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CALIFORNIA ASSOCIATION OF CLERKS
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March 8, 2016

The Honorable Eric Linder
Member, California State Assembly
State Capitol, Room 2016
Sacramento, California 95814

**Re: AB 1707 (Linder) – Public records: response to request
As Introduced on January 25, 2016 – OPPOSE**

Dear Assembly Member Linder:

The California State Association of Counties (CSAC) and the California Association of Clerks and Election Officials (CACEO), regret that we must oppose your Assembly Bill 1707, which would require that local agencies subject to the California Public Records Act (PRA) include in their responses to requests for public records the name of documents withheld, and the exemption that applies to each document. The bill would additionally require these agencies to respond to all requests via written response, regardless of how the request is made.

Would Require Public Agencies to Maintain Privilege Logs for PRA Requests

While the intent behind AB 1707 may be purported to result in further transparency in the realm of access to public records, the costs and administrative burden it would place on public agencies would be crippling. The provisions of AB 1707 would essentially require public agencies to, in response to a PRA request, maintain a version of a “privilege log” – a document describing those documents or other items withheld from production in a civil lawsuit due to the claim that the documents are privileged from disclosure because of the attorney-client privilege or some other privilege. If a privilege claim is made, the party claiming privilege has the burden of showing that the privilege applies, usually by providing sufficient information on the privilege log so that the opposing party can assess its validity.

Requiring public agencies to maintain a document-by-document log of records not provided in response to PRA requests will not only increase the complexity and cost of responding, it will additionally invite substantial ancillary litigation regarding whether an agency has complied with the procedural aspects of PRA and will not further benefit the requesting party. In fact, in *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, the Court opined, “Requiring a public agency to provide a list of all records in its possession that may be responsive to a CPRA request has the potential for imposing significant costs on the agency. A single request may involve thousands of pages of materials... To require each public agency to catalog the responsive documents for each of the requests it receives – even when the agency could legitimately claim that all responsive documents are exempt from disclosure – would be burdensome and of scant public benefit.”

Currently, public agencies cannot simply state that a record does not exist; they must state that there is something that cannot be disclosed and must justify withholding any record by demonstrating that, on the facts of the particular case, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record (California Government Code §6255). It should

additionally be noted that many PRA requests are incredibly voluminous and include potentially large numbers of communications (calls, emails, etc.); the requirement to list each record withheld and the exemption claimed would be extremely burdensome and would provide no added meaningful information than is currently provided.

Privacy Concerns

AB 1707 would require that the written responses include the title or any other identification of the document being withheld, and the exemption that applies to each record exempted. Requiring a list of specific documents would, in many cases, create a potential conflict with statutory confidentiality provisions, including, among many others:

- Revenue and Taxation Code §408 (includes property appraisal documents, change of ownership documents and others).
- Welfare and Institutions Code §827 (confidential juvenile court records may only be viewed by certain parties) and other WIC codes involving adult protective services and welfare benefits records.
- Penal Code §832.7 (confidentiality of peace officer personnel information).

Further, protecting the confidentiality of exempt records relating to the deliberative process and records that are subject to attorney-client privilege may be compromised, in whole or in part, just by revealing the name or content of a privileged document. This consequence would involve far more than issues of cost and increased workload. For instance, the revelation of such information may compromise investigations in which confidentiality is essential to the effectiveness of the investigation.

Unnecessary Expansion of Required Written Responses

Government Code currently requires that, "A response **to a written request** (emphasis added) for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing." AB 1707 removes the written response requirement in GC§6255(b) and applies it to denials (including redactions of records as well as total withholdings) of oral requests as well as written requests; it additionally contains no provision that would nullify the obligation to provide a written response in the instance where the requester is willing to forego the written response.

It is not unusual for a member of the public to call or simply make an in-person request at a county department for a single record. This expansion of the written response requirement to all denied or redacted PRA requests would be astoundingly burdensome on county staff and departments and reduce our ability to provide important services to our residents. To date, CSAC has been provided with no specific incidents that would justify the need for this expansion.

Imposes a Costly, Non-Reimbursable Mandate

Proposition 42 (2014) amended the California Constitution to require local government agencies to comply with the PRA and to eliminate the requirement that the state reimburse local government agencies for compliance with the Act. Accordingly, the costs unnecessarily imposed by AB 1707 will take funds directly out of services we provide to our 38 million residents, including public safety, human services, and health benefits.

In conclusion, AB 1707 is an unjustified expansion of the California Public Records Act that would place an undue fiscal and administrative burden on counties and subject them and their residents to confidentiality breaches and litigation. Our Association struggles to determine the necessity of such legislation and any significant problem it attempts to correct or the members of the public it seeks to help.

For these reasons, we respectfully oppose AB 1707. Should you have further questions, please contact Faith Conley, CSAC Legislative Representative at 916.650.8117.

Cc: The Honorable Mark Stone, Chair, Assembly Judiciary Committee
 Members, Assembly Judiciary Committee
 Tom Clark, Consultant, Assembly Judiciary Committee
 Consultant, Assembly Republican Caucus