ABC 2016 Fall Summit

ABCs of PRAs
Public Records Act (PRA)

September 7-8, 2016

Today’s PRA Overview

- California Public Records Act
  - What is it?
  - What is purpose?
  - How does it affect you?
  - What is a “public record”
  - PRA Best practices
CA Public Records Act

- Originally signed into law = 1968
  - Government Code section 6250 et seq.
- 2004 proposition amended CA constitution
  - Which further emphasized the public’s right to access
    - Public’s right to access must be broadly construed
- 2010 section 6254.30 = CSU Auxiliary (SB 330 - McKee Act)
  - To disclose certain records “as if” public records
  - Protects certain donor records

PRAs Purpose

- to promote “access to information concerning the conduct of the people’s business [which is] a fundamental and necessary right of every person in this state.”
- gives public opportunity to monitor the functioning of government.
- balance between disclosure and protection
  - There is a constitutional right to privacy
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How Does PRA affect me?

- As state employees we are all subject to PRA
  - includes disclosure of public records in your possession.
- “All records” maintained by the CSU and its employees are potentially subject to disclosure
  - “if a record is kept by an officer because it is necessary or convenient to the discharge of their official duty, it is a public record.”
  (California State University v. Superior Court, 90 Cal. App. 4th 810, 824 (2011))

What is a “public record”?*

- Not all records are public (or require disclosure)
- Public records subject to disclosure:
  - “Any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” (Govt Code 6252(e))
- Must be an identifiable public record
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What is writing?

“…any handwritten, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and any record thereby created, regardless of the manner in which the record has been stored.” (6252(e))

Records Exempt from Disclosure

Exceptions are narrowly applied
- Certain personnel records
- Certain investigative records (6254(f))
- The deliberative process, some drafts (6254(a), 6255)
- Proprietary software, trade secrets, certain IP/research

PRA & other laws protect certain information
- FERPA (Student educational records)
- HIPPA (Medical records - 6254(c))
- IPA (Information Practices Act – personal records)
- Attorney-Client (evidence code , 6254 (k))
- Certain police records
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- **Balancing test** (Gov’t code 6255)
  - when public interest in non-disclosure clearly outweighs the public interest in disclosure
  - Who does balancing test?
    - Records Access Coordinator and/or CSU Legal Counsel

- **Segregation of exempt & non-exempt material**
  - If a record has both exempt and non-exempt
    - The exempt material may be redacted / removed but the balance of the record is provided
    - Records Access Coordinator and/or CSU Legal Counsel determine exempt and or redacted records.

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- **Best Practices – record creation & retention**
  - Write as if it will be published on the front page of the newspaper tomorrow
  - Mark drafts – “draft”
  - Mark confidential records “confidential”
    - They may still be required to be disclosed
  - Only retain records you need to retain
    - Are you the record custodian?
    - If not, don’t keep it unless it has a business purpose.
  - Only retain records for useful life
    - Know required retention periods
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Best practices – continued

- If asked to search for records under PRA
  - Make a reasonably **diligent search** for responsible records – paper and electronic
  - Records **do not have to be created**
    - Sometimes creating records is best response
  - Use a thorough and repeatable search process
  - Document your search process and results
  - Respond in a timely manner
  - 10 day rule – Agency must respond with exemptions
  - Identify records for possible exemption to PRA officer

Misc. PRA end notes

- Inspection of public records is free
- CSU has obligation to:
  - broadly interpret request
  - help requester identify a public record
  - narrowly interpret exemptions
- Requests may be verbal or in writing - to anyone
- Timely response is required (i.e. **10 day rule**)
- Expense to gather, produce, review and redact records is **not recoverable**
- CSU no longer has to recover $0.20/page (paper or electronic) in all instances
- PRA is a **right** of the public & an **obligation** of agency
Questions or Comments?

Leah Villa, MPA
Records Access Coordinator
Strategic Business Services
Administrative Compliance Services
pra@calpoly.edu
x65447