

A.: I have heard reports like this from several residents of Grover Beach, and it really bothers me. From my experience, when a public entity improperly withholds public records, it (and/or its city attorney) is attempting to hide something. It takes a great deal of courage to stand up to a public entity, and there are specific procedures for the public's assistance under these circumstances.

The California legislation enacted Chapter 3.5 of the Government Code in 1968, entitled, "Inspection of Public Records," which reads as follows: "In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." This chapter is known as the "California Public Records Act" (Government Code section 6251).

Government Code section 6253(c) provides, in pertinent part, that: "Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available." There is a long list of "exemptions" contained in section 6254.

"Public records" is defined in Government Code section 6252(e) as including "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." And, the term "writing" is defined in section 6252(g) as: "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored."

It is important to note that nothing in the California Public Records Act "shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial."

If you feel that public records are being improperly withheld (because no exemption applies), you may file a petition with the Court. Government Code section 6259(a) provides as follows: "Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow." In addition, subsection (b) states that: "If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the

record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure."

Note that the Court's determination is "immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ" (subsection (c)), and the Court will award court costs and reasonable attorney's fees to the prevailing party: "The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency."

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