

OCT 26 2015

Case No. S227106

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

Frank A. McGuire Clerk

Deputy

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF
SOUTHERN CALIFORNIA and ELECTRONIC FRONTIER
FOUNDATION,

Petitioners,

v.

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES,

Respondent,

COUNTY OF LOS ANGELES, and the
LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, and the CITY
OF LOS ANGELES, and the LOS ANGELES POLICE DEPARTMENT,

Real Parties in Interest.

After a Decision by the Court of Appeal,
Second Appellate District, Division Three, Case No. B259392
Los Angeles County Superior Court, Case No. BS143004
(Hon. James C. Chalfant)

**PETITIONERS' MOTION FOR JUDICIAL NOTICE;
MEMORANDUM OF POINTS AND AUTHORITIES;
DECLARATION OF CATHERINE A. WAGNER WITH
EXHIBITS A-B; [PROPOSED] ORDER**

PETER BIBRING (SBN 223981)

pbibring@aclusocal.org

CATHERINE A. WAGNER (SBN 302244)

cwagner@aclusocal.org

ACLU FOUNDATION

OF SOUTHERN CALIFORNIA

1313 West Eighth Street

Los Angeles, California 90017

Telephone: (213) 977-5295

Facsimile: (213) 977-5297

JENNIFER LYNCH (SBN 240701)

jlynch@eff.org

ELECTRONIC FRONTIER
FOUNDATION

815 Eddy Street

San Francisco, CA 94109

Telephone: (415) 436-9333

Facsimile: (415) 436-9993

MOTION FOR JUDICIAL NOTICE

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF
JUSTICE OF THE STATE OF CALIFORNIA, AND TO THE
ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Pursuant to Evidence Code Sections 452 and 459, Petitioners ACLU of Southern California and Electronic Frontier Foundation hereby move the Court to take judicial notice of the following:

1. The text of Senate Bill 1097, from the 1975-76 Regular Session, as signed by the Governor on July 2, 1976, a true and correct copy of which is attached to the Declaration of Catherine A. Wagner (Wagner Dec.) as Exhibit A; and,
2. The Final History of Senate Bill 1097 from the 1975-76 Regular Session, a true and correct copy of which is attached to the Wagner Dec. as Exhibit B.

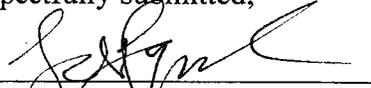
These materials were not presented to the trial court for judicial notice. Cal. Rules Ct. 8.252(a)(2)(B). The materials do not related to any proceedings occurring after the order or judgment that is the subject of this appeal. Cal. Rules Ct. 8.252(a)(2)(D).

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This Motion for Judicial Notice is based upon this Motion, the Memorandum of Points and Authorities, the attached Declaration of Catherine A. Wagner with Exhibits A-B, all documents on record and filed in these proceedings, and on such argument as may be presented to the Court during the oral argument in this matter.

Dated: October 23, 2015

Respectfully submitted,

By: 

Jennifer Lynch
ELECTRONIC FRONTIER
FOUNDATION

Peter Bibring
Catherine A. Wagner
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION OF
SOUTHERN CALIFORNIA

Attorneys for Petitioners

MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner respectfully requests that this Court judicially notice specified legislative materials related to SB 1097 from the 1975 Regular Session of the California Legislature.

As set forth in Petitioner's Opening Brief, these materials are relevant to establishing the legislative intent behind subsection (f) of California Government Code § 6254, the statutory provision that SB 1097 modifies and that is at issue in this proceeding. This legislative history makes clear that the purpose of this amendment was to provide information from law enforcement records required for the filing of insurance claims or civil litigation to individuals who have been involved or injured in an incident. These legislative materials support one of Petitioners' arguments, that § 6254(f) specifically mandates release of this information to ensure timely access for involved individuals pursuing insurance claims or civil lawsuits before an investigation is complete, and not because the records continue to be exempt indefinitely after any police investigation has ceased.

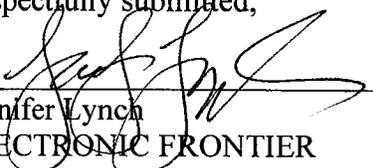
Courts may take judicial notice "of any matter specified in Section 452," Cal. Evid. Code § 459(a), including "[o]fficial acts of the legislative . . . department . . . of any state of the United States" and of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." Cal. Evid. Code §§ 452(c), (g). Under these provisions, this Court and other California courts regularly take judicial notice of the legislative history of this state's bills. *See, e.g., Martin v. Szeto* (2004) 32 Cal. 4th 445, 449-450 & 452 n.9; *Hahn v. State Board of Equalization* (1999) 73 Cal. App. 4th 985, 992 & n.7; *Suarez v. City of Corona* (2014) 229 Cal. App. 4th 325, 331-32; *San Bernardino Cnty. v.*

Superior Court (2015) _ Cal. App. 4th _, 190 Cal.Rptr.3d 876, n.6. Because the documents submitted with this Motion establish important facts for this Court's consideration, Petitioners respectfully request that the Court take judicial notice of the following:

1. The text of Senate Bill 1097, from the 1975-76 Regular Session, as signed by the Governor on July 2, 1976, a true and correct copy of which is attached to the Declaration of Catherine A. Wagner (Wagner Dec.) as Exhibit A; and,
2. The Final History of Senate Bill 1097 from the 1975-76 Regular Session, a true and correct copy of which is attached to the Wagner Dec. as Exhibit B. This final history illustrates that the text of the bill included as Exhibit A is the final version of Senate Bill 1097, as approved by the Senate and Assembly and signed by the Governor.

Dated: October 23, 2015

Respectfully submitted,

By: 
Jennifer Lynch
ELECTRONIC FRONTIER
FOUNDATION

Peter Bibring
Catherine A. Wagner
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION OF
SOUTHERN CALIFORNIA

Attorneys for Petitioners

[PROPOSED] ORDER

This Court, having read and considered Petitioners ACLU of Southern California and Electronic Frontier Foundation's Motion For Judicial Notice, and good cause appearing therefore,

IT IS ORDERED that the Petitioners' Motion is GRANTED, and that the Court hereby takes judicial notice of the following documents:

1. The text of Senate Bill 1097, from the 1975-76 Regular Session, as signed by the Governor on July 2, 1976, a true and correct copy of which is attached to the Declaration of Catherine A. Wagner (Wagner Dec.) as Exhibit A; and,
2. The Final History of Senate Bill 1097 from the 1975-76 Regular Session, a true and correct copy of which is attached to the Wagner Dec. as Exhibit B. This final history illustrates that the text of the bill included as Exhibit A is the final version of Senate Bill 1097, as approved by the Senate and Assembly and signed by the Governor.

Dated: _____

Honorable Tani Cantil-Sakauye
Chief Justice of the State of California

DECLARATION OF CATHERINE A. WAGNER

I, Catherine A. Wagner, declare:

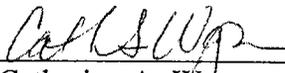
1. I am an attorney admitted to practice before all the courts in the State of California and before this Court. I am an attorney at the ACLU Foundation of Southern California, and one of the attorneys for Petitioners in this case. The matters stated herein are true of my own personal knowledge.

2. Attached as Exhibit A is a true and correct copy of the text of Senate Bill 1097, from the 1975-76 Regular Session, as signed by the Governor on July 2, 1976, which I scanned from the Senate Bills collected on microfiche at the Loyola Law School library in Los Angeles, California.

3. Attached as Exhibit B is a true and correct copy of the Final History of Senate Bill 1097 from the 1975-76 Regular Session. I downloaded this history from the web site of the Clerk of the California State Assembly. The Final Histories from the 1975-1976 session are available at http://clerk.assembly.ca.gov/content/california-state-assembly-and-senate-final-history-%E2%80%93-1975-76-session?archive_type=histories, and the file for Senate Final Histories from the Regular Session is available at <http://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/FinalHistory/1975/Volumes/756shr.PDF>. I have included only the final history from Senate Bill 1097, the bill relevant to Petitioners' arguments.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: October 23, 2015



Catherine A. Wagner

Exhibit A

Senate Bill No. 1097

CHAPTER 314

An act to amend Sections 6254 and 6880 of the Government Code relating to records.

Approved by Governor July 2, 1976. Filed with Secretary of State July 2, 1976.

LEGISLATIVE COUNSEL'S DIGEST

SB 1097, Crutinsky. Public records. Existing law, under the Public Records Act, requires that records of public agencies throughout the state be open to inspection, by the public, with specified exceptions. One such exception is records of complaints to, or investigations conducted by, the Attorney General, Department of Justice, and any state or local police agency, or investigatory or security files compiled by any other state or local agency for correctional or law enforcement purposes.

This bill would revise this exception to the Public Records Act by requiring the disclosure of the following information by the local law enforcement agency to which the incident was reported, to the persons involved in an incident or an authorized representative thereof, an insurance carrier against which a claim has been made or might be made, and to any person suffering bodily injury or property damage as a result of the incident caused by arson, burglary, fire, explosion, robbery, vandalism, or a crime of violence, as defined: the names and addresses of persons involved in, or witnesses to, the incident, the description of the property involved, the date, time, and location of the incident, all diagrams, statements of all parties involved in the incident and statements of all witnesses other than confidential informants. Such requirement would not apply where the disclosure would endanger the safety of a witness or other person involved in the investigation, disclosure would endanger the successful completion of the investigation or a related investigation.

The Public Records Act also requires that its provisions not be deemed in any manner to affect the status of judicial records, nor to affect the rights of litigants, including parties to administrative proceedings, under state laws relating to discovery.

The bill would further specifically require that no provisions of the Public Records Act limit or impair any rights of discovery in a criminal case.

The bill would provide that no appropriation is made, nor obligation created for the reimbursement of any local agency for any costs that may be incurred by it in carrying on any program or performing any services required to be carried on or performed by this bill.

The people of the State of California do enact as follows:

Approved _____ 1976

Governor

SECTION 1. Section 6854 of the Government Code is amended to read:

6854. Except as provided in Section 6854.7, nothing in this chapter shall be construed to require disclosure of records that are:

- (a) Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding such records clearly outweighs the public interest in disclosure;
- (b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 510) of Title 1 of the Government Code, until such litigation or claim has been finally adjudicated or otherwise settled;
- (c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy;
- (d) Contained in or related to:
 - (1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies;
 - (2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of any state agency referred to in subdivision (1);
 - (3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of any state agency referred to in subdivision (1); or
 - (4) Information received in confidence by any state agency referred to in subdivision (1).
- (e) Geological and geophysical data, plant production data and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person;
- (f) Records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any such investigatory or security files compiled by any other state or local agency for correctional, law enforcement or licensing purposes, except that local police agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the persons involved in an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury

or property damage as the result of the incident caused by arson, burglary, fire, explosion, robbery, vandalism, or a crime of violence as defined by subdivision (b) of Section 13909, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, disclosure would endanger the successful completion of the investigation or a related investigation;

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination;

(h) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all of the contract agreement obtained, provided, however, the law of eminent domain shall not be affected by this provision;

(i) Information required from any taxpayer in connection with the collection of local taxes which is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying such information;

(j) Library and museum materials made or acquired and presented solely for reference or exhibition purposes;

(k) Records the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privileges;

(l) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter;

(m) In the custody or maintained by the Legislative Counsel;

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with such licensing agency to establish his personal qualification for the license, certificate, or permit applied for; and

Nothing in this section is to be construed as preventing any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

SEC. 2. Section 6860 of the Government Code is amended to read:

6860. The provisions of this chapter shall not be deemed in any manner to affect the status of judicial records as it existed immediately prior to the effective date of this section, nor to affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state, nor to limit or impede any rights or discovery in a criminal case.

SEC. 3. No appropriation is made by this act, nor is any

Ch. 314

- 4 -

obligation created thereby under Section 2331) of the Revenue and Taxation Code, for the reimbursement of any local agency for any costs that may be incurred by it in carrying on any program or performing any service required to be carried on or performed by it by this act.

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Exhibit B

CALIFORNIA LEGISLATURE
AT SACRAMENTO
1975-76 REGULAR SESSION

SENATE FINAL HISTORY

SHOWING ACTION TAKEN IN THIS SESSION ON ALL SENATE BILLS,
CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT RESOLUTIONS
AND SENATE RESOLUTIONS

CONVENED DECEMBER 2, 1974
ADJOURNED SINE DIE NOVEMBER 30, 1976

DAYS IN SESSION 255
CALENDAR DAYS 730

LT GOVERNOR MERVYN M. DYMALLY SENATOR JAMES R. MILLS
President of the Senate *President pro Tempore*

Compiled Under the Direction of
DARRYL R. WHITE
Secretary of the Senate

By
DAVID H. KNEALE
History Clerk

S.B. No. 1097—Grunsky.

An act to amend Sections 6254 and 6260 of the Government Code, relating to records.

1975

- April 21—Introduced. Read first time To print.
 April 23—From print.
 April 24—Art. IV, Sec 8(a), of Constitution suspended.
 April 30—To Com on C.O.
 May 15—From committee: Do pass as amended, but first amend, and re-refer to Com on FIN. (Ayes 6. Noes 0. Page 3558)
 May 19—Read second time. Amended Re-referred to Com on FIN
 June 3—From committee: Do pass (Ayes 10 Noes 1. Page 4363.)
 June 4—Read second time. To third reading.
 June 13—Read third time. Passed To Assembly. (Ayes 27 Noes 1 Page 5017)
 June 13—In Assembly Read first time. To Com on CRIM.J.
 Aug 19—From committee: Do pass as amended, but first amend, and re-refer to Com on W. & M. (Ayes 5. Noes 0.)
 Aug 20—Read second time. Amended. Re-referred to Com. on W & M.
 Aug 29—Joint Rule 61 suspended.
 Sept 2—From committee: Do pass as amended (Ayes 14 Noes 0.)
 Sept. 3—Read second time. Amended. To second reading
 Sept. 4—Read second time. To third reading.
 Sept 10—Read third time. Passed. To Senate. (Ayes 58. Noes 9 Page 10096.)
 Sept. 11—In Senate To unfinished business.

1976

- Jan. 8—Senate refuses to concur in Assembly amendments. (Ayes 0. Noes 26. Page 8705) To unfinished business. Senate appoints Conference Committee: Senators Grunsky, Carpenter, Wedworth.
 Jan 8—Assembly appoints Conference Committee: Messrs Sieroty, Dixon, Craven.
 Jan. 26—Senate adopts conference report (Ayes 26. Noes 0 Page 8993)
 Jan. 26—Assembly adopts conference report. (Ayes 59. Noes 6. Page 11528)
 Jan 26—To enrollment.
 Jan 29—Enrolled To Governor at 2:30 p.m
 Feb 9—Returned by Governor for further action. Action rescinded whereby Senate adopted conference report and bill ordered to enrollment.
 Feb 13—Action rescinded whereby Assembly adopted conference report
 June 16—Senate adopts Conference report. (Ayes 32 Noes 0. Page 13096)
 June 16—Assembly adopts Conference report (Ayes 73. Noes 0 Page 17107)
 June 16—To enrollment.
 June 21—Enrolled To Governor at 11 a.m.
 July 2—Approved by Governor.
 July 2—Chaptered by Secretary of State Chapter 314, Statutes of 1976

S.B. No. 1098—Rains.

An act to amend Section 9509 of the Government Code, relating to the Governor

1975

- April 21—Introduced Read first time To print.
 April 23—From print
 April 30—To Com on RLS
 June 4—From committee Do pass To Consent Calendar, (Ayes 3 Noes 0 Page 4426)
 June 5—Read second time To Consent Calendar
 June 9—Read third time Passed To Assembly. (Ayes 34 Noes 0 Page 4805)
 June 9—In Assembly Read first time. Held at desk
 June 10—To Com on RLS
 Aug 28—From committee: Do pass (Ayes 6 Noes 0)
 Aug 29—Read second time To third reading
 Sept 10—Read third time Passed To Senate. (Ayes 71 Noes 0 Page 10044)
 Sept 10—In Senate To enrollment
 Sept 12—Enrolled To Governor at 11.45 a.m
 Sept 12—Approved by Governor.
 Sept 14—Chaptered by Secretary of State Chapter 679, Statutes of 1975

CERTIFICATE OF SERVICE

I, Madeleine Mulkern, do hereby affirm I am employed in the County of San Francisco, State of California. I am over the age of 18 years and not a party to the within action. My business address is 815 Eddy Street, San Francisco, California 94109. I am employed in the office of a member of the bar of this court at whose direction the service was made.

On October 26, 2015, I served the foregoing document: **PETITIONERS' MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF CATHERINE A. WAGNER WITH EXHIBITS A-B; [PROPOSED] ORDER** on the parties in this action by placing a true and correct copy of each document thereof, enclosed in a sealed envelope on the persons below as follows:

Court of Appeal of California
Second Appellate District
Division Three
Ronald Reagan State Building
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

Los Angeles County Superior Court
Stanley Mosk Courthouse
Honorable James C. Chalfant
111 North Hill Street, Dept. 85
Los Angeles, CA 90012

Heather L. Aubry, Deputy City Attorney
200 North Main Street
800 City Hall East
Los Angeles, CA 90012
Tel: (213) 978-8393
Fax: (213) 978-8787

Attorneys for Real Parties in Interest: City of Los Angeles and Los Angeles Police Department

Eric Brown
Tomas A. Guterres
Collins Collins Muir & Stewart, LLP
1100 El Centro Street
South Pasadena, CA 91030

Attorneys for Real Parties in Interest: County of Los Angeles

I deposited the sealed envelopes with the United States Postal Service, with postage thereon fully prepaid. I am a resident of the county where the mailing occurred. The envelope was placed in the mail at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on October 26, 2015.

By 
Madeleine Mulkern