

**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: June 6, 2016

TO: Honorable Members of the Rules, Elections, Intergovernmental Relations, and
Neighborhoods Committee

FROM: Sharon M. Tso 
Chief Legislative Analyst

Assignment No: 16-05-0467

SUBJECT: SUPPORT for AB 2853, as amended (Gatto)

CLA RECOMMENDATION: Adopt attached Resolution to include in the City's 2015-2016 State Legislative Program, SUPPORT for AB 2853, as amended (Gatto).

SUMMARY

The City Clerk is requesting that the City support AB 2853, as amended (Gatto), which would allow a public agency to comply with the California Public Records Act by referring the requester to its website, where the requested records are available.

BACKGROUND

On May 23, 2016, the City Clerk submitted a request to establish the City's support for AB 2853 (Gatto), regarding public records requests. The California Public Records Act (CPRA) grants the right to access public records. Any member of the public can submit a request for non-exempt public records. The agency must respond to a request within ten days of receipt. The agency must also reasonably assist the requester in locating the requested information and tailoring the request to avoid a denial. Under the CPRA, the purposes for which records are sought are immaterial to whether a request should be granted by the agency. Thus, once a public record is determined to be available for public inspection and not subject to a statutory exemption, then that record must be disclosed regardless of the requester's motive. This has allowed private companies to use public resources and personnel to retrieve information that can profit their company.

It has been asserted that AB 2853, as amended (Gatto), would respond to such abuses of the CPRA. As an example, the bill's author submitted to the Assembly Committee on Judiciary a copy of a public record request submitted by a private company, Schoolie, Inc., to several school districts and local educational agencies in the State. This company had used school district staff and resources to find and assemble information that it would then use to profit the company. The information requested by companies, like Schoolie, Inc., are often available online or even on the agency's website. In addition to using the information for their own marketing purposes, companies often sell the information to data brokers who use it to market an array of products.

This bill would only apply to records that are uploaded on the agency's website—not records that are

available elsewhere. Accordingly, it has been asserted that this bill would not single-handedly solve the issue of companies exploiting public agency resources for profit. Nevertheless, this bill would realize potential savings for State and local agencies in cases where they are able to fulfill PRA requests by referring requesters to an agency website for the information. This bill is supported by the League of California Cities, Association of California School Administrators, Glendale Unified School District, and Orange County Department of Education.

The City Clerk has indicated that this bill would allow it to be more efficient and cost-effective by referring requesters to the City's online Council File Management System (CFMS), rather than following the exhaustive process mandated by the CPRA. But, the extent of the savings the City will amass as a result of this bill is inconclusive, considering that the City Clerk's Council and Public Services Division web page already includes a link to the CFMS website. Nonetheless, the City Clerk has reported that this bill has the potential to eliminate or reduce "fishing expeditions", and require the requester to first use the CFMS to search for the requested records. The City Clerk has also reported that this bill could affect all City agencies possessing public records on an accessible website.

DEPARTMENT NOTIFIED

City Clerk

BILL STATUS

2/19/16 Introduced

5/19/16 Referred to Committee on Judiciary



Deborah Choi
Analyst

Attachment: 1. Resolution

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, private businesses are exploiting the California Public Records Act (CPRA) by making public record requests to public agencies, particularly educational agencies and local school districts, to utilize the requested information for profit; and

WHEREAS, these agencies expend public resources and staff to retrieve and assemble the requested information, which is then used to market the for-profit businesses' own products or sold to data brokers for targeted marketing purposes; and

WHEREAS, under the CPRA, public agencies must reply to a public record request within ten days, which entails not only physically retrieving the records but also reviewing them to determine which, if any, exemptions apply, or if any other statutes prohibit their disclosure; and

WHEREAS, the public agency is also required to make reasonable efforts to help the requester identify responsive documents and assist the person in refining the request so as to avoid a denial; and

WHEREAS, due to the increased volume of public record requests in recent years, cities across the State have struggled to comply with the ten-day response period required by CPRA, hired additional staff dedicated solely to CPRA requests, and shouldered all the costs on their local public agencies; and

WHEREAS, currently pending before the State Assembly is a bill, AB 2853, as amended (Gatto), which would allow a public agency, when appropriate, to meet its CPRA disclosure requirements by referring the requester to the agency's website where the records are available; and

WHEREAS, if the requester does not have access to the Internet or cannot reproduce them after being referred to the agency's website, the agency would still be required to provide copies of records, per AB 2853, as amended (Gatto); and

WHEREAS, public agencies could be more efficient and cost-effective by posting disclosable records online, where a member of the public could immediately access information without making a formal CPRA request and without subjecting the agency to undergo the required responses to a request; and

WHEREAS, the City Clerk's Council and Public Services Division would experience similar savings and efficiencies with this ability to refer requesters to the City's online Council File Management System;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2015-2016 State Legislative Program SUPPORT for AB 2853, as amended (Gatto), which would allow a public agency to comply with the California Public Records Act by posting any public record on its website, and in response to a request for a public record available on the website, referring the requester to the website.