



**Contra
Costa
County**

To: Board of Supervisors
From: David Twa, County Administrator
Date: December 6, 2016

Subject: Amendment of County Ordinance Code to Authorize Consideration of Competing Public Interests under Government Code section 6255

RECOMMENDATION(S):

INTRODUCE Ordinance No. 2016-26, amending Section 25-4.608 of the County Ordinance Code to authorize the evaluation and consideration of competing public interests under Government Code section 6255 when responding to Public Records Act requests; WAIVE reading, and FIX December 13, 2016, for adoption.

FISCAL IMPACT:

Fiscal impacts are unknown.

BACKGROUND:

The California Public Records Act (PRA), codified in Government Code section 6250 et seq., was enacted in 1968 to give the public a tool to monitor the functioning of their government. To this end, the PRA gives the public the right to inspect or obtain a copy of identifiable public records, provided that the request for records is both specific and focused. In 1995, this County enacted the Better Government Ordinance (BGO) to provide greater rights of access to records than those afforded by state law. Over the past 20 years, this County has had the opportunity to see which aspects of the ordinance are working and which would benefit from further revision.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **12/06/2016** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Mary N. Piepho, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: December 6, 2016

David Twa, County Administrator and Clerk of the Board of Supervisors

Contact: David Twa, County
Administrator 925-335-1086

By: June McHuen, Deputy

BACKGROUND: (CONT'D)

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This County places great importance on providing the public with timely and complete information. In furtherance of that objective, the County trains staff to help those seeking records to focus their requests so that information can be quickly provided in a convenient format. In most cases we believe we achieve that goal. Because the PRA contains few limitations on its use, it can be, and sometimes is, used for improper or illegal purposes such as the disruption or delay of governmental operations, intimidation of public employees, fraud, coercion, or worse. Over the past 20 years, safety concerns have increased, both in terms of individual safety and technological security. From time to time, the County receives requests for information about a specific individual, inquiring their whereabouts or activities, raising serious concerns about the named individual's safety. Additionally, there are times when the County receives requests for information, which if released, potentially could threaten the security of the County's detention facilities or the County's technological capabilities.

The PRA permits records to be withheld when the public interest in nondisclosure is outweighed by the public interest in disclosure (Gov. Code, § 6255). For example, under the PRA, courts have found that the public interest is served by the nondisclosure of records when the release of records could compromise the safety of an individual or the agency; stifle the information gathering process of policy makers; or when the scope of the request is so unduly burdensome that it undermines the ability of the responding agency to operate efficiently and effectively. The BGO eliminated this protection. As a result, there are times when the County cannot fully protect itself against the disclosure of sensitive records, the unreasonable use of taxpayer resources, a potential risk to individual safety, or a threat to the County's ability to operate.

This action would amend the BGO to allow use of the public interest balancing test exemption permitted by Government Code section 6255, in those rare circumstances when the County Counsel's Office authorizes its use. As the County's chief legal officer the County Counsel's Office is best able to evaluate the competing public interests in disclosing records versus nondisclosure, while controlling the use of the exemption to ensure it is applied in a proper, consistent, and legal manner.

CONSEQUENCE OF NEGATIVE ACTION:

If the Better Government Ordinance is not amended the County's ability to ensure that the public interest is adequately considered before records are released will remain hindered.

ATTACHMENTS

Clean Copy of Ordinance

Redline Copy of Ordinance