

The CalAware Guide to Open Meetings in California

UPDATES

Page 13 Insert, after paragraph headed *Agency vis-avis Institution*:

Joint Powers Agency as “Other Local Public Agency”

A court has concluded that a joint powers agency created by agreement among most cities in Los Angeles County to investigate and curtail illegal drug activities and other crime was an instance of an “other local public agency” subject to the Brown Act under Government Code Section 54951. The court identified as hallmarks of a “public” agency that it has been created by statute or the state constitution, quoting with approval *Amoco Corp. v. C.I.R.*, 138 F.3d 1139 (1998):

A typical governmental instrumentality, if one can be said to exist, is created by an enabling statute that prescribes the powers and duties of the instrumentality, and specifies that it is to be managed by a board selected by the government in a manner consistent with the enabling law. The instrumentality is typically established as a separate juridical entity, with the powers to hold and sell property and to sue and be sued.

The court found that the joint powers law enforcement agency was a public agency, formed pursuant to the Joint Exercise of Powers Act (Government Code § 6500 *et seq.*), in that the memorandum of understanding (MOU) signed by the cities in establishing the relationship resulted in an entity—L.A. I.M.P.A.C.T.—given the authority to employ municipalities' police powers and public funds throughout Los Angeles to fight drugs, money laundering, and terrorism. Numerous cities throughout Los Angeles County authorized participation in the MOU. In accordance with the terms of the MOU, L.A. Impact is governed by a board of directors and executive council, with operations conducted under a separate command structure.

It is a fiscally separate entity, subject to strict accounting procedures. According to the MOU, funding for L.A. Impact's activities is obtained through public grants routed through member cities, through contributions of personnel and equipment contributed by member cities, and primarily through the division of the proceeds of seized assets from the activities that L.A. Impact decides to target. It even determines its own formula for the distribution of proceeds of assets it seizes. In fact, as of 2004, it had an "operating account" of over \$9 million, of which over \$5 million was attributable to the asset forfeitures L.A. Impact had secured.

Also, pursuant to the MOU, L.A. Impact can enter into contracts, which it has done. It purchased its own "rotorcraft" and arranged with the City of Pasadena to hangar and maintain it at the Pasadena Heliport.

The court noted the defendant agency's argument that "the absence of any specific language indicating the creation of a separate entity supports the inference that no separate entity was created by agreement," but concluded, "In light of the foregoing evidence, this contention is of no consequence." The court also rejected the argument that no separate entity was formed because "not all city councils may have formally agreed to the MOU.

Once at least two city councils agreed to create L.A. Impact as a separate entity, as we conclude occurred, it became a local public agency whose legislative body is subject to the Brown Act. (§ 6502 ["two or more public agencies by agreement may jointly exercise any power common to the contracting parties"].)

A final clincher for the court was the fact that the police chiefs could not have entered into this task force without the cities' authorization. Section 6502 requires a legislative body's approval before "public agencies by agreement may jointly exercise any power common to the contracting parties." As the trial

court correctly noted, nothing in Penal Code section 830.1 (which sets forth the authority of peace officers) gives "police chiefs as individuals or the police chiefs association as a private organization the power to form a permanent joint task force with permanent governing bodies utilizing city employees and equipment." Given that L.A. Impact could not have come into existence without the cities' approval, it follows that the cities created the task force.

McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force, 134 Cal.App.4th 354 (2005).

Page 14 Insert, before § 1-2(b)(2): **Bodies Created by Legislative Bodies:**

Governing Bodies of Joint Powers Agencies

A court has concluded that the board of directors and executive committee of a joint powers agency created by a memorandum of understanding (MOU) among most cities in Los Angeles County to investigate and curtail illegal drug activities and other crime are "governing bod[ies]" of a local agency pursuant to § 54952 (a.)

According to the MOU, the board of directors is "responsible for establishing policy and overall strategy for the Executive Council." And, the executive council directs the "policy, procedures and affairs of the organization." Undeniably, L.A. Impact's board of directors and executive council are legislative bodies, whose meetings are subject to the Brown Act.

McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force, 134 Cal.App.4th 354 (2005).

Page 15 Insert, after paragraph headed *Application to Community College Faculty and Student Bodies*:

Application to Board of Joint City-Union Trust Fund

The Attorney General has concluded that §54952 (b) does not apply the Brown Act to the meetings of the board of a certain "jointly

administered trust fund, whose members are appointed equally by a city and a labor union representing city employees and whose purpose is to address labor-management issues relating to the health, safety, and training of city employees” since

half of its members are appointed by the Union as part of the collective bargaining agreement. It thus cannot be considered a “board . . . of a local agency,” such as a city planning commission or county civil service commission, which has all members appointed by the local agency. (See Cal. Attorney Gen. Office, *The Brown Act: Open Meetings for Local Legislative Bodies* (2003) pp. 5-6; cf. *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799 [city council and city planning commission each appointed representatives to advisory body of the city council].)

Opinion No. 03-1107 (2/24/04).

Page 19 Insert, after paragraph headed *Delegation to Business Corporation*:

Application to Board of Joint City-Union Trust Fund

The Attorney General has concluded that §54952 (c)(1)(A) did not apply the Brown Act to the meetings of the board of a certain “jointly administered trust fund (JSI), whose members are appointed equally by a city and a labor union representing city employees and whose purpose is to address labor-management issues relating to the health, safety, and training of city employees.” Stating the issue as being whether the board was “an entity that exercises “authority that may lawfully be delegated [to it] by the elected governing body,” the opinion observed that in answering that question, “we look first to the Trust:”

The Trust contains the following provision, which confirms that the Department has a continuing and independent duty to provide for the safety and health of its employees notwithstanding the creation of JSI:

"Nothing in this Agreement shall be deemed or construed in any

way to alter, amend, or modify any provisions of any collective bargaining agreements by and between the [Department] and the [Union]. By entering into this Trust Agreement, the [Union] does not assume, and shall not be liable for breach of, any duty or responsibility the [Department] may have to provide a safe and healthful workplace. The Joint Safety Institute is an independent body, and not the agency, subsidiary, or affiliate of either the [Department] or the [Union]."

Consistent with this Trust provision is the Department's responsibility for the health and safety of its employees, which responsibility cannot be legally delegated to another entity. ...

We view the Board's activities and powers as providing an extension of the collective bargaining process between the Department and the Union. That is, the Board's decisions and actions in administering the Trust reflect evolving agreements between the Department and the Union about how to address employee health, safety, and training. In this regard, we note that under the federal Labor Management Relations Act (29 U.S.C. §§ 141-187) employer-employee safety committees, such as the JSI, are subject to protection as "labor organizations" (29 U.S.C. § 152(5)) from unlawful interference by the employer. ... Moreover, treatment of the Board's meetings as not subject to the Brown Act would be consistent with similar treatment for most labor-management negotiations, or "meet-and-confer sessions," conducted between designated representatives of a local agency and designated representatives of a union. (See 61 Ops.Cal.Atty.Gen. 1, 8 (1978) ["the Legislature in all probability did not intend to require bargaining committees to negotiate in public"].)

Hence, the nature of JSI and the powers of its Board are unlike those of the private entities found subject to the terms of section 54952, subdivision (c)(1)(A), by the courts and in our prior opinions. (See, e.g., *Epstein v. Hollywood Entertainment Dist. II Bus. Improvement Dist.* (2001) 87 Cal.App.4th 862 [private entity "was

formed and structured in such a way as to take over administrative functions that normally would be handled by City" and "City . . . retained plenary decisionmaking authority over the . . . activities"]; *International Longshoremen's & Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287 [city delegation of authority to private entity for the development and operation of harbor terminal]; 85 Ops.Cal.Atty.Gen. 55 (2002) [operation of and programming for public-access cable television channel]; 81 Ops.Cal. Atty.Gen. 281 (1998) [administration of community redevelopment agency's housing activities].) Here, in contrast, the Board may perform only limited collaborative functions as part of the collective bargaining process between the Department and the Union.

Opinion No. 03-1107 (2/24/04).

Application to Board of Joint Powers Agency

A court has concluded that the board of directors and executive committee of a joint powers agency created by a memorandum of understanding (MOU) among most cities in Los Angeles County to investigate and curtail illegal drug activities and other crime are, pursuant to Government Code Section 54952 (c)(1)(A),

"board[s]" or "multimember bod[ies]" that govern an entity, and L.A. Impact was delegated with authority possessed by city councils to exercise municipalities' police powers with public funds. Also . . . various municipalities in Los Angeles County were involved in the creation of L.A. Impact. Consequently, L.A. Impact's board of directors and executive council are legislative bodies subject to the Brown Act.

McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force, 134 Cal.App.4th 354 (2005).

Page 24 Insert, before paragraph headed *The Downey Phenomenon*:

Application to Board of Joint City-Union Trust Fund

The Attorney General has concluded that §54952 (c)(1)(B) did not apply the Brown Act to the meetings of the board of a certain “jointly administered trust fund (JSI), whose members are appointed equally by a city and a labor union representing city employees and whose purpose is to address labor-management issues relating to the health, safety, and training of city employees” because while “JSI is funded by the city, the Board cannot be considered a ‘legislative body’ ... since we are informed that the Board does not include a ‘member of the legislative body of the local agency.’” Opinion No. 03-1107 (2/24/04).

Page 46 Insert, before paragraph headed *Accommodations for the Disabled*:

Posting Agendas on an Electronic Touchscreen Kiosk

The Attorney General has concluded that §54952 (a) permits a city to use an

electronic kiosk (that) would be located in front of the city hall and would be accessible without charge to the public 24 hours a day, 7 days a week. Accessibility would be provided to disabled persons in compliance with state and federal law. ... The agendas of the meetings of all of the city's "legislative bodies," such as its commissions, committees, and boards (§ 54952), would be posted for viewing by touching the word "agenda" on the menu screen. The city anticipates that the new posting procedures will enhance public access, making it easier for members of the public to view agendas in an orderly and convenient manner.

... we believe that the term "posted," as used in subdivision (a) of section 54954.2, includes making agendas available on an electronic kiosk. "Post," in this context, commonly means "to affix (as a paper or bill) to a post, wall, or other usual place for public notices," "to publish, announce, or advertise by or as if by the use of a placard" (Webster's 3d New Internat. Dict. (2002) p. 1771), or "[t]o publicize or announce by affixing a notice in a public place"

(Black's Law. Dict. (8th ed. 2004) p. 1204, col. 1). In ordinary parlance, "posting" includes making use of an electronic format. (See *Ampex Corp. v. Cargle* (2005) 128 Cal.App.4th 1569, 1576 [act of "posting messages on the Yahoo! message board" constitutes making statements in a public forum, defined as place open to public where information is freely exchanged]; *Los Angeles Times Communications v. Los Angeles County Bd. of Supervisors* (2003) 112 Cal.App.4th 1313, 1319 [closed session protocols of county board of supervisors included requirement "that all written materials related to Board agenda items be posted on the County's web page"].)

Moreover, the posting of agendas on an electronic kiosk is consistent with the Act as a whole and furthers its purposes. Providing agendas in an electronic format permits citizens to obtain the information more conveniently than if the same documents were posted on a traditional bulletin board in paper form. Compared to a typical bulletin board, an electronic kiosk offers greater readability, better lighting, increased accessibility for disabled persons, and reduced vandalism.

Opinion No. 03-1107 (2/24/04).

Page 68 Insert, before paragraph headed *Scope of Comment at Regular versus Special Meetings*:

No Right to Comment on Addition to Already Posted Agenda

A court has held that this section's subdivision (a) requirement that the public be allowed to address the body on "each agenda item" does not compel a legislative body, in considering *whether to add an item* to the posted agenda, to take comments from the public on that proposition.

Section 54954.3, subdivision (a), requires the Board to allow members of the public to address it before or during consideration of an agenda item. The subdivision does not, however, require the

Board to allow members of the public to address it on whether to place an item on the agenda. There is simply nothing in the Brown Act that requires such public comment.

Bereft of support in the letter of the Brown Act, COLAB urges that we consider its purpose. It is true that the purpose of the Brown Act is to encourage public participation in government decisionmaking. But the Legislature has determined the purpose is achieved when the public has notice of and the right to comment on an agenda item before or during its consideration. The Legislature has left to the public agency the task of setting its agenda without public comment.

Coalition of Labor, Agriculture and Business v. County of Santa Barbara, 129 Cal.App.4th 205 (2005). This conclusion, however, does not affect the right to comment on matters not on the agenda, but within the body's subject matter jurisdiction, at some other point during the meeting.

Page 70 Insert, before paragraph headed *Viewpoint Neutrality and "Equal Time"*:

Adjusting Time Limits at Particular Meetings

A court has held that the San Francisco Sunshine Ordinance and the bylaws of the San Francisco Library Commission, both of which provided that "each person wishing to speak on an item ... shall be permitted to be heard for up to three minutes," did not preclude the commission from reducing speaker time to two minutes at a given meeting in anticipation of lengthy public reaction to particular items on the agenda. For one thing, the court noted, a previous ordinance provision had specified giving speakers "not less than three minutes" each, suggesting that the three-minute minimum had been knowingly abandoned. Also, in introducing the Sunshine Ordinance to city boards and commissions when it went into effect, the city attorney had noted that the "up to" three-minute standard meant that "bodies may impose shorter, reasonable time limits in their discretion." The court stated:

Moreover, as defendants point out, Chaffee's reading of the Sunshine Ordinance and Commission bylaws would lead to the result that public entities would lack discretion to **increase** the time available for public comments in appropriate circumstances--a result surely not intended by the Brown Act or the Sunshine Ordinance.

We do not mean to imply that restrictions on public comment time may be applied unreasonably or arbitrarily. However, there is no difficulty in imagining situations in which such limits would be appropriate. For instance, setting stricter time limits might be necessary in order to allow every member of the public who wished to speak to do so within the total time allotted for public comment, or in order to complete a meeting with a lengthy agenda within a reasonable period of time.

The court added that in such challenges, it is the plaintiff's burden to show that a specific decision to shorten speakers' time was unreasonable in the circumstances.

In light of the foregoing, we agree with the trial court that the undisputed evidence shows defendants did not violate the Sunshine Ordinance or the Brown Act in the September 4, 2003, meeting at issue here. (Chairman) Higuera stated in his declaration that before the meeting, he anticipated four items would be lengthy. Those items were the presentation of a report by two members of the library staff concerning the library's "affinity centers"; the presentation, discussion, and potential Commission action on the 2003-2006 Strategic Plan for the library; the presentation by the City Librarian on a proposed gift recognition policy; and a closed session with deputy city attorneys concerning pending litigation. Based on his judgment of the time required for the Commission to consider those four items and the other items on the agenda, Higuera concluded the Commission would not be able to complete its meeting in a reasonable period unless public comment was somewhat shortened. According to Higuera, meetings generally last between two and a half and three hours. When

Higuera left the meeting after three hours, it was still in progress, and the meeting minutes indicate it lasted more than four hours. This showing was sufficient to meet defendants' initial burden on summary judgment to show that one or more elements of the action could not be established or there was a complete defense to the cause of action, and the burden accordingly shifted to plaintiff to show the existence of a triable issue of material fact. ...

In our view, plaintiff failed to meet his burden. He stated in a declaration that it was not unusual for Commission meetings to have 12 or 13 items, and the 12-item agenda at the September 4, 2003, meeting was not unusually long. Whatever the number of agenda items that are usual at Commission meetings, plaintiff presented no evidence that Higuera did not reasonably expect the four items he enumerated to be lengthy, or that the Commission did not reasonably apply its bylaws in the circumstances.

Chaffee v. San Francisco Public Library Commission, 134 Cal.App.4th 109 (2005).

Page 81 Insert, before paragraph headed *Confidentiality of Matters Learned in Closed Session*:

Minutes Not Discoverable from District Attorney

A court has held that when a district attorney acquires the minutes of a lawfully closed session from a legislative body in the course of investigating whether action was taken unlawfully in the closed session, a third party may not use discovery to obtain the minutes from the district attorney, since such access is not provided for in Section 54957.2. Moreover, providing the minutes to the district attorney did not constitute a waiver of the section's confidentiality, since

Government Code section 6254.5, subdivision (e), provides that a legislative body may disclose an otherwise exempt document to another governmental agency if the agency agrees to treat the

document as confidential. The section provides a means for governmental agencies to share privileged materials without waiving the privilege. Because the District Attorney executed an agreement to keep the closed session minutes confidential, the privilege was not waived.

County of Los Angeles v. Superior Court of Los Angeles County, 130 Cal.App.4th 1099 (2005).

Page 95 Delete paragraph headed *Exception Available to Non-Governing Bodies* and substitute:

Party Status Required

A court has held that the power to hold a closed session on pending litigation is confined to a legislative body of a local agency that is an actual party to the litigation to be discussed. Accordingly, the board of directors of the Centre City Development Corporation (CCDC)—a nonprofit corporation created by the City of San Diego to coordinate the city’s real property acquisition process, but expressly precluded from conducting eminent domain actions—had no authority to hold closed session discussions on such litigation with the legal counsel of the city redevelopment agency. While under the general principles of the attorney-client privilege, the CCDC board might well have been seen to stand in the shoes of the redevelopment agency board as its authorized representative, the court concluded, those considerations were “irrelevant” in the context of the Brown Act, having been abrogated by the 1987 enactment of Section 54956.9, limiting the privilege’s closed session implications to the exact terms of the section:”

Under this narrow exception, the "legislative body of **a local agency**" may hold "a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation" (§

54956.9) when it is "[l]itigation[]" to which *the local agency* is a party" (*id.*, subd. (a)). Because we are required to narrowly interpret exceptions to the Brown Act's open meeting requirements ... , and the Brown Act does not expressly authorize one local agency to delegate to a second local agency the authority to meet in closed session with legal counsel, we conclude that the CCDC Board may not meet in closed session with legal counsel for the Agency to discuss the Agency's eminent domain litigation.

The court stated that a 1984 Attorney General's opinion (67 Ops.Cal.Atty.Gen. 111) concluding that an airport commission created by a county board of supervisors was permitted to hold closed-session meetings with county counsel about airport-related litigation in which the county board of supervisors was a defendant was also irrelevant since it was published before Section 54956.9 was enacted. *Shapiro v. Board of Directors of the Centre City Development Corporation*, 134 Cal.App.4th 170 (2005).

Page 95 Change paragraph heading from *Application of the Exception to Settlement Discussions* to *Application of the Exception to Settlement Discussions and Approvals*

Page 96 Add to paragraph ending *Southern California Edison Co. v. Peevey*, 31 Cal.4th 781, 801 (2003)):

But a court has concluded that

Section 54956.9's implied allowance for adoption of settlements in closed session ... may be subject to limits. And whatever else it may permit, the exemption cannot be construed to empower a city council to take or agree to take, as part of a non-publicly ratified litigation settlement, action that by substantive law may not be taken without a public hearing and an opportunity for the public to be heard. As a matter of legislative intention and policy, a statute

that is part of a law enacted to assure public decision-making, except in narrow circumstances, may not be read to authorize circumvention and indeed violation of other laws requiring that decisions be preceded by public hearings, simply because the means and object of the violation are settlement of a lawsuit.

Accordingly the court held that a city council's closed session adoption of a settlement agreement that “in essence granted” a developer/litigation opponent “a zoning variance for its 32-unit project, was not authorized by the section, and hence violated the Brown Act's open meeting requirements,” resulting in an agreement that was void on that ground alone, since the grant of such variances required a public hearing under both Government Code Section 65905 and the city’s municipal code. *Trancas Property Owners Association v. City of Malibu*, 138 Cal.App.4th 172 (2006).

Page 113 Insert, after paragraph headed *Performance Evaluation May Be Event-Specific*:

Performance Goals Set in Closed Session May be Confidential

A court has held that a community college district board’s discussion and setting of its superintendent’s “personal performance goals” in closed session created a reasonable expectation of privacy that, combined with other factors, left the text of those goals exempt from disclosure under the California Public Records Act, under Government Code Section 6254 (c). *Versaci v. Superior Court*, 127 Cal.App.4th 805 (2005).

Page 146 Add, immediately after *Id.* At 1782 (emphasis added):

The only other known accusation-triggered prosecution of public officials for violating the Brown Act—of three Tehama County supervisors for involvement in an alleged secret meeting in 1995—was suspended pending a recall election targeting the trio, which mooted the

proceeding by removing them all from office in 1996.

Page 267 Add, after text of Civil Code Section 1363.05:

Access to Meeting Minutes and Other Records

AB 1098, signed by the Governor in October 2005, added to the statute a new section requiring covered associations, commencing July 1, 2006, to make “association records,” for the current fiscal year and the previous two fiscal years available for inspection and copying by an association member, or the member's designated representative, subject to payment of specified costs. The law requires the association to make the records available within 10 business days of receipt of the request for current association records, or 30 calendar days of receipt of the request for association records prepared during the previous two fiscal years. It requires that minutes of member and board meetings be made permanently available and that “(i)f a committee has decisionmaking authority, minutes of the meetings of that committee shall be made available commencing January 1, 2007, and shall thereafter be permanently made available.” It states that these provisions apply to any community service organization or similar entity that is related to the association. It specifically authorizes a member to sue in small claims court to enforce his or her right to inspect and copy association records if the amount demanded does not exceed the jurisdiction of that court. The bill would also authorize the court to assess a civil penalty of up to \$500 for the denial of each separate written request. The bill would make other related changes.

The new Civil Code Section 1365.2 states:

- (a) For the purposes of this section, the following definitions shall apply:
 - (1) "Association records" means all of the following:
 - (A) Any financial document required to be provided to a member in Section 1365.
 - (B) Any financial document or statement required to be provided in Section 1368.

(C) Interim unaudited financial statements, periodic or as compiled, containing any of the following:

(i) Balance sheet.

(ii) Income and expense statement.

(iii) Budget comparison.

(iv) General ledger. A "general ledger" is a report that shows all transactions that occurred in an association account over a specified period of time.

The records described in this paragraph shall be prepared in accordance with generally accepted accounting principles.

(D) Executed contracts not otherwise privileged under law.

(E) Written board approval of vendor or contractor proposals or invoices.

(F) State and federal tax returns.

(G) Reserve account balances and records of payments made from reserve accounts.

(H) Agendas and minutes of meetings of the members, the board of directors and any committees appointed by the board of directors; excluding, however, agendas, minutes, and other information from executive sessions of the board of directors as described in Section 1363.05.

(I) (i) Membership lists, including name, property address, and mailing address, if the conditions set forth in clause (ii) are met and except as otherwise provided in clause (iii).

(ii) The member requesting the list shall state the purpose for which the list is requested which purpose shall be reasonably related to the requester's interest as a member. If the association reasonably believes that the information in the list will be used for another purpose, it may deny the member access to the list. If the request is denied, in any subsequent action brought by the member under subdivision (f), the association shall have the burden to prove that the member would have allowed use of the information for purposes unrelated to his or her interest as a member.

(iii) A member of the association may opt out of the sharing of his or her name, property address, and mailing address by notifying

the association in writing that he or she prefers to be contacted via the alternative process described in subdivision (c) of Section 8330 of the Corporations Code. This opt-out shall remain in effect until changed by the member.

(J) Check registers.

(2) "Enhanced association records" means invoices, receipts and canceled checks for payments made by the association, purchase orders approved by the association, credit card statements for credit cards issued in the name of the association, statements for services rendered, and reimbursement requests submitted to the association, provided that the person submitting the reimbursement request shall be solely responsible for removing all personal identification information from the request.

(b) (1) The association shall make available association records and enhanced association records for the time periods and within the timeframes provided in subdivisions (i) and (j) for inspection and copying by a member of the association, or the member's designated representative. The association may bill the requesting member for the direct and actual cost of copying requested documents. The association shall inform the member of the amount of the copying costs before copying the requested documents.

(2) A member of the association may designate another person to inspect and copy the specified association records on the member's behalf. The member shall make this designation in writing.

(c) (1) The association shall make the specified association records available for inspection and copying in the association's business office within the common interest development.

(2) If the association does not have a business office within the development, the association shall make the specified association records available for inspection and copying at a place that the requesting member and the association agree upon.

(3) If the association and the requesting member cannot agree upon a place for inspection and copying pursuant to paragraph (2), or if the requesting member submits a written request directly to the association for copies of specifically identified records, the

association may satisfy the requirement to make the association records available for inspection and copying by mailing copies of the specifically identified records to the member by first-class mail within the timeframes set forth in subdivision (j).

(4) The association may bill the requesting member for the direct and actual cost of copying and mailing requested documents. The association shall inform the member of the amount of the copying and mailing costs, and the member shall agree to pay those costs, before copying and sending the requested documents.

(5) In addition to the direct and actual costs of copying and mailing, the association may bill the requesting member an amount not in excess of ten dollars (\$10) per hour, and not to exceed two hundred dollars (\$200) total per written request, for the time actually and reasonably involved in redacting the enhanced association records as provided in paragraph (2) of subdivision (a). The association shall inform the member of the estimated costs, and the member shall agree to pay those costs, before retrieving the requested documents.

(d) (1) Except as provided in paragraph (2), the association may withhold or redact information from the association records for any of the following reasons:

(A) The release of the information is reasonably likely to lead to identity theft. For the purposes of this section, "identity theft" means the unauthorized use of another person's personal identifying information to obtain credit, goods, services, money, or property. Examples of information that may be withheld or redacted pursuant to this paragraph include bank account numbers of members or vendors, social security or tax identification numbers, and check, stock, and credit card numbers.

(B) The release of the information is reasonably likely to lead to fraud in connection with the association.

(C) The information is privileged under law. Examples include documents subject to attorney-client privilege or relating to litigation in which the association is or may become involved, and confidential settlement agreements.

(D) The release of the information is reasonably likely to compromise the privacy of an individual member of the association.

(E) The information contains any of the following:

(i) Records of a-la-carte goods or services provided to individual members of the association for which the association received monetary consideration other than assessments.

(ii) Records of disciplinary actions, collection activities, or payment plans of homeowners other than the homeowner requesting the records.

(iii) Any person's personal identification information, including, without limitation, social security number, tax identification number, driver's license number, credit card account numbers, bank account number, and bank routing number.

(iv) Agendas, minutes, and other information from executive sessions of the board of directors as described in Section 1363.05, except for executed contracts not otherwise privileged. Privileged contracts shall not include contracts for maintenance, management, or legal services.

(v) Personnel records other than the payroll records required to be provided under paragraph (2).

(vi) Interior architectural plans, including security features, or individual homes.

(2) Except as provided by the attorney-client privilege, the association may not withhold or redact information concerning the compensation paid to employees, vendors, or contractors. Compensation information for individual employees shall be set forth by job classification or title, not by the employee's name, social security number, or other personal information.

(3) No association, officer, director, employee, agent or volunteer of an association shall be liable for damages to a member of the association as the result of identity theft or other breach of privacy because of the failure to withhold or redact that member's information under this subdivision unless the failure to withhold or redact the information was intentional, willful, or negligent.

(4) If requested by the requesting homeowner, an association that denies or redacts records shall provide a written explanation specifying the legal basis for withholding or redacting the requested records.

(e) (1) The association records, and any information from them, may not be sold, used for a commercial purpose, or used for any other purpose not reasonably related to a member's interest as a member. An association may bring an action against any person who violates this section for injunctive relief and for actual damages to the association caused by the violation.

(2) This section may not be construed to limit the right of an association to damages for misuse of information obtained from the association records pursuant to this section or to limit the right of an association to injunctive relief to stop the misuse of this information.

(3) An association shall be entitled to recover reasonable costs and expenses, including reasonable attorney's fees, in a successful action to enforce its rights under this section.

(f) A member of an association may bring an action to enforce the member's right to inspect and copy the association records. If a court finds that the association unreasonably withheld access to the association records, the court shall award the member reasonable costs and expenses, including reasonable attorney's fees, and may assess a civil penalty of up to five hundred dollars (\$500) for the denial of each separate written request. A cause of action under this section may be brought in small claims court if the amount of the demand does not exceed the jurisdiction of that court. A prevailing association may recover any costs if the court finds the action to be frivolous, unreasonable, or without foundation.

(g) The provisions of this section apply to any community service organization or similar entity, as defined in paragraph (3) of subdivision (c) of Section 1368, that is related to the association, and this section shall operate to give a member of the community service organization or similar entity a right to inspect and copy the records of that organization or entity equivalent to that granted

to association members by this section.

(h) Requesting parties shall have the option of receiving specifically identified records by electronic transmission or machine-readable storage media as long as those records can be transmitted in a redacted format that does not allow the records to be altered. The cost of duplication shall be limited to the direct cost of producing the copy of a record in that electronic format.

(i) The time periods for which specified records shall be provided is as follows:

(1) Association records shall be made available for the current fiscal year and for each of the previous two fiscal years.

(2) Minutes of member and board meetings shall be permanently made available. If a committee has decisionmaking authority, minutes of the meetings of that committee shall be made available commencing January 1, 2007, and shall thereafter be permanently made available.

(j) The timeframes in which access to specified records shall be provided to a requesting member is as follows:

(1) Association records prepared during the current fiscal year, within 10 business days following the association's receipt of the request.

(2) Association records prepared during the previous two fiscal years, within 30 calendar days following the association's receipt of the request.

(3) Any record or statement available pursuant to Section 1365 or 1368, within the timeframe specified therein.

(4) Minutes of member and board meetings, within the timeframe specified in subdivision (d) of Section 1363.05.

(5) Minutes of meetings of committees with decisionmaking authority for meetings commencing on or after January 1, 2007, within 15 calendar days following approval.

(6) Membership list, within the timeframe specified in Section 8330 of the Corporations Code.

(l) There shall be no liability pursuant to this section for an association that fails to retain records for the periods specified in

subdivision (i) that were created prior to January 1, 2006.

(m) As applied to an association and its members, the provisions of this section are intended to supersede the provisions of Sections 8330 and 8333 of the Corporations Code to the extent those sections are inconsistent.

(n) The provisions of this section shall not apply to any common interest development in which separate interests are being offered for sale by a subdivider under the authority of a public report issued by the Department of Real Estate so long as the subdivider or all subdividers offering those separate interests for sale, or any employees of those subdividers or any other person who receives direct or indirect compensation from any of those subdividers, comprise a majority of the members of the board of directors of the association. Notwithstanding the foregoing this section shall apply to that common interest development no later than 10 years after the close of escrow for the first sale of a separate interest to a member of the general public pursuant to the public report issued for the first phase of the development.

(o) The section shall become operative on July 1, 2006.