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May 1, 2009

Mr. John Kessler
Project Manager
Attn: Docket #07-AFC-08
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

RE: 4/16/09 MOTION OF CARRIZO ENERGY, LLC FOR A PROTECTIVE ORDER TO MAINTAIN THE CONFIDENTIALITY OF CORRIDOR LOCATION RESULTS OF THE WILDLIFE CORRIDOR STUDY, AND TO DESIGNATE ENTITIES HAVING ACCESS TO THE CORRIDOR LOCATION RESULTS

Dear Mr. Kessler,

Carrizo Energy, LLC ("Carrizo") asserts in its motion for a protective order (the "Motion") that the Wildlife Corridor Study (the "Study") "will identify high value property parcels, or locations along the preferred migration corridor for all three focal species (tule elk, pronghorn antelope, and San Joaquin kit fox) (the "Corridor Location Results")." The Corridor Location Results are highly sensitive information, which should be protected, because disclosure of same "has significant potential to cause undue increases to the value of land identified within the Corridor Location Results as preferred mitigation land." Therefore, the Corridor Location Results (not the entire Study) should be protected from public disclosure.

The main arguments in the Motion are as follows:

1) The Corridor Location Results are "essentially an appraisal of the value of the land from a biological resources perspective," and therefore are exempt from disclosure under Section 6254(h) of the Public Records Act (the "PRA") as the "contents of real estate appraisals or engineering of feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts.";

2) The Corridor Location Results are exempt from disclosure under Section 6255 of the PRA, the catch-all exception, because the public interest served by not disclosing same "clearly outweighs the public interest served by their disclosure;" and

3) The Corridor Location Results are exempt from disclosure under Section 552(b)(5) of the Freedom of Information Act ("FOIA") because same constitute an "inter-agency or intra-agency memorandum [] or letter[] which would not be available by law to a party other than an agency in litigation with the agency."

We do not believe that Carrizo's arguments in the Motion are persuasive. We address each of their arguments below:

1) It is unlikely that the Corridor Location Results fall under the real estate appraisal exemption in Section 6254(h) of the PRA. We were unable to find any case law interpreting this subsection of the PRA, but the wording of the exemption seems to encompass only appraisals and other monetary valuations, not environmental studies which identify land where certain species may be present or migrate through. The Study may be identifying certain property that is valuable to Carrizo from a mitigation perspective, but this is not an "appraisal" or other monetary valuation of land. Carrizo claims that owners of the property that is deemed valuable from a mitigation perspective could inflate the prices of said land if they knew it was valuable. Our understanding is that the Study will not contain an appraisal or other monetary valuation of any property. If the Study, and the Corridor Location Results in particular, will not contain an economic valuation of real property, the exemption is inapplicable.

2) The catch-all exception is inapplicable. Section 6255 of the PRA provides as follows:

"The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (emphasis added.)

Case law confirms the following:

A) The PRA embodies a strong public policy in favor of disclosure or public records;
B) All exemptions from disclosure under the PRA are narrowly construed;
C) All public records are subject to disclosure unless the PRA expressly provides otherwise;
D) Under the catch-all exception, the burden of proof is on the proponent of nondisclosure to demonstrate a clear overbalance on the side of confidentiality;
E) Courts apply a case-by-case balancing test to determine whether the catch-all exception applies, and where the public interest in disclosure of the records is not clearly outweighed by the public interest in nondisclosure, courts will direct the government to disclose the information; and
F) The mere assertion of possible endangerment from the disclosure of public records does not "clearly outweigh" the public interest in access to these records.

We've attached the following cases, with relevant text highlighted:
Bakersfield City School District v. Superior Court, 118 Cal.App.4th 1041, 13 Cal.Rptr.3d 517 (2004); California State University v. Superior Court, 90 Cal.App.4th 810, 108 Cal.Rptr.2d 870 (2001); and *County of Santa Clara v. Superior Court, 170 Cal.App.4th 1301, 89 Cal.Rptr.3d 374 (2009).*

Based on the established case law, it is apparent that Carrizo failed to demonstrate that the interest in protecting the Corridor Location Results "clearly outweighs" the public's interest in same. The Motion repeatedly asserts that landowners will overinflate the price of their land, and the public will not be harmed by nondisclosure, but we see no support for the argument. Basically, Carrizo wants to keep the public in the dark, which it terms a mere "inconvenience," for its sole benefit in order to purchase mitigation lands as cheap as possible.

3) The Study is not a pre-decisional and/or deliberative memorandum or letter, and the stated FOIA exemption appears to be inapplicable.

Carrizo asserts: "the Corridor Location Results are pre-decisional because they are ultimately being prepared in order to identify mitigation lands to satisfy the requirements of the Commission's site certification process. The ultimate decisions on whether sufficient mitigation has been undertaken by the Projects have not yet occurred. Therefore, the Corridor Location Results constitute a pre-decisional record."

Under this argument, every piece of paper submitted to the Commission prior to its decision would be exempt. Carrizo has cited to no case law supporting its position.

Carrizo claims that the Corridor Location Results are "deliberative in nature -- that is, not merely factual." We would contend that the Study is science based, not merely "theoretical in nature" as asserted by Carrizo. One may argue about what areas of science are fact and which are theoretical, but that is beside the point. The Study is likely to be prepared based upon commonly accepted practices and assumptions in the field.

Carrizo states that this FOIA exemption has been construed to apply to those documents that are normally privileged in the civil discovery context. See *NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 149 (1975).* We see no basis for an argument that the Corridor Location Results would be privileged or confidential in discovery.

Sincerely,

Andrew Christie
Chapter Director

Westlaw Delivery Summary Report for PAULSON,DAVID A

Date/Time of Request:	Monday, April 27, 2009 18:45 Hawaii - Aleutian
Client Identifier:	PRO BONO
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Citation Text:	118 Cal.App.4th 1041
Lines:	279
Documents:	1
Images:	0

Court of Appeal, Fifth District, California.
BAKERSFIELD CITY SCHOOL DISTRICT, Petitioner,
v.
The SUPERIOR COURT of Kern County, Respondent;
The Bakersfield Californian, Real Party in Interest.
No. F043967.

May 20, 2004.
Certified For Partial Publication.[FN*]

FN* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certification for publication with the exception of three paragraphs designated by asterisks on page 521.

Background: In proceedings to obtain access to disciplinary records of public school district employee, real party in interest petitioned for writ of mandate for access to records. The Superior Court, Kern County, Kenneth C. Twisselman II, J., granted petition. School district petitioned for writ of mandate.

Holding: The Court of Appeal, in an opinion by the Court, held that disclosure of records was required under California Public Records Act (CPRA).

Judgment affirmed, and petition for writ of mandate denied.

West Headnotes

[1] Records 326 63

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k63 k. Judicial Enforcement in General. Most Cited Cases
The standard of review of an order of the superior court under the California Public Records Act (CPRA) is independent review of the trial court's ruling; factual findings made by the trial court will be upheld if based on substantial evidence. West's Ann.Cal.Gov.Code § 6250 et seq.

[2] Records 326 50

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k50 k. In General; Freedom of Information Laws in General. Most Cited Cases

Records 326 54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In General. Most Cited Cases
The California Public Records Act (CPRA) embodies a strong policy in favor of disclosure of public records, and any refusal to disclose public information must be based on a specific narrowly construed exception to that policy. West's Ann.Cal.Gov.Code § 6250 et seq.

[3] Records 326 65

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k65 k. Evidence and Burden of Proof. Most Cited Cases
Under catchall exception to disclosure requirements of California Public Records Act (CPRA), burden of proof is on proponent of nondisclosure, who must demonstrate a clear overbalance on the side of confidentiality. West's Ann.Cal.Gov.Code § 6255.

[4] Records 326 58

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k58 k. Personal Privacy Considerations in General; Personnel Matters. Most Cited Cases
The personnel exemption under the California Public Records Act (CPRA) was developed to protect intimate details of personal and family life, not business judgments and relationships. West's Ann.Cal.Gov.Code § 6254(c).

[5] Records 326 58

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k58 k. Personal Privacy Considerations in General; Personnel Matters. Most Cited Cases

Records 326 60

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k60 k. Investigatory or Law Enforcement Records. Most Cited Cases
For purposes of the personnel exemption under the California Public Records Act (CPRA), where complaints of a public employee's wrongdoing and resulting disciplinary investigation reveal allegations of a substantial nature, as distinct from baseless or trivial, and there is reasonable cause to believe the complaint is well-founded, public employee privacy must give way to the public's right to know. West's Ann.Cal.Gov.Code § 6254(c).

[6] Records 326 60

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k60 k. Investigatory or Law Enforcement Records. Most Cited Cases
Disclosure of a complaint against a public school district employee, which was based on alleged sexual conduct, threats, and violence, was required under the California Public Records Act (CPRA), under the applicable standard that the complaint was of a substantial nature and there was reasonable cause to believe the complaint was well-founded; neither a finding of the truth of the complaint nor the imposition of employee discipline was a prerequisite to disclosure, and based upon a review of the entire record, the documents provided a sufficient basis upon which to reasonably conclude the complaint in question was well-founded. West's Ann.Cal.Gov.Code § 6254(c).
*See 2 Witkin, Cal. Evidence (4th ed. 2000) Witnesses, § 278 et seq.; Cal. Jur. 3d, Records and Recording Laws, § 6 et seq.***518 *1043** Jones & Matson, Urrea C. Jones, Jr., Pasadena, Stephen K. Matson and Geoffrey R. Winterowd for Petitioner.

No appearance for Respondent.

David, Wright, Tremaine, LLP, Thomas R. Burke and Duffy Carolan, San Francisco for Real Party in Interest.

OPINION

THE COURT.

Petitioner, Bakersfield City School District (the District), challenges the superior court's order granting real party in interest, The Bakersfield Californian's, petition for writ of mandate for access to disciplinary records of Vincent Brothers (Brothers), a district employee. We will affirm.

STATEMENT OF THE CASE AND FACTS

On July 24, 2003, The Bakersfield Californian filed a "VERIFIED PETITION FOR WRIT OF MANDATE/COMPLAINT FOR ACCESS TO PUBLIC RECORDS" seeking disclosure of "discip-

linary records that [Bakersfield City School District] currently maintains regarding Mr. Vincent Brothers, a District employee."

On September 5, 2003, after counsel initially argued the matter, the court reviewed the personnel records of Brothers ****519** in camera. As to some of the records, the court denied disclosure after concluding that the records were not substantial in nature and that there was no reasonable cause to believe the complaints therein were well founded. However, as to complaints regarding an incident that allegedly occurred on February 20, 1996, which the court described on the record as "Sexual type conduct, threats of violence and ***1044** violence," the court found, "that complaint is substantial in nature and that there is reasonable cause to believe the complaint is well founded." The court further found "I am specifically finding that there are some documents related to one alleged incident. And the word 'alleged' is significant because this Court is not making any findings with regard to the truth of allegations or truth of complaints that are in the documents that I have reviewed." The court ruled that the documents must be produced after being redacted to exclude names, addresses and telephone numbers of all persons mentioned except for Brothers. The court ordered that the redacted documents be submitted to the court by September 12, 2003.

On September 12, 2003, the District substituted in a new law firm. On that same date, new counsel served and filed with respondent court an ex parte application for an order shortening time for hearing on the District's motion to file an amendment to the answer to join necessary parties and to file supplemental points and authorities and declarations in the action. On September 15, 2003, the court signed the ex parte order shortening time. The cause was continued until September 17, 2003.

On September 17, 2003, the court denied the motion to file an amendment to the answer and supplemental points and authorities on the ground that there were no new or different facts, circumstances or law upon which to grant reconsideration under Code of Civil Procedure section 1008.. After reviewing the redacted documents, the court ordered disclosed seven pages that related to the February 20, 1996, incident. The court ordered the documents to remain sealed to permit petitioner the opportunity to seek review in this court. Upon filing of the petition, this court stayed the order dated September 17, 2003, pending further order of this court.

Petitioner's primary contention is that the court exceeded its jurisdiction and abused its discretion because the court applied the wrong standard in ordering disclosure under the California Public Records Act (CPRA). Petitioner contends and real party concurs that, pursuant to the CPRA, disclosure of a complaint against a public employee is justified if the complaint is of a substantial nature and there is reasonable cause to believe the complaint or charge of misconduct is well-founded. However, petitioner further contends that under this standard, "[a] charge or complaint is well-founded only if there is reasonable cause to believe the complaint or charge of misconduct is true" or if discipline has been imposed. We determine that neither the imposition of discipline nor a finding that the charge is true is a prerequisite to disclosure and that pursuant to the less rigorous standard, disclosure is appropriate.

***1045 DISCUSSION**

[1] The standard of review of an order of the superior court under the CPRA is "independent review of the trial court's ruling; factual findings made by the trial court will be upheld if based on substantial evidence." (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1336, 283 Cal.Rptr. 893, 813 P.2d 240.)

****520** [2] The CPRA, codified at Government Code section 6250 et seq., [FN1] provides for the inspection of public records maintained by state and local agencies, including local school districts. The CPRA embodies a strong policy in favor of disclosure of public records. Any refusal to disclose public information must be based on a specific narrowly construed exception to that policy. (*Lorig v. Medical Board* (2000) 78 Cal.App.4th 462, 467, 92 Cal.Rptr.2d 862; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1425, 44 Cal.Rptr.2d 532.) The CPRA includes two exceptions to the general policy of disclosure of public records: (1) materials expressly exempt from disclosure pursuant to section 6254; and (2) the "catchall exception" of section 6255, which allows a government agency to withhold records if it can demonstrate that, on the facts of a particular case, the public interest served by with-

holding the records clearly outweighs the public interest served by disclosure. (*California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 108 Cal.Rptr.2d 870.)

FN1. All further statutory references are to the Government Code, unless otherwise indicated.

[3] The burden of proof is on the proponent of nondisclosure to demonstrate a "clear overbalance" on the side of confidentiality. (*California State University, Fresno Assn., Inc., supra*, 90 Cal.App.4th at p. 831, 108 Cal.Rptr.2d 870.)

[4] Section 6254, subdivision (c) states: "Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following: [¶] ... [¶] Personnel, medical or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." This "personnel exemption" was " 'developed to protect intimate details of personal and family life, not business judgments and relationships.' " (*Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 343-344, 201 Cal.Rptr. 654.)

[5][6] The parties agree that *American Federation of State etc. Employees v. Regents of University of California* (1978) 80 Cal.App.3d 913, 918, 146 Cal.Rptr. 42 (*AFSCME*) sets out the legal standard to be followed when weighing an individual's privacy rights against the public's right to know of an alleged wrongdoing for purposes of section 6254, subdivision (c). ***1046** The case provides that where complaints of a public employee's wrongdoing and resulting disciplinary investigation reveal allegations of a substantial nature, as distinct from baseless or trivial, and there is reasonable cause to believe the complaint is well founded, public employee privacy must give way to the public's right to know. (*AFSCME, supra*, at p. 918, 146 Cal.Rptr. 42.) Petitioner relies on *AFSCME*, as well as *City of Hemet v. Superior Court*, *supra*, 37 Cal.App.4th at p. 1425, 44 Cal.Rptr.2d 532, and *Chronicle Pub. Co. v. Superior Court* (1960) 54 Cal.2d 548, 568-569, 7 Cal.Rptr. 109, 354 P.2d 637 for the proposition that a charge or complaint is well-founded only if it is found to be true or the public employee has been disciplined based on the complaint.

These cases do not support petitioner's contention that the imposition of discipline or "found to be true" is a prerequisite to release of the complaints to the public. In *City of Hemet*, a newspaper requested, pursuant to the CPRA, records of an internal investigation conducted by the city police department into actions of a police sergeant. The Fourth District Court of ****521** Appeal relied on *AFSCME* and held that section 6254, subdivision (c) provided no exemption for records relevant to charges of misconduct which had administratively been found to be true. *AFSCME* in turn, relied on *Chronicle Pub. Co. v. Superior Court*, *supra*, 54 Cal.2d 548, 568-569, 7 Cal.Rptr. 109, 354 P.2d 637, which involved the public's right to information concerning records of complaints of wrongdoing against members of the State Bar of California. The court in *AFSCME* quoted extensively from *Chronicle Pub. Co.* as follows: " ' "Only strong public policies weigh against disclosure" ' of such matters. Such a strong public policy was found in the case of trivial or groundless charges which often, 'no matter how guiltless the attorney might be, if generally known, would do the attorney irreparable harm ....' [Citation.] In such a situation the attorney was to be compared with ' " 'public officers and employes' " ' [*sic*] generally, against whom such communications ' " 'are to be considered as highly confidential, and as records to which public policy would forbid the confidence to be violated.' " ' [Citation.] But where the charges are found true, or discipline is imposed, the strong public policy against disclosure vanishes; this is true even where the sanction is a private reproval. In such cases a member of the public is entitled to information about the complaint, the discipline, and the 'information upon which it was based.' [Citation.]" (*AFSCME, supra*, 80 Cal.App.3d at p. 918, 146 Cal.Rptr. 42; *Chronicle Pub. Co., supra*, 54 Cal.2d at pp. 568-569, 7 Cal.Rptr. 109, 354 P.2d 637.)

Thus, a review of the cases relied upon by petitioner leads to the premise that there is a strong policy for disclosure of true charges. The cases do not stand for the premise that either a finding of the truth of the complaint contained in the personnel records or the imposition of employee discipline is a prerequisite to disclosure.

***1047** In evaluating whether a complaint against an employee is well-founded within the context of section 6250 et seq., both trial and appellate courts,

working with little or nothing more than written records, are ill-equipped to determine the veracity of the complaint. The courts instead, both originally and upon review, are required to examine the documents presented to determine whether they reveal sufficient indicia of reliability to support a reasonable conclusion that the complaint was well founded. The courts must consider such indicia of reliability in performing their ultimate task of balancing the competing concerns of a public employee's right to privacy and the public interest served by disclosure. (§§ 6254, subd. (c) 6255; cf. *Kelvin L. v. Superior Court* (1976) 62 Cal.App.3d 823, 830-831, 133 Cal.Rptr. 325 [under Evidence Code, § 1040, "the fact that the charges against the officers were not substantiated [is a] factor[ ] which the court may weigh in deciding whether the public interest favors disclosure ..."].)

Upon de novo review of the entire record before the trial court,[FN2] we conclude the documents reviewed provide a sufficient basis upon which to reasonably conclude the complaint in question was well founded.

FN2. After this case was argued, it came to this court's attention we had not been provided with the entire record relied upon by the trial court in ordering the records disclosed. This court ordered the record be augmented with the previously omitted material.

FN**

FN** See footnote *, *ante*.

****522 DISPOSITON**

The judgment is affirmed. The petition for writ of mandate is denied.

WE CONCUR: ARDAIZ, P.J., and VARTABEDIAN, J.
Cal.App. 5 Dist.,2004.
Bakersfield City School Dist. v. Superior Court
118 Cal.App.4th 1041, 13 Cal.Rptr.3d 517, 33 Media L. Rep. 1093, 04 Cal. Daily Op. Serv. 4403, 2004 Daily Journal D.A.R. 6040

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Court of Appeal, Fifth District, California.
CALIFORNIA STATE UNIVERSITY, Fresno Association, Inc., Petitioner,
v.
The SUPERIOR COURT of Fresno County, Respondent,
McClatchy Company, Real Party in Interest.
The Board of Trustees of the California State University et al., Petitioners,
v.
The Superior Court of Fresno County, Respondent,
McClatchy Company, Real Party in Interest.
Nos. F037383, F037418.

July 16, 2001.
Rehearing Denied Aug. 9, 2001.

Newspaper petitioned for writ of mandate after state university refused to disclose documents in its in possession indicating identities of private donors who had entered into license agreements allowing them to use luxury suites in multi-purpose arena being built on university campus. The Superior Court, Fresno County, No. 648361-4,Franklin P. Jones, J., ordered university, and university-affiliated association which operated arena, to disclose information. University and association filed petitions for writ of mandate, and the Court of Appeal, Wiseman, J., held that: (1) documents revealing identities of donors who obtained suites were "public records" within meaning of California Public Records Act (CPRA); (2) association, which was a non-governmental entity, was not a "state agency" subject to CPRA's disclosure requirements; and (3) documents in possession of university, which was a state agency, were not exempt from disclosure under catchall exception to CPRA's disclosure requirements.

So ordered.

West Headnotes

[1] Pleading 302 298

302 Pleading
302VIII Verification
302k295 Persons Who May Verify Pleading
302k298 k. Agents or Attorneys. Most Cited Cases
When an attorney has verified the pleading as within his own knowledge and also on information and belief, but without stating the reason it was not verified by the party, the court may permit the pleading to stand. West's Ann.Cal.C.C.P. § 446.

[2] Pleading 302 290(1)

302 Pleading
302VIII Verification
302k289 Necessity for Verification and Effect of Omission
302k290 In General
302k290(1) k. In General. Most Cited Cases
Object of a verification of a pleading is to assure good faith in the averments or statements of a party. West's Ann.Cal.C.C.P. § 446.

[3] Mandamus 250 154(9)

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k154 Petition or Complaint, or Other Application
250k154(9) k. Verification. Most Cited Cases
Fact that petition for writ of mandate filed by association had been verified by association's attorney, and did not state why an officer of the association did not verify it, did not warrant summary denial of petition, in absence of any complaint concerning verifying attorney's good faith. West's Ann.Cal.C.C.P. § 446.

[4] Records 326 50

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k50 k. In General; Freedom of Information Laws in General. Most Cited Cases
California Public Records Act (CPRA) provides for

the inspection of public records maintained by state and local agencies. West's Ann.Cal.Gov.Code § 6250 et seq.

[5] Courts 106 97(6)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k97 Decisions of United States Courts as Authority in State Courts
106k97(6) k. Construction of State Constitutions and Statutes. Most Cited Cases

Statutes 361 223.2(1.1)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k223 Construction with Reference to Other Statutes
361k223.2 Statutes Relating to the Same Subject Matter in General
361k223.2(1) Statutes That Are in Pari Materia
361k223.2(1.1) k. In General. Most Cited Cases
Because California Public Records Act (CPRA) was modeled upon Freedom of Information Act (FOIA), and the two have a common purpose, federal legislative history and judicial construction of FOIA may be used in construing CPRA; however, CPRA may not be construed to read into it FOIA language that the CPRA itself does not contain. 5 U.S.C.A. § 552 et seq.; West's Ann.Cal.Gov.Code § 6250 et seq.

[6] Records 326 63

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k63 k. Judicial Enforcement in General. Most Cited Cases
A trial court order under California Public Records Act (CPRA) which either directs disclosure of records by a public official, or supports the official's refusal to disclose records, is immediately reviewable by petition to the appellate court for issuance of an extraordinary writ; standard for review is an independent review of the trial court's ruling, with factual findings made by the trial court to be upheld if based on substantial evidence. West's Ann.Cal.Gov.Code § 6259(c).

[7] Administrative Law and Procedure 15A 124

15A Administrative Law and Procedure
15AII Administrative Agencies, Officers and Agents
15Ak124 k. Meetings in General. Most Cited Cases

Records 326 50

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k50 k. In General; Freedom of Information Laws in General. Most Cited Cases
Broad definition of "public records" contained in California Public Records Act (CPRA) is designed to protect the public's need to be informed regarding the actions of government, as expressed both in CPRA, and in open meeting requirements of Ralph M. Brown Act. West's Ann.Cal.Gov.Code §§ 6252(e), 54950 et seq.

[8] Records 326 54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In General. Most Cited Cases
The mere custody of a writing by a public agency does not make it a "public record," for purposes of California Public Records Act (CPRA), but if a record is kept by an officer because it is necessary or convenient to the discharge of his official duty, it is a "public record." West's Ann.Cal.Gov.Code § 6252(e).

[9] Records 326 54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In General. Most Cited Cases
Definition of "public record" contained in California Public Records Act (CPRA) is intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record-keeping instrument as it is developed, and only purely personal information unrelated to the conduct of the public's business may be considered exempt from this definition. West's Ann.Cal.Gov.Code § 6252(e).

[10] Records 326 54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In General. Most Cited Cases
Documents in possession of state university which revealed identities of individuals and/or companies that had purchased luxury suites in multi-purpose arena being built on university campus were "public records" subject to disclosure under California Public Records Act (CPRA); documents were used and/or retained by university, and related to conduct of public business. West's Ann.Cal.Gov.Code § 6252(e).

[11] Records 326 51

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k51 k. Agencies or Custodians Affected. Most Cited Cases
Non-governmental association, which was a nonprofit auxiliary corporation affiliated with state university, and which operated multi-purpose arena being built on university campus, was not a "state agency," for purposes of California Public Records Act (CPRA), and thus could not be compelled under CPRA to disclose documents revealing identities of individuals and/or companies that had purchased luxury suites in arena. West's Ann.Cal.Gov.Code § 6252(a).

[12] Records 326 50

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k50 k. In General; Freedom of Information Laws in General. Most Cited Cases
Extent of coverage of California Public Records Act (CPRA) is a matter to be developed by the courts on a case-by-case basis. West's Ann.Cal.Gov.Code § 6250 et seq.

[13] Records 326 51

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k51 k. Agencies or Custodians Affected. Most Cited Cases
A non-governmental auxiliary organization is not a "state agency" for purposes of California Public Records Act (CPRA). West's Ann.Cal.Gov.Code § 6252(a).

[14] Constitutional Law 92 2489

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2485 Inquiry Into Legislative Judgment
92k2489 k. Wisdom. Most Cited Cases
(Formerly 92k70.3(4))

Constitutional Law 92 2492

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2485 Inquiry Into Legislative

Judgment
92k2492 k. Desirability. Most Cited Cases
(Formerly 92k70.3(6))

Constitutional Law 92 2496

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2485 Inquiry Into Legislative Judgment
92k2496 k. Appropriateness. Most Cited Cases
(Formerly 92k70.3(4))
Courts do not sit as super-legislatures to determine the wisdom, desirability, or propriety of statutes enacted by the Legislature.

[15] Constitutional Law 92 2474

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2472 Making, Interpretation, and Application of Statutes
92k2474 k. Judicial Rewriting or Revision. Most Cited Cases
(Formerly 92k70.1(2))
The rewriting of a statute is a legislative, rather than a judicial function, and is a practice in which courts will not engage.

[16] Records 326 50

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k50 k. In General; Freedom of Information Laws in General. Most Cited Cases

Records 326 54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In General. Most Cited Cases
California Public Records Act (CPRA) embodies a strong policy in favor of disclosure of public records, and any refusal to disclose public information must be based on a specific exception to that policy. West's Ann.Cal.Gov.Code § 6250 et seq.

[17] Records 326 54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In General. Most Cited Cases
Statutory exemptions from compelled disclosure under California Public Records Act (CPRA) are narrowly construed. West's Ann.Cal.Gov.Code § 6250 et seq.

[18] Records 326 65

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k65 k. Evidence and Burden of Proof. Most Cited Cases
Under catchall exception to disclosure requirements of California Public Records Act (CPRA), burden of proof is on proponent of nondisclosure, who must demonstrate a clear overbalance on the side of confidentiality. West's Ann.Cal.Gov.Code § 6255.

[19] Records 326 52

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k52 k. Persons Entitled to Disclosure; Interest or Purpose. Most Cited Cases
In determining whether public records come within catchall exception to disclosure requirement under California Public Records Act (CPRA), purpose of the requesting party in seeking disclosure cannot be

considered, and it is also irrelevant that the requesting party is a newspaper or other form of media, because the media have no greater right of access to public records than the general public. West's Ann.Cal.Gov.Code § 6250 et seq.

[20] Records 326 64

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k64 k. Discretion and Equitable Considerations; Balancing Interests. Most Cited Cases
In determining whether public records which are not expressly exempted from disclosure under California Public Records Act (CPRA) must be disclosed over the government's objection, balancing test of CPRA's catchall exception is applied on a case-by-case basis, and where the public interest in disclosure of the records is not outweighed by the public interest in nondisclosure, courts will direct the government to disclose the requested information. West's Ann.Cal.Gov.Code § 6255.

[21] Records 326 64

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k64 k. Discretion and Equitable Considerations; Balancing Interests. Most Cited Cases
Where public interest in nondisclosure of public records clearly outweighs the public interest in disclosure, government's refusal to release records will be upheld under catchall exception to disclosure requirements of California Public Records Act (CPRA). West's Ann.Cal.Gov.Code § 6255.

[22] Privileged Communications and Confidentiality 311H 351

311H Privileged Communications and Confidentiality
311HVI Public Officers and Records
311Hk351 k. Official Information in General. Most Cited Cases
(Formerly 410k216(1))
Statutory privilege which protects official information acquired in confidence if disclosure of the information is against the public interest must be applied conditionally on a clear showing that disclosure is against the public's interest. West's Ann.Cal.Evid.Code § 1040.

[23] Records 326 54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In General. Most Cited Cases
Public interest in disclosure of public records in possession of state university which revealed identities of private donors who had entered into license agreements allowing them to use luxury suites in multi-purpose arena being built on university campus was not outweighed by public interest in nondisclosure, and thus, records were not protected from disclosure under catchall exception to disclosure requirements of California Public Records Act (CPRA). West's Ann.Cal.Gov.Code § 6255.
****873 *815** McCormick, Barstow, Sheppard, Wayte & Carruth, Lowell T. Carruth, Fresno, and Christopher S. Hall, for Petitioner California State University, Fresno Association, Inc.

Susan Westover, Costa Mesa, for Petitioners Board of Trustees of the California State University et al.

No appearance for Respondent.

Dietrich, Glasrud, Mallek & Aune, Donald H. Glasrud and Bruce A. Owdom, Fresno, for Real Party in Interest.

***816** Levy, Ram, Olson & Rossie, Karl Olson, and Joni S. Jacobs, San Francisco, for California Newspaper Publishers Association as Amicus Curiae on behalf of Real Party in Interest.

OPINION

WISEMAN, J.

California State University, Fresno proposed a $103 million multi-purpose arena on its campus, the Save Mart Center, to be funded primarily by private donations and operated by a University-affiliated, nonprofit auxiliary corporation, California State University, Fresno Association, Inc. (Association). In exchange for a generous gift to the California State University, Fresno Foundation (Foundation), also a University-affiliated auxiliary corporation, donors may obtain luxury suites in the arena for five, seven or ten-year terms. The donors enter into license agreements with the Association for use of the luxury suites. Some of the donors who obtained luxury suites requested to remain anonymous.

The McClatchy Company, doing business as the Fresno Bee (McClatchy), requested documents from the University, pursuant to the California Public Records Act (CPRA), concerning the identity of the individuals and/or companies that purchased luxury suites in the arena. The University denied the request, and McClatchy filed a petition for writ of mandate. Respondent court ordered the University and the Association to disclose the identities of the undisclosed licensees and to produce the license agreements.

The Board of Trustees of the University and John Welty, the University's President (collectively referred to as the University), and the Association filed petitions for writ of mandate challenging the respondent court's order, which has been stayed pending resolution by this court. Having reviewed the matter, we deny the University's writ petition, but grant the Association's writ petition and direct respondent court to vacate that portion of its order commanding the Association to disclose the identities of the undisclosed licensees****874** and to produce the license agreements. Respondent court's order remains unchanged with respect to the University. The time has come to disclose the requested documents.

PROCEDURAL AND FACTUAL HISTORIES

The Save Mart Center will house the University's sports teams, including basketball, volleyball and wrestling, and will be a venue for community concerts, cultural events, educational conferences and graduation ceremonies. It will seat 16,000 for sporting events and 18,000 for concerts and stage ***817** events. The plans call for state-of-the-art classrooms, computer rooms and conference rooms, with an anticipated date of completion in the fall of 2002.

The estimated cost of the Save Mart Center is approximately $103 million. The State of California contributed approximately $8 million for preplanning and design costs and offsite improvements to the roads and freeways providing access to the site. The remainder of the funding is from private donations. Save Mart Supermarkets and Pepsi Bottling Group together pledged a $40 million sponsorship gift, payable over 20 years.

The Save Mart Center will feature 32 luxury suites available for use by purchasing a license. Each suite will have 18 seats, a private restroom, refrigerator, wet bar, television monitors and Internet access. Prices for the suite licenses range from $45,000 to $63,000 per year, and license terms are five, seven and ten years. The suite licenses are expected to generate approximately $1.5 million annually for the construction and operation of the Save Mart Center. The University considers the license fees to be charitable donations, the majority of which are tax deductible.

The license agreements are entered into between the donors, "licensees," and the Association, "licensor." The agreements state, in relevant part:

"**I. TERM**

"Licensor does hereby grant the privilege of use to Licensee, and Licensee accepts that certain space shown on Exhibit 'A' and ... known as Preferred Seating Area (PSA) No._____ (the 'Premises') located in the structure commonly known as the Save Mart Center ... for _____ consecutive terms commencing on 2002 and expiring on _____, (the 'Term') unless terminated sooner as provided herein....

"**II. CONSIDERATION**

"Licensee hereby acknowledges that the privilege of use granted by Licensor in the Agreement is based upon annual execution of the terms of Licensee's Pledge Agreement between Licensee and [the Foundation] ...."

The Association is a California nonprofit corporation operating under Education Code section 89900 et seq., which addresses auxiliary organizations of state universities and colleges. The Association operates all the University's commercial enterprises, including the University's bookstore, food services, housing and student union. The Foundation is also a California nonprofit corporation operating under Education Code section 89900 et ***818** seq. The purpose of the Foundation is to provide assistance to faculty and staff with the administration of grants, contracts and trust accounts. The Foundation manages all aspects of the financial activities for grants, contracts, trust accounts, investments, endowments, scholarships, loans, gifts and donations.

The Save Mart Center will be constructed and owned by the auxiliary corporations, not the University. The University ****875** will lease the land for the Save Mart Center to the Association, which will operate the facility. The Association was designated the official recipient of the funds obtained from suite licenses. However, payments for suite licenses are made to the Foundation and mailed to the University. The Association maintains the original license agreements. The University conceded at the hearing on McClatchy's petition that it has the names of the licensees, a concession supported by the record. The record also reveals that the University possesses, or did possess, copies of the license agreements.[FN1]

> FN1. In its initial response to McClatchy's request for the license agreements, the University admitted the records were part of its donor files. It is also clear from press releases issued on University letterhead that the University has knowledge of the specific donations made by undisclosed licensees. It is reasonable to infer that such knowledge was obtained from the license agreements. Finally, in a pleading submitted in opposition to McClatchy's petition, the Association and the Foundation advised respondent court that the University may possess copies of the requested records.

The University publicized the names of donors when it had their permission to do so. However, some donations to the Save Mart Center were made on the condition of anonymity. The University identifies several reasons donors may wish to remain anonymous, including pressures from competing charitable groups and potential family heirs. The University maintains that if certain donors cannot remain anonymous, they will withdraw their pledges. The University also speculates that the forced revelation of donor identities will have a chilling effect on future fundraising efforts.

According to the University's assessment of the economic and fiscal benefits of the Save Mart Center, construction will generate approximately 2,000 new full-time jobs, $188 million in construction expenditures, and $442,000 in local tax revenues. The University also claims the Save Mart Center's annual operations will support approximately 460 to 510 new full-time jobs, $20 to $24 million in new annual expenditures, and $281,000 to $340,000 in annual local sales and transient occupancy tax revenues. The University further maintains that the Save Mart Center will stimulate job creation and retention, enhance the workforce, diversify the economy, and provide additional educational opportunities for students.

***819** On October 14, 1999, a news reporter with the Fresno Bee wrote to the president of the University, and requested "all documents in [his] or [his] office's possession relating to the identity of the people and/or companies who have purchased luxury suites in the Save Mart Center project at [the University].... [and] the terms of their purchase contracts, including the length of the lease and the purchase price." On October 22, 1999, the University responded to the request, acknowledging it was made under the CPRA. The University concluded "the information ... requested, to the extent, if any, that it is contained in state records, is 'official information,' and ... the benefit to the public from non-disclosure outweighs the benefit to the public in disclosing it." The University further reasoned: "Donors expect that the University will keep their donations private. If the University were to be required to disclose this information, there is a very real possibility that it would lose the benefit of many donations. Loss of donations would work a great harm to the University and to the State, which supports it, and is therefore against the public interest."

On December 10, 1999, the attorneys for McClatchy wrote to the University requesting****876** it reconsider its refusal to provide the requested documents. On

December 20, 1999, counsel for the University reiterated the University's position that the records, to the extent they exist in state files, are protected from disclosure because the public interest in nondisclosure outweighs the public interest in disclosure.

On March 24, 2000, McClatchy filed a petition for writ of mandate pursuant to the CPRA against the University, the Association, and the Foundation to compel disclosure of the requested documents. As of August 2000, the University had received approximately $80 million in pledges. However, actual gifts received totaled only $12.6 million. The University contends that if fundraising efforts fall short of its goal, certain design features of the Save Mart Center will be eliminated and, if it is unable to make the down payment on construction costs, the entire project could be jeopardized.

The hearing on the petition was held on September 21, 2000.[FN2] On December 19, 2000, the court issued its ruling, finding, in pertinent part:

> FN2. The Association requests us to take judicial notice of the reporter's transcript of the hearing. We need not take judicial notice of the transcript, since it is included in the record. (See Cal. Rules of Court, rule 56(c); Ct.App., Fifth Dist., Local Rules of Ct., rule 5, Writ petitions; Supporting records and stay requests.) The Association also requests us to take judicial notice of Education Code section 72670 et seq. and Education Code section 89900 et seq. We grant the request pursuant to Evidence Code section 451, subdivision (a).

"4. The Petition for Writ of Mandate by [McClatchy] is granted as to [the University] ... because:

***820** "(a) [The University] is a state agency or state body within the meaning of [Government Code section] 6252(a); [FN3] [¶] ... [¶]

> FN3. All statutory references are to the Government Code unless otherwise indicated.

"(c) [T]he writings that contain the names of the undisclosed licensees of the luxury suites and copies of the license agreements between the licensees and the Association that are in the possession of [the University] ... are public records within the meaning of [section] 6252(e); and

"(d) [The University] ... [was] not able to prove that the public interest in nondisclosure clearly outweighed the public interest in disclosure under [s]ection 6255.

"5. The Association must disclose the identities of the undisclosed licensees and the license agreements between the undisclosed licensees and the Association because:

"(a) [The University] is a state agency within the meaning of the [CPRA];

"(b) The Association is under the direct control of [the University] with respect to all of its activities (Ed.Code §§ 89900-89928 and 5 Cal.Code of Regs. 42400-42700);

"(c) The Association is required to advance the interest of [the University] in all of its activities which include the operation of Kennel Bookstore, University Food Services, University Courtyard, and the University Student Union. The Association will be required to do the same with respect to the Save Mart Center which it will operate on behalf of [the University] and the [University's] campus;

"(d) The Save Mart Center as planned will be an integral part of [the University] and the [University's] campus on which (3)27 it will be located;

"(e) The State of California has paid approximately $8,000,000 for off site improvements****877** in connection with the Save Mart Center;

"(f) The Association will be performing a public function in operating the Save Mart Center;

"(g) The unidentified licensees will be deriving a significant and valuable benefit from the possessory interests they will have in the luxury suites at the planned Save Mart Center under the license agreements, over and above what other donors and members of the public will enjoy;

***821** "(h) The undisclosed licensees and the executed license agreements between them and the Association are subject to disclosure under the Act (Accord *State ex. rel....v. University of Toledo [Found.* (Ohio 1992) 65 Ohio St.3d 258] ...602 N.E.2d 1159);

"(i) The disclosure of the identities of the undisclosed licensees is not a sufficiently serious invasion of their privacy to justify nondisclosure (*Poway Unified School District v. Superior Court* [(1998)] 62 Cal.App.4th 1496, 1505 [73 Cal.Rptr.2d 777])[;]

"(j) The Association was not able to carry the heavy burden that the public interest served by nondisclosure clearly outweighed the public interest served by disclosure under [s]ection 6255....

"6. The Petition for Writ of Mandate by [McClatchy] is denied as to the Foundation because the Foundation will not have a direct interest in the Save Mart Center and will not be performing a public function with respect to it. For purposes of this proceeding the Foundation is a private, nongovernmental, nonprofit corporation that is not governed by the [CPRA]."

On January 16, 2001, the Association filed a petition for writ of mandate and/or prohibition or other appropriate relief pursuant to section 6259, subdivision (c), and requested a temporary stay. On January 22, 2001, the University also filed a petition for writ of mandate and/or prohibition or other appropriate relief to review the order compelling disclosure of records under the CPRA, and requested a temporary stay. We stayed respondent court's December 19, 2000, order pending further order of this court, and directed McClatchy to file informal responses to the petitions. McClatchy filed preliminary oppositions to the petitions on January 31, 2001, and February 8, 2001.

On February 8, 2001, we issued orders to show cause why the relief prayed for in the Association's and the University's petitions should not be granted, and subsequently consolidated the two cases.

DISCUSSION

[1][2][3] The University contends respondent court erred in concluding the documents sought by McClatchy are public records and are not exempt from disclosure under the CPRA. The Association also maintains the court erred ***822** in finding the records not exempt, but initially argues it is not a state agency subject to the disclosure requirements of the CPRA.[FN4]

FN4. McClatchy argues the Association's petition should be summarily denied based on an improper verification. McClatchy recognizes that the petition, verified by the Association's attorney, fails to state why an officer of the Association did not verify it, as required by Code of Civil Procedure section 446.. The claim lacks merit. As explained in *Frio v. Superior Court* (1988) 203 Cal.App.3d 1480, 1498, 250 Cal.Rptr. 819:

> " ...'[W]hen an attorney has verified the pleading as within his own knowledge and also on information and belief but without stating the reason it was not verified by the party, the court may permit the pleading to stand. [Citations.]' [Citation.] [¶] ... [¶]
>
> "The object of a verification is to assure good faith in the averments or statements of a party. [Citations.] The absence of any complaint by real parties concerning verifying counsel's good faith renders this contention meritless."

****878** *I. Disclosure of public records under the CPRA*

We begin with an overview of the CPRA and the appropriate standard governing our review of the contentions made by the University and the Association.

A. Basic principles of the CPRA

[4] The CPRA, codified at section 6250 et seq., provides for the inspection of public records maintained by state and local agencies. Section 6253 states, in pertinent part:

> "(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereinafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.
>
> "(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so."

Section 6252, defines "state agency" and "public records":

> "(a) 'State agency' means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those ***823** agencies provided in Article IV (except Section 20 thereof) or Article VI of the California Constitution.[FN5][¶] ... [¶]
>
> FN5. Article IV of the California Constitution relates to the Legislature, while Article VI pertains to the judiciary.
>
> "(e) 'Public records' includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics...."

The California Supreme Court in *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651-652 and 656, 230 Cal.Rptr. 362, 725 P.2d 470, set forth the underlying policy of disclosure statutes:

> "Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process. However, a narrower but no less important interest is the privacy of individuals whose personal affairs are recorded in government files.
>
> " ... The [CPRA] ... was passed for the explicit purpose of 'increasing freedom of information' by giving the public 'access to information in possession of public agencies' [citation]. Maximum disclosure of the conduct of governmental operations was to be promoted by the [CPRA].... [¶] ... [¶]
>
> "Disclosure statutes such as the [CPRA] and the federal Freedom of Information Act [(FOIA)] were passed to ensure public access to vital information ****879** about the government's conduct of its business." (*CBS, Inc. v. Block, supra*, 42 Cal.3d at pp. 651-652, 656, 230 Cal.Rptr. 362, 725 P.2d 470, fns. omitted; see also § 6250 ["access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state"].)

[5] The CPRA was modeled upon the FOIA (5 U.S.C. § 552 et seq.), and the two have a common purpose. As a result, "federal 'legislative history and judicial construction of the FOIA' may be used in construing California's Act. [Citation.]" (*City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1016, 88 Cal.Rptr.2d 552, see also *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1338, 283 Cal.Rptr. 893, 813 P.2d 240; *County of Los Angeles v. Superior Court* (2000) 82 Cal.App.4th 819, 825, 98 Cal.Rptr.2d 564 [CPRA and FOIA have similar policy objectives and ***824** should receive parallel construction].) However, the CPRA may not be construed to read into it FOIA language that the CPRA itself does not contain. (*Id.* at p. 825, fn. 4, 98 Cal.Rptr.2d 564.)

B. Standard of review

[6] The standard of review for orders under the CPRA was set forth in *City of San Jose v. Superior Court, supra*, 74 Cal.App.4th at page 1016, 88 Cal.Rptr.2d 552:

> "Pursuant to section 6259, subdivision (c), an order of the trial court under the [CPRA], which either directs disclosure of records by a public official or supports the official's refusal to disclose records, is immediately reviewable by petition to the appellate

> court for issuance of an extraordinary writ. [Citation.] The standard for review of the order is 'an independent review of the trial court's ruling; factual findings made by the trial court will be upheld if based on substantial evidence.' [Citation.]" (See also *Lorig v. Medical Board* (2000) 78 Cal.App.4th 462, 467, 92 Cal.Rptr.2d 862 [interpretation of CPRA and application of statute to undisputed facts is question of law subject to de novo review].)

With these principles in mind, we evaluate the parties' claims.

II. Public records

The University first contends that respondent court erred in finding the documents sought by McClatchy are public records subject to disclosure. We find no error.

[7] The broad definition of public records in section 6252, subdivision (e), "is designed to protect the public's need to be informed regarding the actions of government, as expressed both in the [CPRA] and in the open meeting requirements of the Ralph M. Brown Act (§ 54950 et seq.). [Citation.] Indeed, secrecy is 'antithetical to a democratic system of "government of the people, by the people [and] for the people." ' [Citation.]" (*Poway Unified School Dist. v. Superior Court, supra*, 62 Cal.App.4th at p. 1501, 73 Cal.Rptr.2d 777.)

[8][9] We provided a more detailed analysis concerning the definition of public records under the CPRA in *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 340, 201 Cal.Rptr. 654:

> "The mere custody of a writing by a public agency does not make it a public record, but if a record is kept by an officer because it is necessary or convenient to the discharge of his official duty, it is a public record. [Citation.] The court in *San Gabriel Tribune* [*v. Superior Court* (1983) 143 Cal.App.3d 762, 774, 192 Cal.Rptr. 415] included in its discussion of what is a public record the following: ***825** ' " 'This definition is intended to cover every conceivable kind of record that is involved in the governmental ****880** process and will pertain to any new form of record-keeping instrument as it is developed. Only purely personal information unrelated to "the conduct of the public's business" could be considered exempt from this definition, i.e., the shopping list phoned from home, the letter to a public officer from a friend which is totally void of reference to governmental activities.' [Citations.]" [Citation.]' [Citation.]"

[10] In this case, we conclude the documents sought by McClatchy are public records. The requested documents are unquestionably "used" and/or "retained" by the University as required under section 6252, subdivision (e). In addition, they clearly relate to the conduct of the public's business, specifically, the operation of the Save Mart Center, a public facility on land owned by a public university. Further, the arena was financed, in part, by public funds to the tune of at least $8 million. (See *Connell v. Superior Court* (1997) 56 Cal.App.4th 601, 616-617, 65 Cal.Rptr.2d 738 [public has interest in records pertaining to government's conduct in managing public revenues].)

We reject the University's argument that the documents do not fall under the scope of the CPRA because no public revenue has been expended for the suite licenses. The Save Mart Center will be a public facility in which the public's business will be conducted. The word "public" means " 'of, pertaining to, or affecting, the people at large or the community.' " (*Coldwell v. Board of Public Works* (1921) 187 Cal. 510, 520, 202 P. 879.) As the University readily acknowledges, the Save Mart Center will significantly affect the community of Fresno.

III. "State agency"

[11] We turn now to the Association's contention that it is not a state agency for purposes of the CPRA.

The Association is a University-affiliated, nonprofit auxiliary corporation. Education Code section 89901 identifies auxiliary organizations:

> "As used in this article, the term 'auxiliary organization' includes the following entities:
>
> "(a) Any entity in which any official of the California State University participates as a director as part of his or her official position.
>
> "(b) Any entity formed or operating pursuant to Article 1 (commencing with Section 89300) of

Chapter 3 [student body organizations].

***826** "(c) Any entity which operates a commercial service for the benefit of a campus of the California State University on a campus or other property of the California State University.

"(d) Any entity whose governing instrument provides in substance both of the following:

"(1) That its purpose is to promote or assist any campus of the California State University, or to receive gifts, property, and funds to be used for the benefit of such campus or any person or organization having an official relationship therewith.

"(2) That any of its directors, governors, or trustees are either appointed or nominated by, or subject to, the approval of an official of any campus of the California State University, or selected, ex officio, from the membership of the student body or the faculty or the administrative staff of campus.

"(e) Any entity whose governing instrument provides in substance both of the following:

"(1) That its purpose is to promote or assist the trustees of the California ****881** State University, or to receive gifts, property, and funds to be used for the benefit of the trustees of the California State University or any person or organization having an official relationship therewith.

"(2) That any of its directors, governors, or trustees are either appointed or nominated by, or subject to, the approval of the trustees or an official of the California State University, or selected, ex officio, from the membership of the trustees or the administrative staff of the California State University.

"(f) Any entity which, exclusive of the foregoing subdivisions of this section, is designated as an auxiliary organization by the trustees." (Ed.Code, § 89901; see also Cal.Code Regs., tit. 5, § 42400.)

As noted by the Association, California courts have generally recognized that auxiliary organizations are not part of the state body they aid or assist. (See *Coppernoll v. Board of Directors* (1983) 138 Cal.App.3d 915, 918, 188 Cal.Rptr. 394; *Wanee v. Board of Directors* (1976) 56 Cal.App.3d 644, 648-649, 128 Cal.Rptr. 526; see also 47 Ops.Cal.Atty.Gen. 8 (1966) [state college bookstore and foundation not instrumentalities of state but auxiliary organizations of the college for social security purposes].) In *Wanee v. Board of Directors, supra*, the court held that employees of a state university bookstore were not employees of the college or of any governmental entity, ***827** but instead were employees of a private corporation. As a result, the manager of the bookstore had no right insulating him against a dismissal made in good faith but without cause. (56 Cal.App.3d at p. 649, 128 Cal.Rptr. 526.)

The court in *Coppernoll v. Board of Directors, supra*, similarly addressed whether an employee of a state university foundation (a nonprofit auxiliary organization) was entitled to a due process hearing before he was discharged by the foundation. The court recognized that Education Code section 89900, subdivision (c), requires the operation of auxiliary organizations to conform to regulations established by the trustees. These regulations require the governing board of each auxiliary organization to provide comparable salaries, working conditions and benefits for its full-time employees to those given state university employees performing similar services. The court determined that comparable working conditions include a due process hearing before discharge, and the employee had been denied this right. (138 Cal.App.3d at pp. 920-922, 188 Cal.Rptr. 394.)

Although of some assistance, these cases do not address whether state university auxiliary organizations are "state agencies" for purposes of the CPRA. In fact, we find no California cases on point. In addition, contrary to arguments by the Association, we find nothing in the legislative history of the Education Code sections relating to community colleges that assists in resolution of this question.

As a result, we examine case law from other states interpreting statutes that define covered public entities. In *4-H Road Com. v. W.Va. Univ. Foundation* (1989) 182 W.Va. 434, 388 S.E.2d 308, the Supreme Court of Appeals of West Virginia interpreted the meaning of West Virginia's Freedom of Information Act. It held that a nonprofit corporation formed by private citizens, pursuant to general corporation law, for the purpose of assisting a state university through fundraising was not a "public body." The court rea-

soned the corporation was not created by state authority and was not primarily funded by state authority as defined in the Act. (*Id.* at pp. 311-312.)

In *State v. Nicholls College Foundation* (La.App. 1 Cir.1992) 592 So.2d 419, a Louisiana****882** appellate court held that a university foundation's receipt of public funds alone did not make the foundation a "public body" subject to Louisiana's Public Records Act. (*Id.* at pp. 420-421.) In contrast, in *State ex rel. v. Univ. of Toledo Found., supra*, 65 Ohio St.3d 258, 602 N.E.2d 1159, the Ohio Supreme Court held a private, nonprofit corporation that acted as a major gift-receiving and soliciting arm of a public university was a "public office" ***828** subject to Ohio's statutory public records disclosure requirements. (*Id.* at pp. 1161-1165.) [FN6]

> FN6. Following Ohio's subsequent adoption of the Uniform Trade Secrets Act, the Ohio Supreme Court held that state universities can have trade secrets that are exempt from disclosure. (See *State ex rel. Besser v. Ohio State Univ.* (2000) 87 Ohio St.3d 535, 721 N.E.2d 1044, 1049-1051.)

Unfortunately, once again these cases are of little help in determining the breadth of the term "state agency" under the CPRA. A look at how the other state statutes define a covered entity illustrates the point. West Virginia defines a "public body" to mean:

> "every state officer, agency, department, including the executive, legislative and judicial departments, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council or agency thereof; *and any other body which is created by state or local authority or which is primarily funded by the state or local authority.*" (W.Va.Code (1966) § 29B-1-2(3), italics added.)

Louisiana defines a "public body" to include an:

> "instrumentality of state ... government, including a public or quasi-public nonprofit corporation, designated as an entity to perform a governmental or proprietary function." (See La.Rev.Stat.Ann., tit. 44, ch. 1, § 1.A.(1).)

Last, Ohio defines "public office" as:

> "any state agency, public institution, political subdivision, or any other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government." (Oh. Rev.Code Ann., tit. I, § 149.011(A).)

Although the courts' interpretations of the above statutory definitions are of some interest, they do not provide much assistance in deciding what a "state agency" is under the CPRA. As can readily be seen, these other states' statutory schemes cast a much broader net than the CPRA when defining a covered public entity. If anything, the comparatively narrow scope of the CPRA lends some credence to the Association's position that it is not a "state agency" under the CPRA.

[12] In resolving this uncharted territory of legislative intent, we recognize the extent of the CPRA's coverage is a matter to be developed by the courts on a case-by-case basis. (See *Irwin Memorial, etc. v. American Nat. Red Cross* (9th Cir.1981) 640 F.2d 1051, 1054 [each organizational arrangement must be examined in its own context].) In attempting to divine how broadly the term "state agency" can be interpreted, we are limited by rules of statutory construction, recently articulated in *People v. Superior Court (Gary)* (2000) 85 Cal.App.4th 207, 213, 101 Cal.Rptr.2d 874:

> ***829** " 'The court's role in construing a statute is to "ascertain the intent of the Legislature so as to effectuate the purpose of the law." [Citations.] In determining the Legislature's intent, a court ****883** looks first to the words of the statute. [Citation.] "[I]t is the language of the statute itself that has successfully braved the legislative gauntlet." [Citation.]
>
> " 'When looking to the words of the statute, a court gives the language its usual, ordinary meaning. [Citations.] If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs. [Citations.]' [Citation.]" (*People v. Superior Court (Garn), supra*, 85 Cal.App.4th at p. 213, 101 Cal.Rptr.2d 874.)

[13] At this juncture, it bears repeating that the CPRA defines a "state agency" to mean "every state

office, officer, department, division, bureau, board, and commission *or other state body or agency*....” (§ 6252, subd. (a), italics added.) There is some ambiguity in the phrase “other state body or agency.” However, in resolving this ambiguity, we are bound to apply the plain meaning rule and determine what these words mean based on their ordinary usage. In doing so, we conclude a non-governmental auxiliary organization is not a “state agency” for purposes of the CPRA. The words “state body” and “state agency” simply do not include a non-governmental organization. Ironically, our conclusion might well be different if in defining the term “state agency,” the CPRA had incorporated broad language like that employed in the statutory schemes enacted in West Virginia, Louisiana and Ohio.

Our decision is further supported by comparing the definition of “agency” under the FOIA with that of “state agency” under the CPRA. The FOIA defines “agency” to include

> “any executive department, military department, *Government corporation, Government controlled corporation,* or other establishment in the executive branch of the Government (including the Executive Officer of the President), or any independent regulatory agency.” (5 U.S.C. § 552(f), italics added.)

As a result, federal courts examine a number of factors that indicate federal control of an entity. These include the degree of federal supervision, the use of public buildings, the financial reporting and auditing requirements, the appointment power of federal officials to the board of the entity, and the entity's specific purposes. (*Irwin Memorial, etc. v. American Nat. Red Cross, supra*, 640 F.2d at p. 1057.)

The CPRA, in contrast, does not reference any “state corporation” or “state controlled corporation,” despite the fact it was modeled on the FOIA. (See *Motorola Communication & Electronics, Inc. v. Department of General Services* (1997) 55 Cal.App.4th 1340, 1346, fn. 5, 64 Cal.Rptr.2d 477.) ***830** Although the FOIA was amended in 1974, following the enactment of the CPRA, to expand the original definition of “agency” (see *Rocap v. Indiek* (D.C.Cir.1976) 539 F.2d 174, 175), the California Legislature did not follow suit. We cannot “simply ignore the language used in attempting to determine what the Legislature intended since we are bound by the doctrine of stare decisis to first look to the words of a statute.” (*People v. Superior Court (Gary), supra*, 85 Cal.App.4th at p. 214, 101 Cal.Rptr.2d 874; see also *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455, 20 Cal.Rptr. 321, 369 P.2d 937.)

[14][15] We are fully cognizant of the fact that our conclusion seems to be in direct conflict with the express purposes of the CPRA-“to safeguard the accountability of government to the public....” (*Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136, 1141, 59 Cal.Rptr.2d 537.) The Legislature's decision to narrowly define the applicability of the CPRA, balanced against its sweeping goal to safeguard****884** the public, leaves us scratching our judicial heads and asking, “What was the Legislature thinking?” In many ways, the Association can be characterized as a “state-controlled” corporation that should be subject to the CPRA. (See *Eisen v. Regents of University of California* (1969) 269 Cal.App.2d 696, 703, 706, 75 Cal.Rptr. 45 [people have right to know identity and respective officers of student organization that might be using publicly financed and owned campus facilities of university].) However, courts “do not sit as super-legislatures to determine the wisdom, desirability or propriety of statutes enacted by the Legislature.” (*Estate of Horman* (1971) 5 Cal.3d 62, 77, 95 Cal.Rptr. 433, 485 P.2d 785.) The rewriting of a statute is a legislative, rather than a judicial function, a practice in which we will not engage. (*Hofer v. Young* (1995) 38 Cal.App.4th 52, 57, 45 Cal.Rptr.2d 27.)

In light of our decision, it is unnecessary to address the Association's remaining contentions.. However, for purposes of the University's writ petition, we turn to whether the requested records are exempt from disclosure under the CPRA.

IV. Exemption from disclosure

The University argues that respondent court erred in concluding the documents sought by McClatchy are not exempt from disclosure. In taking this position, we presume the University does not challenge its status as a “state agency” under the CPRA. Thus, unless one of the exemptions outlined in the CPRA applies, the University must produce the requested documents. The University maintains the documents

requested by McClatchy are exempt ***831** from disclosure under the official information privilege, the constitutional rights of privacy and freedom of association, and the public interest "catchall" exception.

[16][17] The CPRA embodies a strong policy in favor of disclosure of public records, and any refusal to disclose public information must be based on a specific exception to that policy. (*Lorig v. Medical Board, supra*, 78 Cal.App.4th at p. 467, 92 Cal.Rptr.2d 862; *Cook v. Craig* (1976) 55 Cal.App.3d 773, 781, 127 Cal.Rptr. 712.) Statutory exemptions from compelled disclosure are narrowly construed. (*City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1425, 44 Cal.Rptr.2d 532.)

[18][19][20][21] The court in *City of San Jose v. Superior Court, supra*, 74 Cal.App.4th at pages 1017-1019, 88 Cal.Rptr.2d 552, set forth the law governing exemptions to the general policy of disclosure:

> "Disclosure of public records ... involves two fundamental yet competing interests: (1) prevention of secrecy in government; and (2) protection of individual privacy. [Citation.] Consequently, both the FOIA and the [CPRA] expressly recognize that the public's right to disclosure of public records is not absolute.... [T]he [CPRA] includes two exceptions to the general policy of disclosure of public records: (1) materials expressly exempt from disclosure pursuant to section 6254; and (2) the 'catchall exception' of section 6255, which allows a government agency to withhold records if it can demonstrate that, on the facts of a particular case, the public interest served by withholding the records clearly outweighs the public interest served by disclosure. [Citation.] [¶] ... [¶]
>
> "The burden of proof is on the proponent of nondisclosure, who must demonstrate a 'clear overbalance' on the side of confidentiality. [Citations.] The purpose of the requesting party in seeking disclosure cannot be considered.... It is also irrelevant that the requesting party is a newspaper or other form of ****885** media, because it is well established that the media has no greater right of access to public records than the general public....
>
> "Thus, in determining whether public records which are not expressly exempted from disclosure must be disclosed over the government's objection, California courts apply the section 6255 balancing test for the catchall exception on a case-by-case basis. Where the public interest in disclosure of the records is not outweighed by the public interest in nondisclosure, courts will direct the government to disclose the requested information. [Citations.]
>
> "Conversely, courts have upheld the government's refusal to release public records when the public interest in nondisclosure clearly outweighed ***832** the public interest in disclosure. [Citations.]" (*City of San Jose v. Superior Court, supra*, 74 Cal.App.4th at pp. 1017-1019, 88 Cal.Rptr.2d 552, fns. omitted; see also *Poway Unified School Dist. v. Superior Court, supra*, 62 Cal.App.4th at p. 1501, 73 Cal.Rptr.2d 777.)

A. Section 6254, subdivision (k) exemption

Section 6254 exempts several types of records. Subdivision (k) of section 6254 exempts "[r]ecords the disclosure of which is e xempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Here, the University relies on Evidence Code section 1040 and the constitutional rights of privacy and freedom of association.

[22] Evidence Code section 1040 creates a privilege for official information acquired in confidence if "[d]isclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice...." (Evid.Code, § 1040, subd. (b)(2); see also *CBS, Inc. v. Block, supra*, 42 Cal.3d at p. 656, 230 Cal.Rptr. 362, 725 P.2d 470.) "This privilege must be 'applied conditionally on a clear showing that disclosure is against the public's interest.' [Citation.]" (*Ibid.*)

However, it is unnecessary to specifically address this exemption in light of our holding under the section 6255 catchall exception. As explained by the California Supreme Court in *CBS, Inc. v. Block, supra*, 42 Cal.3d at page 656, 230 Cal.Rptr. 362, 725 P.2d 470:

> "The weighing process mandated by Evidence Code section 1040 requires review of the same elements that must be considered under section 6255 [citation]. Therefore, it is consistent with the

> [CPRA]. Under this privilege, the burden of demonstrating a need for nondisclosure is on the agency claiming the right to withhold the information. [Citation.] Thus, this court's rejection of the claim of exemption under section 6255 on the ground that the public interest weighs in favor of disclosure similarly requires rejection of the claims of exemption under section 6254, subdivision (k) and Evidence Code section 1040." (See also *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 446-447, fn. 6, 186 Cal.Rptr. 235, 651 P.2d 822.)

Similarly, it is also unnecessary, in light of our analysis under section 6255 below, to address the University's claim that the records are exempt from disclosure under the constitutional rights of privacy and freedom of association. (See *CBS, Inc. v. Block, supra,* 42 Cal.3d at pp. 655-656, 230 Cal.Rptr. 362, 725 P.2d 470; *City of San Jose v. Superior Court, supra,* 74 Cal.App.4th at p. 1017, 88 Cal.Rptr.2d 552 [recognizing that "[p]ublic records can include 'personal details about private citizens,' ***833** and disclosure may infringe upon ****886** privacy interests"]; *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 651-653, 117 Cal.Rptr. 106.)

Therefore, we turn to the catchall exception under section 6255.

B. Section 6255 catchall exception

[23] Section 6255, subdivision (a), states: "The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." Here, we conclude the public interest in disclosure of the records is not outweighed by the public interest in nondisclosure.

We find the arguments advanced by McClatchy, advocating the public interest in disclosure, to be compelling. The Save Mart Center utilized public funds for a public multipurpose arena on land owned by a public university. The public should be able to determine whether the purchase price for luxury accommodations in the arena is a fair and reasonable return on its contribution to the project. In other words, disclosure allows the public to discern whether its resources have been spent for the benefit of the community at large or only a limited few. The public should also be able to determine whether any favoritism or advantage has been afforded certain individuals or entities in connection with the license agreements, and whether any discriminatory treatment exists. Determinations pertaining to the public's business cannot be made without disclosure of the identities of the licensees and the license agreements. (See *New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579, 1585-1586, 268 Cal.Rptr. 21 [disclosure of users of excess water resources ensures individuals do not receive special privileges or, alternatively, are not subject to discriminatory treatment].)

The University suggests it can see no reasonable public interest in disclosure of licensee names. We beg to differ, and can conceive of many examples where the licensee's identity could be of significant interest to the public. For example, the Save Mart Center will presumably serve beer to attendees. If so, it is likely there will be a competitive bidding process for the contract to sell beer. One of the anonymous licensees could be a beer distributor. If so, the public has an interest in knowing the licensee's identity to determine whether that licensee is receiving special consideration in contract negotiations. On the other hand, we assume the Coca-Cola Company will probably not be serving its beverages at the Save Mart Center, and attendees will be hoisting cups of Pepsi Cola. The fact that Pepsi ***834** BottlingGroup made a very public multi-million dollar contribution to the Save Mart Center helps the public understand and appreciate why Pepsi will likely be served at the Save Mart Center for a long time. On the other hand, if an anonymous licensee purchases a suite license for a much lesser sum, and somehow benefits from this financial contribution, the public has no way to determine whether the licensee has gained an unreasonable advantage at the expense of public dollars.

The University maintains that donors, particularly anonymous donors, have a right to privacy in their financial dealings. The University worries that if licensee names are made public, those individuals will be solicited by numerous charitable organizations, placed on countless mailing lists and targeted for donations by organizations of unknown or ill repute. We note there is no evidence in the record with re-

spect to whether the undisclosed licensees****887** are individuals or corporations. In any event, we find these alleged privacy violations to be minimal. McClatchy seeks only the names of the purchasers of the luxury suites and the license agreements. The license agreements identify the name of the licensee, the licensee's "preferred seating area number" in the arena, the term of the agreement, the licensee's address, and the amount of the annual purchase price for use of the suite. The agreements contain only basic contractual terms relating to the business of a public facility. McClatchy does not seek any personal financial information concerning the licensees.

In addition, this case is distinguishable from one in which individuals or companies donate unconditionally to the University in the traditional sense. The purchase of luxury suites is more akin to a commercial transaction. The luxury suites unquestionably have a valuable commercial benefit, since they may be used to attract and facilitate business contracts and transactions. Thus, we find the individuals who purchased luxury suites in the Save Mart Center, a public facility, entered into the public sphere. By doing so, they voluntarily diminished their own privacy interests. (See *Braun v. City of Taft, supra*, 154 Cal.App.3d at p. 347, 201 Cal.Rptr. 654 [fact one "is engaged in the public's business strips him of some anonymity"]; *San Gabriel Tribune v. Superior Court, supra*, 143 Cal.App.3d at pp. 780-781, 192 Cal.Rptr. 415 [voluntary entry into public sphere diminishes one's privacy interests].)

The University further asserts that large donations will be canceled if promises of confidentiality are breached. First, the University has set forth no competent evidence that licensees demanded, or University or Association personnel promised, confidentiality. The license agreements, themselves, contain no such provision, and also sport an integration clause. As a ***835** result, any extraneous statements of University personnel not contained in the license agreements are irrelevant and likely violate the parol evidence rule. Second, any claims by the University that donations will be canceled are speculative, supported only by inadmissible hearsay. Statements by University personnel that disclosure of the licensees will "likely" have a chilling effect on future donations, resulting in a "potential" loss of donations, are inadequate to demonstrate any significant public interest in nondisclosure. (*CBS, Inc. v. Block, supra*, 42 Cal.3d at p. 652, 230 Cal.Rptr. 362, 725 P.2d 470 ["mere assertion of possible endangerment does not 'clearly outweigh' the public interest in access to these records"]; *Connell v. Superior Court, supra*, 56 Cal.App.4th at pp. 612-613, 65 Cal.Rptr.2d 738 [declarations failed to make particularized connection between documents subject to disclosure and ways in which disclosure would increase risk of counterfeiting].)

The unsupported statements constitute nothing more than speculative, self-serving opinions designed to preclude the dissemination of information to which the public is entitled.. There is no admissible evidence in the record that any license agreements will be canceled if licensee names are disclosed to the public. Any genuine concerns of donor withdrawals should have been presented with competent evidence through an in camera hearing, which then could have been evaluated on appeal.

We disagree with the University's claim that McClatchy has alternate, less intrusive means of conducting its search for information. The University suggests that McClatchy launch a publicity campaign to elicit information from donors and "canvass" the luxury suites after the Save Mart Center is complete, to discern the identities of anonymous donors. The University's****888** proposal is neither realistic nor sensible. Further, we suspect the licensees would be less than thrilled to have reporters lurking about their suites during events, asking questions of guests, and casting a pall over otherwise festive activities.

In short, the University has failed to meet its burden of demonstrating a " 'clear overbalance' on the side of confidentiality." (*City of San Jose v. Superior Court, supra*, 74 Cal.App.4th at p. 1018, 88 Cal.Rptr.2d 552; see also § 6255..) The requested documents now and formerly in the possession of the University must be disclosed, including electronic copies of such documents. (See *San Gabriel Tribune v. Superior Court, supra*, 143 Cal.App.3d at p. 774, 192 Cal.Rptr. 415.)

DISPOSITION

Regarding the Association's writ petition, we issue a peremptory writ of mandate directing respondent court to vacate that portion of its December ***836** 19, 2000, order commanding the Association to disclose

the identities of the undisclosed licensees and to produce the license agreements. The court shall enter an order denying McClatchy's petition for writ of mandate with respect to the Association. Costs are awarded to the Association against McClatchy.

With respect to the University's writ petition, the order to show cause is discharged and the petition for statutory writ of mandate and/or prohibition or other appropriate relief is denied. The University must disclose the identities of the undisclosed licensees and produce any copies, including electronic copies, of the license agreements now and formerly in its possession. Costs are awarded to McClatchy against the University.

The order staying the December 19, 2000, respondent court order is vacated upon finality of this decision.

BUCKLEY, Acting P.J., and CORNELL, J., concur.
Cal.App. 5 Dist.,2001.
California State University v. Superior Court
90 Cal.App.4th 810, 108 Cal.Rptr.2d 870, 155 Ed. Law Rep. 664, 00 Cal. Daily Op. Serv. 6026, 2001 Daily Journal D.A.R. 7395

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Court of Appeal, Sixth District, California.
COUNTY OF SANTA CLARA et al., Petitioners,
v.
The SUPERIOR COURT of Santa Clara County, Respondent;
California First Amendment Coalition, Real Party in Interest.
No. H031658.

Feb. 5, 2009.
As Modified Feb. 27, 2009.

Background: Requester filed petition for writ of mandate challenging county's denial of its California Public Records Act (CPRA) request for geographic information system (GIS) basemap. The Superior Court, Santa Clara County, No. CV072630,James P. Kleinberg, J., ordered county to provide data to requester. County petitioned for writ review.

Holdings: The Court of Appeal, McAdams, J., held that:
(1) on issue of first impression, Critical Infrastructure Information (CII) Act prohibition against disclosure applies only to recipients of protected critical infrastructure information (PCII);
(2) CII Act did not apply to county's disclosure of its own basemap;
(3) disclosure of basemap would contribute significantly to public understanding of government activities;
(4) alleged availability of alternative means of obtaining information in basemap did not render public interest in disclosure "minimal";
(5) county's financial interests did not compel nondisclosure;
(6) security concerns did not compel nondisclosure;
(7) on issue of first impression, CPRA provides no statutory authority for an agency to assert copyright interest in public records;
(8) on issue of first impression in California, county could not require requester to sign end user agreement limiting use of disclosed records; and
(9) trial court's failure to rule on ancillary costs associated with production of electronic records required remand.

Writ issued.

West Headnotes

[1] Records 326 63

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k63 k. Judicial Enforcement in General. Most Cited Cases
In expedited appellate review by extraordinary writ of an order to disclose public records under the California Public Records Act (CPRA), the scope of review is the same as for direct appeals. West's Ann.Cal.Gov.Code § 6259(c).

[2] States 360 18.3

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.3 k. Preemption in General. Most Cited Cases
As a general principle, federal law preempts state law (1) where Congress has said so explicitly, (2) where Congress has said so implicitly, as when federal regulation occupies the field exclusively, and (3) where federal and state law conflict.

[3] States 360 18.13

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.13 k. State Police Power. Most Cited Cases
Unless Congress has demonstrated a clear and manifest purpose to the contrary, the presumption is that federal law does not preempt the states' historic police powers.

[4] States 360 18.9

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.9 k. Federal Administrative Regulations. Most Cited Cases
A federal agency literally has no power to act, let alone preempt the validly enacted legislation of a sovereign State, unless and until Congress confers power upon it.

[5] Records 326 55

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k55 k. Exemptions or Prohibitions Under Other Laws. Most Cited Cases
Critical Infrastructure Information (CII) Act prohibition against disclosure under state law of protected critical infrastructure information (PCII) provided to a state or local government applies only to information in the hands of the governmental recipient; it does not apply to information in the hands of the submitter. <CARET>6 U.S.C. § 133(a)(1); 6 C.F.R. §§ 29.1(a, b), 29.8(b), (d)(1), (g).

[6] Records 326 55

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k55 k. Exemptions or Prohibitions Under Other Laws. Most Cited Cases
County was not barred by the Critical Infrastructure Information (CII) Act from disclosing geographic information system (GIS) basemap data pursuant to a California Public Records Act (CPRA) request, even though county had submitted the basemap to the federal government as CII, since the data had been submitted by the county rather than to the county. 6 U.S.C. § 133(a)(1); 6 C.F.R. §§ 29.1(a, b), 29.8(b), (d)(1), (g); West's Ann.Cal.Gov.Code § 6250 et seq.
See Cal. Jur. 3d, Records and Recording Laws, § 19; 2 Witkin, Cal. Evidence (4th ed. 2000) Witnesses, § 288.

[7] Records 326 50

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k50 k. In General; Freedom of Information Laws in General. Most Cited Cases
The California Public Records Act (CPRA) was enacted for the purpose of increasing freedom of information by giving members of the public access to information in the possession of public agencies. West's Ann.Cal.Gov.Code § 6250 et seq.

[8] Records 326 54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In General. Most Cited Cases
All public records are subject to disclosure unless the California Public Records Act (CPRA) expressly provides otherwise. West's Ann.Cal. Const. Art. 1, § 3; West's Ann.Cal.Gov.Code § 6250 et seq.

[9] Records 326 55

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k55 k. Exemptions or Prohibitions Under Other Laws. Most Cited Cases
The exemption from disclosure under California Public Records Act (CPRA) for materials whose disclosure "is exempted or prohibited pursuant to federal or state law" is not an independent exemption; it merely incorporates other prohibitions established by law. West's Ann.Cal.Gov.Code § 6254(k).

[10] Records 326 54

326 Records

326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In General. Most Cited Cases
The catchall exemption from disclosure under the California Public Records Act (CPRA) allows a government agency to withhold records if it can demonstrate that, on the facts of a particular case, the public interest served by withholding the records clearly outweighs the public interest served by disclosure. West's Ann.Cal.Gov.Code § 6255.

[11] Records 326 54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In General. Most Cited Cases
Since disclosure of public records is favored, all exemptions from disclosure under the California Public Records Act (CPRA) are narrowly construed. West's Ann.Cal. Const. Art. 1, § 3(b)(2); West's Ann.Cal.Gov.Code §§ 6254, 6255.

[12] Records 326 65

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k65 k. Evidence and Burden of Proof. Most Cited Cases
An agency opposing disclosure under the California Public Records Act (CPRA) bears the burden of proving that an exemption applies. West's Ann.Cal. Const. Art. 1, § 3(b)(2); West's Ann.Cal.Gov.Code §§ 6254, 6255.

[13] Records 326 54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In General. Most Cited Cases
Under the California Public Records Act (CPRA), the fact that a public record may contain some confidential information does not justify withholding the entire document. West's Ann.Cal.Gov.Code § 6253(a).

[14] Records 326 54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In General. Most Cited Cases
The burden of segregating exempt from nonexempt materials is one of the considerations which the court can take into account in determining whether the public interest favors disclosure, in considering whether a record falls within the catchall exemption from disclosure under the California Public Records Act (CPRA). West's Ann.Cal.Gov.Code § 6255.

[15] Records 326 54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In General. Most Cited Cases
Exemptions from disclosure under the California Public Records Act (CPRA) can be waived. West's Ann.Cal.Gov.Code § 6254.5.

[16] Records 326 54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In General. Most Cited Cases
Disclosure to one member of the public of material subject to an exemption under the California Public Records Act (CPRA) would constitute a waiver of

the exemption, requiring disclosure to any other person who requests a copy. West's Ann.Cal.Gov.Code § 6254.5.

[17] Records 326 63

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k63 k. Judicial Enforcement in General. Most Cited Cases
The Court of Appeal would not consider the argument, urged only by county's amici on writ review of order for county to disclose geographic information system (GIS) data pursuant to a request under the California Public Records Act (CPRA), that the GIS data was computer software and thus not treated as a public record; the county had raised the argument unsuccessfully in the trial court. West's Ann.Cal.Gov.Code § 6254.9 (a, b).

[18] Records 326 54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In General. Most Cited Cases

Records 326 64

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k64 k. Discretion and Equitable Considerations; Balancing Interests. Most Cited Cases
When the catchall exemption from disclosure under the California Public Records Act (CPRA) is invoked, the court undertakes a balancing process, assessing whether on the facts of the particular case, the public interest served by withholding the records clearly outweighs the public interest served by disclosure. West's Ann.Cal.Gov.Code § 6255.

[19] Records 326 63

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k63 k. Judicial Enforcement in General. Most Cited Cases
In analyzing the availability of the catchall exemption from disclosure under the California Public Records Act (CPRA), a reviewing court accepts the trial court's express and implied factual determinations if supported by the record, but undertakes the weighing process anew. West's Ann.Cal.Gov.Code §§ 6255, 6257.5.

[20] Records 326 52

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k52 k. Persons Entitled to Disclosure; Interest or Purpose. Most Cited Cases
In determining the public interest in disclosure of a public record, in considering whether the record falls within the catchall exemption from disclosure under the California Public Records Act (CPRA), the motive of the particular requester is irrelevant. West's Ann.Cal.Gov.Code § 6255.

[21] Records 326 52

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k52 k. Persons Entitled to Disclosure; Interest or Purpose. Most Cited Cases
The California Public Records Act (CPRA) does not differentiate among those who seek access to public information. West's Ann.Cal.Gov.Code § 6257.5.

[22] Records 326 54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Re-

quirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In General. Most Cited Cases
If public records sought pertain to the conduct of the people's business, there is a public interest in disclosure, for purposes of determining the availability of the catchall exemption from disclosure under the California Public Records Act (CPRA). West's Ann.Cal. Const. Art. 1, § 3(b)(2); West's Ann.Cal.Gov.Code § 6255.

[23] Records 326 54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In General. Most Cited Cases
For purposes of determining the availability of the catchall exemption from disclosure under the California Public Records Act (CPRA), the weight of the public interest in disclosure of a public record pertaining to the conduct of the people's business is proportionate to the gravity of governmental tasks sought to be illuminated, and the directness with which the disclosure will serve to illuminate. West's Ann.Cal.Gov.Code § 6255.

[24] Records 326 54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In General. Most Cited Cases
The disclosure of county's geographic information system (GIS) basemap data under the California Public Records Act (CPRA) would contribute significantly to public understanding of government activities, thus supporting the conclusion that the catchall exemption from CPRA disclosure did not apply, since access to the basemap would contribute to comparisons of property tax assessments, issuance of permits, treatment of tax delinquent properties, equitable deployment of public services, and issuance of zoning variances; the public interest in disclosure was not merely hypothetical. West's Ann.Cal.Gov.Code § 6255.

[25] Records 326 54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In General. Most Cited Cases
The alleged availability of alternative means of obtaining the information in county's geographic information system (GIS) basemap did not render the public interest in the basemap's disclosure under the California Public Records Act (CPRA) “minimal,” and thus did not support application of the catchall exemption from disclosure under the CPRA, since the disclosure of the basemap would not implicate privacy concerns. West's Ann.Cal.Gov.Code § 6255.

[26] Records 326 54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In General. Most Cited Cases
While the availability of less intrusive means to obtain the information may be a factor in determining the availability of the catchall exemption from disclosure under the California Public Records Act (CPRA), particularly in privacy cases, the existence of alternatives does not wholly undermine the public interest in disclosure. West's Ann.Cal.Gov.Code § 6255.

[27] Records 326 54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In General. Most Cited Cases
Even where a requester has an alternative means to

access the information in a public record, it should not prohibit it from obtaining the documents under the California Public Records Act (CPRA). West's Ann.Cal.Gov.Code § 6250 et seq.

[28] Records 326 63

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k63 k. Judicial Enforcement in General. Most Cited Cases
Trial court's finding that counties disclosing their geographic information system (GIS) basemap programs had suffered few ill fiscal effects, in finding that a county's financial interests did not compel nondisclosure of its basemap under the catchall exemption from the California Public Records Act (CPRA), was supported by substantial evidence, including a declaration that two counties' basemap programs remained "alive" and "robust" after the counties began to provide their basemaps at little cost, that fourteen California counties provided their GIS basemap data to the public free of charge, and that another twenty-three California counties provided their GIS basemap data for the cost of reproduction. West's Ann.Cal.Gov.Code § 6250 et seq.

[29] Records 326 63

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k63 k. Judicial Enforcement in General. Most Cited Cases
Trial court's finding that disclosure of county's geographic information system (GIS) basemap would not have major security implications, in concluding that security concerns did not compel nondisclosure under the catchall exemption from the California Public Records Act (CPRA), was supported by substantial evidence, including expert testimony that the availability of information on the locations of water pipe easements would not uniquely aid terrorists, and evidence that the county had sold the basemap to 18 purchasers including three private entities. West's Ann.Cal.Gov.Code § 6255.

[30] Records 326 54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In General. Most Cited Cases
Security may be a valid factor supporting nondisclosure under the catchall exemption from the California Public Records Act (CPRA). West's Ann.Cal.Gov.Code § 6255.

[31] Records 326 54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In General. Most Cited Cases
The mere assertion of possible endangerment from the disclosure of public records does not "clearly outweigh" the public interest in access to these public records, as required to compel nondisclosure under the catchall exemption from the California Public Records Act (CPRA). West's Ann.Cal.Gov.Code § 6255.

[32] Records 326 67

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k67 k. Findings and Order; Injunctive Relief. Most Cited Cases
Trial court did not fail to address county's claim that it could condition its disclosure of its geographic information system (GIS) basemap on requester's execution of an agreement not to violate county's copyright interest in the basemap, where trial court stated in a footnote to its order to disclose the basemap that copyright protection was not appropriate, reading the provision stating that the California Public Records Act (CPRA) did not limit copyright protection in

conjunction with the provision stating that records stored on computers were not exempt from disclosure; trial court was not required to also discuss creativity and compilation issues which were not briefed by county. 17 U.S.C.A. § 101 et seq.; West's Ann.Cal.Gov.Code § 6254.9(d, e).

[33] Records 326 63

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k63 k. Judicial Enforcement in General. Most Cited Cases
County preserved its claim that it could condition its California Public Records Act (CPRA) disclosure of its geographic information system (GIS) basemap on requester's execution of an agreement not to violate county's copyright interest in the basemap as a "unique arrangement," by arguing to the trial court that it could require execution of such an end user agreement, arguing that it owned a copyright interest in the basemap, and citing to the federal copyright statute. 17 U.S.C.A. § 101 et seq.; West's Ann.Cal.Gov.Code § 6250 et seq.

[34] Copyrights and Intellectual Property 99 10.4

99 Copyrights and Intellectual Property
99I Copyrights
99I(A) Nature and Subject Matter
99k3 Subjects of Copyright
99k10.4 k. Other Works. Most Cited Cases
State law determines whether a public official may claim a copyright in his office's creations.

[35] Copyrights and Intellectual Property 99 10.4

99 Copyrights and Intellectual Property
99I Copyrights
99I(A) Nature and Subject Matter
99k3 Subjects of Copyright
99k10.4 k. Other Works. Most Cited Cases
Each state may determine whether the works of its government entities may be copyrighted.

[36] Copyrights and Intellectual Property 99 10.4

99 Copyrights and Intellectual Property
99I Copyrights
99I(A) Nature and Subject Matter
99k3 Subjects of Copyright
99k10.4 k. Other Works. Most Cited Cases
California Public Records Act (CPRA) provision recognizing the availability of copyright protection for software developed by a state or local agency in a proper case provides no statutory authority for an agency to assert any other copyright interest. West's Ann.Cal.Gov.Code § 6254.9.

[37] Records 326 62

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k62 k. In General; Request and Compliance. Most Cited Cases
In disclosing geographic information system (GIS) basemap as a public record under California Public Records Act (CPRA), county could not require requester to sign end user agreement limiting the use of the basemap; CPRA required disclosure of records for the cost of reproduction, and that policy would be undercut by permitting county to place extra-statutory restrictions on records. West's Ann.Cal.Gov.Code § 6253(b).

[38] Appeal and Error 30 63

30 Appeal and Error
30III Decisions Reviewable
30III(C) Amount or Value in Controversy
30k63 k. Reduction by Payment or Other Satisfaction. Most Cited Cases
Trial court's failure to make an explicit ruling on the issue of whether county was entitled to ancillary costs associated with production of electronic records, in ordering county to disclose its geographic information system (GIS) basemap under California Public Records Act (CPRA), required remand for the

trial court to consider the issue, even though the trial court's order specified that the county was to recover only its direct cost; there was a factual disagreement between the requester and the county about whether the disclosure would require additional programming on the county's part. West's Ann.Cal.Gov.Code § 6253.9(b).

****379** Office of the County Counsel, Ann Miller Ravel, County Counsel, Robert A. Nakamae, Dep. County Counsel, for Petitioners.

California State Association of Counties, Jennifer B. Henning, for Amicus Curiae on Behalf of Petitioners.

Holme, Roberts & Owen, Roger Myers, Rachel Matteo-Boehm, Kyle Schriner, San Francisco, for Real Party in Interest.

California Newpaper Publishers Assoc., Los Angeles Times Communication LLP, Freedom Communications, Inc., Copley Press, Inc., The Bakersfield Californian, The Press-Enterprise, Medianews Group, Inc., Reporters Committee for Freedom of the Press, and The National Freedom of Information Coalition, Mary Duffy Carolan, Jeff Glasser, Davis Wright Tremaine, Los Angeles, for Amicus Curiae on behalf of Real Party in Interest.

The National Security Archive, The Center for Democracy and Technology, Jenner & Block LLP, Paul M. Smith, Iris E. Bennett, Daniel I. Weiner, Peter H. Hanna, The Electronic Frontier Foundation, Marcia Hoffman, American Business Media, Choicepoint Asset Company LLC, First American Core Logic, Inc., National Association of Professional Background Screeners, Real Estate Information Professionals Association, Reed Elsevier Inc., The Software and Information Industry Association, Meyer Klipper & Mohr PLLC, Michael R. Klipper, Christopher A. Mohr; Coblentz Patch Duffy & Bass LLP, Jeffrey G. Knowles, San Francisco, Seventy SevenGIS Professionals, Great Oaks Water Co., Timothy S. Guster, General Counsel, for Amicus Curiae on behalf of Real Party in Interest.

McADAMS, J.

***1308** This writ proceeding raises weighty questions of first impression, which illuminate tensions between federal homeland security provisions and our state's open public record laws. This proceeding also requires us to consider a state law exemption allowing nondisclosure in the ***1309** public interest; the impact of copyright claims on disclosure; and the extent to which charges for electronic public records may exceed reproduction costs. After analyzing these important and novel issues, we conclude that the law calls for unrestricted disclosure of the information sought here, subject to the payment of costs to be determined by the trial court.

INTRODUCTION

The writ proceeding before us was instituted by the County of Santa Clara and its executive, Peter Kutras, Jr. (collectively, the County). The County seeks extraordinary relief from a superior court order filed in May 2007, requiring it to disclose its geographic information system basemap to the real party in interest, California First Amendment Coalition (CFAC). Having stayed the 2007 order, we issued an order to show cause in March 2008, to which CFAC and the County responded.

The County's petition in this court rests on three main legal arguments, which are asserted in the alternative: (1) paramount federal law promulgated under the Homeland Security Act protects the information from disclosure; (2) the requested information is exempt from disclosure under the California Public Records Act; (3) even if disclosure is required, the County can place restrictions on disclosure under state law provisions recognizing its copyright interests, and it can demand fees in excess of reproduction costs.

After considering the extensive record, the arguments raised by the parties, and the submissions by numerous *amici curiae*, we conclude that the County is not ****380** entitled to the relief sought. We therefore deny the County's writ petition on the merits. However, we will remand the matter to the superior court for a determination of whether and to what extent the County may demand fees in excess of the direct costs of reproducing the electronic record requested by CFAC.

FACTUAL AND PROCEDURAL BACKGROUND

On June 12, 2006, CFAC submitted a request for a copy of the County's geographic information system (GIS) basemap.[FN1] The request was made under the California Public Records Act (CPRA),

***1310**Government Code sections 6250 et seq. Two weeks later, the County denied the request, citing statutory exemptions and copyright protection.

> FN1. As described in the County's 2002 GIS Strategic Plan: "Geographic information systems (GIS) are a class of information technology that has been widely adopted throughout government and business sectors to improve the management of location-based information." As further explained in that document: "GIS is an information management technology that combines computer mapping and database technologies to improve the management and analysis of location based information." Among the essential geographic elements of the GIS basemap are "parcels, streets, assessor parcel information, jurisdictional boundaries, orthophotos [aerial photographs], and buildings."
>
> According to a declaration submitted by the County in the proceedings below: "The GIS Basemap starts with the Assessor's map data, and builds layers of information onto it. The 'GIS Basemap' is a computer mapping system that (1) tells the hardware where to gather information from a variety of separate databases and (2) tells the hardware how to intelligently render the various bits of data into a structured output format."

On August 16, 2006, CFAC renewed its request for the GIS basemap, with some modifications. Later that month, the County denied the renewed request.

Proceedings in the Superior Court

On October 11, 2006, CFAC filed a petition for writ of mandate, seeking to compel the County to produce the GIS basemap. Among the exhibits attached to the petition was the County's GIS Basemap Data request form, which details the procedure and the required fees for obtaining that data. Based in part on the fee schedule contained in that form, CFAC asserted that the cost of obtaining county-wide parcel information alone "would be approximately $250,000." As legal support for its petition, CFAC relied on the CPRA, and on the California Constitution, article 1, section 3.. The County answered, then CFAC filed its replication to the answer.

In January 2007, CFAC moved for judgment on its petition. The County opposed the motion, and CFAC replied. At a hearing held in February 2007, the court authorized the County to file a supplemental response, which it did the following month. CFAC successfully sought an opportunity to reply.

The trial court thereafter conducted two further hearings in April 2007. A substantial volume of evidence and argument was presented to the trial court.

On May 18, 2007, the trial court filed a 27-page written order.

In its factual findings, the court described GIS and the basemap. The court determined that the County "sells the GIS basemap to members of the public for a significant fee and requires all recipients to enter into a mutual non-disclosure agreement." Later in its order, the court observed that the County had "actually entered into agreements with 18 different entities, 15 of those being government entities."

****381** Addressing the legal issues, the court noted both parties' agreement that "the resolution of this dispute turns on whether the public record is exempt." ***1311** The court then discussed various proffered CPRA exemptions, ultimately rejecting them all for different reasons.

Having found that no exemption was available under the CPRA, the court ordered the County to provide CFAC with the GIS basemap, at the County's direct cost. The court stayed the order until June 25, 2007, to permit the parties to pursue appellate review.

Proceedings in This Court

[1] On June 12, 2007, the County initiated this writ proceeding.[FN2] It filed a petition accompanied by a memorandum of points and authorities. At the County's request, we issued a temporary stay. CFAC filed preliminary opposition, to which the County replied.

> FN2. The CPRA contains a provision for expedited appellate review by extraordinary writ only. (Gov.Code, § 6259, subd. (c); *Filarsky v. Superior Court* (2002) 28 Cal.4th

419, 426-427, 121 Cal.Rptr.2d 844, 49 P.3d 194.) The scope of review is the same as for direct appeals. (*State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1185, 13 Cal.Rptr.2d 342.)

Order to Show Cause; Responses

In March 2008, we issued an order to show cause to the respondent superior court, inviting opposition by CFAC as the real party in interest.

CFAC filed a return in April 2008, to which the County replied the following month.

Numerous *amici curiae* applied for leave to file five separate briefs in this court. We granted all five applications.[FN3]

FN3. One brief was filed in support of the County by two *amici*, the California State Association of Counties and the League of California Cities. The other four *amicus* briefs were offered in support of CFAC, by (1) the California Newspaper Publishers' Association, and various news and other organizations; (2) the National Security Archive, the Center for Democracy and Technology, and the Electronic Frontier Foundation; (3) American Business Media, et al., commercial and nonprofit entities that compile public records for various uses; and (4) 77 GIS Professionals.

The Record

In connection with its June 2007 petition in this court, the County filed an eight-volume petitioner's appendix consisting of nearly 2,000 pages. The following month, we granted the County's request to augment the record with transcripts of the two hearings conducted by the superior court in April 2007.

1312** In 2008, we received and granted three requests for judicial notice.[FN4] DESPITE having*382** taken judicial notice of these documents, we need not rely on them in resolving this proceeding. (*Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184, fn. 1, 151 Cal.Rptr. 837, 588 P.2d 1261; see also, *Windham at Carmel Mountain Ranch Assn. v. Superior Court* (2003) 109 Cal.App.4th 1162, 1173, fn. 11, 135 Cal.Rptr.2d 834; *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 30, 34 Cal.Rptr.3d 520.)

FN4. The first request for judicial notice was submitted by the County's *amici*, the California State Association of Counties and the League of California Cities. The subject of this request for judicial notice is the legislative history of Assembly Bill No. 3265 (Chapter 447, Statutes of 1988), which enacted Government Code section 6254.9, part of the California Public Records Act. We received and granted this request for judicial notice in June 2008. Shortly thereafter, CFAC opposed the request and moved for reconsideration. In doing so, CFAC expressed no objection "to the Court's taking judicial notice of legislative history materials that may be pertinent to showing the intent of the Legislative as a whole when enacting the bill." But it argued that a large number of documents included in the request for judicial notice fail to satisfy that standard. In opposing the motion for reconsideration, petitioner's *amici* urged the propriety of noticing one particular document targeted by CFAC, a 1988 memorandum from the City of San Jose, which sponsored the bill. In reply, CFAC disagreed with *amici's* assessment of the 1988 memorandum.

The second request for judicial notice was made by CFAC's *amici*, the California Newspaper Publishers' Association, et al.; it was received and granted in June 2008. Attached to that request are 10 newspaper articles, offered "to establish the widespread use of GIS basemap data in reporting, which is relevant to this Court's Government Code § 6255 inquiry into the public interest served by releasing GIS basemap data."

The third request for judicial notice was filed by the County in July 2008. It asks this court to judicially notice documents from the United States Copyright Office demonstrating that two California cities have registered copyrights.

CONTENTIONS

As indicated above, the County offers three grounds to support its petition, which asserts trial court error in mandating disclosure of its GIS basemap.

The County's first argument relies on federal law, including the Critical Infrastructure Information Act of 2002. According to the County, that statute and its accompanying regulations preempt state law. And under those superseding federal provisions, disclosure of the GIS basemap is prohibited, because it has been validated by the United States Department of Homeland Security as protected critical infrastructure information.

The County's second argument is based on state law, the CPRA. According to the County, even if the CPRA is not preempted by federal law, its "catchall" exemption shields the GIS basemap from public disclosure.

As the third ground for its petition, the County posits that even if neither preemption nor exemption supports nondisclosure, it should be allowed (a) to ***1313** demand end user agreements, because the GIS basemap is copyrightable, and (b) to recover more than its direct cost of providing the record, based on a provision of the CPRA.

DISCUSSION

Addressing each of the County's three contentions in turn, we first provide an overview of the relevant general principles of law. We then set forth the parties' arguments in greater detail, followed by our analysis.

I. Federal Homeland Security Law

A. Overview

1. The Statute

The federal statute at issue here is the Critical Infrastructure Information Act of 2002 (CII Act). (6 U.S.C. §§ 131-134.) The CII Act is part of the Homeland Security Act of 2002, which established the Department of Homeland Security (DHS). (See *id.*,§§ 101, 111(a)..) Within the DHS, Congress established an Office of Intelligence and Analysis and an Office of Infrastructure Protection. (6 U.S.C. § 121(a)..) The statutory responsibilities associated with those offices include carrying out "comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States," and developing "a comprehensive national plan for securing the key resources and critical infrastructure of the United States, including power production, generation, and distribution systems, information technology and telecommunications systems (including satellites), electronic financial and property****383** record storage and transmission systems, emergency preparedness communications systems, and the physical and technological assets that support such systems." (*Id.*, (d)(2), (5).)

At the heart of the CII Act is the protection of critical infrastructure information (CII), statutorily defined as "information not customarily in the public domain and related to the security of critical infrastructure or protected systems...." (6 U.S.C. § 131(3).) "The CII Act authorized DHS to accept information relating to critical infrastructure from the public, owners and operators of critical infrastructure, and State, local, and tribal governmental entities, while limiting public disclosure of that sensitive information under the Freedom of Information Act ... and other laws, rules, and processes." (71 Fed. Reg. 52262 (September 1, 2006).)

The CII Act contains a section aimed at protecting voluntarily shared critical infrastructure information. (6 U.S.C. § 133.) Concerning the disclosure of such information, it provides ***1314** in pertinent part: "Notwithstanding any other provision of law, critical infrastructure information (including the identity of the submitting person or entity) that is voluntarily submitted to [the DHS] for use by that agency regarding the security of critical infrastructure and protected systems ... [¶] (A) shall be exempt from disclosure under ... the Freedom of Information Act[ ]" and "(E) shall not, if provided to a State or local government or government agency ... [¶] ... be made available pursuant to any State or local law requiring disclosure of information or records[.]" (*Id.*, (a)(1)(A), (E)(i); see O'Reilly, 1 Federal Information Disclosure 3d (2000 & Westlaw Dec. 2008 update) § 13:14 [describing this provision as a "much-tinkered clause" that was "hotly contested as the bills were debated"].)

The CII Act directs the Department of Homeland Security to "establish uniform procedures for the receipt, care, and storage by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government." (6 U.S.C. § 133(e)(1)..) It further provides that those procedures "shall include mechanisms" for "the protection and maintenance of the confidentiality of such information so as to permit the sharing of such information within the Federal Government and with State and local governments, and the issuance of notices and warnings related to the protection of critical infrastructure and protected systems, in such manner as to protect from public disclosure the identity of the submitting person or entity, or information that is proprietary, business sensitive, relates specifically to the submitting person or entity, and is otherwise not appropriately in the public domain." (*Id.*, (e)(2)(D).)

2. Regulations

The federal regulations implementing the CII Act are found in the Code of Federal Regulations, volume 6, part 29. Those regulations are intended to implement the federal statute "through the establishment of uniform procedures for the receipt, care, and storage of Critical Infrastructure Information (CII) voluntarily submitted to the Department of Homeland Security (DHS)." (6 C.F.R. § 29.1(a) (2007).)

As stated in the regulations: "Consistent with the statutory mission of DHS to prevent terrorist attacks within the United States and reduce the vulnerability of the United States to terrorism, DHS will encourage the voluntary submission of CII by safeguarding and protecting that information from unauthorized disclosure and by ensuring that such information is, as necessary, securely shared with State and ****384** local government pursuant to ... the CII Act. As required by the CII Act, these rules establish procedures regarding: ... [¶] The receipt, validation, handling, storage, proper marking and use of information as PCII[.]" (6 C.F.R. § 29.1(a) (2007).)

***1315** PCII (protected critical infrastructure information) is CII that has been validated by DHS. (6 C.F.R. § 29.2(g) (2007).)

Among the regulations is one relied on by the County, which states that PCII "shall be treated as exempt from disclosure under the Freedom of Information Act and any State or local law requiring disclosure of records or information." (6 C.F.R. § 29.8(g) (2007).)

3. Preemption

The County's reliance on federal law rests on its contention that the CII Act and accompanying regulations preempt the CPRA.

[2][3][4] As a general principle, federal law preempts state law (1) where Congress has said so explicitly, (2) where Congress has said so implicitly, as when federal regulation occupies the field exclusively, and (3) where federal and state law conflict. (*Lorillard Tobacco Co. v. Reilly* (2001) 533 U.S. 525, 541, 121 S.Ct. 2404, 150 L.Ed.2d 532.) Unless Congress has demonstrated a clear and manifest purpose to the contrary, the presumption is that federal law does not preempt the states' historic police powers. (*Id.* at pp. 541-542, 121 S.Ct. 2404; *Jevne v. Superior Court* (2005) 35 Cal.4th 935, 949-950, 28 Cal.Rptr.3d 685, 111 P.3d 954.) Moreover, a federal "agency literally has no power to act, let alone pre-empt the validly enacted legislation of a sovereign State, unless and until Congress confers power upon it." (*Lousiana Public Serv. Comm. v. FCC* (1986) 476 U.S. 355, 374, 106 S.Ct. 1890, 90 L.Ed.2d 369.)

B. The Parties' Contentions

1. Preemption

The County claims express federal preemption under 6 Code of Federal Regulation, part 29.8(g), which exempts PCII from the operation of federal, state, and local laws requiring the disclosure of public records. As the County points out, the preamble to the final rule promulgated by Department of Homeland Security notes "the preeminence of PCII status under the CII Act and these regulations in relation to any State, territorial, or tribal public disclosure laws or policies." (71 Fed.Reg., *supra*, at p. 52268.) That same document also states: "This rulemaking, as required by the underlying statute, preempts State, local and tribal laws that might otherwise require disclosure of PCII...." (*Id.* at p. 52271; see also, O'Reilly, 2 Federal Information Disclosure 3d, *supra*, § 27.22.)

The County also asserts that Congress has implicitly

preempted state law, arguing that "the Federal Regulations set forth a scheme for PCII validation ***1316** that is so pervasive, it is unreasonable to infer that Congress intended the states to occupy the field." (See *Jevne v. Superior Court, supra*, 35 Cal.4th at p. 958, 28 Cal.Rptr.3d 685, 111 P.3d 954.)

CFAC disputes the County's preemption claim. In its view, "the CII Act does not preempt" the CPRA, but "merely creates a rule of nondisclosure" that has no application to this case.

2. Statutory Arguments

According to CFAC, the County's position rests on a misreading of the federal act as it relates to CII that has been voluntarily submitted to the federal government, such as the GIS basemap at issue here. (See 6 U.S.C. § 133(a)..) In CFAC's view, the provisions in the federal statute ****385** limiting disclosure apply only to those entities *receiving* PCII from DHS, not to those *submitting* it. Furthermore, CFAC argues, the federal protection for CII has been incorporated into state law as an exemption in the CPRA, but that exemption was waived by the County's sale of the GIS basemap to non-governmental entities. (See Gov.Code, §§ 6254, subd. (ab) [provision exempting CII]; 6254, subd. (k) [provision incorporating federal law exemptions]; 6254.5 [waiver provision].)

The County disputes this view of the CII Act, arguing that it imposes "an artificial distinction" between submitting and receiving entities. The County also dismisses CFAC's waiver argument, calling it "irrelevant" given federal preemption of the CPRA.

C. Analysis

We agree with CFAC that the pertinent question here is not whether federal homeland security law trumps state disclosure law. Instead, the analysis in this case turns on whether the federal act and accompanying regulations apply at all. As we now explain, we conclude that the CII Act does not apply here because the County is a *submitter* of CII, not a *recipient* of PCII. Given that conclusion, we need not consider whether the CII Act preempts the CPRA.

1. Federal law distinguishes between submitters and recipients of PCII.

In undertaking our statutory analysis, we begin by examining the language of the relevant provisions. (*Smith v. Superior Court* (2006) 39 Cal.4th 77, 83, 45 Cal.Rptr.3d 394, 137 P.3d 218.) Statutory interpretation presents a legal ***1317** question, which we decide de novo. (*Ibid.*; *Los Angeles Unified School Dist. v. Superior Court* (2007) 151 Cal.App.4th 759, 767, 60 Cal.Rptr.3d 445.)

The CII Act provides that critical infrastructure information that has been voluntarily submitted "shall be exempt from disclosure" under the federal Freedom of Information Act. (6 U.S.C. § 133(a)(1)(A).) As more particularly relevant here, it also prohibits disclosure of PCII "pursuant to any State or local law requiring disclosure of information or records"-but only "if provided *to* a State or local government...."(*Id.*, (a)(1)(E)(i), italics added.)

We are not aware of any case law interpreting this provision. But the regulations promulgated under the CII Act bear out the statute's apparent distinction between the submission of CII and the receipt of PCII, as we now explain.

We begin with the specific regulation cited by the County, 6 Code of Federal Regulations, part 29.8.. Subdivision (g) of that regulation provides in part that PCII "shall be treated as exempt from disclosure under the Freedom of Information Act and any State or local law requiring disclosure of records or information." (6 C.F.R. § 29.8(g) (2007).) We acknowledge that subdivision (g) does not distinguish between CII submitters and PCII recipients. But another subdivision of this regulation does reflect that distinction.

Subdivision (b) of 6 Code of Federal Regulations, part 29.8 thus states in pertinent part: "PCII may be provided *to* a state or local government entity for the purpose of protecting critical infrastructure or protected systems...." (6 C.F.R. § 29.8(b) (2007), italics added.) "The *provision* of PCII to a State or local government entity will normally be made only pursuant to an arrangement with the PCII Program Manager providing for compliance ... and acknowledging the understanding and responsibilities of the *recipient.* State and local governments *receiving* such information will acknowledge ****386** in such arrangements the primacy of PCII protections under the

CII Act" and "agree to assert all available legal defenses to disclosure of PCII under State, or local public disclosure laws, statutes or ordinances...."(*Ibid.*, italics added.)

This emphasis on recipients of PCII also appears at subdivision (d) of the next regulation, which provides: "State and local governments *receiving* information marked 'Protected Critical Infrastructure Information' shall not share that information" except as allowed by the regulations. (6 C.F.R. § 29.8(d)(1) (2007), italics added.) On the subject of enforcement, subdivision (d) continues: "if the PCII Program Manager determines that an entity or person who has *received* PCII has violated the provisions of ***1318** this Part or used PCII for an inappropriate purpose, the PCII Program Manager may disqualify that entity or person from future receipt of any PCII or future receipt of any sensitive homeland security information...." (*Id.*, § 29.9(d) (2), italics added.)

Other regulations reflect the same dichotomy between the submission of CII and the receipt of PCII, as the following excerpts demonstrate. "The regulations in this Part apply to all persons and entities that are authorized to handle, use, or store PCII or that otherwise *accept receipt* of PCII."(6 C.F.R. § 29.1(b) (2007), italics added.) The regulations help ensure that CII is "securely *shared with* State and local government pursuant to ... the CII Act."(*Id.*, § 29.1(a), italics added.) "A Federal, State or local agency that *receives* PCII may utilize the PCII only for purposes appropriate under the CII Act, including securing critical infrastructure or protected systems." (*Id.*, § 29.3(b), italics added.) "All Federal, State and local government entities shall protect and maintain information as required by these rules or by the provisions of the CII Act when that information *is provided to the entity* by the PCII Program Manager...." (*Id.*, § 29.5(c), italics added.)

The preamble to the final regulations likewise confirms the submitter/recipient distinction. For example, it clarifies that "State, local and tribal contractors" are not "precluded from *receiving* PCII" and it notes a change in the final regulations "to permit employees of Federal, State, local, and tribal contractors who are engaged in the performance of services in support of the purposes of the CII Act, to communicate with a *submitting* person ... when authorized by the PCII Program Manager or ... designee." (71 Fed.Reg., *supra*, at p. 52269, italics added.)

[5] Taken as a whole, this consistent and pervasive regulatory language supports our construction of the relevant provision of the CII Act, 6 United States Code section 133(a)(1)(E)(i). As we interpret that provision, it draws a distinction between the submission of CII and the receipt of PCII. In the hands of the submitter, the nature of the information remains unchanged; in the hands of the governmental recipient, it is protected from disclosure. [FN5]

> FN5. As one commentator observed in the context of voluntary submissions of CII by private industry, "firms cannot use DHS as a 'black hole' in which to hide information that would otherwise have come to light [.]" (Bagley, Benchmarking, Critical Infrastructure Security, and the Regulatory War on Terror (2006) 43 Harv. J. on Legis. 47, 57, fn. omitted.)

This interpretation is also consonant with other aspects of the statute and regulations, particularly those that limit the uses of PCII in the hands of governmental recipients. As provided in the statute, PCII provided to a state or local government or agency shall not "be used other than for the purpose of protecting critical ****387** infrastructure or protected systems, or in furtherance of ***1319** an investigation or the prosecution of a criminal act[.]" (6 U.S.C. § 133(a)(1)(E)(iii).) The regulations are to the same effect: "A Federal, State or local agency that receives PCII may utilize the PCII only for purposes appropriate under the CII Act, including securing critical infrastructure or protected systems." (6 C.F.R. § 29.3(b) (2007).) If the GIS basemap constitutes PCII in the County's hands, as it maintains, then federal law strictly restricts use of that data to the narrow purposes enumerated in the CII Act.

In sum, we conclude that the CII Act distinguishes between submitters of CII and recipients of PCII, with the result that the federal statute's prohibition on disclosure of protected confidential infrastructure information applies only when it has been "*provided to* a State or local government or government agency...." (6 U.S.C. § 133(a)(1)(E)(i), italics added.)

2. Because the County did not receive PCII, the federal provisions do not apply.

[6] In this case, the information at issue was submitted *by* the County, not *to* it. Because the County is a submitter of CII, not a recipient of PCII, neither the CII Act nor the accompanying regulations apply here.

Having concluded that federal homeland security law does not apply in this case, we turn to the County's contention that the CPRA exempts the GIS basemap from disclosure.

II. State Law Disclosure Exemption

As before, we summarize the governing law, then we describe and analyze the parties' contentions.

A. Overview

"In 1968, the Legislature clarified the scope of the public's right to inspect records by enacting the CPRA." (*County of Los Angeles v. Superior Court* (2000) 82 Cal.App.4th 819, 825, 98 Cal.Rptr.2d 564.) "The CPRA 'replaced a hodgepodge of statutes and court decisions relating to disclosure of public records.' " (*Los Angeles Unified School Dist. v. Superior Court*, *supra*, 151 Cal.App.4th at p. 765, 60 Cal.Rptr.3d 445.) The CPRA is codified in the Government Code, starting at section 6250.[FN6]

> FN6. Further unspecified statutory citations are to the Government Code.

1. Policy Favoring Disclosure

[7][8] The CPRA "was enacted for the purpose of increasing freedom of information by giving members of the public access to information in the ***1320** possession of public agencies." (*Filarsky v. Superior Court*, *supra*, 28 Cal.4th at pp. 425-426, 121 Cal.Rptr.2d 844, 49 P.3d 194.) Legislative policy favors disclosure. (*San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356, 1408, 44 Cal.Rptr.3d 128 (*San Lorenzo.*)) " All public records are subject to disclosure unless the Public Records Act expressly provides otherwise." (*BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 751, 49 Cal.Rptr.3d 519.)

California voters endorsed that policy in 2004 by approving Proposition 59, which amended the state constitution to explicitly recognize the "right of access to information concerning the conduct of the people's business" and to provide that "the writings of public officials and agencies shall be open to public scrutiny." (Cal. Const., art. 1, § 3, subd. (b)(1); see ****388***BRV, Inc. v. Superior Court*, *supra*, 143 Cal.App.4th at p. 750, 49 Cal.Rptr.3d 519; *Los Angeles Unified School Dist. v. Superior Court*, *supra*, 151 Cal.App.4th at p. 765, 60 Cal.Rptr.3d 445.)

2. Exemptions

"The right of access to public records under the CPRA is not absolute." (*Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1283, 48 Cal.Rptr.3d 183, 141 P.3d 288.) The CPRA "states a number of exemptions that permit government agencies to refuse to disclose certain public records." (*Ibid.*) To a large extent, these exemptions reflect legislative concern for privacy interests. (*Ibid.*; *Commission on Peace Officer Standards and Training v. Superior Court* (2007) 42 Cal.4th 278, 289, 64 Cal.Rptr.3d 661, 165 P.3d 462.) The CPRA features two categories of exemptions: "(1) materials expressly exempt from disclosure pursuant to section 6254; and (2) the 'catchall exception' of section 6255...." (*City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1019, 88 Cal.Rptr.2d 552, fn. omitted; *San Lorenzo*, *supra*, 139 Cal.App.4th at p. 1408, 44 Cal.Rptr.3d 128.)

a. Enumerated Exemptions

[9] "The Legislature has assembled a diverse collection of exemptions from disclosure in section 6254." (*Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1068, 112 Cal.Rptr.2d 80, 31 P.3d 760; see also, §§ 6254.1-6254.29.) For example, public records need not be disclosed if their disclosure "is exempted or prohibited pursuant to federal or state law ...." (§ 6254, subd. (k); cf. *Rim of the World Unified School Dist. v. Superior Court* (2002) 104 Cal.App.4th 1393, 1397, 129 Cal.Rptr.2d 11.) But "this exemption 'is not an independent exemption. It merely incorporates other prohibitions established by law.' " (*Copley Press, Inc. v. Superior Court*, *supra*, 39 Cal.4th at p. 1283, 48 Cal.Rptr.3d 183, 141 P.3d 288.) Also listed among the express exemptions is: "Critical infrastructure information, as defined in ***1321**Section 131(3) of Title 6 of the United States Code, that is

voluntarily submitted to the California Office of Homeland Security for use by that office ....” (§ 6254, subd. (ab).)

b. Catchall Provision

[10] Section 6255 “allows a government agency to withhold records if it can demonstrate that, on the facts of a particular case, the public interest served by withholding the records clearly outweighs the public interest served by disclosure.” (*San Lorenzo, supra,* 139 Cal.App.4th at p. 1408, 44 Cal.Rptr.3d 128.) This catchall exemption “contemplates a case-by-case balancing process, with the burden of proof on the proponent of nondisclosure to demonstrate a clear overbalance on the side of confidentiality.” (*Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, 1071, 44 Cal.Rptr.3d 663, 136 P.3d 194.)“Where the public interest in disclosure of the records is not outweighed by the public interest in nondisclosure, courts will direct the government to disclose the requested information.” (*City of San Jose v. Superior Court, supra,* 74 Cal.App.4th at p. 1018, 88 Cal.Rptr.2d 552.)

c. Operation

[11][12] Since disclosure is favored, all exemptions are narrowly construed. (Cal. Const., art. I, § 3, subd. (b)(2); *Board of Trustees of California State University v. Superior Court* (2005) 132 Cal.App.4th 889, 896, 34 Cal.Rptr.3d 82.) The agency opposing disclosure bears the burden of proving that an exemption applies. ****389**(*Board of Trustees of California State University v. Superior Court*, at p. 896, 34 Cal.Rptr.3d 82.)

[13][14] Moreover, if only part of a record is exempt, the agency is required to produce the remainder, if segregable. (§ 6253, subd. (a).) In other words, “the fact that a public record may contain some confidential information does not justify withholding the entire document.” (*State Bd. of Equalization v. Superior Court, supra,* 10 Cal.App.4th at p. 1187, 13 Cal.Rptr.2d 342; see *Connell v. Superior Court* (1997) 56 Cal.App.4th 601, 614, 65 Cal.Rptr.2d 738 [the superior court's “limited disclosure order eliminated the Controller's legitimate security concern”].) “The burden of segregating exempt from nonexempt materials, however, remains one of the considerations which the court can take into account in determining whether the public interest favors disclosure under section 6255.” (*American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 453, fn. 13, 186 Cal.Rptr. 235, 651 P.2d 822.)

[15][16] Exemptions can be waived. (§ 6254.5; *County of Los Angeles v. Superior Court* (2005) 130 Cal.App.4th 1099, 1107, 30 Cal.Rptr.3d 708.) “Disclosure to one member of the public would constitute a waiver of the exemption ***1322** [citation], requiring disclosure to any other person who requests a copy.” (86 Ops.Cal.Atty.Gen. 132, 137 (2003), citing § 6254. 5; *City of San Jose v. Superior Court, supra,* 74 Cal.App.4th at p. 1018, 88 Cal.Rptr.2d 552.)

B. The Parties' Contentions

At issue here is whether the GIS basemap is exempt from disclosure under the CPRA. As stated in the trial court's decision: “Given County's admission that the GIS basemap and data elements are a public record, both parties agree that the resolution of this dispute turns on whether the public record is exempt.”

[17][18] In this court, the County proffers only one exemption, the catchall provision of section 6255.[FN7] That provision reads in pertinent part: “The agency shall justify withholding any record by demonstrating that the record in question is exempt ****390** under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.”(§ 6255, subd. (a).) When this exemption is invoked, the court undertakes a balancing process. (*Michaelis, Montanari & Johnson v. Superior Court, supra*, 38 Cal.4th at p. 1071, 44 Cal.Rptr.3d 663, 136 P.3d 194.) The court assesses whether “on the facts of [the] particular case, the public interest served by withholding the records clearly outweighs the public interest served by disclosure.” (*San Lorenzo, supra,* 139 Cal.App.4th at p. 1408, 44 Cal.Rptr.3d 128.)

> FN7. In the trial court, the County urged other exemptions, including section 6254, subdivision (ab), which exempts “Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the California Emergency Management Agency

> for use by that office, including the identity of the person who or entity that voluntarily submitted the information." As stated in papers that the County filed in January 2007, it was then "in the process of submitting the GIS Basemap as 'Critical Infrastructure Information' to the California Office of Homeland Security" pursuant to section 6254, subdivision (ab). In a similar vein, the County also relied below on section 6254, subdivision (k), which incorporates other exemptions "pursuant to federal or state law," together with the federal regulations governing CII. The County proffered several other statutory exemptions as well. The trial court rejected all of the County's statutory exemption arguments. With the exception of the catchall exemption of section 6255, the County does not renew any of those arguments here.
>
> In this court, by contrast, the County's *amici* urge an additional exemption, based on section 6254.9, which the County argued unsuccessfully below. Under that section, computer software-defined to include computer mapping systems-is not treated as a public record. (§ 6254.9, subds.(a), (b).)
>
> Since the point is raised only by *amici*, we need not and do not consider it. "Amici curiae must take the case as they find it. Interjecting new issues at this point is inappropriate." (*California Assn. for Safety Education v. Brown* (1994) 30 Cal.App.4th 1264, 1275, 36 Cal.Rptr.2d 404; see also, e.g., *Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1047, fn. 12, 56 Cal.Rptr.3d 814, 155 P.3d 226.) We therefore decline to address the exemption issue raised solely by the County's *amici* here.

***1323** Addressing the disclosure prong of the balancing test, the County asserts that the public interest in obtaining the GIS basemap is both minimal and hypothetical. Concerning the nondisclosure prong, the County asserts two reasons for withholding the record: one related to straitened public finances and the other arising from security concerns. Weighing the two prongs, the County says, "the balance clearly favors the County's position of nondisclosure because concerns over security and the risk of undermining the County's ability to continue providing valuable services to County residents clearly outweighed CFAC's hypothetical interest."

CFAC disagrees, with particular emphasis on countering the County's security argument.

C. Analysis

[19] In analyzing the availability of this exemption, we accept the trial court's express and implied factual determinations if supported by the record, but we undertake the weighing process anew. (*Connell v. Superior Court, supra*, 56 Cal.App.4th at p. 612, 65 Cal.Rptr.2d 738.) As our high court has explained, "although a reviewing court should weigh the competing public interest factors de novo, it should accept as true the trial court's findings of the 'facts of the particular case' [citation], assuming those findings are supported by substantial evidence." (*Michaelis, Montanari & Johnson v. Superior Court, supra*, 38 Cal.4th at p. 1072, 44 Cal.Rptr.3d 663, 136 P.3d 194.)

In this case, the trial court considered the evidence, made factual findings, and engaged in the weighing process before concluding that the balance of interests favored disclosure. Though it described both parties' "competing interests" as "somewhat hypothetical," the court nevertheless concluded that the County had "not shown a 'clear overbalance' in favor of non-disclosure."

On independent review of the competing interests, we agree with the trial court's conclusion. In our view, the County has both understated the public interest in disclosure and overstated the public interest in nondisclosure.

1. Public Interest in Permitting Disclosure

According to the County, "CFAC's interest in disclosure of the GIS Basemap is hypothetical," and it is also "minimal" since acquiring the information "can be accomplished by lesser means." We disagree.

a. The public interest in disclosure is not hypothetical.

In pressing its characterization of CFAC's interest as hypothetical, the County cites the trial court's concerns about CFAC's standing, since it ***1324** "represents no citizen." The County paraphrases the trial court's observation: "Other than a generalized proclamation of the 'public's right to ****391** know,' CFAC[ ] has *no* interest in the GIS Basemap."

[20][21] In making that argument, the County misapprehends the focus of the inquiry. As CFAC points out, the motive of the particular requester is irrelevant; the question instead is whether disclosure serves the *public* interest. "The Public Records Act does not differentiate among those who seek access to public information." (*State Bd. of Equalization v. Superior Court, supra*, 10 Cal.App.4th at p. 1190, 13 Cal.Rptr.2d 342; see also, e.g., *American Civil Liberties Union Foundation v. Deukmejian, supra*, 32 Cal.3d at p. 451, 186 Cal.Rptr. 235, 651 P.2d 822; *Connell v. Superior Court, supra*, 56 Cal.App.4th at pp. 611-612, 65 Cal.Rptr.2d 738; § 6257.5.)

[22][23] " 'If the records sought pertain to the conduct of the people's business there *is* a public interest in disclosure. The *weight* of that interest is proportionate to the gravity of governmental tasks sought to be illuminated and the directness with which the disclosure will serve to illuminate.' " (*Connell v. Superior Court, supra*, 56 Cal.App.4th at p. 616, 65 Cal.Rptr.2d 738.) "The existence and weight of this public interest are conclusions derived from the nature of the information." (*Ibid.*) As this court put it, the issue is "whether disclosure would contribute significantly to public understanding of government activities." (*City of San Jose v. Superior Court, supra*, 74 Cal.App.4th at p. 1018, 88 Cal.Rptr.2d 552.)

[24] Here, the trial court summarized some of CFAC's proffered "examples as to how access to the GIS basemap will contribute to its understanding of government activities" including "comparison of property tax assessments, issuance of permits, treatment of tax delinquent properties, equitable deployment of public services, issuance of zoning variances." As these examples show, the public's interest in disclosure is very real, given " 'the gravity of governmental tasks sought to be illuminated and the directness with which the disclosure will serve to illuminate.' " (*Connell v. Superior Court, supra*, 56 Cal.App.4th at p. 616, 65 Cal.Rptr.2d 738.)

b. The public interest in disclosure is not minimal.

[25] In support of its second point, the County cites a decision of this court for the principle that "public interest in disclosure is minimal ... where the requester has alternative, less intrusive means of obtaining the information sought." (*City of San Jose v. Superior Court, supra*, 74 Cal.App.4th at p. 1020, 88 Cal.Rptr.2d 552.) The trial court explicitly recognized that principle, saying "the availability of alternate sources of obtaining the information is relevant in weighing the public interest in disclosure." The court also stated that "CFAC ***1325** could obtain the same information found in the GIS basemap by performing a (more laborious) search of other publicly available records." FN8

> FN8. CFAC contends that the trial court was mistaken factually as to this point.

The County misplaces its reliance on our decision in *City of San Jose v. Superior Court, supra*, 74 Cal.App.4th 1008, 88 Cal.Rptr.2d 552. That case is factually distinguishable, since it involved privacy concerns that are not in play here. In *City of San Jose*, we determined that "airport noise complainants have a significant privacy interest in their names, addresses, and telephone numbers as well as in the fact that they have made a complaint to their government, and that disclosure of this information would have a chilling effect on future complaints." ****392**(*Id.* at pp. 1023-1024, 88 Cal.Rptr.2d 552.) Concerning the CPRA catchall exemption, we explained: "In determining whether the public interest in nondisclosure of individuals' names and addresses outweighs the public interest in disclosure of that information," courts evaluate whether disclosure serves "the legislative purpose" of illuminating the performance of public duties. (*Id.* at p. 1019, 88 Cal.Rptr.2d 552.) "Where disclosure of names and addresses would not serve this purpose, denial of the request for disclosure has been upheld." (*Ibid.*)"Courts have also recognized that the public interest in disclosure is minimal, even when the requester asserts that personal contact is necessary to confirm government compliance with mandatory duties, where the requester has alternative, less intrusive means of obtaining the information sought." (*Id.* at p. 1020, 88 Cal.Rptr.2d 552.) Con-

versely, "where the disclosure of names and addresses is necessary to allow the public to determine whether public officials have properly exercised their duties by refraining from the arbitrary exercise of official power, disclosure has been upheld." *(Ibid.)*

[26][27] While the availability of less intrusive means to obtain the information may be a factor in the analysis, particularly in privacy cases, the existence of alternatives does not wholly undermine the public interest in disclosure. (Cf. *City of San Jose v. Superior Court, supra*, 74 Cal.App.4th at p. 1025, 88 Cal.Rptr.2d 552.) Even where a requester "has an alternative means to access the information, it should not prohibit it from obtaining the documents under the CPRA." (*Los Angeles Unified School Dist. v. Superior Court, supra*, 151 Cal.App.4th at p. 772, fn. 6, 60 Cal.Rptr.3d 445.)The records at issue here " 'pertain to the conduct of the people's business' " so " 'there *is* a public interest in disclosure.' " (*Connell v. Superior Court, supra*, 56 Cal.App.4th at p. 616, 65 Cal.Rptr.2d 738.) For the reasons proffered by CFAC and summarized by the trial court, it also appears that "disclosure would contribute significantly to public understanding of government activities." (*City of San Jose v. Superior Court*, at p. 1018, 88 Cal.Rptr.2d 552.)

In sum, we conclude, the public interest in disclosure of the GIS basemap is neither hypothetical nor minimal. That brings us to the second prong of the balancing test, assessing the public interest in nondisclosure.

***1326** *2. Public Interest in Preventing Disclosure*

The County proffers two interests to support nondisclosure. First, the County cites financial issues, positing its "continuing effort to provide the public with a high level of service during challenging economic times" and emphasizing the threatened impact on first responders. Second, the County raises public safety concerns, stressing the need "to protect sensitive infrastructure information not customarily in the public domain." We consider and reject each in turn.

a. The County's financial interests do not compel nondisclosure.

According to the County, it developed the GIS basemap "at a significant cost in terms of time, effort and resources." If "forced to provide the GIS Basemap to all requesters at the direct cost of production," the County contends, it will lose its ability to sell the technology, with the result that "the County alone will have to shoulder the obligation of maintaining the GIS Basemap-a difficult task during times of ever increasing budget deficits. The end result will be a reduction in service levels to the public." The County also asserts that losing "control over its intellectual**393** property (copyright interests in the GIS Basemap) with the dissemination of electronic copies ... will negatively impact the tools used by first responders" in the county. It argues: "This is no hypothetical scenario, but is based upon actual experiences of other counties."

In support of this claim in the trial court, the County submitted a declaration stating that San Diego and Ventura counties "saw their programs wither away once outside funding disappeared (due to providing the GIS maps at little or no cost to the public)."

[28] CFAC countered below with a declaration that "San Diego County's GIS basemap program ... is alive and thriving" and "Ventura County's GIS operation is robust and growing." That declaration also averred that "fourteen counties in California ... provide their GIS basemap data in electronic format to the public free of charge" while another "twenty-three counties in California ... provide their GIS basemap data in electronic format to the public for the cost of reproduction."

Addressing the financial issues, the trial court expressed concern "that County will have difficulty recouping the expense incurred in creating the GIS basemap," but it noted the "dearth of evidence that this was County's initial plan." Additionally, as just noted, CFAC offered evidence that other counties disclosing their GIS basemap programs had suffered few ill fiscal effects. The trial court apparently credited this evidence. Applying the ***1327** deferential substantial evidence review standard, we do so as well. (*Connell v. Superior Court, supra*, 56 Cal.App.4th at p. 613, 65 Cal.Rptr.2d 738.)

Beyond the state of the evidence in this particular record, there are other reasons to accord little weight to the financial concerns. As has been said: "There is nothing in the Public Records Act to suggest that a records request must impose *no* burden on the gov-

ernment agency." (*State Bd. of Equalization v. Superior Court, supra*, 10 Cal.App.4th at p. 1190, fn. 14, 13 Cal.Rptr.2d 342; see also *Connell v. Superior Court, supra*, 56 Cal.App.4th at p. 614, 65 Cal.Rptr.2d 738.) Thus, for example, the $43,000 cost of compiling an accurate list of names was not "a valid reason to proscribe disclosure of the identity of such individuals." (*CBS Broadcasting Inc. v. Superior Court* (2001) 91 Cal.App.4th 892, 909, 110 Cal.Rptr.2d 889; cf. *American Civil Liberties Union Foundation v. Deukmejian, supra*, 32 Cal.3d at pp. 452-453, 186 Cal.Rptr. 235, 651 P.2d 822 [courts should not "ignore any expense and inconvenience involved in segregating nonexempt from exempt information"].)

b. The proffered security concerns do not compel nondisclosure.

The County also asserts a public safety interest in guarding against terrorist threats, based on its contention that the GIS basemap contains sensitive information that is not publicly available, such as the exact location of Hetch Hetchy reservoir components. The County cites the precision of its "georeferenced parcel map" (described as accurate "within +/1 foot in the developed areas and +/5 feet in the hilly areas") in arguing that disclosure of the basemap would "allow anyone to locate the parcels overlaying the Hetch Hetchy water lines. Matching the GIS Basemap with orthophotographs, which are in the public domain, would allow anyone to pinpoint weak spots in the system and quickly and effectively plan a terrorist attack." By contrast, the County maintains, other publicly available maps "are not georeferenced, do not contain GPS coordinates, do not include orthophotographs, and are not a continuous representation of the Hetch Hetchy water supply system-key elements****394** to disclosing precise locations of the critical infrastructure."

To prove this claim in the trial court, the County submitted the declaration of Robert Colley, Acting GIS Manager for its Information Services Department, which includes these statements: "Requiring the County to provide the GIS Basemap in electronic format to the public will jeopardize public safety because it will provide the public with access to sensitive information that is not otherwise publicly available." "For public safety reasons, it is critical that geospatial information such as the GIS Basemap stay out of the public domain." "The actual location of the Hetch Hetchy water lines are generally known, but not provided in any detail for obvious reasons-to minimize the threat of terrorist attack on the water system." "The ***1328** exact location of Hetch Hetchy water lines is an integral part of the GIS Basemap and not easily segregable."

To refute that claim, CFAC offered the declaration of Bruce Joffe, a member of the Geospatial Working Group, which "is organized by the U.S. Department of Homeland Security" and "is comprised of GIS professionals from various federal agencies ... and the private sector" who "discuss issues of GIS technology and national security." Joffe declared: "Based on my knowledge, skill, experience, training and education in the areas of GIS, the lines identified by the County in each of the documents as Hetch Hetchy 'water pipelines' are actually not the pipelines themselves, but the land easement areas or rights-of-way. The easements cover an area greater than the pipelines themselves, and do not indicate the specific location of pipes, which are buried underground." "The location of the Hetch Hetchy easements can be obtained from other sources...." Joffe opined "that the location of the Hetch Hetchy easement [s] is not the kind of information that would uniquely aid terrorists.... Restricting public access to the County's GIS basemap data is unlikely to be a major impediment for terrorists in identifying and locating their desired targets." Joffe also addressed segregability, declaring: "The County could easily disclose the data elements and descriptive attribute data requested by CFAC in its June 12, 2006 Public Record Act request without also disclosing the location of the Hetch Hetchy easements, if it chose to do so." He then described how that could be done.

[29] Addressing these issues, the trial court explained that not everything in the GIS basemap has security implications. As the County conceded and the trial court found, "some of the information in the GIS basemap" is a matter of public record that has "nothing to do with critical infrastructure." By way of example, the court cited "the assessed value of a single family home in San Jose" and questioned why it should be "cloaked with the protection of CII/PCII simply by submission to OHS" (the California Office of Homeland Security). The court continued: "It appears County has belatedly focused on to the information pertaining to 'water lines' and used that as its

primary, if not sole, basis for obtaining the CII/PCII designation without any concession that the GIS basemap consists of any other publicly available information." The court concluded: "County has not made the initial effort to establish that all information contained in the GIS basemap is CII. Having failed to meet its initial burden, County's assertion of this particular exemption fails." The record supports these findings. (Cf., e.g., *Williams v. Superior Court* (1993) 5 Cal.4th 337, 355, 19 Cal.Rptr.2d 882, 852 P.2d 377 [a public agency may not "shield a record from public disclosure, regardless of its nature, simply****395** by placing it in a file label[ ]ed 'investigatory' "].)

Furthermore, the trial court observed, "it does not appear this has been an overriding concern to County, as shown by the dissemination of the GIS ***1329** basemap to others, albeit relying on a form of nondisclosure agreement." As noted above, the County sold the GIS basemap to 18 purchasers, including three private entities. In the trial court's view: "If the security issue were of greater importance, one would think there would be no dissemination of the GIS basemap whatever." We see no reasoned basis for overturning that inference. (Cf. § 6254.5, subd. (e) [no waiver of exemption where disclosure is made to *government* agency that "agrees to treat the disclosed material as confidential"]; *County of Los Angeles v. Superior Court, supra*, 130 Cal.App.4th 1099, 1107, 30 Cal.Rptr.3d 708 [this section "provides a means for governmental agencies to share privileged materials without waiving the privilege"].)

[30][31] Security may be a valid factor supporting nondisclosure. (See, e.g., *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1346, 283 Cal.Rptr. 893, 813 P.2d 240 [governor's private appointment schedule]; *Procunier v. Superior Court* (1973) 35 Cal.App.3d 211, 212, 110 Cal.Rptr. 531 [diagrams depicting correctional facility], disapproved on other grounds in *Shepherd v. Superior Court* (1976) 17 Cal.3d 107, 124, 130 Cal.Rptr. 257, 550 P.2d 161;73 Ops.Cal.Atty.Gen. 236, 237-239 (1990) [same].) But the "mere assertion of possible endangerment does not 'clearly outweigh' the public interest in access to these public records." *(CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 652, 230 Cal.Rptr. 362, 725 P.2d 470; accord, *Commission on Peace Officer Standards and Training v. Superior Court, supra*, 42 Cal.4th at p. 302, 64 Cal.Rptr.3d 661, 165 P.3d 462.) While we are sensitive to the County's security concerns, we agree with the trial court that the County failed to support nondisclosure on this ground.

3. Weighing the Competing Interests

The balancing test is applied on a case-by-case basis. *(Michaelis, Montanari & Johnson v. Superior Court, supra*, 38 Cal.4th at p. 1071, 44 Cal.Rptr.3d 663, 136 P.3d 194; *CBS Broadcasting Inc. v. Superior Court, supra*, 91 Cal.App.4th at p. 908, 110 Cal.Rptr.2d 889.) As the party seeking to withhold the record, the County bears the burden of justifying nondisclosure.. *(Board of Trustees of California State University v. Superior Court, supra*, 132 Cal.App.4th at p. 896, 34 Cal.Rptr.3d 82; *Los Angeles Unified School Dist. v. Superior Court, supra*, 151 Cal.App.4th at p. 767, 60 Cal.Rptr.3d 445.)

Independently weighing the competing interests in light of the trial court's factual findings, we conclude that the public interest in disclosure outweighs the public interest in nondisclosure. We thus agree with the trial court that the County failed to "demonstrate a clear overbalance on the side of confidentiality." *(Michaelis, Montanari & Johnson v. Superior Court, supra*, 38 Cal.4th at p. 1071, 44 Cal.Rptr.3d 663, 136 P.3d 194.)

***1330 III. Limitations on Disclosure**

Having concluded that neither federal nor state law provides a basis for withholding the GIS basemap, we turn to the County's arguments for limitations on disclosure. As previously noted, the County argues for the right (A) to demand end user agreements, because the GIS basemap is copyrightable, and (B) to recover more than its direct costs of production, based on section 6253.9, subdivision (b), of the CPRA.

****396 *A. Copyright Protection***

1. Background

In arguments below, the County raised similar copyright arguments, relying on section 6254.9. Section 6254.9 permits the nondisclosure of computer software, defined to include computer mapping systems. (§ 6254.9, subds. (a), (b).) This statutory exemption

is based on a legislative determination that software is not a public record. (*Id.*, subd. (a).) Nevertheless, as subdivision (d) explains: "Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer. Public records stored in a computer shall be disclosed as required by this chapter." (*Id.*, subd. (d).) Subdivision (e) addresses copyright as follows: "Nothing in this section is intended to limit any copyright protections." (*Id.*, subd. (e).) Relying on that last subdivision, the County argued that it could "require end users to execute an agreement not to violate [its] copyright interest in the GIS Basemap."

CFAC disagreed. It asserted: "No reported California decision has ever concluded that a public agency may refuse to release copies of public records to protect its own purported copyright."

The trial court agreed with CFAC. The court briefly explained its reasoning in footnote 19 of its May 2007 order. The court first quoted section 6254.9, subdivision (e), then stated: "CFAC is correct in its interpretation that, when read in conjunction with subdivision (d), copyright protection is not appropriate here."

2. The Parties' Contentions

In this court, the County raises both procedural and substantive arguments concerning copyright.

Procedurally, the County complains that the trial court did not reach its copyright claim. The County acknowledges the court's holding in footnote 19. ***1331** But it maintains that the court made its ruling in the context of deciding that the GIS basemap is not "computer software" and thus does not qualify for exemption under section 6254.9, subdivision (a). In the County's view, "the trial court should not have summarily dismissed the County's request for an end user agreement, without first examining the creativity and compilation issues." (See 17 U.S.C. § 101 [defining compilation]; *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.* (1991) 499 U.S. 340, 345, 111 S.Ct. 1282, 113 L.Ed.2d 358 [recognizing a low threshold of creativity for copyright protection].)

In its substantive arguments, the County maintains that copyright law protects its compilation of data as a "unique arrangement." The County seeks the right to demand an end user agreement upon disclosure of the GIS basemap, to protect its rights as the "rightful owner" of copyrightable intellectual property in the map.

CFAC disputes both the procedural and substantive arguments interposed by the County. Countering the County's procedural claim, CFAC points to footnote 19 of the trial court's order, characterizing it as an explicit rejection of the County's copyright arguments. Substantively, CFAC argues, the CPRA does not recognize copyright interests in public records such as these, and it thus precludes the imposition of an end user agreement upon their release.

3. Analysis

[32][33] At the outset, we reject the County's procedural claim that the trial court should have examined "the creativity and compilation issues" involved in its copyright claim. For one thing, the County did not brief those specific issues in its papers below. It simply made the bald ****397** assertion that it owns a "copyright interest in the GIS Basemap" followed by a citation to the federal copyright statute. (17 U.S.C. § 101 et seq.) And that assertion was addressed and rejected by the trial court, as shown by its citation to authority. In any event, the County preserved its substantive copyright claim, which we now review.

a. State Law Question

[34][35] State law "determines whether [a public official] may claim a copyright in his office's creations." (*Microdecisions, Inc. v. Skinner* (2004) 889 So.2d 871, 875; see *County of Suffolk, New York v. First American Real Estate Solutions* (2001) 261 F.3d 179, 188; *Building Officials & Code Adm'rs, Inc. v. Code Tech, Inc.* (1980) 628 F.2d 730, 735-736.) "Each state may determine whether the works of its government entities may be copyrighted." (*Microdecisions, Inc. v. Skinner*, at p. 876.)

***1332** In some states, statutes explicitly recognize the authority of public officials or agencies to copyright specific public records that they have created. (See *Microdecisions, Inc. v. Skinner, supra*, 889 So.2d at pp. 874, 875 [Florida state law authorized "certain agencies to obtain copyrights" and "permitted certain categories of public records to be copyrighted," but it gave county property appraisers "no authority to as-

sert copyright protection in the GIS maps, which are public records"]; cf. *County of Suffolk, New York v. First American Real Estate Solutions, supra*, 261 F.3d at p. 189 [New York's public record law "did not specifically address the impact on a state agency's copyright"].)

At issue here is how California's public records law treats the County's copyright claim. That is a question of first impression in this state. Because it requires statutory interpretation of the CPRA, it is also a question of law, which we review de novo. (*Los Angeles Unified School Dist. v. Superior Court, supra*, 151 Cal.App.4th at p. 767, 60 Cal.Rptr.3d 445.) We begin our analysis with the specific provision cited by the County in support of its copyright interest.

b. Section 6254.9

The CPRA references copyright protection in a single provision, section 6254.9, subdivision (e). As previously noted, that provision states: "Nothing in this section is intended to limit any copyright protections."(§ 6254.9, subd. (e).)

As the County reads that statutory language, it "expressly provides for copyright protection despite production of public records." Furthermore, the County says, copyright protection "is not limited to computer software," which has its own discrete exemption in section 6254.9, subdivision (a).[FN9]

> FN9. Section 6254.9, subdivision (a) provides: "Computer software developed by a state or local agency is not itself a public record under this chapter." The County conceded below that the GIS basemap is a public record. The contrary arguments of its *amici* notwithstanding, that concession appears well-founded. (Cf. 88 Ops.Cal.Atty.Gen. 153, 157 (2005) ["parcel boundary map data maintained by a county assessor in an electronic format is subject to public inspection and copying" under CPRA].) Since the GIS basemap is a public record, the County cannot claim the computer software exemption of section 6254.9, subdivision (a). Nor does it attempt to do so here. (See fn. 7, *ante*.)

We reject the County's interpretation. At the outset, we reiterate the principle that restrictions on disclosure are narrowly construed. (Cal. Const., art. 1, § 3, subd. (b)(1)(2); *Board of Trustees of California State University v. Superior Court, supra*, 132 Cal.App.4th at p. 896, 34 Cal.Rptr.3d 82.) With that principle in mind, ****398** we consider the County's contentions, applying settled rules of statutory construction. As the California Supreme Court recently reaffirmed, "our fundamental task is to ascertain the Legislature's intent so as to effectuate the purpose of the statute." (*Smith v. Superior Court, supra*, 39 Cal.4th at p. 83, 45 Cal.Rptr.3d 394, 137 P.3d 218.)

***1333** *(i) Statutory Language*

In undertaking our analysis, we start with the language of the provision. (*Smith v. Superior Court, supra*, 39 Cal.4th at p. 83, 45 Cal.Rptr.3d 394, 137 P.3d 218; *Los Angeles Unified School Dist. v. Superior Court, supra*, 151 Cal.App.4th at p. 767, 60 Cal.Rptr.3d 445.) We again quote that language, emphasizing two words that guide our construction: "Nothing in this *section* is intended to *limit* any copyright protections."(§ 6254.9, subd. (e), italics added.)

First, the provision uses the word "section." (§ 6254.9, subd. (e).) It does not employ the broader term "chapter," which would encompass the entire CPRA. That word choice directs our focus to the subject of section 6254.9, which is computer software. Given this context, use of the word "section" strongly suggests that the referenced copyright protection is limited to computer software.

[36] Second, the provision states that it does not "limit" copyright protection. (§ 6254.9, subd. (e).) In our view, that phrasing operates only as a legislative *recognition* that copyright protection for software is available in a proper case; it cannot be read as an affirmative *grant of authority* to obtain and hold copyrights. The Legislature knows how to explicitly authorize public bodies to secure copyrights when it means to do so. For example, the Education Code includes a number of provisions authorizing copyrights, including this one: "Any county board of education may secure copyrights, in the name of the board, to all copyrightable works developed by the board, and royalties or revenue from such copyrights are to be for the benefit of the board securing such copyrights." (Ed.Code, § 1044; see also, e.g., *id.*, §§ 32360, 35170, 72207, 81459.) The Health and Safety

Code contains this provision, which references the statute at issue here: "Copyright protection and all other rights and privileges provided pursuant to Title 17 of the United States Code are available to the [Department of Toxic Substances Control] to the fullest extent authorized by law, and the department may sell, lease, or license for commercial or non-commercial use any work, including, but not limited to, videotapes, audiotapes, books, pamphlets, and computer software as that term is defined in Section 6254.9 of the Government Code, that the department produces whether the department is entitled to that copyright protection or not." (Health & Saf.Code, § 25201.11, subd. (a); see also, e.g., *id.*, § 13159.8, subd. (c).) Here, by contrast, section 6254.9 contains no such express authorization to secure copyrights.

(ii) Legislative History

"If the statutory terms are ambiguous, we may examine extrinsic sources, including ... the legislative history." ***1334***(Smith v. Superior Court, supra,* 39 Cal.4th at p. 83, 45 Cal.Rptr.3d 394, 137 P.3d 218; accord, *Los Angeles Unified School Dist. v. Superior Court, supra,* 151 Cal.App.4th at pp. 767-768, 60 Cal.Rptr.3d 445.)

On the other hand, where "legislative intent is expressed in unambiguous terms, we must treat the statutory language as conclusive; 'no resort to extrinsic aids is necessary or proper.' " ****399***(Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 61, 124 Cal.Rptr.2d 507, 52 P.3d 685; see also, e.g., *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc., supra,* 133 Cal.App.4th at pp. 29-30, 34 Cal.Rptr.3d 520.) That is the situation here. By the express terms of section 6254.9, the Legislature has demonstrated its intent to acknowledge copyright protection for software only.

In sum, while section 6254.9 recognizes the availability of copyright protection for software in a proper case, it provides no statutory authority for asserting any other copyright interest.

c. End User Restrictions

Having found no specific statutory copyright authorization, we now consider whether the County may demand licensing agreements or otherwise impose restrictions on end users.

While no California court has addressed this question, courts in two other jurisdictions have, reaching opposite conclusions. Applying New York law, the court in *County of Suffolk* found end user agreements permissible. *(County of Suffolk, New York v. First American Real Estate Solutions, supra,* 261 F.3d at pp. 191-192.) There, the court construed the "plain language" of New York's public records law "to permit [the] County to maintain its copyright protections while complying with its obligations" under the statute. *(Id.* at p. 191.) Three years later, applying Florida law, the court in *Microdecisions* rendered a contrary decision. *(Microdecisions, Inc. v. Skinner, supra,* 889 So.2d at p. 872.) There, the court decided that a county property appraiser could not "require prospective commercial users of the records created in his office to first enter into a licensing agreement." *(Ibid.)*

[37] As a matter of first impression in California, we conclude that end user restrictions are incompatible with the purposes and operation of the CPRA. In arriving at that conclusion, we find ourselves in agreement with the Florida decision in *Microdecisions, Inc. v. Skinner, supra,* 889 So.2d 871. That case addressed similar statutory provisions, and its reasoning is persuasive. *(Id.* at pp. 875-876.) By contrast, we find the *County of Suffolk* case less consistent with our state's law. (See *County of Suffolk, New York v. First American Real Estate Solutions, supra,* 261 F.3d at pp. 191-192.)

As the discussion in *Microdecisions* reflects, Florida's public records law is similar to California's in at least two important respects. ***1335***(Microdecisions, Inc. v. Skinner, supra,* 889 So.2d at p. 875.) For one thing, under Florida law: "A requester's motive for seeking a copy of documents is irrelevant." *(Ibid.)* The same is true in California. By express legislative mandate, the CPRA "does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure."(§ 6257.5; see *City of San Jose v. Superior Court, supra,* 74 Cal.App.4th at p. 1018, 88 Cal.Rptr.2d 552.) In addition, California shares a second key similarity with Florida law: both states limit the fees that may be charged for producing a public record. In Florida, "the fee prescribed by law" is "generally the cost of reproduction." *(Microdecisions, Inc. v. Skinner,* at p. 875.) California law in-

corporates the same general limitation. (§ 6253, subd. (b).)

Beyond these factual similarities, we find the Florida court's reasoning persuasive. The *Microdecisions* court discussed "the interplay between the federal copyright act and Florida's public records law." (*Microdecisions, Inc. v. Skinner, supra*, 889 So.2d at p. 876.) It explained: "The copyright act gives the holder the exclusive rights to reproduce and distribute a ****400** work and to authorize others to do so." (*Ibid.*, citing 17 U.S.C. § 106(1), (3).) "As such, a copyright owner may refuse to provide copies of the work or may charge whatever fee he wants for copies of the work or a license to use the work." (*Ibid.*)"The Florida public records law, on the other hand, requires State and local agencies to make their records available to the public for the cost of reproduction." (*Ibid.*, citing § 119.07(1)(a), Florida Statutes (2002)..) "This mandate overrides a government agency's ability to claim a copyright in its work unless the legislature has expressly authorized a public records exemption." (*Microdecisions, Inc. v. Skinner*, at p. 876.)

The same persuasive reasoning applies to the interplay between copyright law and California's public records law, with the result that unrestricted disclosure is required. Doing so serves effectuates the purpose of the statute, which is "increasing freedom of information by giving members of the public access to information in the possession of public agencies." (*Filarsky v. Superior Court, supra*, 28 Cal.4th at pp. 425-426, 121 Cal.Rptr.2d 844, 49 P.3d 194.) This same "policy is enshrined in the Constitution." (*Los Angeles Unified School Dist. v. Superior Court, supra*, 151 Cal.App.4th at p. 776, 60 Cal.Rptr.3d 445, citing Cal. Const., art. I, § 3, subd. (b).) That policy would be undercut by permitting the County to place extra-statutory restrictions on the records that it must produce, through the use of end user agreements.

d. Conclusion

The CPRA contains no provisions either for copyrighting the GIS basemap or for conditioning its release on an end user or licensing agreement by the ***1336** requester. The record thus must be disclosed as provided in the CPRA, without any such conditions or limitations.

B. Recovery of Additional Costs

In its final argument in this court, the County seeks the right to charge additional amounts for producing the GIS basemap, beyond its direct cost, pursuant to section 6253.9, subdivision (b).

1. Overview

Generally speaking, an agency may recover only the direct cost of duplicating a record. (§ 6253, subd. (b).) The agency "shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable." (*Ibid.*) For paper records, direct cost has been interpreted to cover the "cost of running the copy machine, and conceivably also the expense of the person operating it" while excluding any charge for "the ancillary tasks necessarily associated with the retrieval, inspection and handling of the file from which the copy is extracted." (*North County Parents Organization v. Department of Education* (1994) 23 Cal.App.4th 144, 148, 28 Cal.Rptr.2d 359; compare *id.* at p. 149, 28 Cal.Rptr.2d 359 (dis. opn. of Huffman, J.); see also *Los Angeles Unified School Dist. v. Superior Court, supra*, 151 Cal.App.4th at p. 770, 60 Cal.Rptr.3d 445; 88 Ops.Cal.Atty.Gen., *supra*, at p. 164.)

For electronic records, however, the statute allows an agency to recover specified ancillary costs in either of two cases: (1) when it must "produce a copy of an electronic record" between "regularly scheduled intervals" of production, or (2) when compliance with the request for an electronic record "would require data compilation, extraction, or programming to produce the record."(§ 6253.9, subd. (b)(1), (2); see 88 Ops.Cal.Atty.Gen., *supra*, at p. 164.) Under those circumstances,****401** the agency may charge "the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record ...." (§ 6253.9, subd. (b).)

2. The Parties' Contentions

Here, the County asserts entitlement to greater costs on both statutory bases. (§ 6253.9, subd. (b)(1), (2).) The County maintains: "It is undisputed that in order to comply with CFAC's request, the County would be required to produce a copy of the electronic GIS Basemap at an unscheduled interval. It is also undisputed that compliance requires data compilation, ex-

traction, or programming to produce the GIS Basemap." According to the County, it raised this issue below, but the trial court failed to address it.

***1337** CFAC acknowledges that the County raised the issue below. But in its view, the County failed to advise the trial court of the amount claimed "nor did it indicate how it proposes to calculate that cost, an omission that no doubt led to the respondent court's order to produce the basemap for the direct cost of duplication."

CFAC also questions whether the statute applies, saying "since the County sends copies of the basemap to its paid subscribers on a regular basis, it does not appear that any additional programming would be necessary to fulfill CFAC's request for the data under the PRA."(See § 6253.9, subd. (b)(1).)

The County disputes this last point in its reply.

3. Analysis

[38] Given the parties' opposing factual contentions, coupled with the absence of an explicit ruling by the trial court on this point, remand is warranted on the question of costs.

SUMMARY OF CONCLUSIONS

I. Federal homeland security provisions do not apply here.

As recognized in both the Critical Infrastructure Information Act and the accompanying regulations promulgated by Department of Homeland Security, there is a distinction between submitters of critical infrastructure information (CII) and recipients of protected critical infrastructure information (PCII). The federal prohibition on disclosure of protected confidential infrastructure information applies only to recipients of PCII. Because the County did not receive PCII, the federal provisions do not apply.

II. The proffered California Public Records Act exemption does not apply.

After independently weighing the competing interests in light of the trial court's factual findings, we conclude that the public interest in disclosure outweighs the public interest in nondisclosure.

III. A. There is no statutory basis either for copyrighting the GIS basemap or for conditioning its release on a licensing agreement. B. The matter will be remanded to the trial court to allow it to determine allowable costs that the County may charge for producing the GIS basemap.

***1338 DISPOSITION**

Let a peremptory writ of mandate issue commanding respondent court to set aside that portion of its order of May 18, 2007, that directs the County to "[c]harge CFAC the direct cost for the copy provided." In all other respects, the County's request for an extraordinary writ is denied. Respondent is directed to conduct a new hearing to determine allowable costs that the County may charge for producing the requested public record. The stay issued on ****402** June 14, 2007, by this court shall remain in effect until this opinion is final. Costs in this original proceeding are awarded to real party in interest, CFAC.

WE CONCUR: ELIA, Acting P.J., and MIHARA, J.
Cal.App. 6 Dist.,2009.
County of Santa Clara v. Superior Court
170 Cal.App.4th 1301, 89 Cal.Rptr.3d 374, 37 Media L. Rep. 1331, 09 Cal. Daily Op. Serv. 1526, 2009 Daily Journal D.A.R. 1802

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