

Date of Hearing: March 29, 2023

ASSEMBLY COMMITTEE ON ACCOUNTABILITY AND ADMINISTRATIVE REVIEW

Cottie Petrie-Norris, Chair

AB 469 (Vince Fong) – As Introduced February 6, 2023

SUBJECT: California Public Records Act Ombudsperson

SUMMARY: Establishes a California Public Records Act (CPRA) Ombudsperson within the California State Auditor's (CSA) Office to review CPRA requests denied by state agencies.

Specifically, **this bill:**

- 1) Creates the CPRA Ombudsperson (ombudsperson) within the CSA to receive requests for review from members of the public who believe that a state agency improperly denied their CPRA requests.
- 2) Requires the ombudsperson to have expertise in the CPRA, have been admitted to practice law in the state for at least five years immediately preceding appointment, and be appointed by the CSA.
- 3) Directs the CSA to appoint a new ombudsperson within 30 days in the event of a vacancy or if the ombudsperson is unable to fulfill the duties for a period of 30 days.
- 4) Requires the CSA to provide the ombudsperson with the necessary staff to perform the functions and carry out the objectives of the ombudsperson.
- 5) Directs the ombudsperson to create a process that allows a member of the public to request a review of a CPRA request that has been denied by a state agency, as specified.
- 6) Mandates the ombudsperson shall promptly notify the member of the public who submitted the request and the state agency of its determination and the reasons for the judgment, as specified.
- 7) Specifies that the ombudsperson must respond to a request to review a CPRA denial within 30 business days.
- 8) Provides that in unusual circumstances the time limit of 30 business days may be extended by written notice to the member of the public who submitted the request for review and the state agency. This notice shall set forth the reasons for the extension and the date on which a determination is reasonably expected to be made, as specified.
- 9) Provides that the ombudsperson may require any state agency that improperly denied a request for public records to reimburse the ombudsperson for its investigation costs.
- 10) Permits the office of the ombudsperson to require a state agency to provide the requesting member of the public with the public record or records if the ombudsperson determines the agency improperly denied the disclosure.
- 11) Requires the state agency that is the subject of a request to review a CPRA denial to provide the ombudsperson access to all relevant information, documents, and other records that the ombudsperson requires to make a determination on the request.

- 12) Provides that the ombudsperson shall not disclose any records that are exempt from disclosure under law, including under the CPRA.
- 13) States the ombudsperson shall maintain the privacy and confidentiality of reviewed records in the same manner as required of the possessing state agency under existing law.
- 14) Mandates the ombudsperson to establish policies and procedures for transferring, receiving, possessing, or reviewing records, including for maintaining the privacy and confidentiality.
- 15) Requires the ombudsperson to maintain a copy of any written opinion issued and to post on its internet website.
- 16) States the opinion of the ombudsperson shall not be considered binding precedent, but may be considered persuasive by public agencies and the courts.
- 17) States that a determination by the ombudsperson does not affect the right of a person to inspect or receive a copy of any public record under the CPRA, nor shall they be required to exhaust all administrative actions with the ombudsperson prior to filing a legal action.
 - a) If a person chooses to bring legal action under the CPRA while a request for the same issue is pending with the ombudsperson, they shall immediately notify the ombudsperson and the ombudsperson shall cease investigation of the request.
 - b) A person may also withdraw their request for review if the written withdrawal notice is received prior to the ombudsperson issuing an opinion.
- 18) Permits a state agency to appeal a determination by the ombudsperson that it improperly denied disclosure of a public record or records by filing a petition with the superior court, as specified.
- 19) States a person whose information is contained in a record the ombudsperson has reviewed and required disclosure of may seek declaratory relief or a writ of mandamus to obtain a judicial ruling precluding the state agency from improperly disclosing confidential information.
- 20) Permits the ombudsperson to provide written information, guidance, and advice to both public agencies and members of the public regarding the CPRA, including posting this information online.
- 21) Requires the ombudsperson to report specified information to the Legislature by January 1, 2025, and annually thereafter.
- 22) Sunsets the provisions of this bill as of January 1, 2027.

EXISTING LAW:

- 1) Establishes the CPRA, which governs the disclosure of information collected and maintained by state and local agencies. (Government Code Sections 7920 et seq.)
- 2) Generally requires public agencies to make public records available for inspection, unless an exemption from disclosure under the CPRA applies. (Government Code Section 7921.3)

- 3) Exempts numerous types of records from disclosure under the CPRA based on the character of the information in the records. (Government Code Section 7921.505)
- 4) Specifies that a public agency must justify withholding any record that is responsive to a CPRA request by demonstrating that the record in question is exempt under provisions of the CPRA (Government Code Section 7922).
- 5) Requires a public agency, within 10 days of receiving a request, to make a preliminary determination whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and to promptly notify the person making the request of its determination. (Government Code Section 7922.535)
- 6) Requires a response to a written request for inspection or copies of public records that includes a denial of the CPRA request to be in writing. (Government Code Section 7922.54)
- 7) Authorizes any person to institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records pursuant to CPRA. (Government Code Section 7923)
- 8) Provides for the mandatory award of court costs and attorneys' fees to plaintiffs who successfully obtain a court ruling ordering disclosure of withheld public records. (Government Code Section 7923.115)
- 9) Entitles the California State Auditor or their authorized representative to access all records and property of any public or private entity or person subject to review or regulation by the public agency being audited or investigated, unless expressly prohibited by law. (Government Code Section 8545.2)

FISCAL EFFECT: Unknown, this bill has not been analyzed by a fiscal committee.

COMMENTS:

This bill creates a CPRA Ombudsperson to receive requests for review from members of the public who believe a CPRA request was improperly denied by a state agency.

The CPRA requires documents and records of state and local agencies to be open and available for public inspection unless they are exempt from disclosure. Exemptions generally include personnel records, investigative records, drafts, and material made confidential by other state or federal statutes. In addition, CPRA authorizes a record to be withheld whenever the public interest in nondisclosure clearly outweighs the public interest in disclosure.

Under CPRA, when a state or local agency withholds a record because it is exempt from disclosure, the agency must notify the requester of the reasons for withholding it. This bill applies only to requests denied by state agencies.

Currently, the only remedy available to a requester whose public records request has been denied is to file a lawsuit in superior court to compel disclosure of the records. This bill establishes an alternative mechanism for a member of the public to seek an appeal of a CPRA denial.

According to the Author:

“Government exists to serve the public. The government must be transparent and accountable to the people we serve. State agencies should not be able to abuse the PRA by denying public records requests by simply citing irrelevant PRA exemptions. This bill seeks to end this abuse by establishing a PRA ombudsperson to referee whether the PRA request is legitimate.”

Arguments in Support:

According to Oakland Privacy, “Independent ombudsperson offices provide services much like conflict mediation, potentially providing expert guidance before a dispute hits the court system with the expense that can entail. States that use an ombudsperson system include Alaska, Arizona, Connecticut, Hawaii, Illinois, Indiana, Iowa, Kansas, Massachusetts, New Jersey, and Pennsylvania. [...] It is simply good policy to encourage the unfettered revelation of findings that inform constituents in the community on local and state government activities. An ombudsman provides a valuable and proven service to the journalists, citizen groups, and researchers that rely on California's Public Records Act.”

Arguments in Opposition: None received.

PRIOR LEGISLATION:

AB 343 (Fong) of 2022 was very similar to this bill and would have established a California Public Records Act Ombudsperson within the California State Auditor's Office to review CPRA requests denied by state agencies. This measure failed passage in the Senate Governmental Organization Committee.

AB 289 (Fong) of 2019 was very similar to this bill and would have established a California Public Records Act Ombudsperson within the California State Auditor's Office to review CPRA requests denied by state agencies. This measure failed passage in the Senate Judiciary Committee.

AB 1479 (Bonta) of 2017 would have required, until January 1, 2023, a public agency to designate a person or office to act as the agency's custodian of records in order to respond to any request made for a public record and any inquiry from the public about a decision by the agency to deny a request for records. This measure was vetoed by the Governor, who stated, in part, “I am not convinced this bill would have any measurable impact on the speed or accuracy in responding to CPRA requests... this bill has the potential to further confuse an already complex process.”

AB 1707 (Linder) of 2016 would have required a public agency, when withholding a record requested pursuant to the CPRA, to demonstrate in a written response that the record in question is expressly exempt and would have also required the agency to identify the type or types of record withheld and the specific exemption that justifies withholding that type of record. This measure was held in the Assembly Local Government Committee.

DOUBLE REFERRAL: This bill has been double referred. Should it pass this committee, it will be re-referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Licensed Investigators
Howard Jarvis Taxpayers Association
Oakland Privacy
Ryan, LLC

Opposition: None received.

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