

CHAPTER 27
INFORMATION PRACTICES ACT
FEBRUARY 2015
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CHAPTER 27

INFORMATION PRACTICES ACT

1. LEGAL REFERENCE. The Information Practices Act (IPA), California Civil Code Sections (§) 1798, et seq., regulates the collection, use, maintenance and dissemination of personal information about individuals by state agencies and the rights of individuals to whom the personal information pertains.

NOTE: The Information Practices Act's reference to "individuals" does not differentiate between individuals who are members of the public and individuals who are Department employees; see Civil Code §1798.3. Department employees will find applicable statutes, including: Government Codes §§3300 et seq., Public Safety Officers Procedural Bill of Rights; and Department policy Highway Patrol Manual 10.3, Personnel Transactions Manual, Chapter 30, Personnel and Medical Files, afford greater access to information about the employee maintained by the Department than the employee would secure through an Information Practices Act request.

2. INFORMATION PRACTICES ACT APPLICATION. The IPA applies to any information maintained that identifies or describes an individual (by name, social security number, physical description, home address, home telephone number, education, financial matters, and/or medical or employment history) or a corporation, partnership or association, including attributed statements, from any file maintained by the Department by an identifying particular (most commonly by name).

3. AGENCY REQUIREMENTS. The Department's Special Counsel has been designated as the IPA Coordinator, responsible for ensuring departmental compliance with the IPA.

4. RULES OF CONDUCT FOR EMPLOYEES. Commanders shall ensure employees responsible for handling personal information are fully aware of the following IPA rules.

a. Employees shall not require individuals to disclose personal information which is not necessary and relevant to the lawful state function for which the employee is responsible.

b. Employees shall make every reasonable effort to ensure that a prompt response to inquiries and requests relating to personal information of individuals is provided.

c. Employees shall assist an individual seeking their own information to make the inquiry sufficiently specific and descriptive so as to facilitate locating the information sought.

d. Employees shall respond to requests from individuals to review, obtain copies of, amend, correct, or dispute their personal records in a courteous and businesslike manner in accordance with the IPA.

e. Employees shall not disclose personal or confidential information to unauthorized persons or entities. The intentional unauthorized disclosure of such information may be cause for disciplinary action, including dismissal, is punishable as a misdemeanor or felony pursuant to Penal Code Section (PC) 502, and may result in civil action being filed against an employee and/or the Department.

f. Employees shall not seek out or use personal information relating to individuals for their own interest or advantage. The intentional violation of this rule may be cause for disciplinary action, including dismissal, pursuant to the IPA, is punishable as a misdemeanor or felony pursuant to PC 502, and may result in civil action being filed against the employee and/or the Department.

g. Employees responsible for the maintenance of personal records shall take all necessary precautions to ensure that proper administrative, technical, and physical safeguards are established and followed in order to protect the confidentiality of records.

5. ACCESS OF AND AMENDMENTS TO PERSONAL RECORDS. With specific exceptions, individuals may review, amend, correct, dispute, and obtain copies of information pertaining to themselves in state records.

a. All individuals have the right to inquire and be notified whether a record pertaining to them is maintained by the Department.

b. Requests shall be handled courteously and expeditiously in accordance with the provisions of this chapter.

6. COLLECTION AND MAINTENANCE OF PERSONAL INFORMATION. An office responsible for the maintenance of records containing personal information shall, to the extent possible, acquire the information from the individual to whom it pertains, shall maintain the information only when necessary to accomplish a lawful purpose, shall store the information in a readily accessible manner, in compliance with all applicable security and confidentiality directives to facilitate production when requested by the individual.

a. Refer to General Order 6.3, Disclosure of Social Security Account Numbers, when a form requires an individual to provide their social security number.

7. PERMISSIBLE DISCLOSURES. The IPA precludes the disclosure of personal information in a manner that would link the information to the individual. Exceptions to this preclusion are found in the California Civil Code Section 1798.24 and permit disclosure to, among others, the individual about whom the information pertains or another authorized by the individual, a lawfully-appointed guardian, conservator, or representative.

a. Disclosure made pursuant to the Public Records Act (Government Code §§6250 et seq.) is different from disclosure pursuant the provisions of the IPA.

b. The IPA does not preclude disclosure to any person pursuant to a subpoena, court order, or other compulsory legal process, including a search warrant; the Department should make a reasonable effort to notify the individual to whom the record pertains and to determine the disclosure is not prohibited by other law. Chapter 10, Subpoenas/Subpoenas Duces Tecum Compliance Criminal/Civil Appearances, of this manual refers to policy and procedures relating to release of records pursuant to legal processes. If the disclosure is believed to be prohibited by other law, the Department's Legal Affairs Section should be contacted for advice.

8. ACCOUNTING FOR DISCLOSURES. Each office within the Department disclosing information pursuant to the IPA shall keep an accurate accounting of each disclosure, consistent with the provisions of the California Civil Code Sections 1798.25 – 1798.29, made pursuant to d(5), (8), (10), or (11).

a. The accounting may be memorialized on the CHP 373, Personal/Confidential Information Disclosure Log (refer to Annex A), by keeping a copy of the transmitting memorandum or letter in the file, or by keeping a log in the file itself. The accounting shall include the date, nature, and purpose of each disclosure, and the name, title, and business address of the person or agency to whom the disclosure was made.

b. Each accounting shall be identified with and traced to the information disclosed, and shall be made available to the subject when access to the pertinent records is provided.

c. Each accounting of a disclosure shall be retained with the record disclosed for the life of the record or three years after the disclosure is made, whichever is longer.

9. ACCESS BY INDIVIDUAL.

a. Every individual, whether an employee or not, has the right to inquire about and be notified as to whether the Department maintains a record about them.

b. Procedures for Access - Requests for Inspection or Copies of Records.

(1) Requests by individuals for inspection or copies of records shall be in writing and shall be addressed to the office where the records are located or, if unknown, to the Special Counsel. If requests are received by telephone, a CHP 370A, Personal Records Inquiry Notice and Instructions, and a CHP 371, Request for Records Access (refer to Annex B), shall be mailed to the individual.

(2) Requests shall contain a sufficient description of the records sought to facilitate their identification by departmental personnel.

(3) When the records have been secured, the individual may request and be permitted to inspect copies of the records, and may request and be provided copies of the records, or be permitted to inspect the records and thereafter request copies of the records; inspection may also be undertaken by a representative of the individual's designation. Inspection should occur during regular business hours within 30 days of receipt of the request for current records or within 60 days if the records are stored or archived, or are located at Department facilities other than the office receiving the request.

(4) Inspection of original records shall be made in the presence of departmental personnel to prevent the records from being destroyed, mutilated, defaced, or altered.

(5) If portions of a requested record are exempt from disclosure under the IPA or other law, the exempt portions shall be redacted before inspection is permitted or copies are provided.

10. REQUESTS FOR COPIES OF RECORDS AND FEES.

a. An individual shall be provided with exact copies of any and all records maintained about that individual responsive to the request, except for records, or portions of records, exempt from disclosure.

b. Copies are to be provided within 15 days after inspection or within 30 days after receipt of a written request for the records. Copies of records, upon payment of required fees, can be mailed to the requestor; the requestor can also be notified when the records are available at the Department office closest to their residence,

and can be retrieved upon proof of identity and payment of required fees. The CHP 376, Mail Response to Record Request (refer to Annex C), may be used to notify an individual when the records are available.

c. Individuals shall be charged 10 cents per page for single-sided, letter-sized copies and 20 cents per page for copies of all other sizes. Fees charged for audio/video recordings or other information stored digitally is \$5.00 per disk. Refer to Chapter 4, Miscellaneous Sales – Transmittal of Collections, Annex D, of this manual. These fees are different from those charged for copies provided in response to a request for information pursuant to the Public Records Act.

d. The Department reserves the discretion to reduce or waive fees, based in part on the requestor's credible claim of an inability to pay the required fees.

11. EXEMPTIONS. Pursuant to Civil Code Section 1798.40, certain types of information can be withheld from the individual to whom it pertains. Examples of such information include, but are not limited to; criminal offender information (the requesting individual shall be referred to the Department of Justice); driver license or registration information (the requesting individual shall be referred to the Department of Motor Vehicles); arrest/criminal investigation material compiled for the purpose of investigating suspected criminal activities; and background investigation material compiled for the purpose of determining eligibility, suitability, or qualifications for public employment, advancement, promotion, (renewal of) appointment, promotion, or licensure, so long as the material is withheld only so as not to compromise the investigation or a related investigation (for such background investigations), the identities of sources of information may be withheld from disclosure pursuant to Civil Code Section 1798.38, although the actual information received from the source can be provided.

a. Personal information relating to other individuals which may be contained in a record pertaining to the individual requesting the record, shall not be provided, consistent with California Civil Code Section 1798.42. The Department shall make reasonable efforts to redact such personal information relating to other individuals before the record is made available to the individual making the request.

b. Information which is required by statute to be withheld from the individual shall not be provided in response to an IPA request.

12. REQUESTS FOR PERSONAL INFORMATION AMENDMENTS. The Department shall permit requests for amendments to information or records contained in departmental files when the individual believes such information or records to be inaccurate, irrelevant, untimely, or incomplete, in a manner consistent with Civil Code Section 1798.35.

- a. Individuals expressing a desire to amend information shall be provided with a CHP 372, Request for Records Amendment (refer to Annex D), and instructed to direct the request to the office which has physical custody of the record containing personal information about the individual; if the location of the record is unknown, the request shall be directed to the Special Counsel.
- b. Within 30 days of receipt of a request to amend a record, the office receiving the request shall either:
 - (1) Make each correction in accordance with the individual's request and inform the individual of the corrections made, or
 - (2) Inform the individual, in writing, of the refusal to amend the record in accordance with the individual's request, the reason for the refusal, and the individual's right to request review of the refusal by the Department's IPA Coordinator. The Commissioner is the final reviewing official for a refusal to amend.
- c. If, after such review, the reviewing official refuses to amend the record in accordance with the individual's request, the individual shall be allowed to file a statement setting forth the reasons for the individual's disagreement with the Department.
- d. If the individual chooses to file a statement of disagreement with the Department, the reviewing official shall clearly note any portion of the record which is disputed and file the individual's statement and the Department's reasons for refusal with the record. Thereafter, the individual's statement and the Department's reasons for refusal shall become part of the record and shall be disclosed with the record any time the record is disclosed.

13. LEGAL REMEDIES. An individual who exhausts all IPA-provided administrative remedies may bring a civil action for injunctive relief and/or damages against the Department for refusal to allow an individual to inspect or receive copies of a record, refusal to amend a record as requested by the individual or unauthorized disclosure of a record.

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ANNEX B

EXAMPLE CHP 371, REQUEST FOR RECORDS ACCESS

STATE OF CALIFORNIA
DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
REQUEST FOR RECORDS ACCESS
CHP 371 (Rev. 3-94) OPI 008

*Original: Originating office
Duplicate: Headquarters
Triplicate: Records requester*

I request access to records maintained in my name by the California Highway Patrol as described below:

Name	Record(s) Title	Location of Record(s)	Date(s)
Martin Riggs	STD 637 Report of Performance For Probationary Employee	Valley Division	May 2001

If the requested record is available at another location, I will review at:

If the requested record is available, mail to me at:
Name Martin Riggs
Address 4321 Main Street Sacramento, CA 95846

SIGNATURE OF REQUESTER	DATE <u>07/09/2014</u>
<small>Identification is required to insure that access is provided only to the person to whom the information pertains.</small>	DRIVER'S LICENSE NUMBER <u>N1258964</u>
	OTHER

I, R. Murtaugh (NAME), SSMI (TITLE), Valley Division (LOCATION),
have answered the above request and have taken the following action:

Provided access as requested.

Access was not provided for the following reason:

- Request to be forwarded to the Patrol's Information Practices Coordinator for determination whether the information requested is exempt from disclosure.
- Records may be in another office. Request will be forwarded to:

- Unable to locate record as identified by the requester.
- Record retention period expired and the file has been purged.
- The records requested are not maintained by the California Highway Patrol.

Remarks:

Use previous editions until depleted

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ANNEX C

EXAMPLE CHP 376, MAIL RESPONSE TO RECORD REQUEST

STATE OF CALIFORNIA
DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
MAIL RESPONSE TO RECORD REQUEST
CHP 376 (Rev. 9-94) OPI 008

Date: 7/9/2014

┌ Martin Riggs ─┐
└ 4321 Main Street ─┘
└ Sacramento, CA 95846 ─┘

Requested Records:
STD 637 from May 2001

- Copies of the records you requested will be forwarded to you upon our receipt of the authorized 10 cents per page for regular copies and 20 cents per page for copies of microfilm or computer records, which is:

Number of Pages Copied	Total Cost
15	\$1.50

- Copies of the records you requested will be available at
If you wish to purchase copies of these records, you may do so at the authorized calculated cost indicated above which is:

Number of Pages Copied	Total Cost
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- Access was not provided for the following reason:

- Request to be forwarded to the Patrol's Information Practices Coordinator for determination whether the information requested is exempt from disclosure.
- Unable to locate record as identified by the requester.
- Record retention period expired and the file has been purged.
- The records requested are not maintained by the California Highway Patrol.

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ANNEX D

EXAMPLE CHP 372, REQUEST FOR RECORDS AMENDMENT

STATE OF CALIFORNIA DEPARTMENT OF CALIFORNIA HIGHWAY PATROL REQUEST FOR RECORDS AMENDMENT CHP 372 (Rev. 2-00) OPI 008		Original: Originating office Duplicate: Headquarters Triplicate: Records requester	
TO: CALIFORNIA HIGHWAY PATROL	Date: 7/9/2014		
FROM: Valley Division			
Amendment of the following record(s) or document(s) is requested:			
Name	Record(s) Title	Location of Record(s)	Date(s)
Martin Riggs	STD 673	Valley Division	May 2001
To change:			
To eliminate: The comment from Sgt. McClain regarding the citation activity			
To add:			
SIGNATURE OF REQUESTER	DRIVER'S LICENSE NUMBER	OTHER	
	N1258964		
NOTE: Identification of requester is required to insure that amendments are made by subject to whom the personal information pertains. Further, this request must include supporting documentation to assist the review process. A decision will be provided within 30 days of your request.			
I, <u>R. Murtaugh</u>	<u>SSMI</u>	<u>201</u>	
(NAME)	(TITLE)	(LOCATION)	
acknowledge receipt of your request for record(s) amendment and find this is			
<input checked="" type="checkbox"/> a proper amendment. Action will be taken to comply with your request.			
<input type="checkbox"/> an improper amendment. _____			
You may appeal a denial by filing a copy of this form along with your request for review with the Information Practices Coordinator, P.O. Box 942898, Sacramento, CA 94298-0001.			
NOTE: Retention of this document is until expiration date of the requested file, unless an amendment is pending.			
Use previous editions until depleted		Chp372_0512.pdf	

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