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AB-541 California Public Records Act Ombudsperson. (2025-2026)

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CALIFORNIA LEGISLATURE— 2025–2026 REGULAR SESSION

ASSEMBLY BILL

NO. 541

Introduced by Assembly Member DeMaio

February 11, 2025

An act to add and repeal Chapter 6.6 (commencing with Section 8549) of Division 1 of Title 2 of the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 541, as amended, DeMaio. California Public Records Act Ombudsperson.

Existing law, the California Public Records Act, requires state and local agencies to make their records available for public inspection, unless an exemption from disclosure applies. The act declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

This bill would, until January 1, 2029, and subject to appropriation, establish the Office of the California Public Records Act Ombudsperson. The bill would require the Governor to appoint the ombudsperson subject to certain requirements. The bill would require the ombudsperson to receive and investigate requests for review, as defined, determine whether the denials of original requests, as defined, complied with the California Public Records Act, and issue written opinions of its determination, as provided. The bill would require the ombudsperson to create a process to that effect, and would authorize a member of the public to submit a request for review to the ombudsperson consistent with that process. The bill would require the ombudsperson, within 30 days from receipt of a request for review, to make a determination, as provided, and would require the state agency to provide the public record if the ombudsperson determines that it was improperly denied. The bill would require the ombudsperson to create a process through which a person whose information is contained in a record being reviewed may intervene to assert their privacy and confidentiality rights, and would otherwise require the ombudsperson to maintain the privacy and confidentiality of records, as provided. The bill would require the ombudsperson to report to the Legislature, on or before March 31, 2027, and annually thereafter, on, among other things, the number of requests for review the ombudsperson has received in the prior year.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. *This act shall be known, and may be cited, as the Open Government Accountability Act.*

SECTION 1. **SEC. 2.** Chapter 6.6 (commencing with Section 8549) is added to Division 1 of Title 2 of the Government Code, to read:

CHAPTER 6.6. California Public Records Act Ombudsperson

8549. For purposes of this chapter, the following terms have the following meanings:

- (a) "California Public Records Act" means the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1).
- (b) "Local agency" has the same meaning as defined in Section 7920.510.
- (c) "Member of the public" has the same meaning as defined in Section 7920.515.
- (d) "Ombudsperson" means the California Public Records Act Ombudsperson created pursuant to this chapter.
- (e) "Original request" means a request for records retained by a state agency made by a member of the public pursuant to the California Public Records Act.
- (f) "Public agencies" has the same meaning as defined in Section 7920.525.
- (g) "State agency" has the same meaning as defined in Section 7920.540.
- (h) "Request for review" means a request for the ombudsperson to review a denial by a state agency of an original request.
- (i) "Unusual circumstances" has the same meaning as defined in subdivision (c) of Section 7922.535.

8549.1. (a) There is hereby created in state government the Office of the California Public Records Act Ombudsperson. The ombudsperson shall receive and investigate requests for review, determine whether the denials of original requests complied with the California Public Records Act, and issue written opinions of determination.

(b) (1) (A) The ombudsperson shall be appointed by the Governor. The appointee shall have, at a minimum, expertise in the California Public Records Act and be admitted to practice law in this state for at least five years immediately preceding appointment.

(B) In the event of a vacancy or if the ombudsperson is unable to fulfill the duties of the ombudsperson for a period of 30 days, the Governor shall appoint a new ombudsperson within 30 days.

(2) The Governor shall provide necessary staff to the ombudsperson to perform the functions and carry out the objectives of the ombudsperson.

(c) (1) The ombudsperson shall create a process that allows members of the public to submit a request for review. The ombudsperson shall create a process for a person whose information is contained in a record being reviewed by the ombudsperson to intervene as an interested party to assert their privacy rights or preserve the confidentiality of the information.

(2) A member of the public who believes that a state agency improperly denied an original request made by that member of the public may, in the form and manner prescribed by the ombudsperson pursuant to paragraph (1), submit a request for review.

(3) (A) (i) The ombudsperson shall, within 30 days from receipt of a request for review, determine whether the original request, in whole or in part, sought copies of disclosable public records that were in the possession of the state agency and whether the agency's denial of the request complied with the California Public Records Act.

(ii) Upon completion of its review, the ombudsperson shall promptly notify the member of the public who submitted the request for review and the state agency of its determination and the reasons therefor.

(iii) In unusual circumstances, the time limit specified in clause (i) may be extended by written notice to the member of the public who submitted the request for review and the state agency, setting forth the reasons for the extension and the date on which a determination is reasonably expected to be dispatched. The ombudsperson shall reassess the circumstances necessitating the extension of the time period specified in clause (i) every 30 days and, in the event the date on which a determination is reasonably expected to be dispatched changes, notify the requester and the state agency.

(B) If the ombudsperson determines that the state agency improperly denied disclosure of the public record or records, the state agency shall, subject to the provisions of subdivision (f), provide the public record or records to the member of the public who submitted the request for review.

(4) A state agency that is the subject of a request to review shall provide the ombudsperson access to all relevant information, documents, and other records upon which the agency relied in denying the original request, or that the ombudsperson requests to assist in its review of the agency's determination.

(5) The ombudsperson shall not require a state agency to disclose any records that are prohibited or exempted from disclosure by express provisions of law, including, but not limited to, the California Public Records Act.

(6) The ombudsperson shall maintain the privacy and confidentiality of records being reviewed in the same manner as required of the state agency in possession of the record under existing law.

(7) The ombudsperson shall establish policies and procedures for transferring, receiving, possessing, or reviewing records for review under this section, including for maintaining the privacy and confidentiality of any information contained in the records.

(d) (1) The ombudsperson shall maintain a copy of any written opinion issued pursuant to this section and shall post the opinion on its internet website.

(2) An opinion of the ombudsperson shall not be considered binding precedent, but may be considered persuasive by public agencies and the courts.

(e) (1) A determination issued under this section does not affect the right of a person to enforce their right to inspect or to receive a copy of any public record through an action pursuant to Section 7923.000. A member of the public is not required to exhaust the administrative remedies available under this section prior to filing a legal action. A determination issued under this section shall not be considered as evidence that a requester's action is clearly frivolous under subdivision (b) of Section 7923.115.

(2) If a person elects to bring an action under Section 7923.000 while a request for review under this section of the same original request is pending, the person shall immediately notify the ombudsperson and the ombudsperson shall cease investigation of the request. The ombudsperson shall not consider a request for review under this section of an original request that is or has been subject to a pending or completed action under Section 7923.000.

(3) A person may withdraw, by written notice, their request for review under this section if the withdrawal notice is received by the ombudsperson prior to the issuance of an opinion.

(f) (1) A state agency may appeal a determination by the ombudsperson that it improperly denied disclosure of a public record or records by filing a petition with the superior court in accordance with the procedures set forth in Part 4 (commencing with Section 7923.000) of Division 10 of Title 1 for judicial review of a decision to withhold records. The superior court shall review the determination of the ombudsperson de novo. If the court affirms the determination of the ombudsperson, the member of the public shall be entitled to court costs and reasonable attorney's fees in accordance with Section 7923.115.

(2) A person whose information is contained in a record that the ombudsperson has reviewed and required the state agency to disclose under this section may seek declaratory relief or a writ of mandamus to obtain a judicial ruling precluding the state agency from improperly disclosing confidential documents or information.

(g) Notwithstanding any other provision of this section, the ombudsperson may provide written information, guidance, and advice to both public agencies and members of the public regarding the California Public Records Act, including by posting such information, guidance, and advice on its internet website.

(h) (1) On or before March 31, 2027, and every year thereafter, the ombudsperson shall provide a report to the Legislature on all of the following:

(A) The activities of the ombudsperson in the prior year.

(B) The number of requests for review that were submitted to the ombudsperson in the prior calendar year and the number of determinations made by the ombudsperson that a state agency improperly denied a request for a public record or records.

(C) Any proposals, both legislative and administrative, that would allow the ombudsperson to function more independently and provide more transparency to the records of public agencies.

(D) The amounts of reimbursements sought and obtained from state agencies for the cost of investigating requests for review conducted by the ombudsperson pursuant to this section.

(E) In the report due on or before March 1, 2028, an assessment of whether a local agency should be subject to the same review process as a state agency under this section.

(2) The report shall comply with Section 9795.

8549.2. This chapter shall remain in effect only until January 1, 2029, and as of that date is repealed.

8549.3. Implementation of this chapter shall be subject to appropriation by the Legislature, in the Budget Act or another statute, for the purposes of this chapter.