



TOWN OF DISCOVERY BAY

A COMMUNITY SERVICES DISTRICT



President – Bob Leete • Vice-President – Kevin Graves • Director – Bill Mayer • Director – Bill Pease • Director – Chris Steele

July 6, 2017

The Honorable Hannah-Beth Jackson
Chair, Senate Judiciary Committee
State Capitol, Room 2187
Sacramento, CA 95814

RE: AB 1479 (Bonta) Public Records: Custodian of Records: Civil Penalties - Oppose [As Amended June 19, 2017]

Hearing Date: July 11, 2017 – *Senate Judiciary Committee*

Dear Senator Jackson:

The Town of Discovery Bay Community Services District respectfully opposes Assembly Bill 1479 (Bonta). As amended, the measure places substantial burdens on local agencies by adding costly and unnecessary requirements in processing California Public Records Act (CPRA) requests. AB 1479 would mandate that every local agency assign a “custodian of record” to review each public records act request and response. Additionally, the measure establishes new and costly civil penalties assessed to agencies above and beyond plaintiffs’ attorneys’ fees established in current law.

Under current law, all costs are placed on local public agencies when responding to CPRA requests and local agencies would receive virtually no reimbursements for the increased staffing/staff time that would be required to comply with this measure.

Creates Increased Litigation for Local Agencies

The notion of introducing civil penalties into the body of law pertaining to the CPRA is troublesome. Doing so sets a costly and precarious precedent. Such an introduction of civil penalties could lead to abuses of the CPRA and be likened to the well-documented abuses associated with frivolous Americans with Disabilities Act (ADA) lawsuits filed against small businesses. Similar to unwarranted ADA lawsuits, AB 1479 would provide a financial incentive for serial litigants, from across the nation, to extort taxpayer dollars from the state and local public agencies. Tax dollars that would otherwise be used to provide essential services such as healthcare, fire protection, park and road maintenance, and police protection. Public agencies will be forced to settle out of court to avoid expending time and resources for a costly trial, even when the agency is attempting to comply in good faith with the law.

Currently under the CPRA, a requester can file suit on the day after responsive records are due which could be as early as eleven days after the request, if there has been no extension of time. Once a suit is filed, generous attorneys’ fees established in current law may still be awarded under the “catalyst” theory even if the agency discloses the requested records after the litigation

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has commenced. Paying plaintiff's attorneys' fees in a CPRA case can cost an agency upwards of \$100,000. An additional \$5,000 fine on top of the existing \$100,000 will not stop bad actors from willful violations—rather AB 1479 will incentivize litigation while punishing good actors trying to comply with the statutory deadlines in CPRA law.

Creates New Costs and Impediments to Process Public Records Act Requests in a Timely Manner Local agencies strive to comply with the strict guidelines inherent with the CPRA, including responding within a 10-day period from the time of the request; this measure runs counter to that intent. AB 1479 would cause further delays in processing requests by creating a bottleneck in the process. AB 1479 requires each public agency to designate a person or office to act as the agency's "custodian of records." The custodian of records is then responsible for responding to all CPRA requests made to the agency. Rather than allowing an agency to determine who is the most appropriate person or office to respond to a request, based on their level of expertise on the subject of the request, AB 1479 takes a one-size-fits-all approach to responding to CPRA requests.

For these reasons, the Town of Discovery Bay Community Services District respectfully opposes Assembly Bill 1479. If you have any questions regarding our position, please do not hesitate to contact our District.

Sincerely,

Robert Leete
Board President

CC: The Honorable Rob Bonta
The Honorable Steve Glazier
The Honorable Jim Frazier
Members, Senate Judiciary Committee
Marisa Shea, Counsel, Senate Judiciary Committee
Mike Petersen, Consultant, Senate Republican Caucus
Melinda Grant, Deputy Legislative Secretary, Office of Governor Edmund G. Brown Jr.