

California Department of Food and Agriculture  
Division of Measurement Standards  
California Type Evaluation Program (CTEP)

**Safeguarding Proprietary Information Procedures**

In the course of the type evaluation process, the Division of Measurement Standards (DMS) California Type Evaluation Program (CTEP) often becomes privy to proprietary information related to the device, manufacturing techniques, etc. This information is the property of the applicant. CTEP is only the custodian of the information. All DMS employees with knowledge of proprietary information are bound to protect and limit access to applicant's information and data developed during the type evaluation process, to properly authorized organizations or individuals (e.g., only the applicant or National Type Evaluation Program (NTEP) staff, if the applicant is seeking a NTEP Certificate of Conformance).

As required by State law, the Department of Food and Agriculture has a Public Records Act Policy (see attached). Government Code § 6254(n) establishes that statements of personal worth and financial data required by DMS to establish qualification for a Certificate of Approval are exempt from disclosure under the Public Records Act.

## *Purpose*

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Is the policy of the Department of Food and Agriculture to comply with the California Public Records Act (PRA).

This policy establishes the procedures for processing a PRA request. It addresses the law, the request, the record, the response, fees, and exemptions to disclosure.

## *Authority*

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Article 1, Section 3, California Constitution

The California Public Records Act (Government Code §§ 6250 *et seq.*)

Information Practices Act of 1977 (Civil Code §§ 1798 *et seq.*)

Executive Order S-03-06

## *Primary Responsibility – Legal Office*

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The Legal Office shall be primarily responsible for receiving and responding to California Public Records Act Requests, and to train CDFA employees on the requirements of the Act. The Legal Office should be notified of all requests unless it has authorized a Division or Branch to handle a request in a manner different from that set forth in this policy. Authorization may be given for the processing of routine requests such as license data.

All PRA requests shall be forwarded to the Legal Office. The Legal Office may be contacted at (916) 654-1393 or e-mailed at [sichiho@cdfa.ca.gov](mailto:sichiho@cdfa.ca.gov).

Although the Legal Office has primary responsibility for responding to PRA requests, Department staff has responsibility for providing records responsive to the request for Legal Office review. In addition, the Branch staff will provide the Legal Office with information regarding use and confidentiality of the records. Therefore, Department staff must understand the requirements of the Public Records Act and this policy.

## *The Law*

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The California Public Records Act (PRA), Government Code §§ 6250 *et seq.*, states that every citizen has the right to inspect and/or obtain a copy of any public record. The requestor is not required to provide a reason for requesting a public record. If a document is a public record, its possible use is immaterial to its release. The purpose of the PRA is stated in Government Code § 6250, which reads in part,

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“...access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” Consequently, the California Department of Food and Agriculture (CDFA) policy is to disclose all public records unless they are specifically exempted under the PRA (Gov. Code § 6254), other statutory enactments (e.g., Gov. Code § 11183), or the public interest in nondisclosure clearly outweighs the public interest in disclosure (Gov. Code § 6255).

The Information Practices Act of 1977, Civil Code §§ 1798 *et seq.*, also governs the disclosure of information by the government. The type of information covered is personal or confidential information gathered by the government. The general rule is that personal or confidential information should not be disclosed. The exceptions to nondisclosure of information are found in Civil Code § 1798.24. Civil Code §§ 1798.24(b), (g), (h) and (i) provide for disclosure, with permission, under the PRA, with adequate assurance by the party to whom the information is being disclosed, and for compelling reasons.

PRA requests must be distinguished from subpoenas *duces tecum*. Subpoenas are court orders and can reach records exempt from disclosure under the PRA. All subpoenas should be referred to the Legal Office.

The Freedom of Information Act (FOIA) is a federal law that applies only to federal agencies. However, if a request is received stating that the request for information is pursuant to FOIA, the request should be treated as a Public Records Act request.

### *The Request*

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Although the Public Records Act does not require a request for records be in writing, it facilitates accuracy if a request is in writing. Therefore, if a request is made verbally, the requestor should be asked to put the request in writing.

If copies of voluminous records are requested, the requestor should be asked to sign an agreement to pay or place a deposit.

All requests for records must reasonably identify the desired records so that the records can be located. If the request is so vague or overbroad that it is impossible to identify the desired records, the agency is required to assist the requestor to make a focused and effective request that reasonably describes an identifiable record or records. (Gov. Code § 6253.1(a)) The agency shall, to the extent reasonable under the circumstances, do the following:

- 1) Assist the requestor to identify records and information that are responsive to the request or to the purpose of the request, if stated.

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- 2) Describe the information technology and physical location in which the records exist.
- 3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These requirements are deemed to have been satisfied if the agency is unable to identify the requested information after making a reasonable effort to obtain additional information that will help identify the record or records. In addition, these requirements do not apply if the agency: 1) makes available the requested records, 2) determines that the request should be denied and bases that determination solely on an exemption pursuant to Government Code section 6254, or 3) makes available an index of its records.

### *The Response*

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While records are open to inspection by the public during the normal office hours at the location where the records are kept, access may depend on the availability of staff, whether the records are kept on site, the kind of records, whether the records have to be reproduced, and a number of other factors.

If the records are not of the type generally available without review, e.g., licensing records, the person should be asked to make an appointment for the inspection and/or copying of public records, or advised that he or she will be notified within 10 days of the determination of whether the records will be released.

Under the PRA, state agencies have 10 days to make a determination whether the records requested, in whole or in part, will be disclosed. A special two-day rule applies to conflict of interest statements [check with the Legal Office]. Whether the request is by telephone, in person, or by correspondence, the requestor should have no expectation that he or she will be able to inspect and copy records immediately, unless the records are of the type generally available without review.

The Legal Office shall handle all responses to public records requests. The Legal Office staff shall notify the Branch Chief that a request has been received and what documents are required to respond to the request.

The Branch Chief shall direct the appropriate Custodian of Records to provide copies of the requested records to the Legal Office to determine whether the records are responsive to the request, and are appropriate for disclosure or exempt from disclosure. The Legal Office will generally prepare the response, but may direct the Branch Chief to respond directly, if appropriate.

Legislative requests should be processed as above, except that the Legislative Director should also be notified.

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### *Response Time Frame and Notice of Determination*

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Within 10 days from receipt of the request for records, the agency must determine whether the request, in whole or in part, seeks copies of disclosable public records and shall notify the requestor of the determination.

In unusual circumstances, the time limit may be extended for an additional 14 days upon written notice by the Secretary or his/her designee to the requestor, setting forth the reasons for the extension and the date on which the determination is expected to be made. For purposes of an extension, unusual circumstances are the following:

- 1) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;
- 2) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request;
- 3) the need to consult with another agency having a substantial interest in the determination or the need to consult with multiple components of the Department having substantial interest in the determination; or
- 4) the need to compile data, to write programming language or a computer program or to construct a computer report to extract data.

If a determination is made that the records are disclosable, the notice must state the estimated date and time when the records will be made available.

If a determination is made that the records are not disclosable, the notice must state the reasons why, and the name and title of the person making the determination. (Gov. Code § 6253)

### *Determining Whether Records May Be Released*

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When a request for a reasonably identifiable record is received, the Legal Office shall determine if the public record is exempt from disclosure. Public records must be disclosed unless exempt under Government Code §§ 6254, 6275 *et seq.*, or other applicable law. Disclosable public records are those which a) relate to the public's business; b) do not fit under one of the exceptions to disclosure; and c) are kept in the ordinary course of business.

Generally a public record is defined as "any writing containing information relating to the conduct of the public's business..." which includes any

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“handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, or other documents.” (Gov. Code § 6252(e))

Records maintained by this Department are subject to numerous exemptions. Some of these are discussed in this policy under the section titled “Exemptions to the Public Records Act.” Public records are disclosable unless one of the exemptions apply.

Working notes of Department employees may be exempt under Government Code § 6254(a). Special attention should be given to working notes. Working notes are those personal notes which are created on Department time, are regularly relied upon, and are used professionally to create final documents. Working notes which are not intended to serve as permanent records should be routinely purged in accordance with the Records Management Policy (Administrative Manual section 8.11.1) and applicable Records Retention Schedule. Notes which are retained for more than six months to one year after creation may be treated as public records subject to disclosure. These notes are discoverable through subpoena if they are kept by the employee and used to refresh his/her recollection prior to or during a legal proceeding. PRA requests must be distinguished from subpoenas duces tecum. Subpoenas are court orders and can reach records exempt from disclosure under the PRA.

Only those records kept in the ordinary course of business are subject to disclosure. For example, if a compiled list of growers is not used in the normal course of business, then it may not be disclosable.

Lists that are compiled and distributed by the Department for official purposes may be distributed without charge. Other lists, such as names of officials, approved devices, and names and addresses of licensees, may be furnished upon payment of copying fees, if the information is not otherwise exempt from disclosure.

If a document should have been purged under the current Records Retention Schedule, but is present at the time of a request, the proper practice is to produce it, if it is not otherwise exempt. If in doubt, consult the Legal Office.

Additionally, it is the Department's policy that records that contain confidential information should be identified as such at the time submitted by the supplier of the information, if possible. The supplier of confidential information may be notified of public records requests concerning such information. In limited situations, where the confidential nature of a record is in doubt, the Department may advise the supplier of the Department's intent to disclose and, as a courtesy, may give 10 days to obtain a court order.

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If a supplier of records wishes the records returned, the supplier must request the return of such records *at the time the records are supplied* to CDFA. Alternatively, at the time the records are supplied to CDFA, the supplier may authorize their destruction by CDFA after they are no longer of use to CDFA. Requests for the return or destruction of records may not be made or granted to avoid producing the requested records pursuant to a PRA request.

Forms that are used for collecting confidential data should be designed so that any public information can be easily segregated from confidential information. Special care should be given to computer records which need to be properly formatted and secured.

Records that are exempt from public disclosure may be released to other governmental agencies that agree to treat the records as confidential and respect their protected status. The information so obtained by another governmental agency shall be used only for purposes that are consistent with existing law and shall be disclosed only to employees or officials of the agency who are authorized in writing by the head of the agency to obtain it. (Civ. Code § 1798.24 and Gov. Code § 6254.5(e)) Government agency requests for exempt records must be approved by the Legal Office and the Secretary.

### *Public Records Requiring Redaction*

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If portions of a record are exempt from disclosure, access to the record should not necessarily be denied. The record should be redacted, i.e., exempt portions should be blacked out, and the redacted document released. (Gov. Code § 6253(a))

### *Approval of a Request*

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If the determination is to grant the request for inspection, a written notice informing the requestor of the determination shall be sent to the requestor. The estimated date and time when the records will be made available shall be stated in the notice. (Gov. Code § 6253(c))

If the request is for copies of records, an invoice for the copying costs shall be included with a notice informing the requestor that the records will be released upon payment of the fees. See below for Fees.

## Denial of a Request

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If the determination is made to deny the request for records in whole or in part, a written notice which includes the reason(s) for denying the specific document(s) and the name and title or position of the person responsible for the determination shall be sent to the requestor. (Gov. Code §§ 6253, 6255)

## Fees

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The fees for photocopies of records requested under the PRA shall be 10¢ per page. Fees for other media (e.g., computer disks, tape, etc.) are not standardized and should be charged at the actual cost. If in doubt, consult your Division Director or the Division of Administrative Services.

Documents that are compiled and distributed by the Department for official purposes, such as lists or informational brochures/pamphlets, may be distributed without charge.

Postage may be charged at the actual cost for postage and packaging.

There is no charge for inspection of records.

## Exemptions to the Public Records Act

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There are several exemptions to disclosure of records or information contained in the PRA. Please see Gov. Code §§ 6254 – 6276.48 for these specific exemptions. In addition to those sections, the following should be used as additional guidance.

### 1. Confidential records

The following records are confidential:

#### a) Personnel records:

1. Applications for State civil service examinations. (Gov. Code § 18934)
2. Employee appeals to, and subsequent communications with, the State Personnel Board. (Gov. Code § 18952)
3. Information required by the State Personnel Board in connection with appointments, separations from service, or other changes in position or salary or other matters affecting the status of positions or the performance of duties of employees in State civil service. However, an employee may inspect records pertaining to his or her own service, including comments and item ratings on reports of performance, written and performance tests and oral examinations and medical condition. (Gov. Code § 18573)



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4. Examination materials and questions, unless inspection is authorized. (Gov. Code § 18934)
  5. Employee home address and telephone number. (Gov. Code § 6254.3)
- b) Personal data
- Government Code §§ 6254(c) and 6255, and Article 1, Section 1, of the California Constitution, acknowledge the reasonable expectation of privacy for complainant's identity, address, phone number, and other personal information. (See also section i. below regarding "records of complaints.") This exception may be terminated upon the completion of an administrative, civil, or criminal proceeding. The same expectation of privacy does not apply to respondents who are licensees of the Department.
- c) Records containing information acquired from private books, documents or papers resulting from an investigation pursuant to Gov. Code §§ 11180-11183. If these sections are to be used, the investigator should clearly advise the record provider that the records are received under a pledge of confidentiality. Upon completion of the investigation, any materials which have been obtained from third parties should be returned or destroyed at the option of the third party.
- d) Individual reports of handlers of farm products required to be filed with the Secretary, pursuant to Food and Ag. Code §§ 58775 and 58781, and Gov. Code § 6254(k).
- e) Reports made by distributors, handlers, or manufacturers of milk, cream or dairy products pursuant to Food and Ag. Code §§ 61443, 62243, 62712, and Gov. Code § 6254(k).
- f) Lists of persons reporting, and reports made by farmers, stockmen, processors, dealers, handlers, and others, to the California Crop and livestock Reporting Service, and tabulated copies of such reports and copies of reports made to the Federal Crop Reporting Board at Washington, D.C. (Gov. Code § 6254(e) and 18 United States Code § 1902)
- g) Confidential business and financial information, including:
- 1) Statements of personal worth or financial data required by the Department to establish qualification for a license, certificate, or permit. (Gov. Code § 6254(n))
  - 2) Volume of business, costs and prices, customers, financial

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condition, trade secrets, and similar information obtained under and expressed or implied pledge of confidence. (Gov. Code § 6254(k), in conjunction with Ev. Code § 1060, and Food & Ag. Code §§ 14622 (fertilizer), 14978.5 (feed inspection), Gov. Code §§ 6254(e), 11180-11183 and Food and Ag. Code §§ 58781, 59202, 61443, 62243)

Absent a pledge of confidentiality under Gov. Code §§ 11180-11183, when this confidential business or financial information is obtained, the third party must identify the information as trade secrets, proprietary, etc., or the Department may release the information. The Department employee should clearly identify the confidential information when taken from the third party. However, licenses, permits, and certificates, other than as noted in section 2 below, issued by the Department are public, as well as bonds filed in support thereof. Identified confidential records should be returned to their source upon conclusion of the need for such records. (Gov. Code §§ 6254(n) and 6255)

- h) Negotiated settlements or settlement agreements including statements made during a negotiation or written into a settlement agreement if there is a court order. (Gov. Code § 6254(k) in conjunction with Ev. Code § 1152, *Freedom Newspapers v. Co. of Orange*)
- i) Records of complaints to, or investigations conducted by, the Department, the Attorney General, or a police organization for law enforcement or licensing purposes. Upon completion of the investigation, any information from a third party should be returned or destroyed at the option of the third party. Groundless complaints need not be disclosed. (Gov. Code § 6254(f), *Williams v. Superior Court* (1992) 3 Cal. App. 4th 1292)
- j) Records pertaining to pending Board of Control claims or litigation in which the State is involved. Upon completion of the claim or litigation, any information from a third party should be returned or destroyed at the option of the third party. (Gov. Code § 6254(b))
- k) Correspondence of and to the Governor or employees of his office. Examples of such correspondence are legislative proposals and budget proposals prior to approval. (Gov. Code § 6254(l))
- l) Records that disclose a “deliberative process.” This includes information forwarded to high level policy making employees for the purpose of contemplating or developing policies. These records, which might reveal thought processes are exempt from disclosure under Gov. Code § 6254(f), as well as *Times Mirror Co. v. Superior Court* (1991) 53 Cal. 3d 1325. These courts have decided that these types of strategies must be kept confidential if the Department is to achieve its objectives and protect the public. This type of analysis would also be supported by Gov. Code § 6255. (*Citizens for*

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a *Better Environment v. Department of Food and Agriculture* (1985) 171 Cal. App. 3d 704, *Roberts v. City of Palmdale* (1993) 5 Cal. 4th 363)

- m) Plant production data and similar information obtained under a pledge of confidence. When this confidential business or financial information is obtained, the third party must identify the information as trade secrets, proprietary, etc., or the Department may release the information. The Department employee must mark the information as “confidential” when taken from the third party. (Gov. Code §§ 6254(e), 6255)
- n) Preliminary drafts, notes, or interagency or intra-agency memoranda, not retained in the ordinary course of business, provided that the public interest in withholding such records clearly outweighs the public interest in disclosure. In determining whether preliminary drafts, etc., are to be retained, review your Records Retention Schedule, the Records Management Policy, and branch policy as to whether their retention is required. (Gov. Code § 6254(a))
- o) Bid proposals for a government contract:
  - 1) Prior to award of the contract,
  - 2) Which were not accepted by the government but are subject to confidentiality, or
  - 3) Which were accepted by the government and the proposal contains proprietary information.

Persons making bids on government contracts should be asked to identify potentially confidential information. (Public Contract Code § 10165)

### 2. Qualified confidential records

The following records may be disclosed only to persons who have a direct financial interest in the particular transaction or, to other interested persons if a written response is received from the principal. (Civ. Code § 1798.24(b) (Information Practices Act), Food and Ag. Code §§ 58775 (California Marketing Act of 1937) and 58781; see also Gov. Code §§ 6254(f), (n), and California Constitution Article 1, Section 1 (regarding an individual’s right to privacy))

- a) Inspection reports, other records and correspondence written in anticipation of regulatory or disciplinary action about specific:
  - 1) business operations, premises, equipment, or products that have been found not to comply with laws and regulations; or

- 2) products that are of inferior quality; or
- 3) such premises, crops, livestock, or other products that have been found to be either infected or infected with pests or diseases.

(Gov. Code § 6254(f), (n); see also Food and Ag. Code §12532, 14622, 14978.5)

However, the following records are disclosable: notices of violation, citations, quarantine orders, notices of required action, abatement orders, hearings, and court actions; published results of examination or chemical analysis of official samples of fertilizing materials (Food and Ag. Code § 14604), and official compilations of weights and measures violations (Business and Professions Code § 12103).

- b) Certificates of inspection and reports of analysis for individual persons or firms, when such certificates or reports are issued as a service upon payment of a fee, and indicate the quality or grade of the product. Examples are: shipping point inspection certificates, field crop inspection certificates, reports of seed analyses, and canning tomato inspection certificates. However, the fact that the Department made an inspection or issued a report is public. (Food and Ag. Code §§ 40812, 42761, 52061, 52361, and 52421)

### 3. Marketing Act Lists

Lists of producers or handlers developed pursuant to Food and Ag. Code § 58775 (California Marketing Act of 1937), or comparable authority, may be released only with the approval of the Secretary and subject to such conditions as will assure that they are to be used for a purpose authorized by law and relating to a proposed or established marketing program, except that such lists are public after introduction in a public hearing pursuant to Food and Ag. Code § 58782 or similar public hearing.

### 4. Confidential records to other government agencies

Confidential records may be made available to a cooperating government agency when necessary for Department business, when not restricted by law, and when adequate provision is assured to maintain confidentiality. Confidential records should only be released to other public officers who have a demonstrated official need for the information. (Civ. Code § 1798.24(e))

### 5. Other

Other exemptions from disclosure are contained in Government Code §§ 6275-6276.48. Please note that the list is not all inclusive, and the listing of a statute does not itself create an exemption. Please carefully review the applicable statute to determine the extent to which the statute exempts records from

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disclosure. If in doubt, contact the Legal Office.

### *Distribution*

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Distribution of the above policy includes Division Directors, Branch Chiefs, Administrative Assistants, Executive Assistants, Legal Office, and all office locations.

Questions regarding this policy may be directed to the Legal Office at (916) 654-1393 or CALNET 8-464-1393.