

Right to Know Advisory Committee
Legislative Subcommittee
DRAFT: Review Criteria

**CHAPTER 13
PUBLIC RECORDS AND PROCEEDINGS**

**SUBCHAPTER 1-A
~~EXCEPTIONS TO PUBLIC RECORDS~~ EXCEPTIONS AND ACCESSIBILITY**

§431. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Public records exception. "Public records exception" or "exception" means a provision in a statute or a proposed statute that declares a record or a category of records to be confidential or otherwise not a public record for purposes of subchapter 1.

2. Review committee. "Review committee" means the joint standing committee of the Legislature having jurisdiction over judiciary matters.

3. Advisory committee. "Advisory committee" means the Right To Know Advisory Committee established in Title 5, section 12004-J, subsection 14 and described in section 411.

§432. Exceptions to public records; accessibility; review

1. Recommendations. During the second regular session of each Legislature, the review committee may report out legislation containing its recommendations concerning the repeal, modification and continuation of public records exceptions and any recommendations concerning the exception review process and the accessibility of public records. Before reporting out legislation, the review committee shall notify the appropriate committees of jurisdiction concerning public hearings and work sessions and shall allow members of the appropriate committees of jurisdiction to participate in work sessions.

2. Process of evaluation. According to the schedule in section 433, the advisory committee shall evaluate each public records exception that is scheduled for review that biennium. This section does not prohibit the evaluation of a public record exception by either the advisory committee or the review committee at a time other than that listed in

section 433. The following criteria apply in determining whether each exception scheduled for review should be repealed, modified or remain unchanged:

- A. Whether a record protected by the exception still needs to be collected and maintained;
- B. The value to the agency or official or to the public in maintaining a record protected by the exception;
- C. Whether federal law requires a record to be confidential;
- D. Whether the exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;
- E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;
- F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;
- G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;
- H. Whether the exception is as narrowly tailored as possible; and
- I. Any other criteria that assist the review committee in determining the value of the exception as compared to the public's interest in the record protected by the exception.

2-A. Accountability review of agency or official. In evaluating each public records exception, the advisory committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.

2-B. Recommendations to review committee. The advisory committee shall report its recommendations under this section to the review committee no later than the convening of the second regular session of each Legislature.

2-C. Accessibility of public records. The advisory committee may include in its evaluation of public records statutes the consideration of any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.

3. Assistance from committees of jurisdiction. The advisory committee may seek assistance in evaluating public records exceptions from the joint standing committees of the Legislature having jurisdiction over the subject matter related to the exceptions being reviewed. The advisory committee may hold public hearings after notice to the appropriate committees of jurisdiction.

§433. Schedule for review of exceptions to public records

1. Scheduling guidelines.

2. Scheduling guidelines. The advisory committee shall use the following list as a guideline for scheduling reviews of public records exceptions.

A. Exceptions codified in the following Titles are scheduled for review in 2008:

- (1) Title 1;
- (2) Title 2;
- (3) Title 3;
- (4) Title 4;
- (5) Title 5;
- (6) Title 6;
- (7) Title 7;
- (8) Title 8;
- (9) Title 9-A; and
- (10) Title 9-B.

B. Exceptions codified in the following Titles are scheduled for review in 2010:

- (1) Title 10;
- (2) Title 11;
- (3) Title 12;
- (4) Title 13;
- (5) Title 13-B;
- (6) Title 13-C;
- (7) Title 14;
- (8) Title 15;
- (9) Title 16;
- (10) Title 17;
- (11) Title 17-A;
- (12) Title 18-A;
- (13) Title 18-B;
- (14) Title 19-A;

- (15) Title 20-A; and
- (16) Title 21-A.

C. Exceptions codified in the following Titles are scheduled for review in 2012:

- (1) Title 22;
- (2) Title 23;
- (3) Title 24;
- (4) Title 24-A; and
- (5) Title 25.

D. Exceptions codified in the following Titles are scheduled for review in 2014:

- (1) Title 26;
- (2) Title 27;
- (3) Title 28-A;
- (4) Title 29-A;
- (5) Title 30;
- (6) Title 30-A;
- (7) Title 31;
- (8) Title 32;
- (9) Title 33;
- (10) Title 34-A;
- (11) Title 34-B;
- (12) Title 35-A;
- (13) Title 36;
- (14) Title 37-B;
- (15) Title 38; and
- (16) Title 39-A.

3. Scheduling changes. The advisory committee may make adjustments to the scheduling guidelines provided in subsection 2 as it determines appropriate and shall notify the review committee of such adjustments.

§434. Review of proposed exceptions to public records; accessibility of public records

1. Procedures before legislative committees. Whenever a legislative measure containing a new public records exception is proposed, or a change that affects the accessibility of a public record is proposed, the joint standing committee of the Legislature having jurisdiction over the proposal shall hold a public hearing and determine the level of support for the proposal among the members of the committee. If there is support for the proposal among a majority of the members of the committee, the committee shall request the review committee to review and evaluate the proposal pursuant to subsection 2 and to report back to the committee of jurisdiction. A proposed exception or proposed change that affects accessibility of a public record may not be

enacted into law unless review and evaluation pursuant to ~~subsection~~ subsections 2 and 2-C have been completed.

2. Review and evaluation. Upon referral of a proposed public records exception from the joint standing committee of the Legislature having jurisdiction over the proposal, the review committee shall conduct a review and evaluation of the proposal and shall report in a timely manner to the committee to which the proposal was referred. The review committee shall use the following criteria to determine whether the proposed exception should be enacted:

- A. Whether a record protected by the proposed exception needs to be collected and maintained;
- B. The value to the agency or official or to the public in maintaining a record protected by the proposed exception;
- C. Whether federal law requires a record covered by the proposed exception to be confidential;
- D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;
- E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;
- F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;
- G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;
- H. Whether the proposed exception is as narrowly tailored as possible; and
- I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception.

2-A. Accountability review of agency or official. In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and

use are consistent with the purpose of the exception and that public access to public records is not hindered.

2-C. Accessibility of public records. In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.

3. Report. The review committee shall report its findings and recommendations on whether the proposed exception or proposed limitation on accessibility should be enacted to the joint standing committee of the Legislature having jurisdiction over the proposal.

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