AGENDA

MEETING OF THE OPERATIONS OVERSIGHT COMMITTEE
and
BOARD OF RETIREMENT*

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION

300 NORTH LAKE AVENUE, SUITE 810
PASADENA, CA 91101

THURSDAY, MAY 11, 2017 - 9:00 A.M.**

The Committee may take action on any item on the agenda, and agenda items may be taken out of order.

COMMITTEE MEMBERS:

Alan Bernstein, Chair
Anthony Bravo, Vice Chair
Joseph Kelly
Ronald Okum
David Muir, Alternate

I. APPROVAL OF THE MINUTES

A. Approval of the minutes of the regular meeting of April 5, 2017

II. PUBLIC COMMENT

III. ACTION ITEMS

A. Recommendation as submitted by Johanna M. Fontenot, Senior Staff Counsel, and James Beasley, Administrative Services Analyst: That the Committee recommend the Board of Retirement approve the revised Records and Information Management (RIM) Policy (revised March 29, 2017). (Memorandum dated May 1, 2017)

IV. FOR INFORMATION

A. LACERA Operations Briefing
Robert Hill/JJ Popowich

V. GOOD OF THE ORDER

(For information purposes only)

VI. ADJOURNMENT

***The Board of Retirement has adopted a policy permitting any member of the Board to attend a standing committee meeting open to the public. In the event five or more members of the Board of Retirement (including members appointed to the Committee) are in attendance, the meeting shall constitute a joint meeting of the Committee and the Board of Retirement. Members of the Board of Retirement who are not members of the Committee may attend and participate in a meeting of a Board Committee but may not vote on any matter discussed at the meeting. The only action the Committee may take at the meeting is approval of a recommendation to take further action at a subsequent meeting of the Board.**

****Although the meeting is scheduled for 9:00 a.m., it can start anytime thereafter, depending on the length of the Board of Retirement meeting preceding it. Please be on call.**

Any documents subject to public disclosure that relate to an agenda item for an open session of the Committee, that are distributed to members of the Committee less than 72 hours prior to the meeting, will be available for public inspection at the time they are distributed to a majority of the Committee, at LACERA's offices at 300 North Lake Avenue, Suite 820, Pasadena, California during normal business hours from 9:00 a.m. to 5:00 p.m. Monday through Friday.

Persons requiring an alternative format of this agenda pursuant to Section 202 of the Americans with Disabilities Act of 1990 may request one by calling Cynthia Guider at (626)-564-6000, from 8:30 a.m. to 5:00 p.m. Monday through Friday, but no later than 48 hours prior to the time the meeting is to commence. Assistive Listening Devices are available upon request. American Sign Language (ASL) Interpreters are available with at least three (3) business days notice before the meeting date.

MINUTES OF THE MEETING OF THE

OPERATIONS OVERSIGHT COMMITTEE
and
BOARD OF RETIREMENT*

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION

GATEWAY PLAZA - 300 N. LAKE AVENUE, SUITE 810, PASADENA, CA 91101

WEDNESDAY, APRIL 5, 2017, 11:45 A.M. – 12:15 P.M.

COMMITTEE MEMBERS

PRESENT: Alan Bernstein, Chair
Yves Chery, Vice Chair
Anthony Bravo

ABSENT: Joseph Kelly
Ronald Okum, Alternate

ALSO ATTENDING:

BOARD MEMBERS AT LARGE

Marvin Adams
Vivian H. Gray
David L. Muir
Keith Knox (Chief Deputy to Joseph Kelly)

STAFF, ADVISORS, PARTICIPANTS

Robert Hill
JJ Popowich
Arlene Owens

The meeting was called to order by Chair Bernstein at 11:45 a.m.

I. APPROVAL OF THE MINUTES

A. Approval of the minutes of the special meeting of March 3, 2017

Mr. Bravo made a motion, Mr. Bernstein seconded, to approve the minutes of the special meeting of March 3, 2017. The motion passed unanimously.

II. PUBLIC COMMENT

III. FOR INFORMATION

A. LACERA Operations Briefing
Robert Hill/JJ Popowich

Messrs. Hill and Popowich presented the monthly briefing on LACERA's operations. Many of the items highlighted may recur in subsequent briefings or may result in a future comprehensive OOC presentation.

- Public Records Request Update
- Report of Felony Forfeiture Cases Processed
- Update on Retirement University

B. Overview of the Advanced CERL Education Courses Action Plan and Timeline of Pilot Program
Arlene J. Owens

Ms. Owens presented an overview of the new in-house training program referred to as the Advanced CERL Education Program (ACE). This included a discussion of the three aspects of the curriculum – technical, leadership, and business. The content, lesson plan, and training materials for Module One of the program are complete and ready for testing by the pilot group, which will begin in April 2017.

IV. GOOD OF THE ORDER

(For information purposes only)

V. ADJOURNMENT

The meeting adjourned at 12:15 p.m.

***The Board of Retirement has adopted a policy permitting any member of the Board to attend a standing committee meeting open to the public. In the event five or more members of the Board of Retirement (including members appointed to the Committee) are in attendance, the meeting shall constitute a joint meeting of the Committee and the Board of Retirement. Members of the Board of Retirement who are not members of the Committee may attend and participate in a meeting of a Board Committee but may not vote on any matter discussed at the meeting. The only action the Committee may take at the meeting is approval of a recommendation to take further action at a subsequent meeting of the Board.**

May 1, 2017

TO: Operations Oversight Committee
Allan Bernstein Chair
Yves Chery, Vice Chair
Anthony Bravo
Joseph Kelly
Ronald Okum, Alternate

From: Johanna M. Fontenot, Senior Staff Counsel JMF
James Beasley, Administrative Services Analyst III JB

FOR: May 11, 2017 Operations Oversight Committee Meeting

SUBJECT: Revisions to the Records and Information Management (RIM) Policy (Revised March 29, 2017)

RECOMMENDATION

That the Operations Oversight Committee recommend that the Board of Retirement approve the revised Records and Information Management (RIM) Policy (Revised March 29, 2017).

EXECUTIVE SUMMARY

On March 2, 2017, the California Supreme Court, in a unanimous decision, held that emails and text messages sent to or from personal email accounts of public employees and public officials that relate to the public's business are subject to disclosure under the California Public Records Act (CPRA). The Court recognized the need to broaden the definition of "public records" to address the "evolving methods of electronic communication."

The holding will have a direct and immediate impact on public agencies that regularly receive such requests and on employees and officials who will now be responsible for conducting searches of their personal accounts for responsive documents. For this reason, staff has added more stringent compliance guidelines in the RIM Policy to address the Supreme Court's ruling in City of San Jose v. Superior Court. A copy of the proposed revisions to the RIM Policy is at Attachment A. The City of San Jose decision is at Attachment B.

CITY OF SAN JOSE V. SUPERIOR COURT

In City of San Jose, a resident made requests for any and all voicemails, emails or text messages sent or received on private electronic devices used by the mayor, two city council members and their staff related to redevelopment efforts in the City downtown.

The City refused to provide the information on private devices stating that they were not public records because the emails and texts were not within the City's custody or control. The City disclosed responsive nonexempt records sent from or received on private electronic devices using the individuals' government accounts, but not records from those personal private electronic devices using their private accounts (e.g., a message sent from a private Gmail account using the person's own smartphone or other electronic device).

Although the ruling did not consider the content of specific records, the ruling is nonetheless very significant due to the widespread use of private electronic devices and personal accounts.

Here are some significant takeaways from the Supreme Court ruling:

- We likewise hold that documents otherwise meeting CPRA's definition of "public records" do not lose this status because they are located in an employee's personal account.

- If communications sent through personal accounts were categorically excluded from CPRA, government officials could hide their most sensitive, and potentially damning, discussions in such accounts.

- Any personal information not related to the conduct of public business, or material falling under a statutory exemption, can be redacted from public records that are produced or presented for review. Privacy concerns can and should be addressed on a case-by-case basis.

- The analysis here, as with other exemptions, appropriately focuses on the content of specific records rather than the location or medium of communication.

- We clarify, however, that to qualify as a public record under CPRA, at a minimum, writing must relate in some substantive way to the conduct of the public's business. Communications that are primarily personal, containing no more than incidental mentions of agency business, generally will not constitute public records.

- Whether writing is sufficiently related to public business will not always be clear. For example, depending on the context, an email to a spouse complaining "my coworker is an idiot" would likely not be a public record. Conversely, an email to a superior reporting the coworker's mismanagement of an agency project might well be.

Guidance for Conducting Searches

Additionally, the City of San Jose decision offers guidance to government employees and officials for conducting searches. In this regard the Court offered these suggestions:

- CPRA does not prescribe specific methods of searching for documents. Agencies may develop their own internal policies for conducting searches. As to requests seeking public records held in employees' nongovernmental accounts, an agency's first step should be to communicate the request to the employee in question. The agency may then reasonably rely on these employees to search their own personal files, accounts and devices for responsive material.

- Further, agencies can adopt policies that will reduce the likelihood of public records being held in employees' private accounts. Agencies are in the best position to implement policies that fulfill their obligations under public records law yet also preserve the privacy rights of their employees.

PROPOSED REVISIONS TO RIM POLICY

The proposed revisions to the RIM Policy require LACERA employees to send electronic communications relating to LACERA business utilizing LACERA's system whether the communication is sent/received internally or sent/received externally. It strongly discourages the use of private communication accounts and private devices for conducting LACERA business. This proposal, of requiring LACERA employees to use LACERA's email system, will also be included in LACERA's Information Technology Policy and in user agreements for LACERA devices.

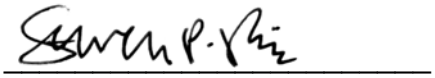
Staff believes that the proposed revisions to Section 8.3 Electronic Communications is necessary for the following reasons: 1) fulfills LACERA's obligations under the CPRA; 2) reduces the likelihood of public records being held in employee's private accounts and thereby protecting LACERA employees' privacy; and 3) increases likelihood that LACERA records are in compliance with LACERA's Records Inventory and Maintenance schedule.

For these reasons, staff is proposing revisions to Section 8.3 Electronic Communications, the definition of Records in Section 4.1, as well as other minor edits. We have included a red-lined copy of the Policy with the revised sections highlighted in order to identify the revisions.

RECOMMENDATION

IT IS THEREFORE RECOMMENDED THAT YOUR COMMITTEE recommend that the Board of Retirement approve the Records and Information Management (RIM) Policy (Revised March 29, 2017).

Reviewed and Approved



Steven P. Rice
Chief Counsel

Attachments

A – Redlined RIM Policy (Revised March 29, 2017)
B – California Supreme Court decision City of San Jose v. Superior Court

c: Gregg Rademacher
Robert Hill
JJ Popowich

Attachment A

Proposed Revisions to RIM Policy

RECORDS & INFORMATION MANAGEMENT (RIM) POLICY

Last Revised: ~~July 1, 2016~~March 29, 2017

Records & Information Management (RIM) Policy

Subject	Records & Information Management (RIM)
Effective Date	September 15, 2016
Date of Llast Rrevision	July 1, 2016
Previous Ppolicy	Records Retention Policy and Schedule
Contact	James Beasley
Related Ddocuments	Records & Information Management (RIM) Manual
	Records Retention Schedule

Table of Contents

1. Background & Rationale

1.1 Background

The Records & Information Management (RIM) Policy replaces the previous Records Management Policy that was approved by the Board of Retirement on March 13, 2008.

1.2 Rationale

LACERA recognizes that we conduct the business of the people, and that information and records are assets, vital for both ongoing operations and also in providing valuable evidence of business decisions, activities, member information, and transactions.

2. Purpose

The purpose of the RIM Policy is to (1) establish an efficient organization-wide records management system for identifying, maintaining, retrieving, preserving and destroying records, (2) ensure that records are adequately protected, (3) preserve LACERA's history, (4) ensure that records that are no longer needed or of no value are destroyed at the appropriate time, (5) comply with all applicable local, state, and federal laws and regulations, and (6) provide guidance for the Managers, Staff, and other constituencies with respect to their responsibilities concerning document retention and destruction.

3. Authority, Application & Compliance

3.1 Authority

This ~~policy~~ Policy has been authorized by the Board of Retirement and is available to all staff. It has been developed in consultation with the Legal Office and will be revised, as provided in Section 3.4. Ownership of the ~~policy~~ Policy rests with the Records and Information Management (RIM) Unit in the Administrative Services Division whom are responsible for LACERA's compliance

with ~~policy~~ Policy ~~requirements~~ Requirements and ~~recordkeeping~~ Recordkeeping ~~standards~~Standards.

3.2 Application

All staff must comply with this ~~policy~~ Policy in their conduct of ~~official~~ all business for LACERA. This ~~policy~~ Policy applies to records in all formats, including electronic records.

3.3 Compliance

Compliance with this Policy will be monitored by the ~~Records Information and Management~~ RIM Unit (with the support of ~~management~~Management). Failure to comply with this Policy, particularly, disobeying any preservation/litigation hold could result in possible civil or criminal sanctions. In addition, for ~~staff~~Staff, it could lead to disciplinary action including possible termination.

3.4 Policy Updates

The RIM Unit will update this Policy as needed if there are any changes in the business or regulatory environment. Minor changes or updates such as contact information, grammatical errors and online references do not require review/approval by the Operations Oversight Committee and Board of Retirement. This Policy will be reviewed by the RIM Unit and the Legal Office on an annual basis.

4. General Provisions

LACERA records, which may be electronic or paper form, shall be retained in accordance with the applicable guidelines including internal, state, and federal regulations. Records that do not need to be retained shall be destroyed after the requisite retention period has passed. A log or other documentation of records destruction will be created to track compliance with periodic audits for regulatory compliance. Pending or potential litigation may require a "hold" or suspension of regularly scheduled destruction of records or other information.

4.1 Definitions:

Non-Record Material:	"Non-record material" consists of library material, publications not produced by LACERA, blank forms, and other materials that do not record the position or operations of the organization.
~~Official~~ Final Record:	A~~n~~ "~~official~~ Final R~~r~~ecord" reflects the final, official record position or activities of an organization related to the specific content of the record.
Record:	A "Record" is any information, regardless of medium, that is created, received, or maintained because of law, regulation, or in the normal course of LACERA business AND is kept as evidence of that activity.~~A "record" is any information, paper or electronic, recorded in a tangible form that is created or received by LACERA and documents some aspect of its operations.~~
Electronic Communications:	Electronic Communication is the sending and receiving of electronic messages, regardless of the technology platform, using any type of ~~computer or another~~ electronic device, such as a computer, mobile phone or a tablet.
~~Unofficial~~ Draft Record:	A~~n~~ ~~–~~"~~unofficial~~ Draft R~~r~~ecord" does not yet reflect the final, official position or activities of an organization and are subject to change before completion.
Vital Record:	As part of the Records Information and Management ~~program~~ Program and the Business Continuity Program, Vital Records are essential to the survival of the organization and are identified for protection from destruction in the event of a disaster. During the records inventory, which is conducted every five (5) years or when required,

each ~~division~~ Division will determine which records for which they are responsible contain information vital for continued operations should a disaster occur. LACERA's Vital Records include those documents that are critical for both ongoing operations and also in providing valuable evidence of business decisions, activities, member information, and transactions.

4.2 Roles & Responsibilities

All Employees: All employees are responsible for the creation and management of information and records as defined by this Policy including, but not limited to, safe storage, quick retrieval, records confidentiality, and appropriate records retention period for any record identified on the Record Retention Schedule.

Assistant Executive ~~Officers (AEO):~~ The AEO is responsible for the visible support of, **Officers (AEO):** and adherence to, this Policy by promoting a culture of compliant records and information management within the organization and contributing to the development of strategic documents such as the records and information management framework and strategy.

Chief Executive ~~Officer (CEO):~~ The CEO is ultimately responsible for the **Officer (CEO):** management of information and records within LACERA. The CEO promotes compliance with this Policy and delegates responsibility for the operational planning and running of the records and information program to ~~the~~ his or her designee~~Assistant Executive Officer~~AEO~~(s)~~.

Contract Staff: Contract staff should create and manage records in accordance with this Policy to the extent specified in the contract.

Legal Office: The Legal Office is responsible, annually, for reviewing and approving any updates or changes to the retention schedule and RIM Policy, ensuring compliance with minimum retention periods pursuant to state, federal, and/or regulatory requirements; and communication of the implementation of "preservation hold," "litigation hold," or "~~legal hold~~Legal Hold" procedures that supersede an established retention schedule. The Legal Office will work with the RIM Unit ~~as needed~~ on an ongoing in connection with implementation of this policy.

Managers/Supervisors: Managers and ~~supervisors~~ Supervisors are responsible for ensuring ~~staff~~Staff, including ~~contract~~ Contract ~~s~~Staff, are aware of and follow the records and information management practices defined in this Policy. They should advise the RIM Unit of any barriers to staff complying with this Policy. They should also advise the ~~unit~~ Unit of any changes in the business environment which would impact the records and information management requirements.

RIM Unit: Under the leadership of the delegated Division Manager, the RIM Unit is responsible for overseeing the management of records and information consistent with the requirements described in this Policy. This includes providing annual training, advice and general support to staff, overseeing the proper use of record destruction methodologies, records inventory, and ongoing maintenance of the Record Retention Schedule. Information management products and

tools may be used in the execution of the RIM Unit's duties and such tools may include data systems to assist in the creation of complete and accurate records, developing and implementing strategies to enable sound records management practices, monitoring compliance with the RIM Policy, procedures, and directives, and advising the AEO(s), Internal Audit, and the Legal Office of any risks associated with non-compliance. The RIM Unit will review the RIM Policy on an on-going basis to ensure organizational efficiency, as provided in Section 3.4.

Systems Division: Systems staff is responsible for supporting the RIM Program by maintaining the technology for LACERA's business information and records systems necessary for the implementation of this Policy, including appropriate system accessibility, security and back-up. Systems and RIM staff have an important joint role in supporting the organization to ensure compliance with LACERA's policies, procedures, and guidelines of the records and information management program.

5. Records as a Resource

LACERA recognizes that its records are a vital asset to:

- facilitate information accessibility, and enhance operations by supporting program delivery, management and administration,
- deliver member services in an efficient, fair and equitable manner,
- provide evidence of actions and decisions and precedents for future decision making, and
- protect the rights and interests of the County of Los Angeles, LACERA and its members.

6. Benefits

The RIM Policy ensures the reasonable and good faith retention of all records created by or under the control of LACERA, whether paper or electronic, that are necessary or advisable to retain for: business operations; historical value; payment of member benefits; member service; accounting, audit, tax and financial purposes; compliance with applicable law; possible future use in litigation involving LACERA; and possible future use in an official proceeding, audit or other matters. A ~~legal hold~~Legal Hold notice shall be issued by the Legal Office when it becomes necessary to preserve a record or other information which may not otherwise be retained or is scheduled or due for ordinary and appropriate destruction in accordance with this Policy.

RIM's primary concern is the efficient and effective management of information. The guiding principle of RIM is to insure that information is available when and where it is needed, in an organized and efficient manner, and in a well-maintained environment. RIM is more than the retention schedule and the disposition of records; RIM also encompasses all the record-keeping requirements that allow LACERA to establish and maintain control over information flow and administrative operations. RIM seeks to control and manage records through the entirety of their life cycle, from their creation to their final disposition.

Other benefits of effective records management include:

- Space Savings
- Reduced expenditures for new filing equipment
- Increased efficiency in information retrieval
- Compliance with legal, administrative, and fiscal retention requirements
- Identification and protection of Vital Records
- Identification of records with research value
- Identification of records with historical value

7. Best Practices

Best ~~practices~~Practices, based on documented experience from a variety of recognized sources, are contained in the Policy, and will be maintained through the Policy review process, to help avoid problems and maintain high standards for Records and Information Management at LACERA. Best ~~practices~~Practices, as documented in the Policy, extend to LACERA's general policy and practices, codes of conduct, and related procedures, and are the basis of good Records and Information Management.

8. Elements of the Records & Information Management Program

8.1 Storage

Current hardcopy records should be stored in designated storage areas with access restrictions as appropriate to the level of confidentiality required.
Rarely used records or records no longer in use for official purposes that are still required to be retained in accordance with the current Retention Schedule should be forwarded to archive. Electronic records must be retained on LACERA's network. Records of short term value will be disposed of at suitable intervals by the Systems Division. Records of long term or archival value should be retained on LACERA's network.

8.2 Records Retention Schedule

A Records R~~r~~etention S~~s~~chedule ("Schedule") is a control document that sets out the amount of time that LACERA needs to keep certain types of records in accordance with state or federal guidelines and as necessitated by business practices. The schedule applies to all records irrespective of the format in which they are maintained or the media upon which they are held.

A properly prepared and approved ~~Records Retention~~ Schedule is LACERA's legal authority to do what needs to be done with records and documents entrusted to the organization's care. It certifies the life, care, and disposition of LACERA records.

A ~~Record Retention~~ Schedule does not look at individual records but rather at the individual group, records series or collection of related records, and, for retention purposes, are evaluated together.

The ~~Record Retention~~ Schedule will be reviewed annually in accordance with the Policy and amended as needed to reflect changing legal requirements, business needs or evolving practices. The authority for any changes made to the ~~Record Retention~~ Schedule to conform to applicable state ~~of~~or federal laws and the necessity for business purposes is delegated to the CEO or his/her designee. Changes will be approved by the Legal Office prior to being made.

8.3 ~~Emails~~Electronic Communications

Sending and receiving electronic communication regarding LACERA business using a non-~~offical~~official electronic messaging account ~~on personal devices~~ is strongly discouraged. LACERA Staff should send electronic communications relating to LACERA business utilizing LACERA's system whether the electronic communication is sent/received internally or sent/received externally.

LACERA Staff may not create or send a record using a non-official electronic messaging account unless Staff 1) copies a LACERA email address of Staff in the original creation or transmission of the record; or 2) forwards a complete copy of the record to LACERA's email system after the original creation or transmission of the record.

Email messages are electronic records created and sent to, or received by, a user of a computer system. The email itself is a communication method of transmission of information. ~~Official~~All "Final Records" and "Vital Records" created using the email system should be saved to an appropriate archival medium. It is each individual user's responsibility to apply the appropriate retention period from the ~~Records Retention~~ Schedule ~~("Schedule")~~ to the subject matter of the email, including any attachments. Each user is responsible for the application of the proper retention period regardless of whether they are the sender or the receiver and regardless of whether the email is sent/received internally or sent/received externally.

For example, an email from a member to a Member Services Retirement Benefits Specialist regarding a member's account would be classified as a "Member Record" on the ~~Records Retention~~ Schedule and must be stored indefinitely in the member's account per the Schedule.

~~EE~~

Email messages that are not archived to an appropriate medium will remain in the email system for sixty (60) calendar days from inception date, and then moved automatically by the email system to the "Trash" folder; items in "Trash" will be deleted within fourteen (14) calendar days, from placement in the "Trash" folder, regardless of the inception date. Support can be obtained from the Systems Division with respect to the proper archiving of email messages. ~~LACERA's email is for business purposes only.~~

8.4 Preservation/Litigation Hold

Records should be kept for a period of time not exceeding the established retention period, unless under relevant litigation or potential litigation, audit, or investigation and are subject to litigation holds. If the Legal Office informs you, that LACERA records are relevant to litigation or potential litigation you must preserve these records until the Legal Office determines that the records are no longer needed. This exception supersedes any previously or subsequently established destruction schedule for those records such that records subject to a litigation hold should not be destroyed with the permission of the Legal Office. Further, if ~~state~~ State or F~~f~~ederal ~~regulations~~ Regulations specifies a longer retention period for any record identified on the retention schedule, ~~state~~ State or ~~federal~~ Federal ~~r~~Regulations will supersede the ~~Record Retention~~ Schedule, as monitored and communicated by the Legal Office. Legal Office will inform RIM ~~staff~~ Staff of any updates or changes that needs to be made to the retention schedule, ensuring compliance with minimum retention periods pursuant to state, federal, and/or regulatory requirements. ~~If you have~~Any questions concerning retention of records that may be relevant to litigation or a legal issue, regardless of whether they are subject to a litigation hold, the Legal Office should be consulted and will provide guidance.

8.5 Access

Records must be available to all authorized staff that requires access ~~to them~~ for business purposes. The Legal Office will determine which records are public and all public records requests shall be directed to the Legal Office. ~~All public access to LACERA records can be made through the Request for Public Records process. Questions regarding public access to documents should be directed to the Legal Office.~~

8.6 Contractors & Outsourced Functions

All records created by contractors performing work on behalf of LACERA belong to LACERA and are LACERA records, subject to the terms of LACERA's contract with each individual contractor. This includes the records of contract staff working on the premises as well as external service providers.

Contracts should clearly state that ownership of records resides with LACERA, and instructions regarding creation, management, and access to the records created. The Legal Office must be consulted during the formulation of the contract.

8.7 Maintenance & Monitoring

The location of all maintained records should be recorded and updated at every movement of the record. This ensures that records, as assets, can be accounted for in the same way that the other assets of LACERA.

The RIM Unit is responsible for ensuring that records and environmental conditions are monitored regularly to protect records. This includes checking temperature and humidity levels in dedicated records storage areas for paper records as well as regularly validating proper maintenance of records at offsite storage facilities.

The Systems Division is responsible for ensuring that digital records are stored, refreshed, and secured as required.

LACERA has implemented a number of security and Business Continuity measures, including information security policies, for safeguarding its information assets. Staff should abide by these measures at all times.

8.8 Transfer

LACERA has an off-site storage facility for the storage of physical records that are infrequently used for business purposes but still need to be retained according to the ~~Records Retention~~ Schedule. The RIM Unit is responsible for transferring these records to the facility.

8.9 Disposal

LACERA has a defined ~~Records Retention~~ Schedule for all ~~divisions~~Divisions. The RIM Unit recommends that disposal actions are assigned to records in all formats on creation to ensure they are managed appropriately. No LACERA records can be dispensed of unless in accordance with the ~~Records Retention~~ Schedule. Approval and signed authorization for retention, destruction or transfer of records must be sought from the appropriate division manager before any disposal takes place.

Records shall be maintained for as long as the period stated in the Records Retention Schedule, which schedule is based on the minimum periods required by applicable state or federal law, and necessity for ongoing business purposes. Unless a ~~legal hold~~Legal Hold is in effect, destruction of records shall occur within one (1) month after the time period stated in the Records Retention Schedule has been met. Management will be contacted prior to the scheduled destruction for their final approval. Any request to extend the retention period of a document or a series of documents, must be made in writing to RIM staff providing business justification and approved by the Legal Office.

The RIM Unit will monitor and assure compliance with the disposal requirements of the Records Retention Schedule.

8.10 PROCEDURES MANUAL

The ~~Administrative Services~~ RIM Unit shall be responsible for preparing and maintaining a procedures manual that details the records management process and any delegated duties and defined terminology. This ~~procedures~~ Procedures ~~manual~~ Manual shall include this policy and must be approved by the ~~Chief Executive Officer~~CEO. These ~~procedures~~ Procedures may be modified at any time as deemed necessary, provided that the ~~procedures~~ Procedures remain within the framework of this ~~policy~~Policy.

In the event that there is a conflict between this ~~p~~Policy and the ~~procedures~~ Procedures ~~manual~~ Manual the ~~policy~~ Policy shall prevail.

Attachment B

City of San Jose v. Superior Court
Decision

1 of 1 DOCUMENT

CITY OF SAN JOSE et al., Petitioners, v. THE SUPERIOR COURT OF SANTA CLARA COUNTY, Respondent; TED SMITH, Real Party in Interest.

S218066

SUPREME COURT OF CALIFORNIA

2 Cal. Rh 608; 2017 Cal. LEXIS 1607

March 2, 2017, Filed

SUBSEQUENT HISTORY: Reported at *City of San Jose v. Superior Court, 2017 Cal. LEXIS 1749 (Cal., Mar. 2, 2017)*

PRIOR HISTORY: **[**1]** Superior Court of Santa Clare County, No. 109CV150427, James P. Kleinberg, Judge. Court of Appeal, Sixth Appellate District, No. H039498.
City of San Jose v. Superior Court, 225 Cal. App. 4th 75, 169 Cal. Rptr. 3d 840, 2014 Cal. App. LEXIS 293 (Cal. App. 6th Dist., 2014)

SUMMARY: [*608]

CALIFORNIA OFFICIAL REPORTS SUMMARY

Pursuant to the California Public Records Act (CPRA) *(Gov. Code, § 6250 et seq.),* a citizen requested disclosure of 32 categories of public records from a city. The targeted documents concerned redevelopment efforts and included e-mails and text messages sent or received on private electronic devices used by city officials. The city disclosed communications made using city telephone numbers and e-mail accounts, but did not disclose communications made using the officials' personal e-mail accounts. The citizen sued for declaratory relief, arguing CPRA's definition of "public records" encompasses all communications about official business, regardless of how they are created, communicated, or stored. The superior court granted the citizen's motion for summary judgment and ordered disclosure. (Superior Court of Santa Clara County, No. 109CV150427, James P. Kleinberg, Judge.) However, the Court of Appeal, Sixth Dist., No. H039498, issued a peremptory writ of mandate directing the superior court to vacate the order granting the citizen's motion for summary judgment and to enter a new order denying that motion and granting the city's motion for summary judgment.

The Supreme Court reversed the judgment of the Court of Appeal and remanded the case for further proceedings. The court held that a city employee's writings about public business are not excluded from CPRA simply because they have been sent, received, or stored in a personal account. A writing prepared by a public employee conducting agency business has been "prepared by" the agency within the meaning of *Gov. Code, § 6252, subd. (e),* even if the writing is prepared using the employee's personal account. A document's status as public or confidential does not turn on the arbitrary circumstance of where the document is located. If public officials could evade the law simply by clicking into a different e-mail account, or communicating through a personal device, sensitive information could routinely evade public scrutiny. The city's interpretation of CPRA would not only put an increasing amount of information beyond the public's grasp but also encourage government officials to conduct the public's business in private. (Opinion by Corrigan, J., expressing the unanimous view of the court.) [*609]

HEADNOTES

CALIFORNIA OFFICIAL REPORTS HEADNOTES

(1) Records and Recording Laws § 12--Inspection of Public Records--Disclosure--Exemptions--Privacy.--Enacted in 1968, the California Public Records Act (CPRA) *(Gov. Code, 5C 6250 et seq.)* declares that access to information concerning the conduct of the people's business is a fun-

damental and necessary right of every person in California *(Gov. Code, § 6250).* In 2004, voters made this principle part of the California Constitution. Public access laws serve a crucial function. Openness in government is essential to the functioning of a democracy. Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process. However, public access to information must sometimes yield to personal privacy interests. When enacting CPRA, the Legislature was mindful of the right to privacy, and set out multiple exemptions designed to protect that right. Similarly, while the California Constitution provides for public access, it does not supersede or modify existing privacy rights *(Cal. Const., art. I, § 3, subd. (b)(3)).*

(2) Records and Recording Laws § 12--Inspection of Public Records--Disclosure--Exemptions--Public Interest.--The California Public Records Act (CPRA) *(Gov. Code, § 6250 et seq.)* establishes a basic rule requiring disclosure of public records upon request *(Gov. Code, § 6253).* In general, it creates a presumptive right of access to any record created or maintained by a public agency that relates in any way to the business of the public agency. Every such record must be disclosed unless a statutory exception is shown. The CPRA also includes a catchall provision exempting disclosure if the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure *(Gov. Code, § 6255, subd. (a)).*

(3) Statutes 29--Construction--Language--Legislative Intent--Plain Meaning.--When a court interprets a statute, its fundamental task is to determine the Legislature's intent so as to effectuate the law's purpose. The court first examines the statutory language, giving it a plain and commonsense meaning. The court does not examine that language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment. If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend. If the statutory language permits more than one reasonable interpretation, courts may consider other [*6101 aids, such as the statute's purpose, legislative history, and public policy. Furthermore, the court considers portions of a statute in the context of the entire statute and the statutory scheme of which it is a part, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.

(4) Records and Recording Laws § 12--Inspection of Public Records--Disclosure--Exemptions--Public Policy.--Given the strong public policy of the people's right to information concerning the people's business *(Gov. Code, § 6250),* and the constitutional mandate to construe statutes limiting the right of access narrowly *(Cal. Const., art. I, § 3, subd. (b)(2)),* all public records are subject to disclosure unless the Legislature has expressly provided to the contrary.

(5) Records and Recording Laws 2--Definitions--Public Record.--The California Public Records Act *(Gov. Code, § 6250 et seq.),* defines the term "public record" to include 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. *Gov. Code, § 6252, subd. (e).* Under this definition, a public record has four aspects. It is (I) a writing, (2) with content relating to the conduct of the public's business, which is (3) prepared by, or (4) owned, used, or retained by any state or local agency.

(6) Records and Recording Laws § 2--Public Record--Conduct of Public's Business--Discharge of Official Duty.--To qualify as a public record, a writing must contain information relating to the conduct of the public's business *(Gov. Code, § 6252, subd. (e)).* Generally, any record kept by an officer because it is necessary or convenient to the discharge of his official duty is a public record.

(7) Records and Recording Laws § 2--Public Record--Conduct of Public's Business--Personal Communications.--To qualify as a public record under the California Public Records Act *(Gov. Code, § 6250 et seq.)* at a minimum, a writing must relate in some substantive way to the conduct of the public's business. This standard, though broad, is not so elastic as to include every piece of information the public may find interesting. Communications that are primarily personal, containing no more than incidental mentions of agency business, generally will not constitute public records. For example, the public might be titillated to learn that not all agency workers enjoy the company of their colleagues, or hold them in high regard. However, an employee's electronic musings about a colleague's personal shortcomings will often fall far short of being a writing containing information relating to the conduct of the public's business *(Gov. Code, § 6252, subd. (e)).* [*6 I 1]

(8) Records and Recording Laws § 2--Public Record--Conduct of Public's Business--Writing Prepared by Public Employee--Personal Account.--Broadly con-

strued, the term "local agency," for purposes of the California Public Records Act *(Gov. Code, § 6250 et seq.),* logically includes not just the discrete governmental entities listed in *Gov. Code, § 6252, subd. (a),* but also the individual officials and staff members who conduct the agencies' affairs. It is well established that a governmental entity, like a corporation, can act only through its individual officers and employees. A disembodied governmental agency cannot prepare, own, use, or retain any record. Only the human beings who serve in agencies can do these things. When employees are conducting agency business, they are working for the agency and on its behalf. The judiciary presumes the Legislature was aware of these settled principles. A writing prepared by a public employee conducting agency business has been "prepared by" the agency within the meaning of *Gov. Code, § 6252, subd. (e),* even if the writing is prepared using the employee's personal account.

(9) Records and Recording Laws § 12--Inspection of Public Records--Disclosure--Public Official--Refusal to Disclose.--When it is alleged that public records have been improperly withheld, *Gov. Code, § 6259, subd. (a),* part of the California Public Records Act (CPRA) *(Gov. Code, § 6250 et seq.),* directs that the court order the officer or person charged with withholding the records to disclose the records or show cause why they should not be produced. If the court concludes the public official's decision to refuse disclosure is not justified, it can order the public official to make the record public (§ *6259, subd. (b)).* If the court finds that the public official was justified in refusing disclosure, it must return the item to the public official without disclosing its content. The Legislature's repeated use of the singular word "official" in § *6259* indicates an awareness that an individual may possess materials that qualify as public records. Moreover, the broad term "public official" encompasses officials in state and local agencies, signifying that CPRA disclosure obligations apply to individuals working in both levels of government.

(10) Records and Recording Laws § 12--Inspection of Public Records--Disclosure--Actual or Constructive Possession.--Records related to public business are subject to disclosure if they are in an agency's actual or constructive possession. An agency has constructive possession of records if it has the right to control the records, either directly or through another person. [*6121

(11) Records and Recording Laws § 12--Inspection of Public Records--Disclosure--Actual or Constructive Possession.--An agency's actual or constructive possession of records is relevant in determining whether it has an obligation to search for, collect, and disclose the material requested *(Gov. Code, § 6253, subd. (c)).* It is a separate and more fundamental question whether a document located outside an agency's walls, or servers, is sufficiently owned, used, or retained by the agency so as to constitute a public record *(Gov. Code, § 6252, subd. (0).*

(12) Records and Recording Laws § 2--Definitions--Public Record--Personal Account.--Documents otherwise meeting the definition of "public records" under the California Public Records Act *(Gov. Code, § 6250 et seq.)* do not lose this status because they are located in an employee's personal account. A writing retained by a public employee conducting agency business has been "retained by" the agency within the meaning of *Gov. Code, § 6252, subd. (e),* even if the writing is retained in the employee's personal account.

(13) Records and Recording Laws § 2--Public Record--Conduct of Public's Business--Personal Account.--A city employee's communications related to the conduct of public business do not cease to be public records just because they were sent or received using a personal account.

(14) Records and Recording Laws § 12--Inspection of Public Records--Disclosure--Exemptions.--Beyond the definition of a "public record," the California Public Records Act *(Gov. Code, § 6250 et seq.)* itself limits or exempts disclosure of various kinds of information, including certain types of preliminary drafts, notes, or memoranda *(Gov. Code, § 6254, subd. (a)),* personal financial data *(Gov. Code, § 6254, subd. (n)),* personnel and medical files *(Gov. Code, § 6254, subd. (c)),* and material protected by evidentiary privileges *(Gov. Code, § 6254, subd. (k)).* Finally, a catchall exemption allows agencies to withhold any record if the public interest served by withholding it clearly outweighs the public interest in disclosure *(Gov. Code, § 6255, subd. (a)).* This exemption permits a balance between the public's interest in disclosure and the individual's privacy interest. The analysis, as with other exemptions, appropriately focuses on the content of specific records rather than their location or medium of communication.

(15) Records and Recording Laws § 12--Inspection of Public Records--Disclosure--Reasonable Effort.--Unless a records request is overbroad or unduly burdensome, agencies are obliged to disclose all records they can locate with reasonable effort. Reasonable efforts do not require that [*6131 agencies undertake extraordinarily extensive or intrusive searches, however. In general, the scope of an agency's search for public records need only be reasonably calculated to locate responsive documents.

(16) Records and Recording Laws § 12--Inspection of Public Records--Disclosure--Exemptions--Personal Account.--In a case in which a citizen requested disclosure of 32 categories of public records written by city officials, but the city did not disclose communications made using the individuals' personal e-mail accounts, the Supreme Court held that a city employee's writings about public business are not excluded from disclosure under the California Public Records Act *(Gov. Code, § 6250 et seq.)* simply because the writings have been sent, received, or stored in a personal account.

[Cal. Forms of Pleading and Practice (2016) ch. 470C, Public Records Act, § 470C.11.1

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Jennifer B. Henning for California State Association of Counties as Amicus Curiae on behalf of Petitioners.

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No appearance for Respondent.

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Jack Cohen as Amicus Curiae on behalf of Real Party in Interest.

Ram, Olson, Cereghino & Kopczynski, Karl Olson; Juan F. Cornejo; Jeffrey D. Glasser; and James W. Ewert for California Newspaper Publishers Association, Los Angeles Times Communications LLC, McClatchy Newspapers, Inc., Hearst Corporation, First Amendment Coalition, Society of Professional Journalists, Californians Aware and the Reporters [**3] Committee for Freedom of the Press as Amici Curiae on behalf of Real Party in Interest.

Michael T. Risher, Matthew T. Cagle, Christopher J. Conley; Peter Bibring, Peter Eliasberg; David Loy; and Jennifer Lynch for American Civil Liberties Union Foundation of Northern California, Inc., American Civil Liberties Union of Southern California, Inc., American Civil Liberties Union of San Diego & Imperial County, Inc., and Electronic Frontier Foundation as Amici Curiae on behalf of Real Party in Interest.

JUDGES: Opinion by Corrigan, J., expressing the unanimous view of the court.

OPINION BY: Corrigan

OPINION

CORRIGAN, J.--Here, we hold that when a city employee uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act (CPRA or Act; *Gov. Code, § 6250 et seq.).* [1] We overturn the contrary judgment of the Court of Appeal.

[1] *Government Code section 6250 et seq.* All statutory references are to the Government Code unless otherwise specified.

I. BACKGROUND

In June 2009, petitioner Ted Smith requested disclosure of 32 categories of public records from the City of San Jose, its redevelopment agency and the agency's executive director, along with certain other elected officials and their [*615] staffs. [2] The targeted documents concerned redevelopment efforts [**4] in downtown San Jose and included e-mails and text messages "sent or received on private electronic devices used by" the

mayor, two city council members, and their staffs. The City disclosed communications made using City telephone numbers and e-mail accounts but did not disclose communications made using the individuals' personal accounts.

> 2 These parties, sued as defendants below and the petitioners here, are collectively referred to as the "City."

Smith sued for declaratory relief, arguing CPRA's definition of "public records" encompasses all communications about official business, regardless of how they are created, communicated, or stored. The City responded that messages communicated through personal accounts are not public records because they are not within the public entity's custody or control. The trial court granted summary judgment for Smith and ordered disclosure, but the Court of Appeal issued a writ of mandate. At present, no documents from employees' personal accounts have been collected or disclosed.

II. DISCUSSION

This case concerns how laws, originally designed to cover paper documents, apply to evolving methods of electronic communication. It requires recognition that, in today's environment, not all employment-related activity occurs during a conventional workday, or in an employer-maintained [**5] workplace.

(1) Enacted in 1968, CPRA 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." (§ *6250.)* In 2004, voters made this principle part of our Constitution. A provision added by Proposition 59 states: "The people have the right of access to information concerning the conduct of the people's business, and, therefore, ... the writings of public officials and agencies shall be open to public scrutiny." *(Cal. Const., art. I, § 3, subd. (b)(1).)* Public access laws serve a crucial function. "Openness in government is essential to the functioning of a democracy. 'Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process.'" *(International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court (2007) 42 Cal.4th 319, 328-329 [64 Cal. Rptr. 3d 693, 165 P.3d 488] (International Federation).)*

However, public access to information must sometimes yield to personal privacy interests. When enacting CPRA, the Legislature was mindful of the [*616] right to privacy (§ *6250),* and set out multiple exemptions designed to protect that right. *(Commission on Peace Officer Standards & Training v. Superior Court (2007) 42 Cal.4th 278, 288 [64 Cal. Rptr. 3d 661, 165 P.3d 462] (Commission* [**6] *on Peace Officer Standards);* see § *6254.)* Similarly, while the Constitution provides for public access, it does not supersede or modify existing privacy rights. *(Cal. Const., art. I, § 3, subd. (b)(3).)*

CPRA and the Constitution strike a careful balance between public access and personal privacy. This case concerns how that balance is served when documents concerning official business are created or stored outside the workplace. The issue is a narrow one: Are writings concerning the conduct of public business beyond CPRA's reach merely because they were sent or received using a nongovernmental account? Considering the statute's language and the important policy interests it serves, the answer is no. Employees' communications about official agency business may be subject to CPRA regardless of the type of account used in their preparation or transmission.

A. *Statutory Language, Broadly Construed, Supports Public Access*

(2) CPRA establishes a basic rule requiring disclosure of public records upon request. (' *6253.) '* In general, it creates "a presumptive right of access to any record *created or maintained* by a public agency that relates in any way to the business of the public agency." *(Sander v. State Bar of California (2013) 58 Cal.4th 300, 323 [165 Cal. Rptr. 3d 250, 314 P.3d 488],* italics added.) Every such record "must be disclosed [**7] unless a statutory exception is shown." *(Ibid.) Section 6254* sets out a variety of exemptions, "many of which are designed to protect individual privacy." *(International Federation, supra, 42 Ca1.4th at p. 329.)* The Act also includes a catchall provision exempting disclosure if "the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure." (§ *6255, subd. (a).)*

> 3 CPRA was modeled on the *federal Freedom of Information Act (FOIA) (5 U.S.C. § 552). (San Gabriel Tribune v. Superior Court (1983) 143 Cal.App.3d 762, 772 [192 Cal. Rptr. 415].)*

(3) "When we interpret a statute, '[o]ur fundamental task ... is to determine the Legislature's intent so as to effectuate the law's purpose. We first examine the statutory language, giving it a plain and commonsense meaning. We do not examine that language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment. If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd con-

sequences the Legislature did not intend. If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative [*617] history, and public policy.' [Citation.] 'Furthermore, we consider portions of a statute in the context of the entire statute [**8] and the statutory scheme of which it is a part, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.'" *(Sierra Club v. Superior Court (2013) 57 Ca1.4th 157, 165-166 [158 Cal. Rptr. 3d 639, 302 P.3d 1026].)*

(4) In CPRA cases, this standard approach to statutory interpretation is augmented by a constitutional imperative. (See *Sierra Club v. Superior Court, supra, 57 Ca1.4th at p. 166.)* Proposition 59 amended the Constitution to provide "A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be *broadly* construed if it furthers the people's right of access, and *narrowly* construed if it limits the right of access." *(Cal. Const., art. I, § 3, subd (b)(2),* italics added.) "'Given the strong public policy of the people's right to information concerning the people's business *(Gov. Code, § 6250),* and the constitutional mandate to construe statutes limiting the right of access narrowly *(Cal. Const., art. 1, § 3, subd. (b)(2)),* "all public records are subject to disclosure unless the Legislature has *expressly* provided to the contrary.'" *(Sierra Club, at p. 166.)*

(5) We begin with the term "public record," which CPRA defines to include "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." (§ *6252, subd (e);* hereafter [**9] "public records" definition.) Under this definition, a public record has four aspects. It is (1) a writing, (2) with content relating to the conduct of the public's business, which is (3) prepared by, *or* (4) owned, used, or retained by any state or local agency.

1. *Writing*

CPRA defines a "writing" 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." (§ *6252, subd. (g).)* It is undisputed that the items at issue here constitute writings.

In 1968, creating a "writing" could be a fairly involved process. Typically, a person would use an implement to type, or record words longhand, or would dictate to someone else who would write or type a document. Writings were generally made on paper or some other tangible medium. These writings were physically identifiable and could be retrieved by examining the physical repositories where they were stored. Writings [**10] exchanged with people outside [*618] the agency were generally sent, on paper, through the mail or by courier. In part because of the time required for their preparation, such writings were fairly formal and focused on the business at hand.

Today, these tangible, if laborious, writing methods have been enhanced by electronic communication. E-mail, text messaging, and other electronic platforms, permit writings to be prepared, exchanged, and stored more quickly and easily. However, the ease and immediacy of electronic communication has encouraged a commonplace tendency to share fleeting thoughts and random bits of information, with varying degrees of import, often to broad audiences. As a result, the line between an official communication and an electronic aside is now sometimes blurred. The second aspect of CPRA's "public records" definition establishes a framework to distinguish between work-related and purely private communications.

2. *Relating to the Conduct of the Public's Business*

(6) The overall structure of CPRA, with its many exemptions, makes clear that not everything written by a public employee is subject to review and disclosure. To qualify as a public record, a writing must "contain[] [**1 I] information relating to the conduct of the public's business." (§ *6252, subd. (e).)* Generally, any "record ... kept by an officer because it is necessary or convenient to the discharge of his official duty ... is a public record." *(Braun v. City of Taft (1984) 154 Cal.App.3d 332, 340 [201 Cal. Rptr. 654];* see *People v. Purcell (1937) 22 Cal.App.2d 126, 130 [70 P.2d 706].)*

Whether a writing is sufficiently related to public business will not always be clear. For example, depending on the context, an e-mail to a spouse complaining "my coworker is an idiot" would likely not be a public record. Conversely, an e-mail to a superior reporting the coworker's mismanagement of an agency project might well be. Resolution of the question, particularly when writings are kept in personal accounts, will often involve an examination of several factors, including the content itself; the context in, or purpose for which, it was written; the audience to whom it was directed; and whether the writing was prepared by an employee acting or purporting to act within the scope of his or her employment. Here, the City claimed all communications in personal accounts are beyond the reach of CPRA. As a result, the content of specific records is not before us. Any disputes

over this aspect of the "public records" definition await resolution in future proceedings. [**12]

(7) We clarify, however, that to qualify as a public record under CPRA, at a minimum, a writing must relate in some substantive way to the conduct of the public's business. This standard, though broad, is not so elastic as to include every piece of information the public may find interesting. Communications that are primarily personal, containing no more than incidental [*619] mentions of agency business, generally will not constitute public records. For example, the public might be titillated to learn that not all agency workers enjoy the company of their colleagues, or hold them in high regard. However, an employee's electronic musings about a colleague's personal shortcomings will often fall far short of being a "writing containing information relating to the conduct of the public's business." (§ *6252, subd. (e).)* [4]

> 4 We recognize that this test departs from the notion that "[o]nly purely personal" communications "totally void of reference to governmental activities" are excluded from CPRA's definition of public records. (Assem. Corn. on Statewide Information Policy, Final Rep. (Mar. 1970) 1 Assem. J. (1970 Reg. Sess.) p. 9; see *San Gabriel Tribune v. Superior Court, supra, 143 Ca1.App.3d at p. 774.)* While this conception may yield correct results in some circumstances, it may sweep too broadly in others, particularly when applied to electronic communications sent through personal accounts.

Coronado Police Officers Assn. v. Carroll (2003) 106 Cal.App.4th 1001 [131 Cal. Rptr. 2d 553] demonstrates the intricacy of determining whether a writing is related to public business. There, police officers sought access to a database of impeachment material compiled by public defenders. The attorneys contributed to the database and used its contents in their work. *(Id. at p. /005.)* However, their representation of individual clients, though paid for by a public entity, was considered under case law [**13] to be essentially a private function. *(Id. at pp. 1007-1009;* see *Polk County v. Dodson (1981) 454 U.S. 312, 321-322 [70 L. Ed. 2d 509, 102 S. Ct. 445].)* Accordingly, the *Coronado* court concluded the database did not relate to public business and thus was not a public record. *(Coronado, at pp. /007-1009.)* The court was careful to note that not all documents related to the database were private, however. Documents reflecting policy decisions about whether and how to maintain the database might well relate to public business, rather than the representation of individual clients. *(Id. at p. 1009.)* Content of that kind would constitute public records. *(Ibid.)*

3. *Prepared by Any State or Local Agency*

The City focuses its challenge on the final portion of the "public records" definition, which requires that writings be "prepared, owned, used, or retained by any state or local agency." (§ *6252, subd. (e).)* The City argues this language does not encompass communications agency employees make through their personal accounts. However, the broad construction mandated by the Constitution supports disclosure.

A writing is commonly understood to have been prepared by the person who wrote it. If an agency employee prepares a writing that substantively relates to the conduct of public business, that writing would appear to satisfy the Act's [** 14] definition of a public record. The City urges a contrary conclusion [*620] when the writing is transmitted through a personal account. In focusing its attention on the "owned, used, or retained by" aspect of the "public records" definition, however, it ignores the "prepared by" aspect. (§ *6252, subd. (e).)* This approach fails to give "'significance to every word, phrase, sentence, and part' of the Act. *(Sierra Club v. Superior Court, supra, 57 Cal.4th at p. 166.)*

The City draws its conclusion by comparing the Act's definitions of "local" and "state" agency. Under CPRA, *"'Local agency'* includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to *subdivisions (c)* and *(d) of Section 54952." (§ 6252, subd (a),* italics added.) The City points out that this definition does not specifically include individual government officials or staff members, whereas individuals *are* specifically mentioned in CPRA's definition of *"state agency."* According to that definition, "'State agency' means every state office, *officer,* department, division, bureau, board, and commission or other [**15] state body or agency, except those agencies provided for in *Article IV (except Section 20* thereof) or *Article VI of the California Constitution." (§ 6252, subd. O(O,* italics added.) The City contends this difference shows the Legislature intended to exclude individuals from the local agency definition. If a local agency does not encompass individual officers and employees, it argues, only writings accessible to the agency as a whole are public records. This interpretation is flawed for a number of reasons.

> 5 Article IV establishes the Legislature, and *article VI* establishes the state's judiciary. *(Cal. Const., arts. IV, VI.)* These branches of government are thus generally exempt from CPRA. (See *Sander v. State Bar of California, supra, 58 Cal.4th at p. 318; Copley Press, Inc. v. Superior*

Court (1992) 6 Cal.App.4th 106, 111 [7 Cal. Rptr. 2d 841].)

(8) The City's narrow reading of CPRA's local agency definition is inconsistent with the constitutional directive of broad interpretation. *(Cal. Const., art. I, § 3, subd. (b)(2);* see *Sierra Club v. Superior Court, supra, 57 Cal.4th at p. 175.)* Broadly construed, the term "local agency" logically includes not just the discrete governmental entities listed in *section 6252, subdivision (a)* but also the individual officials and staff members who conduct the agencies' affairs. It is well established that a governmental entity, like a corporation, can act only through its individual officers and employees. *(Suezaki v. Superior Court (1962) 58 Ca1.2d 166, 174 [23 Cal. Rptr. 368, 373 P.2d 432]; Alvarez v. Felker Mfg. Co. (1964) 230 Cal.App.2d 987, 998 [41 Cal. Rptr. 514];* see *United States v. Dotterweich (1943) 320 U.S. 277, 281 [88 L. Ed. 48, 64 S. Ct. 134]; Reno v. Baird (1998) 18 Cal.4th 640, 656 [76 Cal. Rptr. 2d 499, 957 P.2d 1333] .)* A disembodied governmental agency [*621] cannot prepare, own, use, or retain any record. Only the human beings who serve in agencies can do these things. When employees are conducting agency business, they are working for the agency and on its behalf. (See, e.g., *California Assn. of Health Facilities v. Department of Health Services (1997) 16 Cal.4th 284, 296-297 [65 Cal. Rptr. 2d 872, 940 P.2d 323];* cf. [**16] *Competitive Enterprise Institute v. Office of Science & Technology Policy (D.C. Cir. 2016) 827 F.3d 145, 149* [reaching the same conclusion for federal FOIA requests].). We presume the Legislature was aware of these settled principles. (See *People v. Superior Court (Zamudio) (2000) 23 Cal.4th 183, 199 [96 Cal. Rptr. 2d 463, 999 P.2d 686].)* A writing prepared by a public employee conducting agency business has been "prepared by" the agency within the meaning of *section 6252, subdivision (e),* even if the writing is prepared using the employee's personal account.

The City also fails to explain how its proposed requirement that a public record be "accessible to the agency as a whole" could be practically interpreted. Even when documents were stored in filing cabinets or ledgers, many writings would not have been considered accessible to all agency employees, regardless of their level of responsibility or involvement in a particular project.

Moreover, although employees are not specifically mentioned in the local agency definition, nothing in the statutory language indicates the Legislature meant to *exclude* these individuals from CPRA obligations. The City argues the omission of the word "officer" from the local agency definition reflects a legislative intent that CPRA apply to individuals who work in *state* agencies but *not* employees in local government. The City offers no reason why the Legislature would draw such an arbitrary [**17] distinction. If it intended to impose different disclosure obligations on state and local agencies, one would expect to find this difference highlighted throughout the statutory scheme, particularly when the obligations relate to a "fundamental and necessary right of every person in this state." (§ *6250.)* Yet there is no mention of such an intent anywhere in the Act. Indeed, under the City's logic, CPRA obligations would potentially extend only to state *officers,* not necessarily state *employees.* The distinction between tenured public officers and those who hold public employment has long been recognized. (See *In re M.M. (2012) 54 Cal.4th 530, 542-544 [142 Cal. Rptr. 3d 869, 278 P.3d 1221].)* Considering CPRA's goal of promoting public access, it would have been odd for the Legislature to establish different rules for different levels of state employment. Contrary to the City's view, it seems more plausible that the reference to "every state ... officer" in the state agency definition (§ *6252, subd (1))* was meant to extend CPRA obligations to elected state officers, such as the Governor, Treasurer, or [*622] Secretary of State, who are not part of a collective governmental body nor generally considered *employees* of a state agency. '

> 6 In one respect the local agency definition is worded more broadly than the state agency definition. *Section 6252, subdivision (a)* states that the term local agency "includes" a county, city, or one of several other listed entities. In statutory drafting, the term "includes" is ordinarily one "of enlargement rather than limitation." *(Ornelas v. Randolph (1993) 4 Cal.4th 1095, 1101 [17 Cal. Rptr. 2d 594, 847 P.2d 560].)* "The 'statutory definition of a thing as "including" certain things does not necessarily place thereon a meaning limited to the inclusions.'" *(Flanagan v. Flanagan (2002) 27 Cal.4th 766, 774 [117 Cal. Rptr. 2d 574, 41 P.3d 575].)* By contrast, the definition of "state agency" is couched in more restrictive language: "'State agency' *means* every state office, officer ... ," and other listed entities. (§ *6252, subd. (),* italics added.)

(9) The City's position is further undermined by another [**18] CPRA provision, which indicates that public records can be held by individual officials and need not belong to an agency as a whole. When it is alleged that public records have been improperly withheld, *section 6259, subdivision (a)* directs that "the court shall order the officer or person charged with withholding the records" to disclose the records or show cause why they should not be produced. If the court concludes "the public official's decision to refuse disclosure is not justified," it can order "the public official to make the record public." (,s *6259, subd. (b).)* If the court finds "that the public official was justified in refusing" disclosure, it must "re-

turn the item to the public official without disclosing its content." *(Ibid.)* The Legislature's repeated use of the singular word "official" in *section 6259* indicates an awareness that an individual may possess materials that qualify as public records. Moreover, the broad term "public official" encompasses officials in state *and* local agencies, signifying that CPRA disclosure obligations apply to individuals working in both levels of government.

4. *Owned, Used, or Retained by Any State or Local Agency*

CPRA encompasses writings prepared *by* an agency but also writings it owns, uses, [** 191 or retains, regardless of authorship. Obviously, an agency engaged in the conduct of public business will use and retain a variety of writings related to that business, including those prepared by people outside the agency. These final two factors of the "public records" definition, use and retention, thus reflect the variety of ways an agency can possess writings used to conduct public business.

As to retention, the City argues "public records" include only materials in an agency's possession or directly accessible to the agency. Citing statutory arguments and cases limiting the duty to obtain and disclose documents possessed by others, the City contends writings held in an employee's personal account are beyond an agency's reach and fall outside CPRA. The argument fails. [*623]

(10) Appellate courts have generally concluded records related to public business are subject to disclosure if they are in an agency's actual *or constructive* possession. (See, e.g., *Board of Pilot Commissioners v. Superior Court (2013) 218 Cal.App.4th 577, 598 [160 Cal. Rptr. 3d 285]; Consolidated Irrigation Dist. v. Superior Court (2012) 205 CalApp.4th 697, 710 [140 Cal. Rptr. 3d 622] (Consolidated Irrigation).)* "[A]n agency has constructive possession of records if it has the right to control the records, either directly or through another person." *(Consolidated Irrigation, at p. 710.)* For example, in *Consolidated Irrigation,* a city [**20] did not have constructive possession of documents in files maintained by subconsultants who prepared portions of an environmental impact report because the city had no contractual right to control the subconsultants or their files. *(Id. at pp. 703, 710-711.)* By contrast, a city had a CPRA duty to disclose a consultant's field survey records because the city had a contractual ownership interest and right to possess this material. (See *Community Youth Athletic Center v. City of National City (2013) 220 Cal.App.4th 1385, 1426, 1428-1429 [164 Cal. Rptr. 3d 644] (Community Youth).)*

(11) An agency's actual or constructive possession of records is relevant in determining whether it has an obligation to search for, collect, and disclose the material requested. (See § *6253, subd. (c).)* It is a separate and more fundamental question whether a document located outside an agency's walls, or servers, is sufficiently "owned, used, or retained" by the agency so as to constitute a public record. (See § *6252, subd. (e).)* In construing FOIA, federal courts have remarked that an agency's public records "do not lose their agency character just because the official who possesses them takes them out the door." *(Competitive Enterprise Institute v. Office of Science and Technology Policy, supra, 827 F.3d at p. 149.)* **(12)** We likewise hold that documents otherwise meeting CPRA's definition of "public records" do not lose this status because they are located in an employee's personal account. A writing [**21] retained by a public employee conducting agency business has been "retained by" the agency within the meaning of *section 6252, subdivision (e),* even if the writing is retained in the employee's personal account.

The City argues various CPRA provisions run counter to this conclusion. First, the City cites *section 6270,* which provides that a state or local agency may not transfer a public record to a private entity in a manner that prevents the agency *"from providing the record directly* pursuant to this chapter." (Italics added.) Taking the italicized language out of context, the City argues that public records are only those an agency is able to access "directly." But this strained interpretation sets legislative intent on its head. The statute's clear purpose is to prevent an agency from evading its disclosure duty by transferring custody of a record to a private holder and then arguing the record falls outside CPRA because it is no longer in the agency's possession. [*624] Furthermore, *section 6270* does not purport to excuse agencies from obtaining public records in the possession of *their own employees.* It simply prohibits agencies from attempting to evade CPRA by transferring public records to an intermediary not bound by the Act's disclosure [**22] requirements.

Next, the City relies on *section 6253.9, subdivision (a)(1),* which states that an agency must make a public record available "in any electronic format in which *it holds* the information" (italics added), and on *section 6253, subdivision (a),* which requires that public records be available for inspection "during ... office hours." These provisions do not assist the City. They merely address the mechanics of how public records must be disclosed. They do not purport to define or limit what constitutes a public record in the first place. Moreover, to say that only public records "in the possession of the agency" (§ *6253, subd. (c))* must be disclosed begs the question of whether the term "agency" includes individual officers and employees. We have concluded it does.

Under the City's interpretation of CPRA, a document concerning official business is only a public record if it is located on a government agency's computer servers or in its offices. Indirect access, through the agency's employees, is not sufficient in the City's view. However, we have previously stressed that a document's status as public or confidential does not turn on the arbitrary circumstance of where the document is located.

In *Commission on Peace Officer Standards, supra, 42 Ca1.4th at pages 289 to 290,* a state agency argued certain employment information [**23] was exempt from disclosure under CPRA because it had been placed in confidential personnel files. In considering a Penal Code provision that deems peace officer personnel records confidential, we rejected an interpretation that made confidentiality turn on the type of file in which records are located, finding it "unlikely the Legislature intended to render documents confidential based on their location, rather than their content." *(Commission on Peace Officer Standards, at p. 291.)* Although we made this observation in analyzing the scope of a CPRA exemption, the same logic applies to the Act's definition of what constitutes a public record in the first place. We found it unlikely "the Legislature intended that a public agency be able to shield information from public disclosure simply by placing it in" a certain type of file. *(Commission on Peace Officer Standards, at p. 291.)* Likewise, there is no indication the Legislature meant to allow public officials to shield communications about official business simply by directing them through personal accounts. Such an expedient would gut the public's presumptive right of access *(Sander v. State Bar of California, supra, 58 Cal.4th at p. 323),* and the constitutional imperative to broadly construe this right *(Cal. Const., art. I, § 3, subd. (b)(2)).* [*625]

(13) In light of these principles, and considering *section 6252, subdivision (e)* in the context ["24] of the Act as a whole (see *Smith v. Superior Court (2006) 39 Ca1.4th 77, 83 [45 Cal. Rptr. 3d 394, 137 P.3d 218]),* we conclude a city employee's communications related to the conduct of public business do not cease to be public records just because they were sent or received using a personal account. Sound public policy supports this result.

B. *Policy Considerations*

Both sides cite policy considerations to support their interpretation of the "public records" definition. The City argues the definition reflects a legislative balance between the public's right of access and individual employees' privacy rights, and should be interpreted categorically. Smith counters that privacy concerns are properly addressed in the case-specific application of CPRA's exemptions, not in defining the overall scope of a public record. Smith also contends any privacy intrusion resulting from a search for records in personal accounts can be minimized through procedural safeguards. Smith has the better of these arguments.

The City's interpretation would allow evasion of CPRA simply by the use of a personal account. We are aware of no California law requiring that public officials or employees use only government accounts to conduct public business. If communications sent through personal accounts [**25] were categorically excluded from CPRA, government officials could hide their most sensitive, and potentially damning, discussions in such accounts. The City's interpretation "would not only put an increasing amount of information beyond the public's grasp but also encourage government officials to conduct the public's business in private." (Senat, *Whose Business Is It: Is Public Business Conducted on Officials' Personal Electronic Devices Subject to State Open Records Laws?* (2014) *19 Comm. L. & Poly 293, 322.)*

It is no answer to say, as did the Court of Appeal, that we must presume public officials conduct official business in the public's best interest. The Constitution neither creates nor requires such an optimistic presumption. Indeed, the rationale behind the Act is that it is for the *public* to make that determination, based on information to which it is entitled under the law. Open access to government records is essential to *verify* that government officials are acting responsibly and held accountable to the public they serve. *(CBS, Inc. v. Block (1986) 42 Ca1.3d 646, 651 [230 Cal. Rptr. 362, 725 P.2d 470J.)* "Such access permits checks against the arbitrary exercise of official power and secrecy in the political process." *(Ibid.)* The whole purpose of CPRA is to ensure transparency [**26] in government activities. If public officials could evade the law simply by clicking into a different e-mail account, or communicating through a personal device, sensitive information could routinely evade public scrutiny. [*626]

The City counters that the privacy interests of government employees weigh against interpreting "public records" to include material in personal accounts. Of course, public employees do not forfeit all rights to privacy by working for the government. *(Long Beach City Employees Assn. v. City of Long Beach (1986) 41 Cal.3d 937, 951 [227 Cal.Rptr.90, 719 P.2d 6601)* Even so, the City essentially argues that the contents of personal e-mail and other messaging accounts should be categorically excluded from public review because these materials have traditionally been considered private. However, compliance with CPRA is not necessarily inconsistent with the privacy rights of public employees. Any personal information not related to the conduct of public business, or material falling under a statutory exemption, can

be redacted from public records that are produced or presented for review. (See § *6253, subd. (a).)*

(14) Furthermore, a crabbed and categorical interpretation of the "public records" definition is unnecessary to protect employee privacy. Privacy concerns can and should be addressed on a case-by-case [**27] basis. (See *International Federation, supra, 42 Cal.4th at p. 329.)* Beyond the definition of a public record, the Act itself limits or exempts disclosure of various kinds of information, including certain types of preliminary drafts, notes, or memoranda (§ *6254, subd. (a)),* personal financial data (§ *6254, subd. (n)),* personnel and medical files (§ *6254, subc1. (c)),* and material protected by evidentiary privileges (' *6254, subd. (k)).* Finally, a catchall exemption allows agencies to withhold any record if the public interest served by withholding it "clearly outweighs" the public interest in disclosure. (§ *6255, subd. (a).)* This exemption permits a balance between the public's interest in disclosure and the individual's privacy interest. *(International Federation, at pp. 329-330; BRV, Inc. v. Superior Court (2006) 143 Cal.App.4th 742, 755-756 [49 Cal. Rptr. 3d 519].)* The analysis here, as with other exemptions, appropriately focuses on the *content* of specific records rather than their location or medium of communication. (See *Commission on Peace Officer Standards, supra, 42 Cal.4th at p. 291.)'*

> *7* While admitting it invoked no CPRA exemptions in the proceedings below, the City nevertheless asks us to decide that messages in employees' personal accounts are universally exempt from disclosure under *section 6255.* This issue has not been preserved and is beyond the scope of our grant of review. It also appears impossible to decide on this record. Answering threshold questions about whether employees have a reasonable expectation of privacy (see *Hill v. National Collegiate Athletic Assn. (1994) 7 Ca1.4th 1, 35 [26 Cal. Rptr. 2d 834, 865 P.2d 633]),* or whether their messages are covered by the "deliberative process" privilege *(Times Mirror Co. v. Superior Court (1991) 53 Cal.3d 1325, 1339-1344 [283 Cal. Rptr. 893, 813 P.2d 240])* would require a fact-intensive review of the City's policies and practices regarding electronic communications, if not the contents of the challenged documents themselves. The record here is insufficient.

The City also contends the search for public records in employees' accounts would itself raise privacy concerns. In order to search for responsive [*627] documents, the City claims agencies would have to demand the surrender of employees' electronic devices and passwords to their personal accounts. Such a search would be tantamount to invading employees' homes and rifling through their filing cabinets, [**28] the City argues. It urges no case has extended CPRA so far.

Arguments that privacy interests outweigh the need for disclosure in CPRA cases have typically focused on the sensitive content of the documents involved, rather than the intrusiveness involved in searching for them. (See, e.g., *International Federation, supra, 42 Cal4th 319; Copley Press, Inc. v. Superior Court (2006) 39 Cal.4th 1272 [48 Cal. Rptr. 3d 183, 141 P.3d 2881)* Assuming the search for responsive documents can also constitute an unwarranted invasion of privacy, however, this concern alone does not tip the policy balance in the City's favor. Searches can be conducted in a manner that respects individual privacy.

C. *Guidance for Conducting Searches*

The City has not attempted to search for documents located in personal accounts, so the legality of a specific kind of search is not before us. However, the City and some amici curiae do highlight concerns about employee privacy. Some guidance about how to strike the balance between privacy and disclosure may be of assistance.

(15) CPRA requests invariably impose some burden on public agencies. Unless a records request is overbroad or unduly burdensome, agencies are obliged to disclose all records they can locate "with reasonable effort." *(California First Amendment Coalition v. Superior Court (1998) 67 Cal.App.4th 159, 166 [78 Cal. Rptr. 2d 847].)* Reasonable efforts do not require that agencies undertake extraordinarily [**29] extensive or intrusive searches, however. (See *American Civil Liberties Union Foundation v. Deukmejian (1982) 32 Cal.3d 440, 453 [186 Cal. Rptr. 235, 651 P.2d 822]; Bertoli v. City of Sebastopol (2015) 233 Cal.App.4th 353, 371-372 [182 Cal. Rptr. 3d 308].)* In general, the scope of an agency's search for public records "need only be reasonably calculated to locate responsive documents." *(American Civil Liberties Union of Northern California v. Superior Court (2011) 202 Cal.App.4th 55, 85 [134 Cal. Rptr. 3d 472];* see *Community Youth, supra, 220 Cal.App.4th at p. 1420.)*

CPRA does not prescribe specific methods of searching for those documents. Agencies may develop their own internal policies for conducting searches. Some general principles have emerged, however. Once an agency receives a CPRA request, it must "communicate the scope of the information requested to the custodians of its records," although it need not use the [*628] precise language of the request. *(Community Youth, supra, 220 Cal.App.4th at p. 1417.)* As to requests seeking public records held in employees' nongovernmental accounts, an agency's first step should be to communicate the request to the employees in question. The agency may then reasonably rely on these employees to search

their own personal files, accounts, and devices for responsive material.

Federal courts applying FOIA have approved of individual employees conducting their own searches and segregating public records from personal records, so long as the employees have been properly trained in how to distinguish between the two. (See *Ethyl Corp. v. U.S. Environmental Protection Agency (4th Cir. 1994) 25 F.3d 1241, 1247.)* A federal employee who withholds a document identified [**30] as potentially responsive may submit an affidavit providing the agency, and a reviewing court, "with a sufficient factual basis upon which to determine whether contested items were 'agency records' or personal materials." *(Grand Central Partnership, Inc. v. Cuomo (2d Cir. 1999) 166 F.3d 473, 481.)* The Washington Supreme Court recently adopted this procedure under its state public records law, holding that employees who withhold personal records from their employer "must submit an affidavit with facts sufficient to show the information is not a 'public record' under the PRA. So long as the affidavits give the requester and the trial court a sufficient factual basis to determine that withheld material is indeed nonresponsive, the agency has performed an adequate search under the PRA." *(Nissen v. Pierce County (2015) 183 Wn.2d 863, 886 [357 P.3d 45, 57].)* We agree with Washington's high court that this procedure, when followed in good faith, strikes an appropriate balance, allowing a public agency "to fulfill its responsibility to search for and disclose public records without unnecessarily treading on the constitutional rights of its employees." *(Id., 357 P.3d at p. 58.)*

Further, agencies can adopt policies that will reduce the likelihood of public records being held in employees' private accounts. "Agencies are in the best position to implement [**31] policies that fulfill their obligations" under public records laws "yet also preserve the privacy rights of their employees." *(Nissen v. Pierce County, supra, 357 P.3d at p. 58.)* For example, agencies might require that employees use or copy their government accounts for all communications touching on public business. Federal agency employees must follow such procedures to ensure compliance with analogous FOIA requests. (See *44 U.S.C. § 2911(a)* [prohibiting use of personal electronic accounts for official business unless messages are copied or forwarded to an official account]; *36 C.F.R. § 1236.22(b) (2016)* [requiring that agencies ensure official e-mail messages in employees' personal accounts are preserved in the agency's recordkeeping system]; *Landmark Legal Foundation v. Environmental Protection Agency (D.D.C. 2015) 82 F.Supp.3d 211, 225-226* [*629] [encouraging a policy that official e-mails be preserved in employees' personal accounts as well].)

We do not hold that any particular search method is required or necessarily adequate. We mention these alternatives to offer guidance on remand and to explain why privacy concerns do not require categorical exclusion of documents in personal accounts from CPRA's "public records" definition. If the City maintains the burden of obtaining records from personal accounts is too onerous, it will have an opportunity to so establish in [**32] future proceedings. (See *Connell v. Superior Court (1997) 56 Cal.App.4th 601, 615-616 [65 Cal. Rptr. 2d 738]; State Bd. of Equalization v. Superior Court (1992) 10 Cal.App.4th 1177, 1188 [13 Cal. Rptr. 2d 342].)*

D. *Conclusion*

(16) Consistent with the Legislature's purpose in enacting CPRA, and our constitutional mandate to interpret the Act broadly in favor of public access *(Cal. Const., art. I, § 3, subd. (b)(2)),* we hold that a city employee's writings about public business are not excluded from CPRA simply because they have been sent, received, or stored in a personal account.

DISPOSITION

The judgment is reversed, and the case is remanded for further proceedings consistent with this opinion.

Cantil-Sakauye, C. J., Werdegar, J., Chin, J., Liu, J., Cuellar, J., and Kruger, J., concurred.

LACERA

FOR INFORMATION ONLY

May 2, 2017

TO: Operations Oversight Committee
Alan Bernstein, Chair
Anthony Bravo
Joseph Kelly
Ronald Okum, Alternate

FROM: Robert R. Hill, Assistant Executive Officer
JJ Popowich, Assistant Executive Officer

FOR: May 11, 2017 Operations Oversight Committee Meeting

SUBJECT: **LACERA OPERATIONS BRIEFING**

The purpose of this briefing is to share insights on staff activities, updates on goals, and discuss opportunities and/or concerns. Many of the items highlighted may recur in subsequent briefings or may result in a future comprehensive OOC presentation.

- Public Records Request Update
- Report of Felony Forfeiture Cases Processed

RRH:rrh

DATE RECEIVED	REQUESTER	DOCS REQUESTED
03-27-17	J. Hammond, RELAC	Requested photo of Les Robbins. *Transmitted 1 document.* *Sent via email: Photo.*
03-19-17	C. Nocon, Thomson Reuters Lippers	Request bond holdings information for the funds listed below. 1. Los Angeles County Employees Ret Sys (Barclay) 2. Los Angeles County Employees Ret Sys (Goldman Sachs) 3. Los Angeles County Employees Ret Sys (BlackRock) 4. Los Angeles County Employees Ret Sys (Dolan McEniry) 5. Los Angeles County Employees Ret Sys (GW Capital) 6. Los Angeles County Employees Ret Sys (LM Capital) 7. Los Angeles County Employees Ret Sys (Loomis Sayles) 8. Los Angeles County Employees Ret Sys (Oaktree) 9. Los Angeles County Employees Ret Sys (PENN Capital) 10. Los Angeles County Employees Ret Sys (PIMCO) 11. Los Angeles County Employees Ret Sys (Post Advisory) 12. Los Angeles County Employees Ret Sys (Principal GI) 13. Los Angeles County Employees Ret Sys (Pugh Capital) 14. Los Angeles County Employees Ret Sys (WAMCO) 15. Los Angeles County Employees Ret Sys (Wells Capital) 16. Los Angeles County Employees Retirement System 17. Los Angeles County Employees Retirement Sys (LACERA) 18. Los Angeles County Employees Ret Sys (Standish Mellon) *Transmitted 1 document.* *Sent via email document titled: Thomson Reuters_123116_Holdings_ Final.*
03-31 VERBAL	C. Williamson, Pensions and Investments	Telephone inquiry regarding LACERA's Hedge Fund reporting in our CAFR. *Transmitted 1 document.* *Sent via email: Latest Hedge Fund Report (Q3 2016)*
04-05-17	S. Ayers, TriStar	Transmitted monthly request for Retiree's Benefit Approval List. *Transmitted 1 document.* *Sent via email: Board Agenda Report for April 5, 2017.*
04-05-17	LA Sheriffs Dept.	Transmitted monthly request to LA County Sheriffs' Department: *Transmitted 2 documents.* *Sent via email: Monthly Fire Department List and Sheriff List each showing date run of March 30, 2017.*
04-05-17	J. Hammond, RELAC	Transmitted monthly request for Retiree's Benefit Approval List. *Transmitted 1 document.* *Sent via email: Board Agenda Report for April 5, 2017.*

DATE RECEIVED	REQUESTER	DOCS REQUESTED
04-05-17	L. Robbins, Individual	Transmitted monthly request for Retiree's Benefit Approval List. *Transmitted 1 document.* *Sent via email: Board Agenda Report for April 5, 2017.*
04-06-17	S. Moomjean, CEO, LA County	Requested agenda packet for BOI meeting held on, Wednesday, April 12, 2017. *Transmitted information via email.*
04-06-17	V. Desikan, Individual	Requested agenda packet for BOI meeting held on, Wednesday, April 12, 2017. *Transmitted information via email.*
04-06-17	F. Massey, Individual	Requested agenda packet for BOI meeting held on, Wednesday, April 12, 2017. *Transmitted information via email.*
04-06-17	A. Poe, Reedsmith	Requested agenda packet for BOI meeting held on, Wednesday, April 12, 2017. *Transmitted information via email.*
04-07-17	G. Chung, FIN	Requested agenda packets for BOI meetings held on Wednesday, April 12, 2017. *Transmitted 3 documents.* *Sent via email: Agenda packets for:* *Corporate Governance Committee, Board of Investments Committee and Real Estate Committee for meetings held on Wednesday, April 12, 2017.*
Received 04-05-17 Dated 03-27-17	J. Curry, IPREO	Requested latest Information for Fixed Income. *Transmitted 3 documents.* *Sent via email on April 12, 2017: Document titled FI Holdings 12-31-2016.* *Sent on April 17, 2017 via email: LACERA Non-U.S. Equity Holdings as of December 31, 2016 and LACERA U.S. Equity Holdings as of December 31, 2016*
04-12-17	BOR Board Members	Transmitted agenda packets for BOR Administrative meeting and the Insurance, Benefits, and Legislative (IBL) Committee meetings that were on Thursday, April 13th. Also forwarded the electronic. link. *http://www.lacera.com/about_lacera/board_retirement.html* *Transmitted the two agenda packets via email*.

DATE RECEIVED	REQUESTER	DOCS REQUESTED
04-12-17	D. Gregory, IQ Public	Requested copies of documents for: 1. April 12, 2017 Regular Meeting Board of Investments: All investment related discussion materials. 2. April 12, 2017 Corporate Governance Committee: All investment related discussion materials. 3. April 12, 2017 Real Estate Committee: All investment related discussion materials. *Transmitted 3 documents.* *Sent via email: Corporate Governance Committee, Board of Investments Committee and Real Estate Committee for meetings held on Wednesday, April 12, 2017.*
04-12-17	A. Ju, PEI Media	Requested Wednesday April 12, 2017 BOI documents: Agenda items III, VII-F, IX-C, and XII-A. *Transmitted 1 document.* *Sent via email: Agenda packet for BOI meeting held on, Wednesday, April 12 2017.*
04-13-17 VERBAL	M. Lemann, Fund Fire	Requested, via telephone call, monthly salary information for D. Kushner and J Grabel. Regarding LACERA's CIO search *Transmitted 1 document.* *Sent via email: LACERA CIO Search Press release dated April 11, 2017 and also transmitted salary information via email.*
04-13-17	B. Shapiro, Money Management Report	Requested confirmation regarding the hiring of J. Grabel as LACERA's CIO. *Transmitted 1 document.* *Sent via email: LACERA CIO Search Press release dated April 11, 2017 and also transmitted monthly salary information via email.*
04-13-17	S. Webber, Aurora Advisors	Requested all records with respect to the FTI Consulting "Proposal to Service Los Angeles County Employees Retirement Association" dated October 9, 2016, from October 9, 2015 to present." *Response via April 17, 2107 email stated that due to out of office schedule of personnel involved in response effort, LACERA invokes an extension under GCS 6253(c). LACERA's response is due Sunday April 23, 2017, which would be extended to Monday, April 24, 2017.* *LACERA responds using only 4-day extension.* *Transmitted 6 documents,* *Sent April 28, 2017 via email:*

DATE RECEIVED	REQUESTER	DOCS REQUESTED
		1. FTI handwritten and typed notes dated October 30, 2015; *2. February 2016 (Revised April 2017) Vol 2, TOC* *3. March 2016 (Revised April 2017) Vol 3, TOC* 4. Memo to G. Rademacher re Recommendation to retain *Kreischer Miller* *5. PE FEE Retrospective Audit Memo Final;* *and* *6. Webber PRA records dated April 28, 2017*
04-17-17	G. Chung	Would like to know who winner of this RFP re Opportunities, Private Equity and an approximate hire date. *Response transmitted via email:* *The retrospective winner was Kreischer Miller and the ongoing winner was LP Capital, now known as Pavilion.*
04-18-17	M. Sandate, Individual	Requested following document from 4/12/2017 Board of Investments Meeting, Agenda item on page 3, IX. REPORT c. Private Equity Co-Investment Program Morgan Stanley Alternative Investment Partners dated March 30, 2017. *Transmitted 1 document.* *Sent via email: Agenda packet for BOI meeting held on, Wednesday, April 12, 2017.*

LACERA

Report of Felony Forfeiture Cases Processed
April 20, 2017

CASE #	MEMBER'S LAST NAME	MEMBER'S FIRST NAME	DEPT.	CONVICTION DATE	LACERA NOTIFIED	MEMBER NOTIFIED BY LACERA	FINAL STATUS	DISABILITY STATUS	IMPACT NOTIFICATION SERVICE LEVEL
NO CASES PENDING									