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Public Law Update – New Public Records Act Legislation Aims to Ease Burdens on Public Agencies

Two new bills amending the California Public Records Act will go into effect on January 1, 2027 that provide some relief to public agencies in complying with the Act's mandates while still ensuring transparency and access to public records.

The California Public Records Act requires a public agency to provide a response to a public records request informing the requester whether their request seeks copies of disclosable public records, in whole or in part, within 10 days of receipt and allows extensions of this time for up to 14 days. AB 1821 amends these deadlines to specify that they are "business days" rather than calendar days. This change in law addresses the issue under the current law of the clock continuing to run on the deadline to provide a response on non-working days. For example, if a request is submitted on a Friday four of the ten calendar days given to provide an initial response fall on the weekend. AB 1821 provides public agencies with more time to process records requests while still ensuring members of the public receive timely responses to their requests.

SB 1159 amends the California Public Records Act and other laws, including the Ralph M. Brown Act and the California Environmental Quality Act, to specify that artificial intelligence systems, autonomous agents, robots, and other nonhuman entities do not have rights under those laws. Artificial intelligence systems and the like are now expressly excluded from the definition of a "person" or "member of the public" under the Public Records Act. This will affect the processing of record requests because agencies do not have to respond to requests that are purely from artificial intelligence systems, agents and robots. However, the statute does not relieve an agency of its duty to respond to a request just because a human used artificial intelligence to help prepare it, so long as "the volume and frequency of the engagement are reasonably consistent with ordinary participation by a natural person." SB 1159 authorizes public agencies to use disclosure verification tools that meet the criteria of Business & Professions Code Section 22757.2 to determine if artificial intelligence is present.

Many public agencies have experienced a large increase in the volume and complexity of public records requests in recent years, largely

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attributed to the proliferation of artificial intelligence. SB 1159 aims to address the drain on public resources that can occur due to artificial intelligence generated records requests and other communications and seeks to preserve those public resources to serve the people of California.

There are still some unanswered questions, which may be clarified through further legislation. For example, what type of evidence should a public agency rely on to show that a public record request is being made by artificial intelligence and not a natural person? What level of assistance from artificial intelligence is inconsistent with the ordinary participation by a natural person-especially given the increasing use of artificial intelligence? In the meantime, public agencies should discuss these questions with their counsel to determine how cities will implement SB 1159.

Burke, Williams & Sorensen, LLP regularly advises clients on legal matters relating to the California Public Records Act.

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