

SUMMARY OF THE CALIFORNIA INFORMATION PRACTICES ACT

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INTRODUCTION

This summary of California’s Information Practices Act, Civ. Code, § 1798 et seq. (“IPA” or “Act:”). Immediately following is an Executive Summary based upon a California Supreme Court description of the Act. This in turn is followed by a more detailed summary. Words in italics reflect words defined in the Act. One important point to remember, this Act applies to “agencies.” As defined, “agencies” excludes “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. . . .” **Thus, the IPA regulates state, not local, agencies.**

EXECUTIVE SUMMARY

The following is a summary of the IPA which the Supreme Court crafted in *Perkey v. Department of Motor Vehicles* (1986) 42 Cal.3d 185, 191-193.

In 1972, the people of California amended the state Constitution to provide explicit language protecting the personal right of privacy. Five years later, the Legislature enacted the Information Practices Act of 1977 (the Act). (Civ. Code, § 1798 et seq.) The Act delineates an elaborate statutory scheme specifically designed to implement the privacy amendment.

Section 1798.1, one of the Act's introductory provisions, captures the spirit of the legislation: "The Legislature declares that the right to privacy is a personal and fundamental right protected by Section 1 of Article I of the Constitution of California and by the United States Constitution and that all individuals have a right of privacy in information pertaining to them."

In the Act's declaration of purpose, the Legislature stated that the right to privacy was being threatened by "the indiscriminate collection, maintenance, and dissemination of personal information and the lack of effective laws and legal remedies" and that "[the] increasing use of computers and other sophisticated information technology has greatly magnified the potential risk to individual privacy that can occur from the maintenance of personal information." (§ 1798.1, subs. (a) and (b).)

To guard against this threat, the Act places strict limits on "the maintenance and dissemination of personal information." (*Id.*, subd. (c).) "Personal information" is defined to include "any information that is maintained by an agency that *identifies or describes an individual*, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual." (§ 1798.3, subd. (a), italics added.)

Under the Act, state agencies are required to limit the collection and retention of personal information to that necessary to accomplish the agency's specific purpose (§ 1798.14). If an agency maintains such a record (§ 1798.32), individuals must be informed when they request it. Further, they may request amendments to correct any inaccurate information (§§ 1798.35-1798.37). More importantly, all disclosures of personal information are restricted (§ 1798.24), and an accounting of such disclosures must be made, including disclosures pursuant to subpoena or search warrant (§ 1798.25).

WHO IS SUBJECT TO THE INFORMATION PRACTICES ACT?

The IPA applies to *agencies* which the statute, with certain exceptions, broadly defines as “every state office, officer, department, division, bureau, board, commission, or other state agency” (Civ. Code, § 1798.3 (b).) The exceptions include, the California Legislature, California courts, the State Compensation Fund and, significantly, a “local agency” as defined in section 6252(a) of the Government Code (Public Records Act).

Section 6252(a) of the Government Code defines “local agency” to include “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.”

With the exclusion of *local agencies* from the ambit of the IPA, the Act targets state agencies.

WHAT INFORMATION IS SUBJECT TO THE INFORMATION PRACTICES ACT?

The IPA protects “personal information” which the Act defines as “any information that is maintained by an agency that identifies or describes an individual, including, *but not limited to*, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual.” (Civ. Code, § 1798.3(a); italics added.)

“Maintain” includes maintain, acquire, use or disclose. (Civ. Code, § 3(e).)

“The IPA has been construed as generally imposing ‘limitations on the right of governmental entities to disclose *personal* information about an individual.’” (*Bates v. Franchise Tax Board* (2004) 124 Cal.App.4th 367, 376, quoting *Anti-Defamation League of B’nai B’rith v. Superior Court* (1998) 67 Cal.App.4th 1072, 1078.)

AGENCY OBLIGATIONS UNDER THE INFORMATION PRACTICES ACT

Agency obligations under the IPA include:

* maintaining in its *records* only *personal information* relevant and necessary “to accomplish a purpose of the agency required or authorized by the California Constitution or statute or mandated by the federal government.” (Civ. Code, §1798.14.)¹

* collecting *personal information* “to the greatest extent practicable from the individual who is the subject of the information rather than from another source.” (Civ. Code, §1798.15.)

* maintaining the source of *personal information* (including name) regarding an individual if received from other than the individual except where the individual has received a copy of a source document. If the source is an *agency, government entity* or other organization, the agency must maintain the source by name of *agency, entity* or organization “as long as the smallest reasonably identifiable unit of that *agency, governmental entity, or organization* is named.” (Civ. Code, § 1798.16(a)².) The *agency* shall maintain the identity of the source in an accessible format so that the subject of the information may access it. (Civ. Code, § 1798.16(c).)

* providing on or with any form used to collect *personal information* a notice containing certain specific information, including, among other things, the following:

¹ The IPA defines records as “any file or grouping of information about an individual that is maintained by an agency by reference to an identifying particular such as the individual’s name, photograph, finger or voice print, or a number or symbol assigned to the individual.” (Civ. Code, § 1798.3(g).)

² “Government entity” includes “any branch of the federal government or of the local government.” (Civ. Code, § 1798.3(i).)

the name of the *agency* or agency division requesting the information;

the title, business address, and telephone number of the agency official who is responsible for the system of records and who shall, upon request, inform an individual regarding the location of his or her records and the categories of any persons who use the information in those records;

the authority (statute, regulation or executive order) which authorizes maintenance of the information;

whether the submission of particular information is mandatory or voluntary;

the consequences of not providing the information;

the principal purpose(s) within the *agency* for which the information is to be used.

known or foreseeable disclosures of the information; and

the individual's right to access *records* containing personal information.

(Civ. Code, § 1798.17; this section also sets forth a requirement of an annual notice if the contact with the individual is of a recurring nature.)³

³ Certain law enforcement documents are excluded from the foregoing obligations. These include citations, a copy of which is given to a violator, or accident reports available under the Vehicle Code. (Civ. Code, § 1798.17.) The foregoing notice also is inapplicable "to agency requirements for an individual to provide his or her name, identifying number, photograph, address, or similar identifying information, if this information is used only for the purpose of identification and communication with the individual by the agency, except that requirements for an individual's social security number shall conform with the provisions of the Federal Privacy Act of 1974 (Public Law 93-579)." (*Ibid.*)

* *agencies* are to maintain *records* with accuracy, relevance, timeliness and completeness when they are used to make any determination about the individual. (Civ. Code, § 1798.18.)

* *agencies* that contract for the operation or *maintenance* of *records* containing *personal information* “shall cause . . . the requirements of this chapter to be applied to those records.” (Civ. Code, § 1798.19.)

* *agencies* are to establish rules of conduct, remedies and penalties for noncompliance and instruction thereon for persons involved in the design, development, operation, disclosure, or *maintenance* of *records* containing *personal information*.(Civ. Code, § 1798.20.)

* *agencies* must establish “appropriate and reasonable” administrative, technical, and physical safeguards to ensure compliance with the provisions of the statute in order “to ensure the security and confidentiality of records, and to protect against anticipated threats or hazards to their security or integrity which could result in any injury.” (Civ. Code, § 1798.21.)

* *agencies* must designate an employee to be responsible for compliance with the act. (Civ. Code, § 1798.22.)

DISCLOSURE OF INFORMATION

Subject to a lengthy list of exceptions (23 exceptions), section 1798.24 prohibits an *agency* from disclosing *personal information* in a manner that would link the information disclosed to the individual to whom it pertains. Exceptions include, among others, disclosure:

- * to the individual to whom the information pertains (Civ. Code, § 1798.24(a));

- * in accord with the timely written consent of the individual to whom the information pertains (Civ. Code, § 1798.24(b));

- * “[t]o those officers, employees, attorneys, agents, or volunteers of the agency that has custody of the information if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired” (Civ. Code, § 1798.24(d));

- * to a *government entity* if required by law (Civ. Code, § 1798.24(f));

- * pursuant to the Public Records Act (Civ. Code, § 1798.24(g));

- * “[t]o any person pursuant to a subpoena, court order, or other compulsory legal process if, before the disclosure, the agency reasonably attempts to notify the individual to whom the record pertains, and if the notification is not prohibited by law” (Civ. Code, § 1798.24(k));

- * “[t]o any person pursuant to a search warrant” (Civ. Code, § 1798.24(l)); and

- * to a law enforcement or regulatory agency regarding an investigation, licensing or regulation (Civ. Code, § 1798.24(o)).

In any given case, section 1798.24 should be examined to determine whether these or other exceptions are applicable.

AGENCY ACCOUNTING FOR DISCLOSURE OF PERSONAL INFORMATION.

For certain disclosures, an *agency* must keep an accurate accounting of the date, nature, and purpose of each disclosure of a record made. The accounting shall also include the name, title, and business address of the person or agency to whom the disclosure was made. This is the case with disclosures made pursuant to subdivisions (i), (k), (l), (o), or (p) of section 1798.24. It also appears that this is the case with a disclosure under subdivision (e) or (f) of section 1798.24.

An accounting must be retained for three years after the disclosure or until the record is destroyed, whichever is shorter; “[n]othing in this section shall be construed to require retention of the original documents for a three–year period, providing that the agency can otherwise comply with the requirements of this section.” (Civ. Code § 1798.27.) Presumably, this last sentence allows compliance by using a copy of a record rather than the original.

DISCLOSURE OF BREACH OF SECURITY OF PERSONAL INFORMATION.

Section 1798.29(a) of the Civil Code requires an *agency* that owns or licenses computerized data that includes *personal information* to disclose any data breach following discovery of the breach to any California resident (1) whose unencrypted *personal information* was, or is reasonably believed to have been, acquired by an unauthorized person, or, (2) whose encrypted *personal information* was, or is reasonably believed to have been, acquired by an unauthorized person who is able to break through the encryption and access the information.

Additionally, an agency that “maintains computerized data that includes personal information that the agency does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.” (Civ. Code § 1798.29(b).)

“The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.” (Civ. Code § 1798.29(c).)

Section 1798.29(d) requires that a notice of breach include certain items. It shall be entitled “Notice of Data Breach” and include information under the headings including: “What Happened,” “What Information Was Involved,” “What We Are Doing,” “What You Can Do,” and “For More Information.” The section contains other formatting requirements and a sample form. One should review section 1798.29(d)(2) to ensure required information is included in the notice.

If notification to more than 500 persons is required, the person or business experiencing the breach must submit a sample copy of the security breach notification to the Attorney General. (Civ. Code,

§1798.29(e.) This may be accomplished through the Attorney General's Web site: <https://oag.ca.gov/privacy/databreach/report-a-breach>.

Section 1798.29(f) defines "breach of security of the system" as "unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the agency."

For purposes of a data breach, section 1798.29(g) provides a definition of "personal information" that is broader than the definition in section Civ. Code, § 1798.3(a). Section 1798.29(h)(1) excludes from the definition "publicly available information that is lawfully made available to the general public from federal, state, or local government records." Section 1798.29(h)(2), (3) and (4) contain further definitions of "medical information," "health insurance information" and "encrypted."

Section 1798.29(i) describes the manner in providing notice of a breach.

Section 1798.29(k) states that the reference to "agency" in section 1798.29 includes "local agency" as defined in section 6252 of the Government Code regardless of the more limited definition in section 1798.3 of the Civil Code.

ACCESS TO RECORDS AND ADMINISTRATIVE REMEDIES

“Each agency shall either adopt regulations or publish guidelines specifying procedures to be followed in order fully to implement each of the rights of individuals set forth in [the statute].” (Civ. Code, § 1798.30.)

An individual has the right to inquire of, and obtain a response from, an *agency* as to whether it *maintains* a *record* on the individual. (Civ. Code, § 1798.32.) Any notice from an *agency* indicating that the *agency maintains records* must identify an official responsible for maintaining the *records* and set forth the procedures to be followed (a) to gain access to the *records* or to contest the contents of the *records*. “In implementing the right conferred by this section, an agency may specify in its rules or regulations reasonable times, places, and requirements for identifying an individual who requests access to a record, and for disclosing the contents of a record.” (*Ibid.*)

“Each agency may establish fees to be charged, if any, to an individual for making copies of a record. Such fees shall exclude the cost of any search for and review of the record, and shall not exceed ten cents (\$0.10) per page, unless the agency fee for copying is established by statute.” (Civ. Code, § 1798.33.)

Section 1798.34 specifies how an individual may request and access *records* containing *personal information*, time limits for an *agency* responding and the place for review at a location “near the residence of the individual or by mail, whenever reasonable.”

Section 1798.35 provides a mechanism for an individual to request in writing an amendment of a *record*. Section 1798.36 provides a process for review of a refusal to amend a *record*. If the *agency* does not amend, the individual may submit a statement of disagreement. Thereafter, a disclosure of the particular *record* shall note the disagreement, make available a copy of the statement of disagreement and make available a copy of the

agency's response to the statement of disagreement. (Civ. Code, § 1798.37.)

Section 1798.40 provides a list of circumstances in which an *agency* is not required to provide personal information to the individual to whom it pertains. Among others, circumstances include law enforcement and licensing investigations, fitness for public employment, competitive examinations or promotions.

If the *agency* determines that information requested is not subject to production, the *agency* is to so notify the individual in writing. (Civ. Code, § 1798.41(a).) An individual can request a review of this determination. (Civ. Code, § 1798.41(b).)

Personal information of other individuals, not the one requesting the record, is to be deleted from produced or requested records. (Civ. Code, § 1798.42.) *Personal information* that is exempt from production shall also be deleted. (Civ. Code, § 1798.43.)

CIVIL REMEDIES

Section 1798.45 entitles an individual to bring a civil action for damages against an *agency* for

(a) refusing to comply with a lawful request to inspect pursuant to section 1798.34(a).

(b) Fails to maintain any *record* concerning any individual with such accuracy, relevancy, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, opportunities of, or benefits to the individual that may be made on the basis of such *record*, if, as a proximate result of such failure, a determination is made which is adverse to the individual.

(c) Fails to comply with any other provision of the act, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual.

A plaintiff may obtain actual damages, including damages for mental suffering, and reasonable attorney's fees and costs for a violation of section 1798.45(c) and (b). (Civ. Code, § 1798.48.)

See *Meister v. Regents of University of California* (1998) 67 Cal.App.4th 437, 445-446:

California's IPA prohibits the disclosure of "personal information," such as employment history information, by any state agency except under certain circumstances including where the disclosure of the information is "relevant and necessary." (Civ. Code, § 1798.3, 1798.24, subd. (d).) The IPA permits an individual to bring a civil action for damages against a state agency if the agency fails to comply with the IPA and the individual is adversely affected. (

disclosed intentionally by a person acting in other than his or her official capacity as a state employee, punitive damages of at least \$ 2,500 are mandatory. (Civ. Code, § 1798.53.) An individual also may obtain injunctive relief for a violation of the IPA. (Civ. Code, § 1798.47.) Attorney's fees are statutorily mandated in successful IPA actions. A successful plaintiff under the IPA is entitled to recover "[t]he costs of the action together with *reasonable attorney's fees as determined by the court.*" (Civ. Code, § 1798.48, subd. (b), italics added.)

IMPORTANT NOTE: Before suing for damages under the IPA, a plaintiff must exhaust the Government Claims Act (Gov. Code, § 900 et seq.) applicable to government entities. (*Bates v. Franchise Tax Board, supra*, 124 Cal.App.4th at pp. 382-385.)

In an action under section 1798.34(a), a court may enjoin the *agency* from withholding *records* and order their production to the plaintiff. (Civ. Code, § 1798.46.) The burden is on the *agency* to support its withholding. (*Ibid.*) In considering whether to make such an order, the court may examine the records in camera. Should the plaintiff prevail, the court may award reasonable attorney's fees and costs. (*Ibid.*)

An individual, the California Attorney General, and district attorneys may seek injunctive relief against an agency for a violation of the IPA. (Civ. Code, § 1798.47.)

Pursuant to section 1798.49, a complaining party may bring an action for damages, injunctive relief or violation of the IPA under sections 1798.45, 1798.46, 1798.47 and 1798.48 in any court of competent jurisdiction in the county where the complainant resides, his principal place of business is located or where the records at issue are located. The statute of limitations is 2 years from the date the cause of action arises; however, in the event there is a misrepresentation that delays

discovery of a violation, the statute is 2 years after discovery of the misrepresentation. (*Hurley v. Department of Parks & Recreation* (2018) 20 Cal.App.5th 634, 650-651 [claim for damages, whether economic or noneconomic, generally must be limited to damages arising out of IPA violations occurring within 2 years of filing the action].) The rights and remedies under the IPA are not exclusive and are in addition rights and remedies otherwise available.

“Where a remedy other than those provided in Articles 8 [administrative remedy commencing at section 1798.30] and 9 [judicial remedy commencing at section 1798.45] is provided by law but is not available because of lapse of time an individual may obtain a correction to a record under this chapter but such correction shall not operate to revise or restore a right or remedy not provided by this chapter that has been barred because of lapse of time.” (Civ. Code, § 1798.51.)

Pursuant to section 1798.53, an individual has a claim against another individual (other than a state or local agency employee acting in an official capacity) who intentionally discloses information not otherwise public which the other individual knew, or reasonably should have known, was obtained from personal information subject to the Act from a “state agency” or from “records” subject to the Federal Privacy Act of 1974, 5 U.S.C. § 552a. A successful plaintiff shall be awarded, in addition to any special or general damages, a minimum of \$2,500 in exemplary damages as well as attorney’s fees and other litigation costs reasonably incurred in the suit. The statute of limitations applicable to a claim under this section is 3 years under section 338(a) of the Code of Civil Procedure, not the 2 year period of section 1798.49. (*Hurley v. Department of Parks & Recreation*, *supra*, 20 Cal.App.5th at p. 651.)

PENALTIES

“The intentional violation of any provision of this [Act] or of any rules or regulations adopted thereunder, by an officer or employee of any agency shall constitute a cause for discipline, including termination of employment.” (Civ. Code, § 1798.55.)

“Any person who willfully requests or obtains any record containing personal information from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than five thousand dollars (\$5,000), or imprisoned not more than one year, or both.” (Civ. Code, 1798.56.)

“Except for disclosures which are otherwise required or permitted by law, the intentional disclosure of medical, psychiatric, or psychological information in violation of the disclosure provisions of this chapter is punishable as a misdemeanor if the wrongful disclosure results in economic loss or personal injury to the individual to whom the information pertains.” (Civ. Code, 1798.57.)

MISCELLANEOUS

“An individual’s name and address may not be distributed for commercial purposes, sold, or rented by an agency unless such action is specifically authorized by law.” (Civ. Code, § 1798.58.)

The IPA does not prohibit “the release of only names and addresses of persons possessing licenses to engage in professional occupations.” (Civ. Code, § 1798.61; *Lorig v. Medical Board* (2000) 78 Cal.App.4th 462 [okay to post licensees’ addresses of record on Medical Board Web site].) The Act also does not prohibit “the release of only names and addresses of persons applying for licenses to engage in professional occupations for the sole purpose of providing those persons with informational materials relating to available professional educational materials or courses.” (*Ibid.*)

“Upon written request of any individual, any agency which maintains a mailing list shall remove the individuals’ name and address from such list, except that such agency need not remove the individuals’ name if such name is exclusively used by the agency to directly contact the individual.” (Civ. Code, § 1798.62.)

Section 1798.63 requires that the IPA be “liberally construed so as to protect the rights of privacy arising under [the Act] or under the Federal or State Constitution.”

Section 1798.70 provides:

This chapter shall be construed to supersede any other provision of state law, including Section 6253.5 of the Government Code [California Public Records Act], or any exemption in Section 6254 or 6255 of the Government Code, which authorizes any agency to withhold from an individual any record containing personal information which is otherwise accessible under the provisions of this chapter.

Thus, section 1798.70 “expresses a legislative intent that the IPA supersede only provisions of state law which authorize the withholding of records containing personal information. This interpretation is consistent with the express purpose of the IPA, to govern the collection, maintenance, and use of *personal* information.” (*Bates v. Franchise Tax Board, supra*, 124 Cal.App.4th at pp. 377.)

Sections 1798.64 to 1798.77 of the Civil Code contain a variety of (a) very specific provisions and (b) statutory “housekeeping” provisions that should be eyeballed in any particular case to determine if they might be applicable to the particular facts and issues presented. They do not merit summary here.

