



CPRA PROCESSING MANUAL

Los Angeles Department of Water and Power

CPRA Clearinghouse
Corporate Strategy and Communications Division

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This manual is designed to provide answers and guidance on the LADWP CPRA process and the roles that each group plays in developing the Department's response to public records requests.

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This manual is intended to provide an overview of the California Public Records Act (CPRA) and assist LADWP employees process requests for public records in accordance with the law.

Introduction to the California Public Records Act (CPRA)

The Los Angeles Department of Water and Power (the Department/LADWP) is mandated by law to respond to public requests for access to its records. The Department is committed to upholding the right of the public to access records and information under the CPRA. The Department has established a CPRA Clearinghouse to coordinate the LADWP's CPRA requests.

1.1 Overview

The California Public Records Act (CPRA) is contained in [California Government Code Sections 6250-6270](#). The purpose of the CPRA is to provide access to information concerning the public's business and is applicable to all government agencies in California, local and state, and generally requires that the records government generates in its work be available for public inspection and that copies be made only at cost and upon request. The CPRA is based upon state policy that access to government information is "a fundamental and necessary right of every person in this state." The primary purpose of the CPRA is to allow citizens to monitor government.

1.2 Agencies Covered by the CPRA

All state and local government agencies are covered by the CPRA. Non-profit and for-profit entities subject to the Ralph M. Brown Act are covered as well. The CPRA is not applicable to the legislature, which is instead covered by the Legislative Open Records Act. The judicial branch is not bound by the CPRA at all, although most court records are disclosable as a matter of public rights of access to courts. Federal government agencies are covered by the Federal Freedom of Information Act (FOIA).

1.3 Duties with Respect to Public Records

Assistance to Requesters: LADWP must assist members of the public in obtaining access to public records by helping requesters identify records which are responsive to

a request. LADWP should provide guidance and recommendations to assist in clarifying, narrowing, and refining a request to overcome “any practical basis for denying access”, so the Department can meet the ask of the specific request without undue burden.

The Department also has discretion to adopt regulations and procedures to specify how requests are submitted and processed starting with providing a form that can be used to place a records request, identifying a specified official or unit to receive and process requests, and establishing internal tracking mechanisms to track and route records requests.

Public records requests for information from the LADWP can be obtained from the CPRA Clearinghouse by submitting a request by regular mail, email, facsimile, phone or in-person. The Clearinghouse routinely uses a CPRA Request Form that is designed to help requestors make a clear and focused request. This is important because the information provided will help LADWP personnel determine if there are responsive records and will aide in the research and compilation of records. Examples of key information that requestors can include that prove useful are:

- The subject of the record.
- A clear, concise, and specific description of the record(s) being requested.
- The date(s) of the record(s), or a time period for the request (e.g.: calendar year 2020).
- Full names for the individuals and/or agencies included in the request, including proper spelling.
- Any additional information that helps staff identify the record(s) being requested.
- Requestor’s complete contact information for the Department to be in communication regarding the request.

While the aforementioned information is not *required* to submit a records request, it certainly helps in the Department’s ability to search and provide a response to the request.

Open for Inspection and Provision of Copies/Fees: In general, public records must be available for public inspection by members of the public at any time during business hours. LADWP, upon request, must also provide copies of public records and may charge only its “direct costs of duplication” unless a statute specifies a specified, lower fee (e.g. elections records). “Direct costs of duplication” does not include staff time to locate or retrieve records or to make copies. Currently, the City of Los Angeles Administrative Code dictates that the LADWP charge \$0.10 per page for standard-sized documents (8 ½” x 11” or 8 ½“ x 14” (white paper with black ink) and \$0.25 per page for large-sized documents (11” x 17” inch white paper with black ink.). Additional costs may

apply for postage (e.g., first class U.S. Mail or expedited delivery), photographs, color reproductions, over-sized drawings, or special programming associated with electronic records. There is no fee for the records during a records review session.

Electronic Format: When a person seeks a record in an electronic format, the CPRA analyst shall, upon request, make the information available in any electronic format in which it holds the information (e.g. DVD, USB drive, or other electronic storage device). Computer software developed by the government is exempt from disclosure.

If a portion of a public record is exempt from disclosure, the Department must “redact” or edit that document to protect the confidential material, while making “any reasonably segregable portion” available to the public. California Government Code Section 6253(a). See Section 3 of this manual for additional information regarding exemptions.

1.4 Who Can Request Records?

All “persons” have the right to inspect and copy disclosable public records. A “person” does not need to be a resident of California or a citizen of the United States to make a request under the CPRA. “Persons” include corporations, partnerships, limited liability companies, firms or associations. Representatives of the news media have no greater rights than members of the public. Government employees acting in their official capacity are not considered to be members of the public. Individuals may have greater access to records about themselves than public records, generally.

1.5 Definition of a Public Record

A public record is broadly defined as any writing containing information relating to the conduct of the public's business. The CPRA defines a public record as “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.” A record includes all forms of recorded information that currently exist or that may exist in the future. The CPRA specifies a record or “writing” in very broad terms as any, “handwriting, typewriting, printing, photo stating, 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.” The rights under the CPRA provide for the inspection of public records or to obtain

copies of identifiable records that exist, it does not compel the LADWP to create lists or reports in response to the request.

Essentially, a record includes any and all information produced for the purposes of conducting government business regardless of the format the record might take.

1.6 Records Prepared, Owned, Used, or Retained

Writings containing information "related to the conduct of the public's business" must also be "prepared, owned, used or retained by any state or local agency" to be public records subject to the CPRA. Writings do not always have to be in the physical custody of, or accessible to, the Department to be considered public records subject to the CPRA. The obligation to search for, collect, and disclose the material requested can apply to records in the possession of the LADWP'S consultants, which are deemed "owned" by the Department and in its "constructive possession" when the terms of an agreement between the Department and the consultant provide for such ownership. Where the Department has no contractual right to control the subconsultants or their files, the records are not considered to be within our constructive possession.

It is important to note that documents which meet the definition of public records (including emails and text messages) are considered "retained" by the LADWP even when they are actually "retained" on an employee or official's personal device or account. When the Department receives a request for records that may be held in an employee's personal account, the Department's first step should be to communicate to the employee or Department official who may have such information in personal devices or accounts to turn over potentially responsive records.

Documents that the Department previously possessed but no longer actually or constructively possess at the time of the request may not be public records subject to disclosure.

1.7 Destruction of Records

Public records must be maintained for the period specified by LADWP's records retention policy and in accordance to the City of Los Angeles records retention and destruction policy. The CPRA requires city records to be maintained for at least two years, however, the LADWP's records retention policy sets policy and guidelines to safeguard against unauthorized or early destruction of records. Some records, of course, should never be destroyed such as:

- Records affecting title to real property.
- Historical Records.
- The minutes, ordinances or resolutions of the Board of Commissioners.

2 Timelines and the Determination Period

LADWP is obligated by the CPRA to respond in writing to CPRA requests within 10 days, and may take an additional 14-day extension in unusual circumstances.

2.1 10-Day Period for Response

10-Day Period for Providing Copies and a Response: A request for copies must be satisfied “promptly” and LADWP must indicate within 10 calendar days of receiving a request whether it will provide copies of records in response to that request. The 10-day response period starts with the first calendar day after the date of receipt. If the request is received after 5pm on a weekday, or on a weekend or holiday, the next business day will be considered the date of receipt. The 10-day period is not a legal deadline for producing records. The 10-days allows the LADWP to review records and to determine if there are records responsive to the request. If this is not possible, the CPRA Clearinghouse will notify the requestor that additional time is needed with an estimate of the date the records will be made available. A typical response letter may state that records are available for review, that additional time is required to search for records, or that no responsive records were found.

2.2 14-Day Extension of Time for Response

14-Day Extension of Time: LADWP may need a reasonable amount of time to research, review, and inspect records prior to release, if the request is voluminous, or requires research, or requires computer programming. Therefore, it may take longer than ten days before LADWP determines it has responsive records and is able to make the records available. Upon receipt of a request, LADWP will make every effort to keep the requestor apprised of response timeframes and any necessary extensions of time to process the request.

In unusual circumstances, LADWP can, by written notice to the requester, extend its time to conduct its initial research, review, and inspection of records prior to release for up to 14 additional days. These “unusual circumstances” are defined by the CPRA:

- The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the requestor among two or more components of the agency having substantial subject matter interest therein.
- The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

Unusual circumstances are strictly defined by the CPRA and only should be used to the extent reasonably necessary to the proper processing of the particular request that has been made.

Routing: Senior Assistant General Manager (or designee in their absence) of each Division assigned to the request and City Attorney approval is **required** in advance on all written notifications to a requestor when an extension beyond 14 days is necessary. The written notification must include the new date LADWP estimates it will complete its initial research and review to locate responsive and the bases for the extension.

When the estimated time for production of responsive records (as distinct from the initial response itself) is more than 75 days after the CPRA request was received, Senior Assistant General Manager (or designee in their absence) of each Division assigned to the request and City Attorney approval is required.

3 Exemptions

3.1 Exemptions

The fundamental principle of the CPRA is that governmental records shall be disclosed to the public, upon request, unless there is a specific reason not to do so. Most of the reasons for withholding disclosure of a record are outlined in the CPRA. However, some confidentiality provisions are incorporated by reference to other laws. Also, the CPRA provides for a general balancing test by which an agency may withhold records from disclosure, if it can establish that the public interest in nondisclosure clearly outweighs the public interest in disclosure.

There are two recurring interests that justify most of the exemptions from disclosure. First, several CPRA exemptions are based on a recognition of the individual's right to privacy (e.g., privacy in certain personnel, medical or similar records). A second group of disclosure exemptions are based on the government's need to perform its assigned functions in a reasonably efficient manner (e.g., maintaining confidentiality of investigative records, official information, records related to pending litigation, and preliminary notes or memoranda). The CPRA dictates that reasons for denials must be under one of the specific exceptions or under the "general balancing" exception contained in the CPRA.

If a record contains exempt information, the LADWP generally must segregate or redact the exempt information and disclose the remainder of the record. If LADWP improperly withholds records, a member of the public may enforce, in court, their right to inspect or copy the records and receive payment for court costs and attorney's fees. **A denial for releasing records must be in writing to the requestor.**

The CPRA lists hundreds of exceptions to the duty to disclose, while not all encompassing, the below list identifies those exceptions commonly applicable to the LADWP.

3.2 Non-records

Non-records: Most basic are those things which do not meet the definition of record because they are not "prepared, owned, used or retained" by the LADWP in the conduct of its business. For example, an LADWP employee's grocery list is not a disclosable public record just because it is on their desk in their office.

3.3 Preliminary Drafts, Notes, and Memos

Preliminary drafts, notes or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

3.4 Litigation Records

Records pertaining to pending litigation to which the LADWP is a party, or to claims made pursuant to the Government Claims Act, until the pending litigation or claim has been finally adjudicated or otherwise settled. This exception does not allow records created prior to a suit and relevant to it to be withheld merely because a suit is pending, but instead relates to records created for the lawsuit. Many records exempt from disclosure under this exception will also be exempt as attorney-client privileged materials or attorney work product.

3.5 Personnel Records

Personnel, medical or similar files, all of which, disclosure would constitute an unwarranted invasion of personal privacy. For example, the Department cannot refuse to produce its salary scales listing pay ranges by position and employee name. However, it cannot disclose such personal information about its employees such as home addresses, phone numbers, social security numbers (which are expressly protected by federal law), wage garnishments, child support obligations, and medical records, etc.

3.6 Privileged Records

Any record which is privileged under other law is exempt from disclosure under the CPRA. Thus, all the Evidence Code privileges for attorney-client communications, communications between a patient and physician, etc. are also exempt from disclosure under the CPRA. In addition to the attorney-client privilege, which extends to communications between attorneys and their clients for the purpose of giving or receiving legal advice, many legal records are protected by the work product doctrine of the civil procedure statutes. That rule protects an attorney's legal research and analysis

from disclosure without their expressed consent. Records of communications between the LADWP and the City Attorney(s) should not be disclosed to the public unless the City Attorney(s) are first informed and determine that no privilege will be violated.

3.7 Security Assessments

A provision was added to the CPRA in response to the events of 9/11, to protect records prepared by or for a state or local agency that assesses its vulnerability to terrorist attack or other criminal attacks intended to disrupt the agency's operations and that is for distribution or consideration in a closed session. LADWP may apply this exemption provision to withhold records regarding critical infrastructure data, such as sensitive technical information about our security system.

3.8 Trade Secrets

The Department may withhold confidential trade secret information pursuant to California Evidence Code Section 1060 which is incorporated into the CPRA through California Government Code Section 6254(k). However, with respect to state contracts, bids and their resulting contracts generally are disclosable after bids have been opened or the contracts awarded. Although the Department has the obligation to initially determine when records are exempt as trade secrets, a person or entity disclosing trade secret information to the Department may be required to assist in the identification of the information to be protected and may be required to litigate any claim of trade secret which exceeds that which the LADWP has asserted.

3.9 Utility Customer Data

Records containing information regarding LADWP's customers are protected which includes the name, credit history, utility usage data, home address or telephone of utility customers of local agencies. The exception to be able to disclose the information of utility customers specific to their name, utility usage data, and the home address upon request are:

- a. To an agent or authorized family member of the person to whom the information pertains.
- b. To an officer or employee of another governmental

agency when necessary for the performance of its official duties.

- c. Upon court order or the request of a law enforcement agency relative to an ongoing investigation.
- d. Upon determination by the local agency that the utility customer who is the subject of the request has used utility services in a manner inconsistent with applicable local utility usage policies.
- e. Upon determination by the local agency that the utility customer who is the subject of the request is an elected or appointed official with authority to determine the utility usage policies of the local agency, provided that the home address of an appointed official shall not be disclosed without his or her consent.
- f. Upon determination by the local agency that the public interest in disclosure of the information clearly outweighs the public interest in nondisclosure.

3.10 Public Official's Addresses and Phone Number

LADWP cannot post an official's home address or phone number to the internet or provide it in response to a request without first obtaining written consent. The CPRA makes it a crime to post a public official's address or phone number to the Internet in order to harm that person.

3.11 General Balancing Exception

The CPRA allows the LADWP authorization to perform and determine a "general balancing exception", if non-disclosure of a record when the Department can prove 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. Since the courts tend to favor disclosure to the public, it is very important and is the best practice to consult with the City Attorney to provide clear guidance when attempting to invoke this exemption.

4 Redactions

4.1 Redactions

Documents requested through the CPRA process, should be reviewed for redactions, before released as responsive records.

When a record contains exempt material, it does not necessarily mean that the entire record may be withheld from disclosure. Rather, the general rule is that the exempt material may be withheld, or redacted, but the remainder of the record must be disclosed. At times performing redactions can be time consuming, however, this does not excuse the LADWP from performing necessary redactions. The exception to this is if the burden to redact is so burdensome as to clearly outweigh the public interest in disclosure. If the information which would remain after exempt material has been redacted would be of little or no value to the requester, the agency may refuse to disclose the record on the grounds that the segregation process is disproportionately burdensome. The difficulty in segregating exempt from nonexempt information is relevant in determining the amount of time which is reasonable for producing the records in question. This deliberation should always include the guidance of the City Attorney.

4.2 California Civil Code Section 1798.24(a)

“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the information is disclosed, as follows:

- (a) To the individual to whom the information pertains.”

4.3 California Government Code Sections 6254(c), 6254(k), and 6255(a)

Records sought are exempt from disclosure under the exemptions for official information and personnel, medical and private information.

4.4 California Government Code Section 6254(k) and 6255, and California Evidence Code Section 1040).

Documents are confidential and privileged because they are official records, and the public interest in nondisclosure outweighs the public benefit of disclosure.

4.5 Common Redactions Related to Procurement/Contract Records

Bidders/Proposers are required to clearly mark documents that they deem to be "Confidential." This would also include documents claimed to contain private, proprietary, or trade secret information. This includes all pages that include information that can be interpreted as a trade secret and are marked as "Confidential," "Proprietary," or "Trade Secret"

4.6 Proprietary or Trade Secrets - (California Government Code Section 6254(k), California Evidence Code Section 1060).

Gov. Code Sec. 6254(k) exempts records the disclosure of which is prohibited by any other federal or state law, "including but not limited to provisions of the Evidence Code relating to privilege." Evidence Code Sec. 1060 says the owner of a trade secret has a privilege to refuse to disclose a trade secret and to prevent another from disclosing a trade secret. Thus, in the context of the CPRA, these two statutes work in conjunction with each other regarding trade secret information.

4.7 Corporate Financial Records - (California Government Code Section 6254.15, California Public Contract Code Section 20101)

Any internal financial records kept in the ordinary course of business such as profit and loss statements, balance sheets, income statements, cash flow, tax returns, revenue forecasts, accounting ledgers, etc.

4.8 Evaluation Sheets – redact only evaluator names - (California Government Code Section 6255)

Redact only evaluator names from the evaluation sheets. Removing rater names ensures raters are able to make full and forthright evaluations of prospective contractors. This is a good example of the balancing exception where the public interest

in non-disclosure outweighs the public interest in disclosure because it promotes raters to be uninhibited with their ratings.

4.9 W-9 Forms, Social Security Number/Tax ID and/or IRS Serial Number - (California Government Code Section 6254.15).

4.10 Vendor Authentication Form - (California Public Contract Code Section 20101(a)).

4.11 Contractor Responsibility Questionnaire - (California Public Contract Code Section 20101(a)).

4.12 Past Performance Questionnaire - (California Government Code Section 6255).

4.13 Information to be redacted only when marked "Confidential"

4.14 Key Personnel Information (Resumes of Key Personnel) - (California Government Code Section 6254(k), California Evidence Code Section 1060)

4.15 Subcontractor information - (California Government Code Section 6254(k), California Evidence Code Section 1060)

4.16 Fee Schedule - (California Government Code Sections 6254(k) and 6254.15)

Fee Schedules in general are deemed to be releasable without redaction, including those that are marked as confidential, proprietary, or trade secret. However, Fee Schedules should be redacted if they contain elements that may be deemed proprietary, such as information about the bidders/proposer's business model. If any Fee Schedule is questionable, promptly consult with the City Attorney if it appears to fit before the record is released.

5 Key Roles, Duties, and Responsibilities

5.1 CPRA Clearinghouse (CH)

The CPRA Clearinghouse is a centralized and specialized unit within the Corporate Strategy Communications Division. The CPRA Unit is "the custodian of records" for CPRA requests and coordinates Department-wide requests; assignment, and response processing. Analysts in the CH are responsible for receiving, assigning, and tracking every request the LADWP receives regardless of how the request is made and submitted to the Department. The CH Analyst reviews each request and will best determine which division(s)/section(s) should be assigned the request.

The CPRA analyst is responsible for analyzing the CPRA request and contacting the requester to clarify and assist the requester with the CPRA request.

Upon receiving records responsive to a request and applicable response letter, CH staff reviews, and approves every request package, and work directly with the requestor on providing fee estimates, production of copies and delivery of all records approved for release.

5.2 CPRA Division Coordinator/Alternate Coordinator

Division Coordinator/Alternate Coordinator – designated Division CPRA contact; receives official CPRA assignment; coordinates search, review and assists in the preparation of responsive records. The Division Coordinator will also with the assigned City Attorney while the request is in process. Routing and coordination of extension and response letters are also key responsibilities and ensuring deadlines set by the Clearinghouse are adhered to.

5.3 Subject Matter Expert (SME)/Technical Experts/Division Staff

The SME/Technical Expert is vital to preparing records responsive to CPRA requests. This often is division-level staff charged in the search, review and preparation of responsive records, and are usually personnel that are contract or project administrators who are most familiar with the subject and context of records. SME's also play a vital

role in reviewing records to possibly identify exemptions and will actively work with the City Attorney and the Division CPRA Coordinator in doing so. When asking for legal review, below are best practices:

- Review all the records.
- Stick a Post-It on anything that has an attorney's name or "confidential."
- Stick a Post-It on the page with potentially confidential records.
- Highlight the section with yellow marker so it won't copy.
- Write down the reason for the privilege on the Post-It.

5.4 Division Management Senior Assistant General Manager (Sr. AGM)/Executive Approval

Division management are responsible for the review & approval of responsive records. The acceptable level for this role is at the Senior Assistant General Manager (Sr. AGM)/Executive level. The SAGM's/AGM designates who is authorized to approve CPRA's in their absence. Designation occurs in the absence of the SAGM/AGM, and not as a matter of routine delegation for deferral purposes.

Below is the mandate for Division Management approval, specifically pertaining processing and routing for extension of time when processing CPRA requests:

Routing: Senior Assistant General Manager (or designee in their absence) of each Division assigned to the request and City Attorney approval is **required** in advance on all written notifications to a requestor when an extension beyond 14 days is necessary. The written notification must include the new date LADWP estimates it will complete its initial research and review to locate responsive and the bases for the extension.

Routing: Senior Assistant General Manager (or designee in their absence) of each Division assigned to the request and City Attorney approval is **required** on all written notifications to a requestor whenever an extension of time is necessary for any estimated production date that differs from the initial date in the determination letter when the request was received. The written notification must include the new date it is estimated records will be produced and the bases for the extension. Senior Assistant General Manager (or designee in their absence) of each Division assigned to the request and City Attorney approval is also **required** when the estimated date of the production of records is more than 75 days after the CPRA request as received.

5.5 City Attorney

The City Attorney is critical in the Department's ability to respond to every CPRA request. They provide legal advice and also review and approval all responsive records.

5.6 Lead Division

The lead Division, upon receipt of all records found responsive by co-assigned divisions, consolidates records into a single package, removing any duplicates. The lead Division is also responsible drafting the Response Letter (or DEL), making sure any code citations are consistent with exemptions/redactions from records provided by all involved Divisions.

The lead Division verifies co-assignee processing and, if errors are found, returns records to the co-assignee for corrections.

5.7 Co-Assigned Division

The co-assignee ensures their portion of records responsive to a request has been researched, collected, reviewed, prepared, and approved for release, including review/approval by city attorney and executive management (SAGM or AGM) of the co-assignee Division.

The co-assignee Division turns over their portion of records to the lead Division and/or advises the lead Division of the estimated timeframe and reason for issuing an extension. If necessary, the co-assignee Division makes corrections and returns records to the lead Division

Initials of executive signers of all Divisions assigned on co-assignments must be secured.

5.8 Media Relations Manager

The Media Relations Manager interfaces directly with media outlets when they place a request. Like the CH, the Media Relations Manager works in the Corporate Strategy and Communications Division. All CPRA requests from the media are flagged at the point of assignment by the Clearinghouse. During processing the request, all communications must include the Media Relations Manager and only this person is to communicate directly with the Media outlet. Media outlets includes print, web, broadcast and other electronic entities

6 Procedures

6.1 Placing a Request

The Department accepts CPRA requests in person, by phone, email, or facsimile. A person does not need to give notice to inspect public records at the Department's offices during normal working hours. However, if the records are not readily accessible or if portions of the records must be redacted to protect exempt material, the Department must be given a reasonable period of time to perform these functions.

Public records requests can be obtained from the CPRA Clearinghouse:

Los Angeles Department of Water and Power
Attn: CPRA Clearinghouse
Corporate Strategy and Communications
P. O. Box 51111, Room 1520
Los Angeles, CA 90051-5700

Email: CPRA@ladwp.com

CPRA Hotline: 213-367-4440

FAX: (213) 367-0532

Responsive records may be viewed at LADWP's downtown Los Angeles headquarters by scheduling a review session. Details regarding how to schedule a review session are included in the response letter.

6.2 Clarification

Sometimes a request requires clarification by the Clearinghouse from requestor before it can be assigned to a Division(s). Clearinghouse staff will contact the requestor in an effort to gain clarification. A suspension of time will be noted in the Clearinghouse tracking system and will assign the request after clarification is received.

Example: Requestor wants records of DWP service disruptions

Clarification needed: Power or Water? Time range? Geographic area?

If after a request is assigned to a Division and clarification is needed from the requestor the Division Coordinator or SME contacts the requestor and while this effort is ongoing, the Division Coordinator notifies Clearinghouse of suspension of time and the Clearinghouse will note suspension of time in the tracking system. The Division will notify the Clearinghouse to start clock when clarification is received from the requestor.

Example: Requestor wants records of communications between LADWP and the SEC, regarding municipal finance

Clarification needed: FSO and IT need scope, time frame narrowed

6.3 The Initial 10 Days of a CPRA Request

The goal of the LADWP is to strive to fully comply with the request within 10 calendar days. Although prompt access to public records is required by the CPRA, the 10-day period mentioned is not a legal deadline for producing records. The 10 days allows the LADWP to review records and to determine if there are records responsive to the request. A typical response letter may state that records are available for review, that additional time is required to search for records, or that no responsive records were found.

The 10-day response period starts with the first calendar day after the date of receipt. If the request is received after 5pm on a weekday, or on a weekend or holiday, the next business day will be considered the date of receipt.

The deadline is the date on which the requestor must receive their determination response and the response must be submitted to the Clearinghouse in advance of this

deadline (internal due date). The Clearinghouse ideally gives the Division 7 days to prepare records and/or responses in order to meet the statutory deadline.

If it is not possible for the Department to fully respond in the first 10 days of receiving a request, the CPRA Clearinghouse will notify the requestor with an estimate of the date the records will be made available and why an extension of time is necessary to process the request (see section 2 of this manual for additional information regarding timelines). Should the request be voluminous, or require research, or computer programming, LADWP may need a reasonable amount of time to research, review, and inspect records prior to release; therefore, it may take longer before the records can be made available.

6.4 Responding to Requests for Records/Notification to Requestor(s)

LADWP shall make every effort to keep requestors apprised of response timeframes and any necessary extensions of time to process the request. The Department must respond in writing to CPRA requests within 10 days, or 24 days in unusual circumstances, with the following information:

- Whether the requested records exist;
- Whether the Department will release any of the requested records and if so, when and how; and
- Citing any legal reasons for withholding a record or portion of records;

Routing: Senior Assistant General Manager (or designee in their absence) of each Division assigned to the request and City Attorney approval is **required** on all written notifications to a requestor when an extension beyond 14 days is necessary. The written notification must include the new date it is estimated records will be produced and the bases for the extension. Senior Assistant General Manager (or designee in their absence) of each Division assigned to the request and City Attorney approval is also required when the estimated date of the production of records (even when the initial determination letter is sent within 10 or 24 days) is more than 75 days after the CPRA request as received.

6.5 Extending Response Times – 14-day Extensions and Division Extension Letters (DEL)

An extension of the 10-day response period is permitted only in "unusual circumstances", which are defined by the CPRA as follows:

- The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the requestor among two or more components of the agency having substantial subject matter interest therein.
- The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

Unusual circumstances are strictly defined by the CPRA and only should be used to the extent reasonably necessary to the proper processing of the particular request that has been made. No other reasons justify an extension of time to respond to a request for copies of public records. For example, the Department may not extend the time on the basis that it has other pressing business or that the employee most knowledgeable about the records being sought is unavailable.

Lastly, The Department may also obtain an extension by consent of the requester. Often a requester will cooperate with the Department regarding extensions of time, especially if the Department is acting reasonably and conscientiously in processing the request. It is advisable to document in writing any extension agreed to by the requester and this must include the CPRA Clearinghouse.

Routing: Senior Assistant General Manager (or designee in their absence) of each Division assigned to the request and City Attorney approval is **required** on all written notifications to a requestor when an extension beyond 14 days is necessary. The written notification must include the new date it is estimated records will be produced and the bases for the extension. Senior Assistant General Manager (or designee in their absence) of each Division assigned to the request and City Attorney approval is also required when the estimated date of the production of records (even when the initial determination letter is sent within 10 or 24 days) is more than 75 days after the CPRA request as received

6.6 Timing of Disclosure

After responding to a public records request in writing, the LADWP is legally obligated to promptly disclose (provide requester access to or a copy of the record) any responsive and nonexempt records. In some cases, the records can be disclosed at the same time the Department responds in writing to the requester.

Responsive records may be viewed at LADWP's downtown Los Angeles headquarters by scheduling a review session. Details regarding how to schedule a review session are included in the response letter.

6.7 Locating Records

The search for records is similar to an affirmative statement by the employee conducting the search that a diligent and good faith search was conducted; that the records being released (within reason) are all the responsive records; and there is nothing that was purposely left out. All persons or offices that would most likely be in possession of any responsive records should be consulted in an effort to locate the records.

The right to access public records is not without limits. The Department is not required to perform a "needle in a haystack" search to locate records sought by the requester. The LADWP is also not compelled to undergo a search that will produce an unreasonably huge volume of material in response to the request. The Department typically will still endure some burden - at times, a significant burden - in its records search. Should the request impose a substantial enough burden, the Department may decide to deny the records request on the basis that the public interest in nondisclosure clearly outweighs the public interest in disclosure. This should only be done after consultation with the City Attorney.

6.8 Types of Responses

After conducting a reasonable search for requested records, the Department has a limited amount number of possible responses. If the search yielded no responsive records, the LADWP must inform the requester. If the Department has located a responsive record, it must do one of the following:

- Disclose the record;

- Withhold the record; or
- Disclose the record in redacted form.

Careful consideration should be taken in deciding whether to disclose, withhold, or redact a record and should be done in consultation with the City Attorney.

If a CPRA request is denied because the Department does not have the record or has decided to withhold it under an applicable exemption, or if the requested record is disclosed in redacted form, the Department's response must be in writing and the legal basis cited for the redaction.

If records are withheld in their entirety or provided to the requester with redactions, the Department must state the legal basis under the CPRA for its decision not to comply fully with the request. Statements like "we don't give up those types of records" or "our policy is to keep such records confidential" are not sufficient.

6.9 Submitting Response Packages to the Clearinghouse

Response packages submittal by the Division to Clearinghouse should be compiled in an orderly fashion containing only responsive records that have been approved for release with applicable response letters. Contents and labeling for all email RL/records packages and DEL submissions to the CH should be consistent and standardized:

- Provide all email approvals, i.e. Executive Management and City Attorney for division extension letters (DELs) and response letters (RLs)
- Combine separate records files into one PDF whenever possible, with clearly labeled sections if needed
- All files submitted with the RL/records package or DEL should be clearly labeled to differentiate between the RL/by or DEL/bc, the responsive records, the original assignment PDF, or any other documents:
 - **Example:** response letter; response letter bc; responsive records; CPRA assignment

The Clearinghouse accepts digital initials, digital signatures, as well as email approvals to expedite routing (hard/wet signatures are not necessary). Receiving digital records found to be responsive to the CPRA request are also acceptable. Divisions are only required to submit either an electronic or hard copy package, but are not required to submit both.

Initials must be secured by all Divisions assigned on CPRA requests. This is important because each Division/section must remain apprised of the status of the request especially concerning status of records research, revised deadlines and final disposition of potentially responsive records. Acceptance of digital initials/signatures and/or email approvals make this process as expeditious as possible.

6.10 No Duty to Create a Record, Log, or List

The LADWP has no duty to create a record that does not exist in response to a request. There is also no duty to reconstruct a record that was lawfully discarded prior to receipt of the request.

The CPRA does not require that the Department create a list that identifies the specific records being withheld. The response only needs to identify the legal grounds for nondisclosure/redactions. If the Department creates a list for its own use, however, that document may be considered a public record and may be subject to disclosure in response to a later public records request.

7 Litigation

7.1 Litigation Under the CPRA

To enforce compliance with the law, the CPRA provides for an award of court costs and attorneys' fees to prevailing plaintiffs. Any requester may bring legal action, and if they prevail, the judge may award them court costs and attorney's fees. A plaintiff is considered the prevailing party if the lawsuit ultimately motivated the agency to provide the requested records, or if records were improperly denied.

In very rare instances, a prevailing defendant may be awarded court costs and attorney fees if the requester's claim is clearly frivolous.

This manual is intended to provide an overview of the California Public Records Act (CPRA) and assist LADWP employees process requests for public records in accordance with the law.

END PAGE