

STATE OF CALIFORNIA

Supplement Three



COMMISSION ON
**PERSONAL
PRIVACY**

Securing privacy
through law
and education

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COMMISSION ON PERSONAL PRIVACYSupplement Three:

This supplemental document contains topical reports and surveys that pertain to government information policies and practices. Authors and titles are listed below:

Title: Annotated Subject Index to California Informational Privacy Statutes

Author: Commissioner Gary Cooper and Ms. Diane Josephs

Title: Report on the Department of Motor Vehicles Law, Policy and Practices Affecting Individual Privacy

Author: Richard Donohoe

Title: Invasion of Juror Privacy: Survey and Report on the Jury Systems in California's Municipalities

Author: Commissioner Godfrey D. Lehman

Title: The Unconstitutionality of Voir Dire, Peremptory Challenges and Jury Books in Jury Selection

Author: Commissioner Godfrey D. Lehman

Title: Report of The Corrections Committee

Author: Commissioner Lester Pincu, D.Crim.

COMMISSION ON PERSONAL PRIVACYDISCLAIMER

The views stated in the topical reports contained in the Supplements published by the Commission on Personal Privacy are the views of the authors of those reports and do not necessarily reflect the views of the Commission as a whole.

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The Commission is grateful for the research done by the authors of the topical reports contained in the Supplements. The Commission found these reports helpful in its deliberations and in many cases adopted the recommendations suggested in these reports, either in whole or in part.



**ANNOTATED SUBJECT INDEX
TO
CALIFORNIA INFORMATIONAL PRIVACY STATUTES**

LIST OF CODES USED

| | |
|--------|-------------------------------|
| B & P | Business and Professions Code |
| C.C. | Civil Code |
| CCP | Code of Civil Procedure |
| E.C. | Education Code |
| Ev C | Evidence Code |
| F.C. | Financial Code |
| G.C. | Government Code |
| H & S | Health and Safety Code |
| I.C. | Insurance Code |
| La C | Labor Code |
| P.C. | Penal Code |
| P.U.C. | Public Utilities Code |
| R & T | Revenue & Tax Code |
| U.I.C | Unemployment Insurance Code |
| V.C. | Vehicle Code |
| W & I | Welfare and Institutions Code |

REGULATIONS AND GUIDELINES USED

| | |
|---------------|--|
| A.B.A.-C.P.R. | American Bar Association: Code of Professional Responsibility |
| CA.C. | California Administrative Code |
| CA.-C.P.R. | California Bar Association: Rules of Professional Conduct |
| R Ct. | California Rules of Court |
| D.I.R. | Department of Industrial Relations Policy Memo No. 76-2 |
| U.C. | University of California Policies Applying to the Disclosure of Information from Student Records |

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I. ELECTRONIC DEVICES/EAVESDROPPING

A. Invasion of Privacy

Public Utilities Code 7905 - Requires telephone companies to keep records of all eavesdropping devices discovered and must take adequate steps to insure privacy of communications.

Public Utilities Code 2872-73 - Requires telephone companies to approve connection of automatic dialing devices to telephone lines and requires that the called party consent to listen to its pre-recorded message.

Penal Code 630-637 - Invasion of Privacy.

631 - Prohibition against unauthorized connection to wires.

632 - Prohibition against eavesdropping on confidential communication.

633 - Exception re: law enforcement.

635 - Sale of eavesdropping equipment.

636 - Prohibits eavesdropping on prisoner conversation with attorney, clergymen, or physician.

637 - Prohibition against willful disclosure of telegraphic or telephone message.

637.2 - Civil remedies for violation of sections 631-637 (\$3,000 or treble actual damages).

637.3 - Prohibition against use of stress analyzers for lie detection purposes without prior consent.

637.4 - Prohibition against use of polygraph examination of complaining witness in case involving violent attack.

Penal Code 620 - Prohibition against altering telegraph or telephone messages.

Penal Code 641 - Penalty for bribery to obtain telephone/telegraphic messages.

Penal Code 653 - Prohibits installation of two-way mirrors in bathrooms, wash-rooms, locker rooms, fitting rooms, motel or hotel rooms.

Business and Professions Code 7551 - Private investigators license may be suspended or revoked for violation of Penal Code Invasion of Privacy Statutes.

II. EMPLOYMENT RECORDS

A. Collection of Information by Employers

1. Polygraph Tests

Labor Code 432.2(a)

Private employer may not require polygraph test as precondition to employment.

Labor Code 432(b)

Employer request for polygraph test must first provide notification of rights guaranteed in 432(a).

Labor Code 433

Criminal and civil sanctions for violation of Labor Code 432a-b.

Government Code 3307

Public safety officers' right to refuse polygraph; no recriminations; refusal may not be noted anywhere.

2. Investigations re: Personal Information

Labor Code 432.7

Prohibits private and public employers from asking an applicant to disclose any information concerning an arrest or detention not resulting in conviction; exception - criminal justice agencies.

Labor Code .432.8

Limitations of section 432.7 applied to specified marijuana convictions.

Business & Professions Code 461

Prohibits public agencies from inquiring, on initial application for any license, certificate or registration, about any arrest not resulting in conviction. Exemption: licenses under education, corporation and/or insurance code.

Education Code 44340

Requires personal ID cards (fingerprint card) for school credential.

Education Code 44341

- Authorizes securing information, records, reports to ascertain the moral character and true identity of credential applicant or holder.
- Application must contain notice of investigation.
- Disclosure to private schools upon written authorization of the applicant.

Education Code 45125

Requires use of personal ID cards (fingerprint cards) for non-certified school district employees to ascertain whether applicant or employee has been arrested or convicted of any crime.

Education Code 45126

Department of Justice to furnish information regarding E.C. 45125.

Penal Code 291

Notice to school authorities of arrest of school employee for sex offense.

Education Code 87220

Requires use of personal ID cards (fingerprint cards) with legible fingerprints for community college credential.

Education Code 87221

Authorizes collection of personal information relative to identification or fitness of any credential applicant from any state department or agency. Private schools may obtain information upon request.

Education Code 88024

Requires use of ID cards for non-credential community college employees to ascertain whether applicant or employee has been arrested or convicted of any crime.

Education Code 88025

Department of Justice to furnish information re: E.C. 88024.

Penal Code 11105

Permits furnishing of state criminal histories to various public agencies in fulfilling employment, licensing or certification duties; records of arrests pending trial and convictions of applicants; and/or employees of public utilities.

Penal Code 11105.2

Permits Dept. of Justice to supply record of sex crime convictions to employer for applicant for salaried or volunteer position with supervisory power over minors.

Penal Code 13300

Permits furnishing of local criminal histories to those as per 11105.

Penal Code 13326

Prohibition against requiring employee or applicant to obtain copy of record or notification that record exists.

Civil Code 1786.15; 1786.16; 1786.18

Furnishing of personal non-credit information to employers under "Investigative Consumer Reporting Agency Act" (further description, see IIIc, Financial Records-credit p.).

Civil Code 1785.13; 1785.20

Furnishing of credit information to employers under the "Consumer Credit Reporting Agencies Act" (further description, see IIIc, Financial Records-credit p.).

Government Code 3300 - 3311 - "Public Safety Officers Bill of Rights"

3303 - Limitations of investigations and interrogation of public safety officers.

3308 - Limitations regarding financial disclosures of public safety officers.

3304; 3309.5 - Protections and sanctions for violations of public safety officers' bill of rights.

Civil Code 1799.et seq.

"Information Practices Act" - restrictions on collection of personal information by state agencies.

Education Code 45293

Prohibits questions relating to political or religious affiliations, sex, nationality for any applicant/certified candidate for merit appointment.

Labor Code 1101-1102

Prohibits employer control of political affiliations.

Government Code 19700 - 19706 - Discrimination in State Civil Service

19700-19702.1 - Prohibited discrimination; hiring and promotions.

19702.2 - Prohibits non-job-related testing/evaluation methods/educational prerequisites.

19702.5 - Affirmative action plan; statistical surveys.

19703 - Political/religious opinions/affiliation.

19704

- Prohibits entries as to race, color, religion, sex/marital status on application materials.
- Allows statistical data subsequent to employment.

19705 - Permits establishment of system for applicant's voluntary submission of ethnic data for restricted use.

19706 - Prohibits requiring a job applicant to disclose date of birth/date of high school graduation on any state civil service application unless age limits are a bona fide occupational qualification.

B. Employee Access to Employment Records

Labor Code 1198.5

Private employees' right to inspect personnel records.

Labor Code 1199

Misdemeanor - violation of 1198.5.

Dept. of Industrial Relations Memo 76-2

Procedural guidelines to LA 1198.5.

Government Code 31011

County employees' right to inspect, review, respond to personnel records.

Education Code 44031

School employees' right to inspect personnel files; notice of adverse comment and right to respond.

Education Code 92612

University of California employees' access to personnel records.

Education Code 89546

CSUC employees' right to access, inspection, copies, rebuttal and amendment of personnel records.

Education Code 87031

Community college employees' right of inspection of personnel files; notice of adverse comments; right to respond.

Government Code 3305

Public safety officers - notice of adverse comments in personnel or other record.

Government Code 3306

Public safety officers' right to respond to adverse comment in personnel file.

Government Code 18573

State civil service employees/appointees' right of access to service records.

Civil Code 1798.30-.40

Fair information practices access, review and amendment rights re: state records containing personal information.

Civil Code 1785.1-1785.35 - Consumer Credit Reporting Agencies Act
(further description, IIIc, Financial Records-credit, p.).

1785.25

Prospective employees' right to notice by the user of the name and address of consumer credits reporting agency whose report was partly/wholly the basis for denial of employment.

1785.10; 1785.15; 1785.17

Consumer inspection of files of consumer credit reporting agencies including those related to employment; copies; charges.

1785.16; 1785.30

Amendment procedures re: consumer credit reports.

Civil Code 1786-1786.52 - Consumer Investigative Reporting Agencies Act
(further description, IIIc, Financial Records-credit, p.).

1786.10

Prospective employees' right to notice by user of the name and address of investigative consumer reporting agency whose report was partly/wholly used in denial of employment.

1786.16

Notice to consumer by requestor of report sought for employment purposes other than promotion; reassignment; termination; criminal investigation.

1786.22; 1786.26

Consumer inspection of files of investigative reporting agency including those related to employment; copies; charges.

1786.24

Amendment procedures.

Labor Code 2930

Employee right to copy of a shopping investigator report prior to discharging or disciplining employee on the basis of report; exemption for investigator-exclusive employee.

C. Disclosures

1. Restrictions on Employer Disclosure

Labor Code 1050:

Prohibited employer misrepresentations which attempt to prevent a former employee who voluntarily left the employer's service, from obtaining employment. Violation a misdemeanor.

Labor Code 1051:

Prohibits improper use and/or disclosure of fingerprints or photos by any person requiring above as a precondition of employment. Violation a misdemeanor.

Labor Code 1052:

Any employer who knowingly causes a person to violate 1050-51 is guilty of misdemeanor.

Labor Code 1053:

Truthful statements of reasons for employee termination are permissible.

Labor Code 1054:

Civil penalties, including treble damages, for violation of 1050-51 in addition to the criminal penalties above.

Civil Code 3344:

Places restrictions on use of a person's (including an employee's) name, photo and/or likeness for solicitation purposes.

Education Code 44438:

An applicant's/credential holder's employer shall receive a copy of credential commission's private admonition to an employer. Employer disclosure is prohibited without the employee's consent.

Education Code 44949:

Notice of termination of school employer remains confidential until a hearing has been requested or waived.

Education Code 44248:

Prohibits unauthorized release of information received at meetings, hearings and investigations. Restriction applicable to staff and material witnesses. Violation a misdemeanor.

Education Code 45273:

Merit examination records are confidential.

Civil Code 56.20-56.30:

Restrictions on use and disclosure of medical information by employers under the Confidentiality of Medical Information Act (further information, IVA.1, Health Records, General Statutes).

Civil Code 56.35-37:

Violation of the restrictions on use and disclosure of medical information is a misdemeanor. In addition, civil penalties may include award of compensatory and punitive damages; attorney's fees and court costs.

2. Government Required Employer Disclosures

Labor Code 6409-6409.1

Requires reports to Department of Industrial Relations of occupational injury/illness including social security number of injured employer and physician reports.

Labor Code 6412

Information contained in reports required by 6409.1 are confidential; not open to public inspection; not admissible in workers compensation hearing.

Labor Code 1174

Employers are required: (1) to keep a record of names, addresses, wages, hours of all employees, ages of minor; (2) records must be kept at least one year; (3) furnish informational reports to the Industrial welfare commission; (4) permit a representative of the commission to inspect places of employment and book record and document.

LA 1175

Misdemeanor violation.

LA 2673

Employment records of garment industry must be kept 3 years.

Business and Professions Code 9970-9971

Required employment agency records; right of inspection and copies.

Business and Professions Code 753

Required private investigator records of employees.

Labor Code 1353

Employer must keep an accurate record showing names and hours of female employees. Records must be accessible to labor division officers.

Labor Code 1776; 17221; 1777.7

- Employers engaged in Public Works contracts must: keep payroll records available; the Division of Labor Standard Enforcement and the Division of Apprenticeship Standards.

- Members of the public may have access to such records after deletion of the name, address and social security number of each employee.

Labor Code 1197.5

- Employers shall maintain records of wages, rates, job classifications and other condition of employment of all employees for 2 years for inspection by the Division of Labor Standards Enforcement.
- Any employee may file a complaint with the Division of Labor Standards Enforcement regarding unequal wage rate. Complaints remain confidential if withdrawn or if possible during the course of investigation.

Government Code 6254.8

Public employer contracts are public records.

Govt Code 20134

- Data filed with the Public Employees Retirement System Administration Board by a member or beneficiary is confidential.
- Release of information is limited to the member to whom the information relates (or an authorized representative), any contracting agency by which member is employed, a state agency or the university.

Labor Code 6309

- Division of Occupational Safety and Health may investigate with or without notice possible unsafe working conditions.
- The name of any person submitting a complaint re: unsafe employment shall remain confidential.

Govt Code 19826.5

- Confidential sources who provide pay data to the Department of Personnel Administration remain anonymous when the pay data is submitted by the Department to parties conferring pursuant to the State Employee/Employer Relations Act.
- The source will not be open to the public or admissible as evidence in any action or proceeding.

Govt Code 6254

Exceptions to required disclosure of public records include personnel, medical or similar files.

Unemployment Insurance Code 986

Requires employers to keep records of workers, wages and other information required by the Director of Employment.

Unemployment Insurance Code 1952

Requires the Unemployment Insurance Appeal Board to keep records of disputed claims.

Education Code 44950

- Requires school district to transmit to Department of Education a statement of reasons for dismissal or failure to rehire.
- Statements are confidential, utilized for statistical analysis to the Legislature.

III. FINANCIAL RECORDS

A. Financial Institution Records

Government Code 7460-7491 - Financial Privacy Act

7461 - Chapter provisions regulate government access to a person's financial records held by a financial institution.

7470(a) - State/local agency may not, in a civil or criminal investigation, request/receive a customer's financial records from a financial institution without customer consent; or a subpoena; summons/search warrant.

7470(c)

- Financial institutions must maintain a record of all disclosures made within the preceding 5 years.
- Record must be available to customer within 5 days.

7470(d) - Exception

- Law enforcement agency may initiate contact with financial institution believed to be a crime victim.
- If financial institution believes it is a victim, it may choose to disclose relevant information.

7473(a) - Detailed requirements of a valid authorization.

7473(c) - Notification requirement re: right to revoke authorization.

7473(d)

- Written notification of examination of record must be provided within 30 days of agency receipt of information;
- Circumstances warranting time extension.

7474 - Provision re: administrative subpoena or summons

- Record subject must be served with copy of the subpoena/summons including name of agency and purpose for use.
- 10 days for motion to quash; exceptions.

7475 - Search warrants

- If obtained notice to record subject is not required.
- Examination generally within 10 days of service.

7476 - Judicial subpoenas

- Procedural and substantive due process requirement.
- Notification.
- Motion to quash exception.

7480 - Exempted disclosure.

7485 - Violation misdemeanor.

7486-87

- Civil remedies.
- Attorneys fees.
- Injunctive relief.

7490 - Waiver of rights void.

90 - Exclusionary rule.

- Evidence obtained in violation of chapter inadmissible except as to enforce the chapter provisions.

Business and Professions Code 6069

Every member of the State Bar is deemed by operation of law to have irrevocably authorized the disclosure of financial records to the State Bar and the California Supreme Court upon issuance of a subpoena and notice to the member.

B. Tax Records

Revenue and Tax Code 400: Property appraisal market data.

- Records not required to be kept/prepared by the assessor are not open to public inspection.
- Access provided to the assessee.
- Disclosure to law enforcement, grand jury, board of supervisors, state controller, inheritance tax referees and duly authorized state legislative/administrative bodies.

Revenue and Tax Code 408.1

- Assessor shall maintain list of property interest transfers.
- List shall be open to public inspection.

Revenue and Tax Code 400.2

Information required to be kept or prepared by the assessor are public record.

Revenue and Tax Code 26423 - Banks and corporations

Franchise Tax Board right to examination of book and records and oral examination of taxpayer and witnesses.

Revenue and Tax 26425 - Bank and corporation

Maintenance of reports and return for at least four years.

Revenue and Tax Code 26451 - 26455

Restrictions on disclosure of information re: banks and corporations.

26451 - Misdemeanor to disclose except as provided

- Public inspection of tax exemption applications and supporting papers; exceptions.

26452

- Definition of business affairs.
- Disclosure of extraneous matters only if information will not be used for commercial list purposes.

26453a-c - Permissible disclosures to specified governmental entities; restricted use; unwarranted redisclosure a misdemeanor.

26455 - Non-identifiable statistics are permitted.

Revenue and Tax Code 19268

Franchise Tax Board shall transmit claims for unemployment insurance credit or refund to the Director of Employment Development.

Revenue and Tax Code 19281-19290: Restrictions on personal income tax disclosure.

19281 - Maintenance of tax returns and documents.

19282 - Prohibits disclosure of information re: amount of income; misdemeanor violation.

19283 - Permits disclosure on judicial order for cases/actions re: tax violations.

19284 - Permits disclosure to legislative committee.

- Redislosure a misdemeanor except for law enforcement purposes.

19285 - Permits disclosure to Attorney General re: tax case or enforcement of any charitable or public trust.

19286 - Permits inspection on furnishing of abstracts to other tax officials.

Requires written agreement or affidavit stating that use will be for investigation of tax specified.

19286.5 - Permits inspection, by Director/Deputy of Social Welfare; of records of applicants or recipients of assistance.

- Records limited to current/preceding year.
- Purpose limited to eligibility determination.
- Counties may request and receive the information from Social Welfare for the purposes of eligibility determination.
- Requires notification of request to the record subject.

19286.6 - Allows disclosure to the State Controller of information to locate owners of unclaimed property.

19286.7

- Department of Social Services shall inform the Franchise Tax Board of the name and social security numbers of applicants/recipients of public social service programs.
- Upon receipt, Franchise Tax Board shall inform social services of any applicants or recipients who received interest/dividend in excess of \$30.

19287 - Restriction on use of information.

19289.5 - Requires publication of amount of tax paid by individual taxpayers with high total incomes.

C. Credit and Other Consumer Information

Civil Code 1785.1-1785.35

"Consumer Credit Reporting Agencies Act"

1785.3 - Regulates non-governmental agencies which compile and report credit information concerning consumers.

- Permits consumer access and copies of all information in agency's files.

1785.17(4) - Reasonable charge cannot exceed \$5.

1785.10 - Requires explanation of any code used or a decode version of file.

1785.16 - Provisions for disputing, reinvestigating and amending files.

1785.11 - Limits disclosure to use in connection with a credit, insurance, or employment transaction or other legitimate business need.

1785.13 - Prohibits disclosure of certain information including arrests, certain convictions (if release antedates request by more than 7 years); exception where the employment, credit, or insurance transaction involves greater than 30,000, 50,000 or 100,000 respectively.

1785.20 - User must notify record subject of name and address of reporting agency whose information adversely affected credit/employment insurance.

1785.14 - Requires agencies to develop and maintain procedures to insure accuracy of records and compliance with the Act.

1785.31(a)(1) - Remedies for non-compliance: must establish negligent or willful violation.

1785.31(a)(2) - If willful, punitive damages.

1785.31(d) - Attorney's fees and costs to prevailing party.

1785.3(b) - Injunctive relief.

1785.31 - No cause of action for invasion of privacy or defamation.

Civil Code 1786-1786.51 - "Investigative Consumer Reporting Agencies Act:"

Similar to Consumer Credit Report Act - major differences include:

1786.2(e) - Regulates agencies which collect and report information concerning a consumer's personal characteristics, general reputation or mode of living but do not collect/report credit information.

1786.12 - Disclosure limited to use for employment purposes; insurance eligibility; government licensing; or in compliance with court order.

1786.16 - Notification requirement of report may be sought in connection with the underwriting of insurance or if report is sought for employment purposes.

1786.28(b) - Requires verification of adverse information before inclusion in subsequent report.

1786.18(a)(6) - Arrest, indictment and informaton misdemeanor complaints may be reported while judgement is pending.

1786.50 - \$300 minimum damage remedy can be awarded for violation of the Act without proving negligence.

1786.52 - Allows cause of action for invasion of privacy/defamation.

1786.50(a)(2) - Attorney fees and costs only to prevailing consumer.

Civil Code 1787.2 - Holden Credit Disclosure Denial Act

- Every creditor must inform consumer of his decision re: extending credit within 30 days.
- Every denial must be accompanied by reasons for denial including credit and non-credit information; or inform the consumer of his/her right to request a statement of reasons from the creditor.
- Civil remedies: actual damages necessary; punitive damage for intentional/persistent violation; attorney fees and costs only to aggrieved applicant.

Civil Code 1747-1747.90 - "Sony Beverly Credit Card Act of 1971."

1747.70

- Prohibits knowing disclosure of untrue credit information.
- Prohibits disclosure of unfavorable credit information based upon a pending billing error dispute.
- Violation: treble damages; attorney's fees and costs.

1747.80 - Prohibits discrimination in issuance of credit cards.

D. Business Records

Business and Professions Code 16606

Telephone answering service customer list constitutes a trade secret, therefore confidential.

Business and Professions Code 16607

Employment agency customer list is a trade secret, therefore confidential.

Labor Code 6322

- Information obtained in connection with health and safety inspection which might reveal a trade secret is confidential.
- Violation - misdemeanor.

Evidence Code 1060

Owner of a trade secret has a privilege to refuse to disclose the secret and to prevent another from disclosing it.

Labor Code 1309.5-1309.6

- Requires all retailers and persons who knowingly sell or distribute for resale any material that they know, or reasonably should know depicts a minor under the age of 16 engaged in sexual conduct, to maintain records containing the names and addresses of the persons from whom they obtained the material.
- Failure to maintain these records is a misdemeanor - civil penalty up to \$5,000.

Civil Code 1799-1799.2

- Any business entity which performs bookkeeping services and discloses any of the record contents to a person/entity other than the record subject shall be liable for actual damages sustained, plus attorney's fees and costs.
- Exceptions for judicial proceedings/orders; law enforcement investigation; tax administration.

Financial Code 1582

- Restrictions on disclosure concerning private trusts.

IV. HEALTH RECORDS

A. Collection and Disclosure

1. General Statutes

Civil Code 56-56:37 - Confidentiality of Medical Information Act.

56.10-56.16 - Except under specified circumstances a provider of health care may not disclose personal medical information without prior written authorization from the patient or the patient's representatives.

56.11 - Written authorization must:

- Be clearly separate;
- Specify cases and types of medical information to be disclosed and any limitations on the use by the receiver of the information.

56.20-56.25

- Restrictions on use and disclosure of medical information by employers.
- Employers must establish appropriate procedures to ensure confidentiality.

56.26 - Disclosure limitations on those engaged in the business of furnishing administrative services to programs that provide payment for health care services (not applicable to persons or entities subject to the Insurance Information Privacy Act).

56.35-.36 - Violation remedies:

- A patient sustaining economic loss or personal injury may maintain a civil action to recover full compensatory damages; punitive damages not exceeding \$3,000; and attorney's fee and costs not exceeding \$1,000.
- Economic loss/personal injury must be sustained before a violation constitutes a misdemeanor.

56.37 - Any waiver of the provisions, except by valid prior authorization, is void.

Insurance Code 791-791.26 - Insurance Information and Privacy Act (see description under V.A, Insurance, p. ____).

2. Mental Health

Welfare and Institutions Code 5325-5328.15 - Rights of Persons Involuntarily Detained

5328 - Information and records obtained in providing services to voluntary or involuntarily detained patients are confidential. No disclosure without consent; certain exceptions.

5328.01 - Confidential information may be disclosed to law enforcement agencies with consent or court order and procedural safeguards.

5328.02 - Disclosure to youth authority and adult correctional agencies.

5328.1 - Information to patient's family.

5328.2 - Information to Department of Justice re: criminal matters.

5328.4 - Release of information relating to crimes against person by or upon patient.

5328.6 - Requires records of disclosure.

5328.7 - Required consent forms.

5328.8 - Release of death information to coroner.

5328.9 - Disclosure of records to an employer upon request of the patient.

Welfare and Institutions Code 4019; 4425 - Department of Mental Health shall keep information regarding state institution patient.

Welfare and Institutions Code 5200 - Protects privacy and dignity of persons subject to court ordered evaluations of mental condition.

Welfare and Institutions Code 5202 - Prepetition screening reports are confidential and subject to provisions of 5328.

Welfare and Institutions Code 5510-5550 - Patients Rights Office and advocates for those receiving mental health services.

5530 - Advocates access to clients' notices of availability of services; privacy rights.

5541

- Specific authorization by client or guardian for advocate access to, use or copy confidential records or information.
- When authorized advocate may inspect and copy records and information.

5542 - Advocate's right to inspect and copy all non-confidential information.

5543 - Advocate may communicate confidential information to the client.

5544 - Written client information may be used in proceedings.

5545 - Access for purposes of monitoring compliance with patients' rights provision.

5546 - Copy costs.

5550 - Immunity of persons filing complaints or providing information.

Welfare and Institutions Code 4744

- Regional centers shall provide information re: dangerous propensity prior to placement in a residential facility.
- No confidential information disclosures without consent.

Welfare and Institutions Code 4656 - Disclosure of information regarding developmental disability of a minor.

Welfare and Institutions Code 4701-4710 - Regional Centers--fair hearing procedures.

Welfare and Institutions Code 6002 - After admission of voluntary patient to private institution, hospital or clinic a record of required information shall be forwarded to the Department of Mental Health.

7278

- Investigations to determine property, guardians and/or relatives of patient admitted into state hospital for the mentally disordered.

- All records may be inspected by patient's relatives or representative.

8104 - Maintenance of records by Department of Mental Health

- Forwarding of information to Department of Justice with regard to applications weapon permits.

8105 - Public and private hospitals shall submit to the department information necessary pursuant to 8104.

3. Drug and Alcohol Programs

Health and Safety Code 11263 - Research with clinical trials of cannabis; confidentiality of records.

Health and Safety Code 11838.1 - Statewide reporting procedures and forms re: services to persons convicted for driving under the influence of alcohol.

Health and Safety Code 11882 - Statewide identification of methadone patients.

Health and Safety Code 11974 - Registration of narcotics and drug abuse.

Health and Safety Code 11977-78 - Confidentiality of patients' records; disclosure.

4. Medi-cal

Welfare and Institutions Code 14101.5 - Exchange of information between Health Services and Social Services.

Welfare and Institutions Code 14100.2 - Confidentiality of information not open to examination other than for purposes directly connected with Medi-cal; rules and regulations; misdemeanor violation.

Welfare and Institutions Code 14101.7 - Exchange of information with Workers' Compensation Appeals Board.

Welfare and Institutions Code 14017 - Identification cards.

Welfare and Institutions Code 140169 - Verification of eligibility.

Welfare and Institutions Code 14117 - Information related to medication provided Medi-cal recipient shall be disclosed to treating physician.

5. Recordkeeping Requirements of Health Care Facilities

Health and Safety Code 1457 - County hospital records.

Health and Safety Code 441-442.4 - Health Facilities Disclosure Act

441.18 - Reports by health facility to commission including Hospital Discharge Abstract Data record.

- Confidentiality of patient shall not be violated.

Welfare and Institutions Code 14308 - Prepaid health plans shall furnish specified information and reports.

Welfare and Institutions Code 14455 - Prepaid health plans shall maintain a complete medical record for each enrollee available for review by state and federal officials.

Welfare and Institutions Code 14456 - Periodic medical audits.

6. Professional Licensing and Review Boards

Civil Code 43.7 - Immunity of members of professional review committees.

Civil Code - Immunity relating to communication of information used to evaluate practitioner of healing arts.

Business and Professions Code:

§2225

- Privileged communication does not apply to professional review hearings.
- Patient records be kept in confidence by review board members.

Business and Professions Code 2263 - Physician-patient privileged communications.

Business and Professions Code 2282-83 - Patient records must be adequate and accurate.

Business and Professions Code 2379 - Willful betrayal of professional secret constitutes unprofessional conduct; privileged communications are not applicable to review/licensing board review.

Business and Professions Code 2960 - A psychologist's license may be denied or suspended due to willful unauthorized communication of a professional confidence.

7. Law Enforcement

Health and Safety Code 1493 - Recordation of medical data disclosed by examination of sexual assaults utilized for statistical purposes by Department of Justice.

Penal Code 11165-11173 - Mandatory child abuse reporting.

Penal Code 1543-1545 - Disclosure of non-confidential medical records to law enforcement agencies.

8. Department of Motor Vehicles Medical Information

Vehicle Code 1808.5 - Records of physical or mental conditions are confidential.

Health and Safety Code 410 - Reportable diseases.

9. Employment

Unemployment Insurance Code 2714 - Confidentiality of medical records.

Labor Code 5701-5703 - Disclosure of medical records to Workers' Compensation Appeals Board.

Labor Code 6409-6409.1 - Requires reports to Department of Industrial Relations of occupational injury/illness including social security number of injured employee and physician's report.

Labor Code 6412 - Reports required by section 6409 are confidential; not open to public inspection or admissible at workers' compensation hearings.

10. Student Health Records

Education Code 79401

- Examination of community college students.
- Confidentiality of any defects noted.

Education Code 49076 - Confidentiality of community college counseling records.

Education Code 72621 - Confidentiality of K-12 pupils counseling records.

11. Privileges and Discovery Proceedings

Evidence Code 990-1007 - Physician-patient privilege; exceptions.

Evidence Code 1010-1028 - Psychotherapist-patient privilege; exceptions.

Evidence Code 1035-1036.2 - Sexual assault victim-counselor privilege; exceptions.

Evidence Code 1156 - Records of medical study of in-hospital staff committee.

Evidence Code 1157 - Proceedings and records of hospital medical, dental, chiropractic review committee.

Evidence Code 1157.5 - Non-profit medical care foundation or professional standards review committees; proceedings and records.

Evidence Code 1158 - Right of access by patient's attorney to medical records with written consent of the patient.

Penal Code 1034 - Special master required for searches for documentary evidence in possession of attorneys, physicians, therapists or clergyman not suspected of criminal activity.

12. Vital Statistics

Health and Safety Code 10125.5-10131 - Content of live birth certificate.

- 10125(a) - live birth certificate shall name, sex of child; date and place of birth, name, birthplace and age of mother and father; multiple births; signature and date of parent or other informant; name, title, address, signature of principal attendant; registration date and signature; state and local certificate number; blank space captioned Date of Death.
- 10125(b) - in addition certificate contains certain medical and social information, labeled "Confidential Information for Public Health Use Only."

10125.5; 10128; 10129

Rules governing confidentiality.

Civil Code 7005 - Confidential, sealed record of father conceived by artificial insemination.

Government Code 129 - Confidentiality of photos of deceased body taken during post mortem or autopsy.

B. Access

Health and Safety Code 25250-25258 - Patient Access to Health Records

25252(a) - The act guarantees (with certain exceptions) patients and former patients of specified health care providers, the right to inspect and copy health records.

25253(b) - A health care provider can refuse access to certain mental health records, but the record subject can designate a physician or psychologist to inspect and copy such records.

22553 - Under certain circumstances a health care provider could refuse parent access to a minor patient's records.

25256 - A health care provider may choose to prepare a summary rather than allowing access to the entire record.

25252(f) - Willful violation of the act constitutes unprofessional conduct.

25254 - A civil action may be brought to enforce the provisions and courts may award attorney fees to the prevailing party.

V. INSURANCE RECORDS

A. Comprehensive Statutes

Insurance Code 791-791.26 - Insurance Information and Privacy Protection Act.

791.04: Notification requirement including informing the applicant/policyholder that:

- personal information may be collected from persons other than the individual to be covered;
- under certain conditions, personal/privileged information collected by the insurance company may be redisclosed without authorization;
- a right of access and amendment exists;
- upon request, all required notice must be in writing.

791.07 - Restrictions on preparation or use of investigative consumer reports.

791.08 - Access to recorded personal information.

791.09 - Right of amendment to recorded personal information; right to file rebuttal statement.

791.10 - Procedural rights after adverse underwriting decision including specific reasons for denial and sources of information.

791.11 - Prohibits insurers from seeking information concerning an individual's previous adverse underwriting decision.

791.13 - Restrictions on disclosure of personal/privileged information.

791.15 - Charges of violation of sections 791.-791.13; .19 - Hearing procedures; cease and desist order; penalties.

791.20 - Violation - Civil Remedies:

- monetary award not exceeding actual damages;
- bars cause of action for defamation, invasion of privacy or negligence that arise from disclosures in accordance with the act;
- no immunity for furnishing false information with intent to injure any person.

B. Collection

Insurance Code 11580.08

Prohibits issuer of motor vehicle liability insurance from asking an applicant to disclose previous arrests (not resulting in convictions) for offenses which relate to the operation of a motor vehicle.

Insurance Code 10140

Prohibits refusal of insurance for discriminatory reasons.

Insurance Code 10141

Prohibits identification of race, color, religion, ancestry/national origin on an insurance application.

Insurance Code 10142

Birthplace questions are permissible if used only for identification and not for discrimination purposes.

C. Disclosure

Insurance Code 770.1

Restrictions on use and disclosure of policy information by mortgagee.

Insurance Code 12919

Confidentiality of information received by Insurance Commissioner regarding the holder of/applicant for any certificate/license.

VI. JURORS

A. Collection and Disclosure of Information Re: Selection and Service

Code of Civil Procedure 197 - Random selection for jury service.

Code of Civil Procedure 197.1 - Prohibit discrimination on account of race, religion, color, sex/economic status.

Code of Civil Procedure 198-199 - Competency requirements.

Code of Civil Procedure 203 - Rules for fair representation of the population.

Code of Civil Procedure 204

- Jury commissioner inquiry into qualifications of potential jurors.
- Commissioner may require any person to answer all questions addressing name, age, residence, occupation and qualifications as a juror and all questions as to similar matters concerning other person of whose qualification for jury duty the person has knowledge.
- All records shall be preserved for at least 3 years after the list used in juror selection was completed.

Code of Civil Procedure 204.7

- Source lists of jurors; contents.
- Upon written request by the jury commissioner, Department of Motor Vehicles shall furnish the current list of names and addresses of persons

over 18 years who are licensed or have been issued an identification card.

- Disclosure of D.M.V. data limited to jury selection use.

Code of Civil Procedure 601-602; Penal Code 1067-1076; Challenges to juror.

Code of Civil Procedure 603; Penal Code 1073; Court Rule 228; Court Rule

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- Examination of prospective jurors by court and counsel.

American Bar Association Code of Professional Responsibility (A.B.A.-C.P.R.) D.R 7.-108 E-F; E.C. 7-30, 7-31; A lawyer shall not conduct/cause by financial support or otherwise, another to conduct vexation or harassing investigations of either a venireman or juror or members of his/her family.

California Bar Association Rules of Professional Conduct (CA. C.P.R.) 7-106.

A member of the State Bar shall not directly or indirectly conduct an out of court investigation of a venireman/a juror/family member which is likely to influence state of mind in present or future jury service.

A.B.A. P.R.C.-D.R 108(a), E.C. 7-29; CA. PRC 7-106(A)

- Prohibits communication with potential juror/family member prior to trial.

A.B.A. P.R.C-D.R 108(F), E.C. 8-31; CA PRC 7-106(B)

- Prohibits unofficial communication with juror/family member during trial.

A.B.A. P.R.C D.R 108(D), E.C. 7-29; CA PRC 7-1060

- After jury discharge, attorney shall not ask questions of or make comments to a member that are calculated merely to harass or embarrass the juror or to influence his actions in future jury service.

VII. MOTOR VEHICLE/DRIVING RECORDS

A. Collection and Maintenance of Information

Vehicle Code 1800 - Requires DMV to keep certain records of driver's licenses and vehicle registration and to file all applications.

Vehicle Code 1801 - Allows DMV to maintain records by electronic recording and storage.

Vehicle Code 1802 - Requires judge to keep full record of every DMV code conviction.

Vehicle Code 1806

- Requires DMV to keep accident reports and conviction abstracts.
- Permits storage by electronic recording.

Vehicle Code 1807 - Permits destruction of certain records.

Vehicle Code 2900 - California Traffic Safety Program

- Keeps records of vehicle accidents, injuries, deaths.

Insurance Code 11580.08

- Prohibits motor vehicle liability insurance issuer from asking an applicant to disclose previous arrests for driving offenses from which no conviction resulted.
- Violation may result in suspension/revocation of license.

B. Disclosure of Information

Health and Safety Code 410

- Requires physicians to report to local health officers the name and address of every person with disorders characterized by lapses of consciousness.
- Mandatory reports from health officer to DMV.

Vehicle Code 25.5 - Prohibition against false representation as a DMV employee in order to obtain DMV records or information.

Vehicle Code 1803 - Reports of court action re: violation of Vehicle Code and Health and Safety Code re: possession of controlled substances shall be forwarded to DMV.

Vehicle Code 1808 - DMV records are open to public inspection with certain exceptions.

Vehicle Code 1808.2 - Home address of any inspector, investigator or peace officer are confidential.

Vehicle Code 1808.4 - Home address of legislators, judges, court commissioners, District Attorneys or peace officers are confidential.

Vehicle Code 1808.5

- Records of physical or mental conditions or controlled substance convictions are confidential.

- Does not limit provision of information to Department of Social Services.

Vehicle Code 1808.6 - Demonstration program to evaluate effect of withholding traffic convictions from public inspection.

Vehicle Code 1810

- Permits DMV to sell its driver's license and registration information.
- Imposes specific identification and notification requirements when vehicle registration information is requested.
- Procedural requirements are not applicable to governmental entities, persons with permits or requestor codes; courts of competent jurisdiction; attorneys with proper interest; members of the press.

Vehicle Code 1814 - Requires any person engaged in the business of examining DMV records and selling information to the public to file a bond and obtain a permit from DMV.

Vehicle Code 1818 - Court records of juvenile traffic offenders are to be sent to DMV.

Vehicle Code 1819 - Records of actual mileage of motor vehicles are open to public inspection.

Vehicle Code 1817 - Written allegations received by DMV identifying vehicles from which flaming/glowing substances have been thrown will be forwarded to the Department of Forestry along with identity of registered owner.

Vehicle Code 16005

- Financial responsibility reports are for confidential use by DMV and other state agencies.
- May also disclose reports to specified person having proper interest.

Vehicle Code 20012

- Accident and supplemental reports are for confidential use by DMV and the law enforcement agency to which accident was reported.
- Shall also disclose to persons with proper interest therein.

Vehicle Code 20013 - Accident reports cannot be used as evidence except to show that report was made.

Vehicle Code 20014 - All required accident reports are available for confidential use by any DMV division; by Department of Transportation and to local authority having jurisdiction over highway.

Civil Code 1798.26 - Information Practices Act provision re: requests for vehicle registration information.

Code of Civil Procedure 204.7 - Furnishing of D.M.V. data to jury commissioner.

California Administrative Code

Title 17

2572 - Reportable disorders characterized by lapses of consciousness as per H&S 410.

Title 13

320 - Vehicle registration records are open to public inspection.

320.05 - Commercial requestor account requirements.

320.06 - Requests for information by other than governmental entity or persons with requestor codes/permits.

320.07 - Certification of requests.

320.08 - Identification requirements for occasional requester of vehicle registration information.

320.10 - Notification of record subject of requests for vehicle registration information.

320.11 - Requires retention of request for vehicle registration for 90 days.

320.12 - Fees.

320.13 - Procedures re: complaints from record subject regarding inaccuracy of requester information.

320.14 - Grounds for refusal or cancellation of commercial requester account including invasion of privacy.

C. Access

Vehicle Code 1808

Motor vehicle records are open to public inspection.

VIII. PRIVATE INVESTIGATORS

A. Collection, Use and Disclosure

Business & Professions 7521; 7522

- Definition of private investigators.
- Exemptions.

Business & Professions Code 7538

- Confidential nature of information; exception law enforcement.
- Prohibits making knowingly false report.
- Requires diligence in determining accuracy of information.

Business & Professions Code 7551 - License may be revoked or suspended for violation of penal code Invasion of Privacy Statutes.

Business & Professions Code 7553.2 - Suspension or revocation of license for fraud and dishonesty including false statements relating to obtained information; publishing slander/libel; acceptance of employment relating to a matter to which confidential information was obtained.

Business & Professions Code 7560 - Falsification of fingerprints/photographs.

Labor Code 2930 - Shopping investigator reports.

Civil Code 1785.4; 1786.2 - Inapplicability of the Consumer Credit Reporting Agencies Act and Investigative Consumer Reporting Agencies Act to private investigators.

B. Licensing and Recordkeeping

Business & Professions Code 7526 - Qualifications for license.

Business & Professions Code 7551; 7553.2 - Grounds for suspension/revocation.

Business & Professions Code 7539 - Required employee records.

IX. STUDENT RECORDS

A. K-12 Pupils

1. Collection and Maintenance of Information

Education Code 10600-10610 - California Education Information System.

Education Code 49062 - Establishment, maintenance and destruction of records.

Education Code 49063 - Modification of rights of parents or eligible students.

Education Code 49064 - Required logs of persons and organizations requesting and receiving information.

Education Code 49068 - Procedures for transferring records.

Education Code 56320-30 - Assessment of student with special education requirements.

California Administrative Code 16020-16029

16020-16029 - Maintenance, transfer and destruction of records.

450 - Records identifying project connected students.

2. Disclosure

Education Code 49073-49078 - Privacy of Pupil Records.

Education Code 49073 - Restrictions on release of directory information.

Education Code 49074 - Statistics permitted.

Education Code 49075 - Provides for access to pupil records by any person with parental written consent.

Education Code 49076 - Exceptions to confidentiality of pupil records include school or state, official, pupils 16 years or older, courts, financial aid organizations, accreditation and others in an emergency.

- Requires notification of parent and pupil.

Education Code 49078 - Subpoena provisions.

Education Code 44944.1 - Protections against public school employees hearing testimony which would violate privacy of pupil records.

Education Code 45345 - Prohibits instructional aides disclosure of any personal information re: pupils.

Education Code 51219 - Departmental collection of pupil information from school districts.

Education Code 35301 - Confidentiality of school counseling records and information.

Education Code 35145 - School board hearings.

Education Code 35146 - Closed session school board hearings.

Education Code 48914 - Hearings re: expulsion of public school pupils.

Education Code 51219 - Proficiency tests.

Education Code 52212 - Records of gifted children.

Education Code 56300-56303 - Identification and referral of special education students.

Education Code 56500-56507 - Procedural safeguards for special education students.

3. Access

Education Code 49069-76 - Rights of parents and eligible students.

Education Code 49069 - Parents absolute right of inspection of all pupil records by public and private schools.

Education Code 49070 - Challenge and amendment of public school pupils.

Education Code 49071 - Hearing panel to assist in making determination re: record challenges.

Education Code 49072 - Parents right to include statement or response to disciplinary action information included in public school records.

Education Code 49076 - Access rights by public school pupils over 16.

Education Code 56504 - Parental access to school records of special education students.

California Administrative Code

430-38 - Collection and disclosure, access of school records.

B. Community College Students

1. Collection and Maintenance of Information

Penal Code 626.11 - Students are entitled to rights of privacy; limits on use of evidence seized from student dormitories.

Education Code 76220 - Establishment, maintenance and destruction of records.

Education Code 76221 - Notification of student rights.

Education Code 76222 - Requires log of persons and organizations requesting or receiving information and the legitimate interest therefore.

Education Code 76225 - Transfer of records, notification to students.

2. Disclosures

Education Code 762 40-76245 - Privacy of Student Records.

76240 - Restricts release of directory information.

76241 - Statutes permitted.

76242 - Provides for access to student records by any person with written student consent.

76243 - Exceptions to confidentiality for certain school, state, federal officials; courts; financial aid organizations and others in an emergency.

76244 - Access to information concerning a student in compliance with court order; notice to student.

76245 - Subpeona.

Education Code 72621 - Confidentiality of counseling records.

Education Code 72121 - Board hearings; open to public.

Education Code 72122 - Closed session board hearings.

3. Access

Education Code - Rights of Students

76230 - Students absolute right of inspection of community college records.

76231 - Student may waive right of access to confidential recommendations.

76232 - Challenging records.

76233 - Right to include statement of response to disciplinary action.

C. **Colleges and Universities**

1. Collection and Maintenance of Information

Penal Code 626.11 - Students are entitled to rights of privacy; limits on use of evidence seized from student dormitories.

Education Code 67100-67147 - Donahue Higher Education Act.

Education Code 67120 - Establishment, maintenance and distribution of school records determined by school's governing board regulations.

Education Code 67122 - Requires maintenance of separate log listing person and organizations requesting/receiving information and the legitimate interest therefore; exemptions.

Penal Code 11105 - Any California State University or University of California campus may require fingerprints and may receive conviction information in conjunction with an application for admission to any special education program for convicted felons.

2. Disclosure

Education Code 67140 - Restrictions on release of student directory information; misdemeanor violation.

Education Code 67141 - Statistical data permitted.

Education Code 67142 - Allows 3rd party access with student's written consent.

Education Code 67143 - Exceptions to student consent requirement.

Education Code 67144 - Requires compliance with court orders; must make reasonable effort to notify student in advance of compliance.

Education Code 67145 - Response to subpoenas.

3. Access

Education Code 67121 - Requires notification of rights within 2 weeks after enrollment and at least annually thereafter.

Education Code 67123 - Allows reasonable charges for furnishing copies.

Education Code 67130 - Any current or former student has right of access, within 15 days of requests to all students records maintained by public/private college or university.

Education Code 67131 - Student may waive right of access to confidential recommendations.

Education Code 67132 - Right to challenge and amend record; right to file rebuttal statement.

Education Code 67133 - Right to include statement rebutting disciplinary action record.

4. Enforcement of Rights

Education Code 67137 - Injunctory relief may be sought after exhaustion of all college/university administrative remedies.

Education Code 67137.5 - Injunctive relief for improper withholding of records; order for production; in camera examination of records.

Education Code 67138 - Civil action may be brought after exhaustion of all university/college and U.S. Department of Education administrative remedies.

Education Code 67139 - Provision of attorney's fees and costs.

Education Code 67139.5 - Cause of action for invasion of privacy if intentional disclosure of confidential information; provision for attorney's fees and costs and exemplary damages; remedy is non-exclusive.

Education Code 67100 - Only specified provisions are applicable to private college and universities.

Education Code 67147 - The provision of E.C. 67100-67147 are applicable to University of California only to the extent to which such provisions have been adopted by the Regents.

Education Code 67147.5 - Construction with other laws.

University of California Policies (1980) Sec. 10-10.90 - Disclosure of information from student records.

California Administrative Code, Title 5 42396 et. seq. - Privacy and personal information management.

X. SOCIAL SERVICES

A. Collection and Disclosure of Information

1. Domestic Relations

Welfare and Institutions Code 11477(b) - Questionnaires for AFDC eligibility prohibits county welfare from asking applicants about paternity where it is not legally an issue.

Welfare and Institutions Code 11478

- Requires state, county and local agencies to cooperate in locating deserting parent by providing all information regarding the location, income and property of absent parent.
- Information shall be used and disclosed only for administration of aid.

Welfare and Institutions Code 11478.5

- Department of Justice has a parent locator service containing certain information on deserting parent.
- State and local agencies are required information.
- Records are only available to district attorneys, probation officers, state locator services; courts of competent jurisdiction.

Welfare and Institutions Code 1536

- Privacy of small foster homes.
- Limits disclosure except for licensing and facilitating child placement.

Welfare and Institutions Code 10609 - Cooperation with federal government re: services for children.

Education Code 8212

- Comprehensive program of child care administered by Department of Education.
- Resource file providing general information about available program.
- Confidential referral system.

Civil Code 227

- Adoption proceedings.
- Upon written request of any party and upon order of the court, access to any documents will not be permitted unless name of natural parents of the child is deleted.

Health & Safety Code 10439

- Adoption records shall be available only upon order of the superior court.
- Name and address of natural parents shall be given only if petitioner that they are necessary to establish a legal right.

Civil Code 4213 - Confidential marriages.

2. Welfare/Assistance

Welfare and Institutions Code 11025 - Demonstration projects comparing Franchise Tax Board records and reported income of applicant and/or recipients of public assistance.

Welfare and Institutions Code 11026 - Information sharing between State Department of Social Services and Franchise Tax Board re: public social service recipients.

Welfare and Institutions Code 10850-10854: Public Social Service Records

10850 - Confidentiality of records of applicants or recipients of public social services for which federal grants in aid are provided; exceptions; misdemeanor violation.

10851 - Establishment, maintenance, retention and destruction of public social service records.

10852 - All persons subject to investigation or supervision by the department must furnish requested information and allow department free access to all records.

10853 - Requires persons subject to jurisdiction of the department to keep such records as the director requires.

Welfare and Institutions Code 18909 - Provisions of 10850 relating to information disclosure shall apply to food stamp recipients.

Welfare and Institutions Code 11270 - AFDC applicants must apply for unemployment benefits.

Welfare and Institutions Code 18471 - Department shall conduct investigations and secure information regarding relief.

Welfare and Institutions Code 18491 - Mandates county to keep complete records of every application for relief, periodic visitation to recipients and rehabilitation attempts.

- Records are confidential; not open to public inspection except by grand jury or relief officials.
- Any citizen may demand and receive statement of the amount, character and value of relief received by any person.

Vehicle Code 1808.5 - Information exchange DMV and Department of Social Services.

Unemployment Insurance Code 1094 - Privacy of information supplied by employers; information disclosed for administration of public social services.

Unemployment Insurance Code 1095 - Permissible uses of information in directors' possession.

Unemployment Insurance Code 2060 - Provision of employment information to public agencies.

Unemployment Insurance Code 2111 - Privacy of information; misdemeanor violation.

B. Access

Welfare and Institutions Code 10850.2 - Factual information relating to eligibility, provided by the public assistance recipient shall be open to inspection by the recipient or representative.

Welfare and Institutions Code 11206 - Right to inspect AFDC file by applicant and/or recipient and/or his representative.

XI. STATE RECORDS

Civil Code 1798-1798.7 - "Information Practices Act."

- Criteria for collection and disclosure of personal and confidential information by state agencies.
- Access provisions.
- Creation of the Office of Information Practices to assist individuals in identifying and gaining access to state agency records and to assist state agencies in implementation of the Act.
- Civil remedies and criminal penalties for violation.

Government Code 14740-14768 - State Records Management Act.

- Regulations for the utilization, preservation and disposal of state records.

Government Code 11700-11791 - "Electronic Data Processing."

- Management of Electronic Data Processing; Security and Confidentiality.

Government Code 1195-1198 - "California Information Systems Implementation Committee"

REPORT ON THE DEPARTMENT OF MOTOR VEHICLES
LAW, POLICY AND PRACTICES AFFECTING INDIVIDUAL PRIVACY

BACKGROUND:

This report was prepared under an interagency agreement between the Department of Motor Vehicles and the State Personnel Board acting on behalf of the Commission on Personal Privacy.

The Commission's principal report was released on December 21, 1982. This report deals only with the Department of Motor Vehicles and its licensing and registration activities as they affect individuals. Specifically, the purpose of the study underlying this report, as stated in the interagency agreement, was:

- "1. Study the program, policy and practice of this Department which will directly or indirectly affect the personal privacy of departmental employees or clients;
- "2. Identify and develop issues for further study such as those listed below:
 - "a. Whether the occupational licensing procedures of the DMV, Division of Compliance, adequately protect against any problems of discrimination based on sexual orientation and invasions of the right of personal privacy.
 - "b. Whether the initial driver licensing process and the physical and mental post-licensing control procedures of the DMV, DDL, adequately protect against any problems of discrimination based on sexual orientation and invasions of the right of personal privacy.
- "3. Conduct an extensive analysis of those identified problems considered more pressing."

SUMMARY OF FINDINGS AND RECOMMENDATIONS:

1. Considering the number of individuals who come into contact with the Department of Motor Vehicles, there appear to be few privacy-related complaints against the Department.
2. Of the privacy-related complaints that are made against the Department, many if not most are against practices required or specifically permitted by statute and would require amendments to the Public Records Act and/or the Vehicle Code to be avoided in the future.

3. To further restrict public access to license and registration files would contradict the public interest in having the identities and addresses of licensees and registrants accessible for justifiable purposes. However, if individual complaints were to increase in the future and indicate that information about licensees and registrants is being abused because of the ease with which identities and addresses are obtainable from the Department, additional safeguards, including statutory penalties for misuse, should be adopted.
4. While the Department does accommodate requests for change of sex identification for transsexuals, the forms and procedures employed to allow individuals to change their sex identification should be amended with the objective of minimizing embarrassment and invasions of the privacy of such individuals.

INTRODUCTION:

The protection of personal privacy is a social concern expressly recognized in the California Constitution (Article I, Section 1) and the two major State information statutes, the Public Records Act, beginning at Government Code Section 6250 and the Information Practices Act of 1977, beginning at Civil Code Section 1798.

Virtually all of the State's statutory codes which affect personal information contain provisions which are intended to limit unwarranted invasions of personal privacy. The Vehicle Code, while emphasizing public access to departmental records, also restricts access to financial and medical information. Even names and addresses of licensees and registrants are withheld when the request does not meet criteria established under the law. Such limitations may not be imposed for information subject only to the Public Records Act which requires no need or purpose for disclosure.

This study focuses on departmental practices relating to information about individuals in the client public as opposed to the Department's own employees. After further consultation with representatives of the Department as well as with staff of the Office of the Information Practices (OIP) of the State Personnel Board, it was decided not to look into the employee area. There appears to be nothing unique about the Department's practices relating to employee privacy, such practices being guided by the same law, rules, general policy and bargaining agreements as are those of other State agencies. Staff of the OIP was aware of only two records-related complaints by DMV employees over the last several years. This is remarkably few considering the Department has nearly 8,000 employees.

The data for this report was obtained by interviews of DMV and OIP personnel and by reviewing applicable statutes, rules, policy and procedures. The OIP was contacted because it has a statutory responsibility to assist individuals who have problems and complaints relating to State agency information practices affecting them. Each agency, as does the DMV, reports its systems of record containing information about individuals together with procedures for allowing access, amendments and noting disputes, to the Office of Information Practices.

We chose to organize the report in accord with the three major departmental functions affecting individuals, i.e., driver licensing (Division of Drivers Licenses), registration of vehicles and vessels (Division of Registration Services and Compliance Enforcement), and occupational licensing (same as registration). We looked at the information collection, maintenance and disclosure practices within each of three major areas, noting pertinent statutory, administrative and case law.

DRIVER LICENSING:

There are in excess of 16 million individual files in this category. When combined with the identification card files, there are closer to 20 million individual files.

The information in this system includes the name, address, date of birth, color of hair, color of eyes, height, weight, sex and a photograph of the individual. Effective July 1982, applicants for driver's licenses must also furnish a legible thumb or fingerprint (Section 12800 V.C.). Applicants for nondriver ID cards must do likewise under Section 13000 V.C.

It is pertinent to note here that the requirement for thumb or fingerprint was recently challenged by an individual and sustained by the Sacramento County Superior Court (Perkey v. DMV, Case No. 307275). In its ruling in favor of the Department, the court cited the public reliance on the driver's license as a basic source of identification and the necessity of the thumbprint to assure the accuracy and integrity of the system.

In addition to the personally descriptive data, the driver's license files contain the licensee's records of convictions of driving offenses. These are available to the public for a period of 37 months. Serious offenses such as hit-and-run are accessible for five years and drunk driving convictions are accessible for seven years.

Sections 16005 and 20012 of the Vehicle Code restrict disclosure of information from accident reports and proof of financial responsibility to those involved in the accident and/or who have some property or other legal interest arising out of the accident.

While driver's records are open to public inspection, they are available only when the requestor furnishes either name and driver's license number, or full name and birth date of the data subject.

Complaints about disclosures from the driver's license files are not as prevalent as complaints about disclosures from registration files (name and address) presumably because the disclosure of information from the driver's license files generally is to an insurer, peace officer or other individual with whom the record subject has exchanged or provided personal data.

Where there is a question of the applicant's or driver's physical or mental ability to operate a motor vehicle safely, this system of records will contain such information, including reports of physicians and psychiatrists. Each applicant must respond to a question on the application regarding lapses of consciousness or other diseases or disabilities that would affect his/her ability to drive safely.

In the case of persons already licensed, the Department may receive information regarding a licensee's physical or mental condition suggesting a possible driving impairment. This information may come from law enforcement, health care providers as required by Section 410 of the California Health and Safety Code where disorders characterized by lapses of consciousness are concerned, or by persons who know or come into contact with the licensee.

Upon receiving information placing the licensee's ability to drive safely into question, the Department may call the licensee in for a reexamination and require him/her to submit to a physical or psychiatric examination at the licensee's expense.

The Department may, upon completing its reexamination, suspend, revoke or restrict the license subject to the licensee's right to appeal. The authority to inquire into an applicant's or licensee's physical and mental condition stems mainly from Section 12800 of the Vehicle Code.

The information relating to an individual's physical or mental condition, or convictions for possession or use of controlled narcotic substances not arising out of the use of a motor vehicle, is protected from disclosure by Section 1808.5 V.C. Law enforcement agencies, which generally have a more ready and in-depth access to DMV files than the public, do not get access to the Department's records covered by this Section of the law.

If the Department is subpoenaed for a licensee's records, it will instruct its counsel to move to quash the discovery, or will mask out the protected information, when making the records available for the party for whom the subpoena was issued. The Department informs the party of the statutory confidentiality of the obliterated information.

Given the strong public interest in safety on the State's streets and highways, it would appear that the law and policy governing data collection and disclosure from the driver license records strikes about as good a balance between individual privacy rights and public safety as can be expected.

One area that we believe worthy of change by the Department is how requests for change of sex identification are handled. Present procedure, as we understand it, requires the individual to go through a process not unlike that of someone whose mental or physical condition poses a potential threat to public safety. An exception is made for those rare instances where the person requesting sex identification change shows that the change is already established by a legitimate corrected birth certificate or passport.

The standard medical forms used by the Department to effectuate the sex identification change were designed to accommodate the questions of possible disability or impairment that would affect a person's driving ability and thus tend to exacerbate an already difficult situation for the applicant for change of sex identification. The applicant is required to furnish medical/psychological proof that they are predominantly of the sex for which the new identification is requested, and may be required to submit to a very in-depth interview into their personal history. While we were impressed with the analyst we interviewed on the subject in terms of his sensitivity and concern for the feelings of the individuals he has dealt with, we question whether the process is necessary to satisfy an identification change.

Were it not for the established use of the driver's license as official identification, as noted by the court in the thumbprint case before cited, the question of sex on a driver's license and/or application would be irrelevant and unnecessary. Given the acceptance of a driver's license as an identification device, we would agree that a person should not be allowed to change his/her sex identification without justification. We were told, for example, of one case where an individual requested repeated reversals in his/her identification. However, other identifying characteristics are easily changed, for example, the presence, color and length of facial and head hair may be altered which may make the license a very poor visual identification device. We question whether more than a physician's certification should be required for sex identification changes. We would recommend that the Department modify its procedure in this area accordingly.

REGISTRATION FILES:

This system encompasses more than 20 subsystems as reported to the OIP and contains in excess of 20 million individual files.

These files contain much less personal information than driver's records, i.e., name and address of registered owner together with a description of the registered vehicle or vessel. An exception is where the registrant has applied for special plates or placards such as those for a disabled person. This latter information also is protected by Section 1808.5 V.C., as with driver's license records.

Because of their clearly public nature as required by the Vehicle Code and the Public Records Act, the names and addresses of registered owners are so readily obtainable from the Department as to cause frequent complaints. It was in response to complaints that provisions were added to both the Vehicle and Civil Codes (1810 and 1798.26 respectively) requiring the Department to establish procedures to help assure that information from these files is disclosed only for legitimate purposes. Whereas the Public Records Act imposes no requirement to show purpose or need for a record, departmental regulations under the statutes cited require individual requesters (as opposed to commercial accounts) to positively identify themselves and state under possible penalty of perjury the purpose for the request. The data subject (registered owner) is mailed a copy of the request. If the disclosure is over the counter, the data subject receives a copy of the request sometime after the disclosure of the data.

The Department can and does take action against individuals who falsify their reasons for requesting information and/or misuse the information to harass or otherwise abuse the registered owners. Data on the number of prosecutions for such activity exists but is not readily available. We were told that there were 28 open investigations of information falsification or misuse at the time of our inquiry. An example of an unacceptable reason for requesting a name and address would be to contact the registered owner for a date. Policy in this area is evolving and subject to inconsistent application. It is also impossible to prevent disclosures to the more sophisticated requester who has an unacceptable purpose for the information but provides an acceptable reason. It is also impossible to control the behavior of the requester whose initial purpose was legitimate but subsequently harasses the registrant.

If complaints from affected registrants indicate an increase in abuse of the information and/or registrants, we would recommend that information be provided only by mail so as to make disclosure of the information and receipt by the data subject of a copy of the request a little more proximate in time. This would provide registrants with more timely notice of contact from the data requester.

Persons or firms who establish themselves as commercial requester accounts must promise to use the information in a way that will not contradict the public interest (such as by mailing pornography) and either post a bond or prepay for the acquisition of information en masse.

While there are complaints from individuals who object to receiving "junk" mail resulting from the sale of their name and address, Section 1810 of the Vehicle Code specifically allows the Department to do this. It is interesting to note that a 1974 public opinion poll by Roper indicated that 71% of the individuals polled felt that the Department of Motor Vehicles should be prohibited from providing names and addresses for mailing lists, while 15% felt that they should be so allowed.

While there are arguably beneficial uses for the information such as factory recalls, for instance, the principal benefit may be a monetary profit to the State. The receipts from providing this service apparently more than offset the cost. This is also a departure from the provisions of the Public Records Act which allows a governmental agency only to recover costs of providing information.

It should also be pointed out that Vehicle Code Sections 1808.2 and 1808.4 protect the confidentiality of the home addresses of persons in specified occupations such as peace officers, judges and members of the Legislature where the subject of the record requests that this information not be publicly disclosed.

OCCUPATIONAL LICENSING:

There are approximately 14 categories of vehicle-related occupations licensed or certificated by the DMV. This system of records comprises over 60,000 individual files as reported to the OIP.

The most sensitive information in these records would be the information contained in the personal history questionnaires which include information on the applicant's finances, work history and criminal convictions, if any.

Applicants must list (by express provision of law) convictions subsequently dismissed under Section 1203.4 of the Penal Code. Case law, and now this statute, place greater emphasis on the protection of the public than on individual privacy with respect to licensees and holders of public office. Convictions are not necessarily cause for denial or revocation of an occupational license. The Department is particularly concerned about convictions involving theft and fraud. For school bus drivers, the interest is in excluding persons with convictions for assault or sex crimes. The Department is guided by case law that disqualifying convictions should

reasonably relate to the activity for which the license pertains and that such activity would provide similar opportunity or temptation to repeat the kind of offense for which the applicant/licensee had been convicted (see Ready v. Grady, 243 Cal. 2d 113, and Brewer v. DMV, 93 CA 3d, 358).

Prior conviction information from a personal history questionnaire is not made public but actions taken against the licensee by the Department are. This is in keeping with other State licensing activities and is neither unusual or questionable from that standpoint.

CONCLUSION:

With the exceptions noted, considering the enormous amount of contact with individuals and the sensitivity of some of the information contained in its records, the Department of Motor Vehicles and the law and rules governing it strike an appropriate balance between the public's right to be informed and the right of individuals to privacy. There is no apparent institutional discrimination based on sexual orientation. We do recommend that the procedure for allowing transsexuals to change their sex identification for the driver's license be modified, however.

