

APPROVED  
By the Board of Directors of  
The Metropolitan Water District  
of Southern California  
at its meeting held

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

APR 11 1995

*Barbara E. Duff*  
EXECUTIVE SECRETARY

7-4

April 10, 1995

To: Board of Directors (Committee on Legislation--Action)  
From: General Manager  
Subject: Senate Bill 323 (Kopp) and Amendments to the California  
Public Records Act

Report

The California Public Records Act requires state and local agencies to make their records open to public inspection at all times during office hours, except as specifically exempted from disclosure by law. Existing law further provides that except for those records exempt from disclosure, any person may request a copy of public record from any state or local agency upon payment of a fee covering the cost of duplication.

Senate Bill 323 (SB 323) is the modified reprise of Quentin Kopp's earlier Senate Bill 95 on amendments to the Public Records Act. The full text of SB 323 is set forth in Attachment A. SB 323 is summarized below.

1. Expands the definition of "public records" to include "data, sounds, and images that relate to the conduct of the public's business, including directories, indices, cross-indices, and cross-references, and that are prepared, owned, used, or retained by any state or local agency regardless of the physical form or characteristics in which a record is created, copied, indexed, cross-indexed, cross-referenced, modified, or stored."
2. Directs public agencies to ensure, to the extent technologically and economically feasible, that systems used to collect and hold public records purchased or created by the agency after January 1, 1996, to be designed to ensure ease of public access to public records. Systems must meet the following minimum requirements: allow for computer-assisted redaction of exempt information from otherwise disclosable record, allow for production of copies of public records in a format generally acknowledged as being an industry-standard format for information exchange between computer programs, allow for provision, by agencies, of

copies on computer information storage media of all materials produced by the agency or any consultant to the agency in connection with any matter that is placed on an agenda for any matter heard in open session under the Brown Act; allow for network-based computer assisted public access with proper security controls. Agencies are not obligated to provide technical support or copies of manuals and documentation.

3. Requires the agency to identify the provision of law on which it based its decision to withhold a record or, if withholding is based on the public interest, to state in writing the public interest in disclosure and the public interest in nondisclosure. If an action in superior court is later brought to compel disclosure, an agency may not submit documentation, argument or other evidence supporting its decision to withhold information which was not stated in its earlier denial.
4. Reorganizes the disclosure exemptions into two types; specific and categorical. Exemptions which describe broad categories of records such as law enforcement, personal privacy, etc. would remain in the Act. All specific exemptions which are now outside the Act, and any future disclosure exemptions after January 1, 1996, would be descriptively listed in a new section of the Act.

#### EFFECT ON METROPOLITAN

##### A. Expanded Definition of Public Records

Under SB 323, "public records" would include any information, data, sounds and images and their indices and cross-indices that relate to the conduct of the public's business and that are prepared, owned, used or retained, by the agency regardless of physical form or characteristics when it was copied, created, cross-indexed, indexed, modified or stored. This expanded definition will require Metropolitan to provide access to records held in all categories identified. Public agencies are concerned that the expanded definition will require agencies to create records which do not exist and interpret the requirement as creating a public right to query, pose questions to electronic public records databases. This requirement conflicts with existing law where there is no right to ask fact seeking questions in the guise of a records request.

The expanded definition is also unclear regarding whether the requirement to provide "sound" records incorporates

"phone mail" or other phone calls. Since the phone mail system is computer-based, Phone Mail or other phone calls could fall within the requirements of the proposed legislation. Access to phone mail records poses profound privacy issues and redaction concerns.

Because the Public Records Act does not permit Metropolitan to charge costs for staff time expended in researching and retrieving requested records, the expanded definition will result in increased compliance costs to Metropolitan.

#### B. Storage Media Format

Section 6 of SB 323 requires that a copy of computerized data shall be provided in any form that is requested from any of the alternative forms used by the controlling agency. It is important to recognize that not all records are kept in all forms of information storage media used by Metropolitan. The bill is unclear as to whether it would permit the agency to provide the record in the storage media normally used by the agency for that record or would obligate it to deliver or convert the record into any currently used format. Procedures and programs may need to be developed if this requirement is interpreted to require conversion of records into formats which are different from the original format. This portion of the bill affects all existing computerized data used by Metropolitan including financial data, engineering records and files held on personal computers.

#### C. Impact on Current Development Activities

Section 7 of SB 323 poses the most troublesome compliance and implementation concerns. Section 7 applies to an agency's computer systems purchased or created after January 1, 1996. The bill is unclear as to what constitutes a "system." If interpreted broadly, "system" could include each personal computer, host computer system or local area network record system. A broad interpretation poses significant compliance and implementation challenges to ensure ease of public access. The bill is also unclear regarding whether software packages purchased from vendors after the effective date will fall within the bill's design requirements. Vendors may be reluctant to bid on Metropolitan software contracts and be unable to meet the design requirements. "Systems," therefore, must be more fully defined.

It is also unclear if systems development started prior to January 1, 1996, but implemented following that date fall within the bill's requirements. If this is true, current systems

development activities would be affected--increasing the costs. Systems which are in progress that could be affected are as follows:

- \* Projects within ISSP Phase I such as electronic time sheets and Health, Safety and Environmental applications;
- \* Full implementation of SOMMS (Strategic Operations Maintenance Management Systems)
- \* Some portion of WINS (Water Information Systems)
- \* Engineering re-work of PMIS (Project Management Information Systems).

These systems are not currently designed to include the requirements that the bill imposes. In many cases, these projects have utilized purchased packages. If the vendor cannot them make compliant to the extent required by a broad interpretation of these requirements, the entire project could be at risk. These systems represent a \$8.3 million investment.

In addition, since Phase I systems are integrated and share vendor software, all Phase I systems may be affected and require re-work. Since none of these matters were considered in the original project scope, these new matters would result in the overrun of Phase I's \$23.2 million budget. Future planned systems such as E-Mail and document management would be affected by increased costs for customization requirements of purchased packages to conform to the new requirements if the original package was not found to be compliant.

Section 7 requires public agencies to design their computer systems to ensure ease of public access to public records, to the extent technologically and economically feasible. According to a recent Legi-Tech bill Analysis Report, opponents argue that, "even with this feasibility language, the provision would constitute a substantial unfunded mandate, require every public agency in the state to invest millions of dollars in new computer systems. After making the investment, the agencies would not even know if they had complied to the extent technologically and economically feasible." This concern is strongly echoed by Metropolitan based on its ongoing efforts to modernize its information systems. The bill is also unclear whether the agency is the final arbiter of what constitutes "technologically and economically feasible." The bill should clearly set forth the agency's authority on this issue.

Under Section 7 of SB 323, a copy of computerized data shall be provided in a format generally acknowledged as being an industry-standard for information exchange between computer programs. However, SB 323 does not define nor provide guidance as to what constitutes "industry-standard format." Because of various standards currently existing within the industry, greater clarification is necessary in order to understand and comply with this requirement. Furthermore, even if Metropolitan provides computer diskettes in response to a request, there can be no guarantee that the diskettes will perform similarly on the requesting party's hardware system due to compatibility requirements between the software and hardware configurations.

Section 7 of SB 323 would require an agency to identify and classify private and privileged information while continuing to allow access to public information. Metropolitan's existing system does not currently classify information as private or confidential. Staff and consultants, however, are currently undertaking efforts to inventory records, to locate necessary information, classify field data, create indices and categorize records in recognition of Metropolitan's existing obligation to provide public access to records balanced with Metropolitan's need to protect sensitive information. Metropolitan is methodically evaluating its information systems and procedures to meet its future needs. The timing for implementation of these needs must be at Metropolitan's discretion in order to derive the full benefit of its development work.

Section 7 would require public agencies in the design of their future systems to consider ease of public access in the collection and retention of public records. This system design should ensure that the record-holding system allows for redaction of confidential information. Redaction is the editing out of confidential or privileged information in an otherwise public record. The redaction requirement poses a significant design hurdle. Privacy and authentication issues present the greatest problems for system design. The League of California Cities believes that constitutional privacy rights are endangered by the bill because of the difficulty of ensuring that all confidential and exempt information from computerized databases would be redacted.

Section 7 would also require the agency to allow for timely public access to copies of all computerized public records by way of the largest nonprofit, nonproprietary public computer network. This requirement implies that public records should be available on the Internet. Agencies are concerned that security measures are infeasible to insure protection of public records provided via Internet. Internet access would not adequately enable the agency to ascertain who was requesting the information

or for what purpose. For example, unauthorized public access to information concerning location of pipelines and communications lines could severely interfere with or jeopardize an agency's operations thereby creating a serious threat to public safety.

It has been suggested that a more realistic starting point would be to require agencies to provide on-line and other computerized access to materials prepared in connection with public meetings, since these materials are the most requested types of information. Metropolitan would consider this experimental use of the Internet.

D. Legal Justification for Withholding Public Records and the Brown Act

SB 323 would require the agency to identify the provision of law on which it based its decision to withhold a record or, if withholding is based on the public interest, to state the public interest in disclosure and the public interest in nondisclosure. Since not all arguably sensitive records will fall within the identified exemptions and because of extensive requirements to justify nondisclosure, the protection of certain information from disclosure will be more difficult. When records are withheld, careful evaluation of all reasons for nondisclosure is necessary since the bill prohibits the agency from introducing new evidence to support its decision to withhold records at a later proceeding brought in superior court. Some agencies view this requirement as extreme since it would essentially require an agency to write a legal brief each time it denied a request and include every case, every fact and every policy argument which the agency would cite in court if the request is challenged. Furthermore, if information is available on the Internet, the agency does not have the 10 day review process available to permit the agency to formulate the basis to justify its decision for nondisclosure.

The bill requires public access to copies on computer information storage media of all materials produced by the agency or its consultant for any matter heard in open session under the Brown Act. Metropolitan staff has increasingly implemented the use of computer presentations (particularly for presentations concerning the Domenigoni Valley Reservoir project) during committee and board meetings. Staff will need to consider the Public Records Act compliance requirements in such presentations.

E. Suggested Amendments

Metropolitan supports the intent and public policies underlying SB 323. The bill, however, contains significant ambiguities making compliance and implementation of its

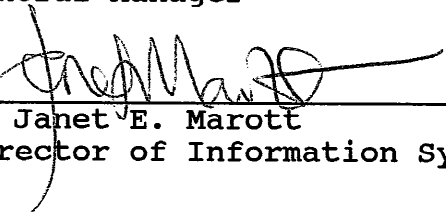
requirements extremely difficult. Metropolitan's current and future information systems efforts regarding improvement and modernization are heavily impacted by the proposed requirements. Some of the proposed features cannot be developed or implemented by the bill's effective date of January 1, 1996 without impacting the cost of the systems and the development schedules. Metropolitan shares concerns articulated by other agencies in that the bill needs more clarification and proposes too much, too fast. Metropolitan would propose the creation of a Task Force comprised of experts and representatives of affected agencies to address the technological and implementation problems and issues proposed in SB 323.

Recommendation

**COMMITTEE ON LEGISLATION FOR ACTION.**

It is recommended that your Board support SB 323 if amended to: (1) clarify what constitutes "systems," "technologically and economically feasible" and "industry-standard format;" (2) clarify the agency's decision-making authority regarding the determination of what is "technologically and economically feasible" and; (3) the creation of a Task Force comprised of experts and representatives of affected agencies to address the technological and implementation issues generated by SB 323.

John R. Wodraska  
General Manager

By   
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Janet E. Marott  
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Concur:

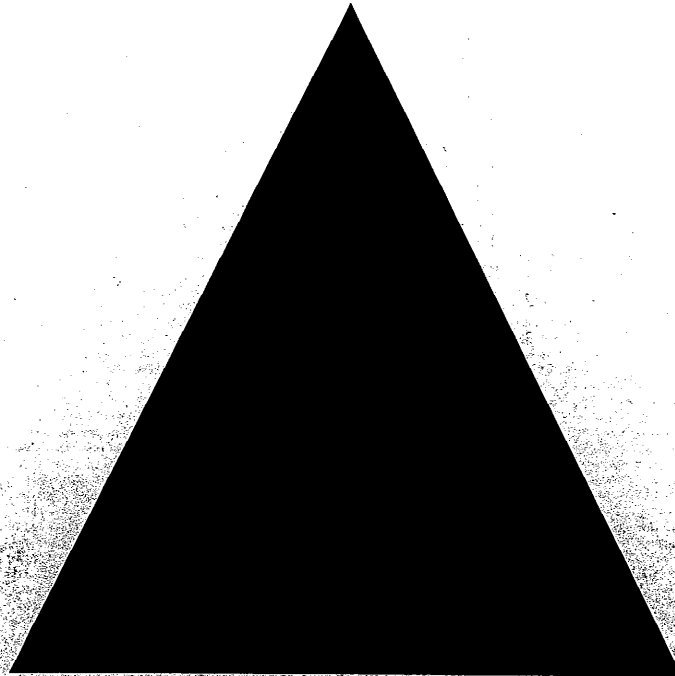
  
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Attachment A

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