refusal. You are entitled to file a statement of disagreement if you do not agree with the departmental review decision. Your statement should be of reasonable length (usually not more than one or two pages), specifying the corrections requested and giving the reasons why each correction should be made. Send your statement of disagreement to the official responsible for maintaining the record.

Your statement of disagreement, together with the Department's statement of reasons for refusing to amend the record, will be made a part of your record and copies will be made available to persons or agencies to whom the disputed information is disclosed.

ABSS
3-7500
540 (3/79)

GUIDELINES TO THE INFORMATION PRACTICES ACT OF 1977

**RULES OF CONDUCT FOR EMPLOYEES
(EXAMPLE)**

Employees responsible for the collection, maintenance, use and dissemination of information about individuals which relates to their personal life, including their employment and medical history, financial transactions, marital status and dependents, for example, shall comply with the provisions of the Information Practices Act, Civil Code Sections 1798 through 1798.78. The guidelines to the Act issued by the Office of Information Practices shall be used as a basic source of guidance in administering the Act's provisions.

Employees shall not require individuals to disclose personal information which is not necessary and relevant to the lawful State function for which the employee is responsible.

Employees shall make every reasonable effort to see that inquiries and requests by individuals for their personal records are responded to quickly and without requiring the individual to unnecessarily repeat his or her inquiry to others.

Employees shall assist individuals who seek information pertaining to themselves in making their inquiry sufficiently specific and descriptive so as to facilitate locating the records requested.

Employees shall respond to inquiries from individuals, and requests from them to review, obtain copies of, amend, correct or dispute their personal records in a courteous and businesslike manner, and in accordance with Sections 1798.30 through 1798.42 of the Civil Code.

Employees shall not disclose personal information relating to individuals to unauthorized persons or entities. The improper disclosure of personal information may be cause for disciplinary action.

Employees shall not seek out or use personal information relating to others for their own interest or advantage. The intentional violation of this policy may be cause for disciplinary action.

Employees responsible for maintenance of records containing personal information shall take all necessary precautions to assure that proper administrative, technical and physical safeguards are established and followed in order to protect the confidentiality of records containing personal information, and to assure that such records are not disclosed to unauthorized individuals or entities.

Rev. (1/86)

STATE PERSONNEL BOARD
 OFFICE OF INFORMATION PRACTICES
ANNUAL NOTICE OF SYSTEMS OF RECORDS
 (Ref. Civil Code Sections 1798.9 & 1798.10)
 SPB-14 (9/91) PAGE 1

Office of Information Practices
 801 Capitol Mall P.O. Box 944201
 Sacramento, CA 94244-2010
 CALDEX 653-1341
 CALNET 8-443-1341
 FAX (916) 653-0927
 Toll Free (800) 952-5562

INTRODUCTION

1. DATE OF REPORT	
2. AGENCY NAME	
3. ADDRESS	
4. INFORMATION PRACTICES COORDINATOR NAME/TITLE	TELEPHONE

INSTRUCTIONS:

- Specify the **date** the report was prepared.
- Specify the **name of the agency** authority and responsibility for the statutory or constitutional function; i.e., "appointing power"
- Specify the official **address of the agency**; street or post office box number, city and zip code.
- Specify the **name and title** of the **Information Practices Officer**, the person who is responsible for the maintenance of the agency's records system.

PART A

5. RECORD SYSTEM NAME/TITLE
6. DESIGNATED CONTACT PERSON NAME/TITLE
7. BUSINESS ADDRESS
8. PROCEDURES TO ACCESS AND TO CONTEST RECORD CONTENTS. <i>(Attach additional pages as necessary.)</i>

INSTRUCTIONS:

- Specify the **name or title** of each **personal records system** in the agency.
- Specify the **name or title** of the designate **contact person** for each personal records system.
- Specify the **business address** of the designated contact person for each personal records system.
- Specify the **procedures** for each records system for an individual **to access** or **to contest** the contents of records containing personal information. One procedure may be submitted for all personal records systems or a separate procedure may be submitted for each one. Appendix 2 on page 37 of The Information Practices Act With Guidelines and Commentary contains an

APPENDIX 5

Annual Notice of Systems of Records

(Ref. Civil Code Sections 1798.9 & 1798.10)

SPB-14 (9/91) PAGE 2

PART B

9. Were there any known instances in which personal information was improperly distributed by the agency or accessed by an individual?

No Yes

Specify **each known instance** during the reporting period in which personal **information** either has been **distributed unlawfully** by the agency or has been **obtained unlawfully** by an individual.

10. Were there any known instances in which a denial was issued or a delay beyond statutory limits was experienced in response to a request to access or to be provided copies of records under the Information Practices Act or the California Public Records Act?

No Yes

Specify **each known instance** during the reporting period in which a request to assess records under the Information Practices Act or the California Public Records Act has resulted in: (a) a denial of the request or (b) a **delay** beyond the statutory limits in providing access to or copies of records. For each instance, provide the **statutory basis** or other **reason(s)** for the action.

Memorandum

Example "No Change" Notice

TO: E-9
Office of Information Practices
Mail Station #41a
801 Capitol Mall
P.O. Box 944201
Sacramento, CA 94244-2010

FROM: ***(Be sure to indicate name of your agency)***

SUBJECT: Notices of records systems pursuant to Sections 1798.9 and 1798.10, subdivisions (a) through (d), of the Civil Code

This is to certify that our index or list showing each record system by name or title and our procedures for an individual to gain access to and to contest the contents of records containing personal information about him/her as filed with your office on _____ remain essentially correct to the best of our knowledge. There were no known instances during the reporting period in which personal information was either distributed by the agency or obtained by any person in a manner not in accord with law. Additionally, during the reporting period, there were no known instances of denial or delay beyond statutory limits for requests made under the Information Practices Act and the California Public Records Act.

Signed _____
NAME TITLE

Date _____

Note: This notice could accommodate changes by the addition of language after the word "knowledge", such as " . . . with the following exceptions noted below". Amended or new reports and procedures should be attached to such a notice.

**The California Public Records Act
and the
Information Practices Act of 1977
A Comparison of the Features of Each**

Public Records Act (CPRA)

1. It was established in the California Government Code beginning at Section 6250.
2. It is modeled after the Federal Freedom of Information Act (FOIA).
3. It became effective 1968.
4. It applies to all records, in whatever form, maintained by California state and local public agencies.
5. It excludes from coverage the State Legislature and the Judicial Branch.
6. It is based on the premise of open government, and every person's right to public information.
7. It provides rights to all members of the public on an equal basis.
8. It is essentially an access law, and all provisions relate to this purpose, including those that allow an agency to withhold information.

Information Practices Act IPA

1. It was established in the California Civil Code beginning at Section 1798.
2. It is modeled after the Federal Privacy Act of 1974.
3. It became effective 1978.
4. It applies only to information about individuals maintained by California state agencies. Does not apply to local public agencies except under voluntary contractual agreements.
5. It excludes from coverage the State Legislature, the Judicial Branch, the State Compensation Insurance Fund, except as to records of the Funds' own employees, and local government agencies.
6. It is based on the premise that personal privacy must be protected by placing constraints on the collection, maintenance and dissemination of information about individuals by the State.
7. It provides rights to individuals with respect to information about themselves in State agency records beyond any rights of the general public under the CPRA.
8. It is a comprehensive law dealing not only with access by the record subject, but also with how an agency collects, maintains and discloses information about individuals.

APPENDIX 7

- | | | | |
|-----|---|-----|--|
| 9. | It sets forth approximately 27 specific exemptions and one general exemption from mandatory disclosure. One of these exemptions is to protect individual privacy, Government Code Section 6254(c). These exemptions are generally discretionary with the agency, i.e., an agency <u>may</u> disclose exempted information if it chooses to do so, unless disclosure is otherwise prohibited by law. | 9. | It sets forth 22 conditions of disclosure of which an agency must meet at least one before disclosing information about an individual covered by the Act. However, one condition of disclosure is "Pursuant to the California Public Records Act ... Thus, with respect to such disclosure, the CPRA privacy exemption and the individual's constitutional right to privacy may provide stronger legal protection against public disclosure of personal information than the IPA. The IPA is most likely to be considered in any administrative or judicial decision with respect to public disclosure of personal information, however. |
| 10. | An agency's time limit for responding to a request for access is not specified but is assumed to be at any reasonable time within an agency's open hours. Time for responding to a request for a copy of a record is within ten days of receipt of the request. Unusual circumstances permit an agency to extend response time for up to ten days. | 10. | An agency's time limit for responding to a request for access is within 30 days for active records or 60 days for inactive or geographically dispersed records. Copies of records requested by an individual and to which the individual is entitled must be provided within 15 days of the individual's inspection of higher records. The Franchise Tax Board may extend its response time to 60 days for specified reasons. |
| 11. | An agency may charge for copies sufficient to recover direct costs of duplication or a statutory fee if applicable. | 11. | An agency may charge no more than ten cents per page for copies unless a higher statutory fee applies. |
| 12. | An individual who is denied access to, or a copy of, a record must seek relief in court. There is no administrative oversight for the CPRA. | 12. | An individual who feels that his/her rights have been violated may seek relief by means of a review by the offending agency, by seeking the assistance of the Office of Information Practices (OIP), or by filing an action in court. The law does not require the plaintiff to exhaust his/her administrative remedies before going to court. The OIP is established to |

12. contd.

assist both individuals and State agencies to assure that the IPA is properly followed. It also must report violations of the IPA where it has determined that a violation occurred, to the Legislature, the Governor and the Attorney General.

13. If the plaintiff prevails in court, he/she may be awarded court costs and reasonable attorney fees. If the complaint is frivolous, the agency may be awarded costs and fees.

13. If the plaintiff prevails, he/she may be awarded court costs, attorney fees and in some cases actual and exemplary damages. Wrongful disclosures make the defendant agency liable for minimum exemplary damages of \$2,500.