

# SELECTIVE DISCLOSURE PROHIBITED UNDER CALIFORNIA PUBLIC RECORDS ACT

In an attempt to open up the federal governmental processes to the public, the United States Congress first enacted a public information statute in 1946.<sup>1</sup> Instead of becoming a vehicle for interested persons to obtain information, the statute was used by agencies to deny access to information.<sup>2</sup> Congress attempted to remedy this situation in 1966 by passing the Freedom of Information Act (FOIA).<sup>3</sup> Recent substantive and procedural amendments, passed over presidential veto, are designed to clarify the Act and strengthen disclosure provisions.<sup>4</sup> Congress has

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1. Administrative Procedure Act, ch. 324, § 3, 60 Stat. 237 (1946). Section 3(c), entitled "Public Records," provided that "matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found." *Id.* at 238. Individuals who felt they had been wrongly denied access to the government's records had no remedy.

2. Note, *The Freedom of Information Act: A Seven-Year Assessment*, 74 COLUM. L. REV. 895, 897 (1974); 40 FORDHAM L. REV. 921, 923 (1972); 80 HARV. L. REV. 909 (1967); 42 U. CIN. L. REV. 529, 530 (1973). For example, the Secretary of the Navy ruled that "'telephone directories fall in the category of information relating to the internal management of the Navy . . .'" 80 HARV. L. REV. 909 (1967).

3. 5 U.S.C. § 552 (1970). This Act, Pub. L. No. 89, 80 Stat. 250 (1966), amended § 3 of the Administrative Procedure Act, ch. 324, 60 Stat. 237 (1946). Pub. L. No. 90-23, 81 Stat. 54 (1967), repealed Pub. L. No. 89-487 for the purpose of incorporating its provisions, without substantive change, into its present codification. For two early interpretations of FOIA see Davis, *The Information Act: A Preliminary Analysis*, 34 U. CHI. L. REV. 761 (1967); *Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act* (July 4, 1967), reprinted in 20 AD. L. REV. 263 (1968).

4. Act of Nov. 21, 1974, Pub. L. No. 93-502, 88 Stat. 1561, amending 5 U.S.C. § 552 (1970), now codified in 5 U.S.C. § 552 (Supp. IV, 1974). The legislative history is set forth in U.S. CODE CONG. & ADM. NEWS 6286 (1974). See also H.R. CONF. REP. NO. 1380, 93d Cong., 2d Sess. (1974). One commentator has divided the amendments into three categories:

(1) substantive material designed to correct interpretations given by courts to two of the exemptions which restrict disclosure, (2) a series of procedural directives which combine principles of sanction and reward to obtain a larger outflow of information, and (3) the further definition and expansion of several of the provisions which set out the reach and responsibilities of the Act.

Clark, *Holding Government Accountable: The Amended Freedom of Information Act*, 84 YALE L.J. 741, 752 (1975). Most of the amendments are procedural in nature and are intended to both make it easier to gain access to materials and to provide stricter enforcement guidelines. For example, a request for information must be answered within 10 working days. 5 U.S.C. § 552(a)(6)(A)(i) (Supp. IV, 1974). Appeal of a denial of information must be answered within 20 days. *Id.* § 552(a)(6)(A)(ii). Unusual circumstances will result in an extension of no more than 10 working days in either situation. *Id.* § 552(a)(6)(B). Governmental agencies must maintain current indexes providing identifying information for any matter issued, adopted or promulgated after

also passed laws giving citizens access to personal information gathered by academic institutions<sup>5</sup> and the federal government.<sup>6</sup> Individual states, following this federal initiative, have enacted statutes giving citizens a right of access to public records<sup>7</sup> as well as statutes detailing which

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July 4, 1967. *Id.* § 552(a)(2)(C). Only reasonable standard fees can be charged for document search and duplication. *Id.* § 552(a)(4)(A). If the issue of disclosure goes to court, the government must answer the complaint within 30 days (barring a showing that there are exceptional circumstances and that the agency is exercising due diligence). 5 U.S.C. § 552(a)(4)(C) (Supp. IV, 1974).

In *EPA v. Mink*, 410 U.S. 73 (1973), the Supreme Court ruled that under FOIA, Congress had provided for only limited judicial review of classified documents. In response, § 552(b)(1) was amended to permit nondisclosure only when "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and (B) are in fact properly classified pursuant to such Executive order." 5 U.S.C. § 552(b)(1) (Supp. IV, 1974). Limited access to investigative files is also provided.

5. Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (Supp. IV, 1974). The provisions are also set forth in U.S. CODE CONG. & ADM. NEWS 647 (1974). *See also* H.R. CONF. REP. NO. 1211, 93d Cong., 1st Sess. (1974). These amendments give parents or students over 18 the right to inspect and review any and all official records held by any state or local educational agency, any institution of higher education, any community college, or any school or agency offering a pre-school program which the student is attending. 20 U.S.C. §§ 1232g(a)(1)(A), (d) (Supp. IV, 1974). Refusal by institutions or agencies to give access to records will result in the discontinuance of federal funds. *Id.* § 1232g (a)(1)(A). Provisions are made as to whom, other than the parent or student, can receive copies of these records. *Id.* § 1232g(b).

6. Privacy Act of 1974, 5 U.S.C. § 552(a) (Supp. IV, 1974). *See also* H.R. REP. NO. 1416, 93d Cong., 2d Sess. (1974). The act is intended to provide safeguards for individuals against invasions of personal privacy by federal agencies. 5 U.S.C. § 552(a), note 2(b) (Supp. IV, 1974). The Act spells out guidelines for individuals to determine what records are being kept on them, allows access to those records, provides for an opportunity to challenge the validity and truthfulness of the records, restricts inter-agency dissemination of the records, and provides that certain records will be exempted from disclosure to the individual. *Id.* § 552(a). *See also* Karst, "The Files: Legal Controls Over the Accuracy and Accessibility of Stored Personal Data," 31 LAW & CONTEMP. PROB. 342 (1966).

7. ALA. CODE tit. 41, § 145 (1958); ALASKA STAT. § 09.25.110 (1973); ARIZ. REV. STAT. ANN. § 39-121 (1973); ARK. STAT. ANN. §§ 12-2801 to -2807 (1968); CAL. GOV'T CODE §§ 6250-60 (Deering Supp. 1975); CONN. GEN. STAT. ANN. §§ 1-19 to -20 (1972); FLA. STAT. ANN. §§ 119.01-.10 (1973); GA. CODE ANN. §§ 40-2701 to -2703 (Spec. Supp. 1974); ILL. ANN. STAT. ch. 116, §§ 43.4-.28 (Smith-Hurd Supp. 1974); IND. ANN. STAT. §§ 57-601 to -606 (Burns 1974); IOWA CODE ANN. §§ 68A.1-.9 (1973); KAN. STAT. ANN. § 45-201 (1964); LA. REV. STAT. ANN. §§ 44:31-.39 (West 1951); ME. REV. STAT. ANN. tit. 1, § 401 (1964); MASS. ANN. LAWS ch. 66, §§ 5A, 7, 10, 11 (1973); MICH. STAT. ANN. § 28.760 (1972); MINN. STAT. ANN. § 15.17 (1967); MO. REV. STAT. § 109.180 (1969); NEB. REV. STAT. § 84-712 (1971); NEV. REV. STAT. § 239.010 (1973); N.M. STAT. ANN. § 71-5-1 (1953); N.Y. PUB. OFFICERS LAW §§ 85-89 (McKinney Supp. 1975); N.C. GEN. STAT. § 132-1 (1974); N.D. CENT. CODE § 44-04-18 (1960); OKLA. STAT. ANN. tit. 51, § 24 (1962); ORE. REV. STAT. tit. 19, §§ 192.410-.500 (1973); PA. STAT. ANN. tit. 65, §§ 66.1-4 (1959); UTAH CODE ANN. § 52-4-1 (1953). *See generally* Marino, *The New York Freedom of Information Law*, 43 FORDHAM L. REV. 83 (1974); Note, *Iowa's Freedom of Information Act: Everything You've Always Wanted to Know About Public Records*

governmental meetings must be open to the public.<sup>8</sup> Questions have arisen, however, concerning the proper interpretation of these public information statutes.

*Black Panther Party v. Kehoe*<sup>9</sup> exemplifies the promise and problems involved in the field of public record litigation. Plaintiffs, the Black Panther Party and the California Legislative Council for Older Americans, sought to inspect letters of complaint charging unethical or abusive practices by licensed collection agencies sent to defendant, California State Department of Consumer Affairs.<sup>10</sup> Plaintiffs grounded their request for relief on the California Public Records Act.<sup>11</sup> On appeal

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*But Were Afraid to Ask*, 57 IA. L. REV. 1163 (1972). It is interesting to note that in England there was a common law right of access and inspection of public roads. The right, however, was limited in that the person seeking inspection had to show a direct interest in the document and that inspection would serve a legitimate purpose. Note, *Public's Right of Access to Government Information Under the First Amendment*, 51 CHI.-KENT L. REV. 164, 168-69 (1974).

8. ALA. CODE tit. 14, §§ 393-94 (1959); ARIZ. REV. STAT. ANN. § 38-431 (1974); CAL. GOV'T CODE §§ 11120, 54950 (Deering 1973); CONN. GEN. STAT. ANN. § 1-21 (1972); FLA. STAT. ANN. § 286.011 (1975); ILL. ANN. STAT. ch. 102, §§ 41-46 (Smith-Hurd 1969); IND. ANN. STAT. §§ 57-601 to -606 (Burns 1974); MD. ANN. CODE art. 41, § 14 (1971); MASS. ANN. LAWS ch. 30A, § 11A; ch. 34, § 9F; ch. 39, § 23A; ch. 43, §§ 18, 35, 71, 84 (1973); MINN. STAT. ANN. § 10.41 (1967); MO. REV. STAT. §§ 610.010-.030 (Cum. Supp. 1973); NEV. REV. STAT. §§ 241.010-.040 (1973); N.H. REV. STAT. ANN. §§ 91-A:1 to :8 (Supp. 1973); N.J. STAT. ANN. §§ 10:4-1 to -5 (Supp. 1974); N.M. STAT. ANN. § 5-6-17 (1974); N.D. CENT. CODE § 44-04-19 (1960); OHIO REV. CODE ANN. § 121.22 (Page 1969); S.D. COMPILED LAWS ANN. §§ 1-25-1 to -5 (1967); UTAH CODE ANN. § 52-4-1 (1970); VT. STAT. ANN. tit. 1, §§ 311-14 (1972); WASH. REV. CODE ANN. §§ 42.30.010-.920 (1972). See generally Wickham, *Let the Sun Shine In! Open-Meeting Legislation Can Be Our Key to Closed Doors in State and Local Government*, 68 NW. U.L. REV. 480 (1973); Note, *Open Meeting Statutes: The Press Fights for the "Right to Know"*, 75 HARV. L. REV. 1199 (1962); Comment, *Iowa Open Meetings Act: A Right Without a Remedy?*, 58 IA. L. REV. 210 (1972); Note, *Texas Open Meetings Act Has Potentially Broad Coverage But Suffers From Inadequate Enforcement Provisions*, 49 TEX. L. REV. 764 (1971); Note, *Government in the Sunshine: Promise or Placebo*, 23 U. FLA. L. REV. 361 (1971); Comment, *Open Meetings in Virginia: Fortifying the Virginia Freedom of Information Act*, 8 U. RICH. L. REV. 261 (1974). Cases have defined meetings open to the public in at least three ways: (1) meetings include only assemblages where formal action can be taken, (2) public must be given the opportunity to express its views in the presence of the governmental body, but public officials are permitted to deliberate and vote privately, and (3) meetings include the entire decisionmaking process. Note, *Texas Open Meetings Act*, *supra*, at 768-70 (1971).

9. 42 Cal. App. 3d 645, 117 Cal. Rptr. 106 (Dist. Ct. App. 1974).

10. *Id.* at 648, 117 Cal. Rptr. at 107.

11. CAL. GOV'T CODE §§ 6250-60 (Deering 1973), as amended, §§ 6253, 6253.5, 6254.8 (Deering Supp. 1976). The California legislature found that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." *Id.* § 6250 (Deering 1973). "Public records are open to inspection at all times during the office hours of the state or local agency and every citizen has a right to inspect any public record, except as hereafter provided." *Id.* § 6253(a) (Deering Supp.

from a decision for defendants, the district court of appeal reversed and remanded.<sup>12</sup> On rehearing, the appellate court vacated its previous opinion and held that when defendant officials chose to supply copies of the complaints to collection agencies the complaints became public records available for public inspection.<sup>13</sup>

Section 6253 of the California Public Records Act guarantees the right of public inspection of public records.<sup>14</sup> The *Kehoe* court was initially faced with deciding whether the complaints were records under the Act and if so whether the complaints fell within the exemptions of sections 6254 or 6255. Section 6254 lists fourteen types of records exempt from disclosure as well as a provision allowing permissive disclosure of those exempt records unless otherwise prohibited by law.<sup>15</sup> Section 6255 allows exemption of records from disclosure if the public interest would be better served by nondisclosure.<sup>16</sup>

The court focused on section 6254(f) which exempts from disclosure:

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1976). The court in *Kehoe* dealt with two of the exemption provisions:

Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are:

...  
 (c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy;

...  
 (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;

...  
 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.

*Id.* § 6254 (Deering Supp. 1976). Section 6255 provides for exemption from disclosure if "on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record." *Id.* § 6255 (Deering 1973). Sections 6257 and 6258 give "any person" the right to receive a copy of a public record or standing to initiate judicial action if access to public records is denied. *Id.* §§ 6257-58, as amended, § 6257 (Deering Supp. 1976).

12. 114 Cal. Rptr. 725 (1974).

13. 42 Cal. App. 3d at 656-57, 117 Cal. Rptr. at 113. The California Supreme Court denied a petition for hearing on Dec. 18, 1974. Letter from William M. Goode, Deputy Attorney General, to Mark R. Heller, Jan. 22, 1975, on file with *Urban Law Annual*.

14. CAL. GOV'T CODE § 6253 (Deering Supp. 1976). A public record is defined as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." *Id.* § 6252(d).

15. See note 11 *supra*.

16. See note 11 *supra*.

[r]ecords 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.<sup>17</sup>

The court held that the phrase “any such investigatory or security files” in the second clause of subdivision (f) was a condensed description of all the records described in the first clause, including records of complaints.<sup>18</sup> Thus, the complaints were exempt from disclosure.

The court’s interpretation of section 6254(f) to include complaints within investigatory files would seem to require a definition of what constitutes an investigatory file. The court, however, stated that the exemption of the complaints from disclosure was not dependent upon creation of an investigatory file.<sup>19</sup> It is unclear how records of complaints are independently exempt under the second clause of section 6254(f), since the second clause specifically exempts “any such investigatory or security files.” If records of complaints are included within the second clause, it would appear that they must be in an investigatory or security file. The court, however, distinguished *Uribe v. Howie*,<sup>20</sup> which held that information in public files became exempt as “investigatory” material only when the prospect of enforcement proceedings became

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17. CAL. GOV'T CODE § 6254(f) (Deering 1973), *as amended*, (Deering Supp. 1976) (emphasis added); *cf.* 5 U.S.C. § 552(b)(7) (1970) which exempted from disclosure “investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency.” This provision has been amended to preclude disclosure of:

(7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel.

*Id.* § 552(b)(7) (Supp. IV, 1974).

18. 42 Cal. App. 3d at 651, 117 Cal. Rptr. at 109. Arguably this distinction is incorrect because the language in the first clause of § 6254(f) differentiates between complaints and investigatory files and the second clause exempts “any such investigatory or security files.” “Any such” could refer to any properly designated investigatory file.

19. *Id.* at 654, 117 Cal. Rptr. at 111.

20. 19 Cal. App. 3d 194, 96 Cal. Rptr. 493 (Dist. Ct. App. 1971).

concrete and definite.<sup>21</sup> The *Kehoe* court concluded that the record in question in *Uribe* was not a complaint but a routine report in a public file and could not gain exemption unless it became part of an investigatory file.<sup>22</sup>

In *Uribe* the court had adopted a definition of investigatory files used by several federal courts in determining what constituted an exempt investigatory file under FOIA.<sup>23</sup> These federal courts found that records did not become exempt investigatory files when there was no prospect of enforcement<sup>24</sup> or when enforcement action had been taken and completed.<sup>25</sup> Some federal courts, however, have held that once information is put into a properly designated investigatory file, it cannot be divulged.<sup>26</sup> In *Wellford v. Hardin*,<sup>27</sup> factually similar to *Kehoe*, the Court of Appeals for the Fourth Circuit held that since letters and reports describing investigators' findings had already been issued to the investigatees and regulatory action had been taken, public disclosure of the investigatory file was required.<sup>28</sup> Although the statutory schemes differ, *Wellford* arguably supports disclosure of the complaints in *Kehoe* since *Uribe* had "adop[ed] the definition propounded by the federal

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21. *Id.* at 212-13, 96 Cal. Rptr. at 505.

22. 42 Cal. App. 3d at 654, 117 Cal. Rptr. at 111.

23. 5 U.S.C. § 552(b)(7) (1970). *Uribe* relied on federal court opinions issued before the recent amendments to the investigatory files exemption. See note 17 *supra*.

24. *Weisberg v. Department of Justice*, 489 F.2d 1195 (D.C. Cir. 1973) (Bazelon, C.J., dissenting) (en banc), *cert. denied*, 416 U.S. 993 (1974), *noted in* 1974 WASH. U.L.Q. 463; *Getman v. NLRB*, 450 F.2d 670 (D.C. Cir.), *stay denied*, 404 U.S. 1204 (1971), *noted in* 40 GEO. WASH. L. REV. 527 (1972), 47 IND. L.J. 530 (1972), and 1971 U. ILL. L.F. 329; *Wellford v. Hardin*, 444 F.2d 21 (4th Cir. 1971), *noted in* 40 FORDHAM L. REV. 921 (1972), and 85 HARV. L. REV. 861 (1972); *Bristol-Myers Co. v. FTC*, 424 F.2d 935 (D.C. Cir.), *cert. denied*, 400 U.S. 824 (1970); *M.A. Schapiro & Co. v. SEC*, 339 F. Supp. 467 (D.D.C. 1972). See generally *Federal Administrative Law Developments-1972*, 1973 DUKE L.J. 157, 178; Note, *The Investigatory Files Exemptions to the FOIA: The D.C. Circuit Abandons Bristol-Myers*, 42 GEO. WASH. L. REV. 869 (1974).

25. *Cooney v. Sun Shipbuilding & Drydock Co.*, 288 F. Supp. 708 (E.D. Pa. 1968). *Contra*, *Aspin v. Department of Defense*, 491 F.2d 24 (D.C. Cir. 1973).

26. *Frankel v. SEC*, 460 F.2d 813 (2d Cir.), *cert. denied*, 409 U.S. 889 (1972), *noted in* 39 BROOKLYN L. REV. 767 (1973), 41 GEO. WASH. L. REV. 93 (1972), 47 ST. JOHN'S L. REV. 223 (1972), 4 ST. MARY'S L.J. 219 (1972), 51 TEX. L. REV. 119 (1972), and 47 TUL. L. REV. 1136 (1973); *Evans v. Department of Transp.*, 446 F.2d 821 (5th Cir. 1971), *cert. denied*, 405 U.S. 918 (1972); *NLRB v. Clement Bros. Co.*, 407 F.2d 1027 (5th Cir. 1969), *aff'g* 282 F. Supp. 540 (N.D. Ga. 1968); *Cowles Communications v. Department of Justice*, 325 F. Supp. 726 (N.D. Cal. 1971).

27. 444 F.2d 21 (4th Cir. 1971).

28. *Id.* at 23-24.

courts<sup>29</sup> of the investigatory file exemption. Although the federal case law on the investigatory file question had not defined the parameters of the exemption or produced conclusive results,<sup>30</sup> the recent FOIA amendments exempt investigatory files from disclosure in only specified circumstances.<sup>31</sup>

The *Kehoe* court also held that the complaints were not exempt from disclosure under the public interest balancing test of section 6255.<sup>32</sup> The court decided that the public interest in encouraging complaints by provisional assurances of confidentiality outweighed the public interest in turning over copies of the complaints to the licensees.<sup>33</sup> The court thus rejected defendants' argument that the Business and Professions Code, which authorizes licensing agencies of the Department of Consumer Affairs to discuss consumer complaints with licensees in an attempt to resolve and mediate disputes,<sup>34</sup> balanced the public interest test of section 6255<sup>35</sup> in favor of disclosing records of complaints to those collection agencies complained of, but not to the general public.<sup>36</sup>

After dealing with the exemptions of sections 6254(f) and 6255, the court faced the problem of selective disclosure. Section 6258 of the Public Records Act states that "any person" may bring suit to enforce his right of access to public records.<sup>37</sup> Having determined that the public interest balancing test of section 6255 did not require turning over copies of the complaints to the licensees, the court decided that once the Bureau of Collection and Investigative Services disclosed complaints to the affected collection agencies, the complaints were accessible public records and not exempt from disclosure to any person wishing to examine them.<sup>38</sup> In holding that selective disclosure is not allowed under the Act, the court reasoned that the Public Records Act should be construed broadly concerning disclosure and narrowly regarding

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29. *Uribe v. Howie*, 19 Cal. App. 3d 194, 213, 96 Cal. Rptr. 493, 505 (Dist. Ct. App. 1971).

30. Note, *Freedom of Information Act: A Seven Year Assessment*, *supra* note 2, at 943-48.

31. *See* note 17 *supra*.

32. 42 Cal. App. 3d at 658, 117 Cal. Rptr. at 114.

33. *Id.*

34. CAL. BUS. & PROF. CODE § 326 (Deering Cum. Supp. 1973).

35. *See* note 11 *supra*.

36. 42 Cal. App. 3d at 658, 117 Cal. Rptr. at 144. The denial of information to the general public under a public interest test may be an anomalous result.

37. *See* note 11 *supra*.

38. 42 Cal. App. 3d at 657-58, 117 Cal. Rptr. at 113.

exemptions. Although this is the interpretation given to the federal law,<sup>39</sup> it does not seem applicable to the California act. Section 6255 specifically exempts records from public disclosure if “on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.”<sup>40</sup> FOIA does not provide a balancing test because the Act did “not authorize withholding of information or limit the availability of records to the public, except as specifically stated . . . .”<sup>41</sup> Even with its stronger language against exemptions from disclosure, however, FOIA has been interpreted by some courts to possibly allow equitable discretion.<sup>42</sup>

A major argument advanced by plaintiffs was that a constitutional right to disclosure under the first amendment invalidated the exemptions enumerated by the Public Records Act.<sup>43</sup> Although writers have suggested that there is a constitutional right to know,<sup>44</sup> the court

39. *E.g.*, *Montrose Chem. Corp. v. Train*, 491 F.2d 63, 66 (D.C. Cir. 1974); *Ethyl Corp. v. EPA*, 478 F.2d 47, 49 (4th Cir. 1973); *Frankel v. SEC*, 460 F.2d 813, 816-17 (2d Cir.), *cert. denied*, 409 U.S. 889 (1972); *Getman v. NLRB*, 450 F.2d 670, 672 (D.C. Cir.), *stay denied*, 404 U.S. 1204 (1971); *Soucie v. David*, 448 F.2d 1067, 1080 (D.C. Cir. 1971); *Long v. IRS*, 349 F. Supp. 871, 875 (W.D. Wash. 1972).

40. CAL. GOV'T CODE § 6255 (Deering 1973) (emphasis added). The effect of this section could be the same as the first public information statute passed by Congress in 1946. See note 1 *supra*. The Senate Committee on the Judiciary made this comment on the earlier U.S. public information statute:

It is the conclusion of the committee that the present section 3 of the Administrative Procedure Act is of little or no value to the public in gaining access to records of the Federal Government. Indeed, it has had precisely the opposite effect: it is cited as statutory authority for the withholding of virtually any piece of information that an official or an agency does not wish to disclose.

S. REP. NO. 813, 89th Cong., 1st Sess. 5 (1965).

41. 5 U.S.C. § 552(c) (1970).

42. *E.g.*, *Wu v. National Endowment for Humanities*, 460 F.2d 1030, 1034 (5th Cir. 1972), *cert. denied*, 410 U.S. 926 (1973); *General Servs. Administration v. Benson*, 415 F.2d 878, 880 (9th Cir. 1969); *Consumers Union of United States, Inc. v. Veterans' Administration*, 301 F. Supp. 796, 806 (S.D.N.Y. 1969), *appeal dismissed as moot*, 436 F.2d 1363 (2d Cir. 1971). *Contra*, *Tennessean Newspapers, Inc. v. FHA*, 464 F.2d 657, 662 (6th Cir. 1972); *Getman v. NLRB*, 450 F.2d 670, 678 (D.C. Cir.), *stay denied*, 404 U.S. 1204 (1971); *Soucie v. David*, 448 F.2d 1067, 1076-77 (D.C. Cir. 1971) (dictum); *Wellford v. Hardin*, 444 F.2d 21, 24-25 (4th Cir. 1971); *Wine Hobby, USA, Inc. v. Bureau of Alcohol, Tobacco & Firearms*, 363 F. Supp. 231, 236 (E.D. Pa. 1973).

43. 42 Cal. App. 3d at 654-55, 117 Cal. Rptr. 111-12.

44. *Henkin, Right to Know and the Duty to Withhold: The Case of the Pentagon Papers*, 120 U. PA. L. REV. 271 (1971); *Hennings, Constitutional Law: The People's Right to Know*, 45 A.B.A.J. 667 (1959); *Parks, The Open Government Principle: Applying the Right to Know Under the Constitution*, 26 GEO. WASH. L. REV. 1 (1957); *Symposium, Public Access to Information*, 68 Nw. U.L. REV. 177 (1973); *Note, Public's Right of Access*

did not find any judicial authority for the proposition.<sup>45</sup> Despite current legislation and broad judicial interpretation in other jurisdictions,<sup>46</sup> the court declined to find the disclosure exemptions unconstitutionally restrictive.<sup>47</sup>

An issue raised, but not found to be decisive in the court's holdings, was whether the disclosure of the complaints to the public would constitute an invasion of the complainant's privacy.<sup>48</sup> The court did not decide whether the complaints were exempt from disclosure under section 6254(c), which prohibits disclosing the contents of files which would constitute an unwarranted invasion of personal privacy. The court ruled that once the complaints were disclosed to the collection agencies they became open to the public.<sup>49</sup> The court did not discuss the possibility that disclosure might be based on the people's right to monitor the performance of governmental agencies. The use of disclosure as a monitoring device might be one factor a California court should use in determining whether the public interest would be best served by disclosure.

The court in *Kehoe* was called upon to deliver one of the first interpretations of the California Public Records Act. The court's

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*to Government Information Under the First Amendment*, 51 CHI.-KENT L. REV. 164 (1974); Note, *Rights of the Public and the Press to Gather Information*, 87 HARV. L. REV. 1505 (1974); Note, *Access to Official Information: A Neglected Constitutional Right*, 27 IND. L. REV. 209 (1952); Note, *Access to Government Information and the Classification Process — Is There a Right to Know?*, 17 N.Y.L.F. 814 (1971); Comment, *First Amendment and the Public Right to Information*, 35 U. PITT. L. REV. 93 (1973).

45. 42 Cal. App. 3d at 654, 117 Cal. Rptr. at 112. With the exception of language in *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965), where Justice Douglas stated that the guarantees of the first amendment encompass not only freedom to communicate but also peripheral rights to "the spectrum of available knowledge," authority is scant.

46. See notes 3-8 and accompanying text *supra*.

47. 42 Cal. App. 3d at 655, 117 Cal. Rptr. at 112.

48. *Id.* It should be noted that plaintiff offered to receive the complaints with the name and address of the complainant deleted. Plaintiff also asked for the disposition of each complaint so that this information could be conveyed to readers of the Black Panther newspaper. Brief for Appellant at 3, *Black Panther Party v. Kehoe*, 42 Cal. App. 3d 645, 117 Cal. Rptr. 106 (Dist. Ct. App. 1974).

49. The only personal information the complaint form asked for was the complainant's name, address, phone number, and the nature of the complaint. Brief for Appellant, *supra* note 48, app. c. The corresponding section of federal law, 5 U.S.C. § 552(b)(6) (1970), which also prohibits disclosure of files which "constitute a clearly unwarranted invasion of personal privacy," has been interpreted to exempt from disclosure only documents containing highly personal information containing intimate details of a person's life. *Robles v. EPA*, 484 F.2d 843, 845 (4th Cir. 1973). *Accord*, *Rose v. Department of the Air Force*, 495 F.2d 261 (2d Cir. 1974).

finding that complaints are independently exempt from disclosure under the second clause of section 6254(f) is open to argument. The California legislature may find it necessary, as did Congress, to redraft the Public Records Act to allow a broader disclosure reading by the state's agencies and judiciary.

*Mark R. Heller*