

Review and possible recommendations for revisions to the Open Government Ordinance
(black text: existing language, red text: new language, blue text: notes)

Deadline for the broadcast and archival of all commission meetings

2.06.100 Broadcast of meetings.

~~A. All regular and special meetings of the City Council, Redevelopment Agency, Rent Stabilization Board, and Zoning Adjustments Board, when held in the venue regularly used, shall be recorded, televised and video-streamed live as well as archived for replay. The live broadcasts shall be captioned.~~

~~B. It is the intent of the City to broadcast the meetings of the Planning Commission, Landmarks Preservation Commission, and Housing Advisory Commission, in the same manner as specified in paragraph A, as City resources become available.~~

A. All regular and special meetings of the City Council, Rent Stabilization Board, and Zoning Adjustments Board, when held in the venue regularly used, shall be streamed live on a two-way audio visual platform that is accessible by phone call, recorded, as well as archived for replay. The live broadcasts and archived recordings shall be captioned. No later than June 30, 2027, the above requirements shall apply to all meetings of all boards and commissions.

B. Archived recordings for the City Council and all quasi-judicial boards and commissions shall be retained permanently. Archived recordings for all other boards and commissions shall be retained for a minimum of one year. After this period, the city no longer has a strict legal obligation of retention, however, best efforts shall be made to maintain online access of all recordings for as long as possible.

C. The City shall procure and maintain the necessary equipment and venues to support the regular broadcast and archival requirements of paragraphs A and B.

D. The broadcast requirements shall not apply if necessary equipment malfunctions or if a public meeting is changed to a location that does not have the technological capacity to accommodate the broadcasting needs. This paragraph shall not be construed to excuse the City's obligations under paragraph C.

2.06.180 Posting of documents.

All documents submitted to the City Council, including but not limited to, the Agenda and Agenda Packet, communications, and any documents submitted at a meeting of that body, shall be available through the City's website no later than the close of business the following business day after the meeting for which the documents were submitted.

New CPRA Section

Nothing in this section authorizes the City to withhold or redact any record from the requester, limits any right under the California Public Records Act, or governs anything other than what the City posts to the public portal. This section shall be interpreted to maximize public access consistent with Article I, Section 3(b) of the California Constitution.

B. For every request made under the California Public Records Act, the City shall post to a public online portal (1) the description of the records sought, within seven days of receipt of the request, and (2) the status of the request, updated within seven days of any change in that status. These two items shall not be withheld or redacted for any reason, except that the City may redact a requester's own identifying or contact information wherever it appears, including within the request text.

C. The City shall also post to the portal, within seven business days after a record is produced or a communication is sent or received, (1) each record it produces in response to a request and (2) the communications exchanged between the City and the requester concerning the request.

D. The City may decline to post, or post in redacted form, an item described in subsection C only as necessary to: (1) protect a third party individual's personal privacy or safety, or guard against a specific and substantial risk to public safety or to the security of property or critical infrastructure, where that interest clearly outweighs the public interest in posting; (2) comply with any legal requirement imposed by a court order, state law, or federal law. The exceptions in this subsection shall be construed narrowly and applied as sparingly as possible, and any portion of an item that cannot be exempted due to reasons (1) or (2) shall be posted. Wherever the City declines to post or posts in redacted form under subsection D, it shall post a brief explanation of its reasoning within seven days of making such a decision.

E. All communications posted online as described in this section shall be accompanied by a timestamp.

~~The entire body of any public records act requests, associated metadata, status updates, and documents produced, shall be made freely available to the public via an online portal within ten days after each such communications were originally produced.~~

~~During circumstances in which the online portal used does not allow for the publishing of status updates or metadata with the speed and comprehensiveness specified above, the city shall be~~

~~required to publish such communications with the maximum speed and comprehensiveness possible. This exemption shall not apply to the request body or documents ultimately produced.~~

(Notes: I believe the City of Berkeley already does this **sometimes** via the NextRequest portal, but this inscribes the requirement into law. We could also consider a different timeframe: seven days, fourteen days, or "reasonable timeframe.")

- can we make it a technology-based default to have the public checkbox always on, for NextRequest? And if they are not shared, it could be made public with a note *why* it was not shared, but others can request the documents? (And the request itself would still be public in that case). There should be a good reason to do so, and we should lean towards releasing all. What are those good reasons, are there any? We should explicitly enumerate reasons in the ordinance, if any.

<https://cityofberkeleyca.nextrequest.com/requests/26-529>

I am working on an article about The Station located at 2984 Russell Street in Berkeley. I understand it is a historic site -- a former Shell gas station -- and need to confirm what year the gas station opened, who designed it, what type of architecture it is, when it was converted to a restaurant and any other information you can provide, including old photos.

- This doesn't seem sensitive but the documents were only released to the requester, not the public.

- How often do PRA requests NOT go through NextRequest? Could they just redirect people to go through NextRequest? Does NextRequest let you forward an email chain to join it into the system?

Prohibition on Ephemeral Messaging Features for Public Business

Section 1. Section 2.06.020 is amended to add the following definitions:

I. “Public Business” means any matter relating to the conduct of the City's affairs.

J. “Ephemeral Messaging Features” means any setting, function, or feature of an electronic communications application or service that causes a message, or any portion of a message, to be automatically deleted, hidden, or rendered inaccessible after a defined period or upon a defined event.

K. “Personal Account or Device” means any electronic account, device, application, or service that is not issued, owned, or controlled by the City.

Section 2. A new Section 2.06.185 is added to Article IV, to read:

2.06.185 Electronic communications concerning Public Business.

A. No member of any Legislative Body, and no elected or appointed official, officer, employee, or contractor of the City shall use for Public Business any ephemeral messaging feature, whether on a City-issued account or device or on a Personal Account or Device.

B. Each person subject to subsection A shall make reasonable efforts to ensure that all electronic communications concerning Public Business sent or received on a Personal Account or Device are retained and stored in a manner that keeps them accessible for the duration of the applicable retention period, regardless of whether such communications would be subject to an exemption from disclosure under the Public Records Act. Upon receipt of a valid request under the Public Records Act seeking such communications, each such person shall search their Personal Accounts and Devices for responsive communications and shall produce all responsive communications, except those subject to a valid exemption under the Public Records Act.

(Notes: Should volunteers or commissioners be covered? Contractors?

Should Signal be allowed if ephemeral messaging feature is turned off?

We may consider a stronger version, which would require the use of city devices for all communications when such a device is available, and require forwarding communications from personal devices to a city IT system otherwise, similar to 44 U.S.C. §2911 -- see below).

Explicit requirement for personal devices to be included under public records laws, in line with City of San Jose v. Superior Court, 2017

Option 1 (weaker)

Section 2. A new Section 2.06.185 is added to Article IV, to read:

2.06.185 Electronic communications concerning Public Business.

Any electronic communication concerning Public Business sent or received on a Personal Account or Device is subject to the City's applicable records retention schedule and to disclosure under the Public Records Act on the same terms as a communication conducted on a City-issued account or device.

Option 2 (stronger)

Section 2. A new Section 2.06.185 is added to Article IV, to read:

2.06.185 Electronic communications concerning Public Business.

No member of any Legislative Body, and no elected or appointed official, officer, employee, or contractor of the City shall use for Public Business a nonofficial electronic messaging system unless the official or employee sends a copy of all sent and received communications concerning public business to an official electronic messaging system within 20 days of the original sending or receiving of the communication.

Background

The Information in "[How Telegram Offers Way Around Public Records Laws](#)" revealed that members of the San Francisco Board of Supervisors were using Telegram to conduct city business. Telegram's "Secret Chat" feature, which includes a self-destruct timer for messages, was cited as a primary reason for the app's popularity among officials: one official said they were encouraged to use Telegram by colleagues in City Hall who described it as a way to skirt the city's public records laws. Supervisors were observed appearing "active" on the app throughout the day, often hourly, on their private phones.

California law treats public business communications on personal accounts as public records (*City of San Jose v. Superior Court*, 2017), but does not prohibit officials from using applications whose default behavior is to destroy those records before any member of the public can request them. Once a message is auto-deleted, no enforcement mechanism can recover it. Berkeley residents have shown interest in this category of communication. As of May 7, 2026, a search of the City of Berkeley's NextRequest portal returns more than 50 California Public Records Act requests referencing WhatsApp, Signal, or other platforms that support self-deleting messages.

After (*City of San Jose v. Superior Court*, 2017), State Senator Dave Cortese authored CA SB 908: "An elected or appointed official or employee of a public agency shall not create or send a public record using a nonofficial electronic messaging system unless the official or employee sends a copy of the public record to an official electronic messaging system within 20 days of the original creation or sending of the public record." SB 908 died in 2024. **Note that this requirement is stronger than the one I proposed, which simply requires preservation of records, even if they are stored outside of city IT systems.**

This bill was likely inspired from the existing federal requirement under the "Presidential and Federal Records Act Amendments of 2014:"

44 U.S.C. §2911. Disclosure requirement for official business conducted using non-official electronic messaging accounts

(a) An officer or employee of an executive agency may not create or send a record using a non-official electronic messaging account unless such officer or employee

(1) copies an official electronic messaging account of the officer or employee in the original creation or transmission of the record; or

(2) forwards a complete copy of the record to an official electronic messaging account of the officer or employee not later than 20 days after the original creation or transmission of the record.

The Associated Press in "[Encrypted messaging apps promise privacy. Government transparency is often the price](#)" writes the following:

- Signal is one of many end-to-end encrypted messaging apps that include message auto-delete functions. While such apps promise increased security and privacy, they often skirt open records laws meant to increase transparency around and public awareness of government decision-making. Without special archiving software, the messages frequently aren't returned under public information requests.
- An Associated Press review in all 50 states found accounts on encrypted platforms registered to cellphone numbers for over 1,100 government workers and elected officials. The AP found accounts for state, local and federal officials in nearly every state, including many legislators and their staff, but also staff for governors, state attorneys general, education departments and school board members. The AP's list is likely incomplete because users can make accounts unsearchable.
- Improper use of the apps has been reported over the past decade in places like Missouri, Oregon, Oklahoma, Maryland and elsewhere, almost always because of leaked messages.
- The best remedy is stronger public record laws, said David Cuillier, director of the Brechner Freedom of Information Project at the University of Florida. Most state laws already make clear that the content of communication — not the method — is what makes something a public record, but many of those laws lack teeth, he said.

American Oversight is a "nonpartisan, nonprofit watchdog that advances truth, accountability, and democracy by enforcing the public's right to government records."

American Oversight highlighted in 2023 these as some of the three major threats to transparency:

- "The use of ephemeral messaging apps and personal accounts and devices to conduct official government business is one dangerous way that public officials have been evading retention rules."
- "Lawmakers are taking steps to exempt themselves from public records laws and shield themselves from public scrutiny."

In 2026, they highlighted these as some of the three major **wins** for transparency:

- "We filed a lawsuit against Hegseth and the other officials involved in the now-infamous Signalgate scandal. Our litigation prompted a court order for key officials to preserve records and exposed a broader pattern of recordkeeping violations across multiple Trump administration agencies."
- "Shortly after we asked a court to order DOGE to preserve certain documents, DOGE unveiled a newly created records retention policy. It requires DOGE employees to "capture and transmit" work-related messages received on personal devices — including through Signal — onto their work devices."
- "Because of our lawsuit, DHS demanded its top officials 'preserve documents and electronic records that relate to the subject matter of the complaint in this case.'"

Existing Legal Precedent

MICHIGAN

Michigan House Bill [4778](#) directs state departments to "not use any app, software, or other technology that prevents it from maintaining or preserving a public record"

COLORADO

"Both Democratic and Republican party leaders in the Colorado House of Representatives agreed to a Consent Decree on Sept. 1, 2023, in which they committed to distribute a formal directive to all House members barring them from setting any device or app to auto-delete any electronic message exchanged with another representative. The directive is the first in the nation to expressly prohibit legislators from using so-called "ephemeral messaging" apps when discussing public business."

NEVADA

According to NV Rev Stat § 289.827 (2025), "A law enforcement agency may not approve for official use on a mobile device any mobile application that uses end-to-end encryption or any other means with the intent to avoid the creation, retention or lawful discovery of records or data relating to the communications of a peace officer."

MISSOURI

In *Sansone v. Governor of Missouri*, the Missouri Court of Appeals for the Western District held that the governor's use of disappearing messaging apps was not a violation of the sunshine laws because no messages were retained so there was no public record to be produced.

TEXAS

Texas Senate Bill 944, enacted in 2019, requires government officials to preserve text messages sent from or received on their personal devices that concern public or official business. However, the law does not directly address the use of disappearing or encrypted messaging apps.

KANSAS

Kansas Executive Order 18–06 requires governor's office employees to conduct official business on their official state email accounts; accordingly, any use of a disappearing or encrypted messaging app for official business would be in violation of the executive order.

USA

44 U.S.C. §2911. Disclosure requirement for official business conducted using non-official electronic messaging accounts

(a) An officer or employee of an executive agency may not create or send a record using a non-official electronic messaging account unless such officer or employee

(1) copies an official electronic messaging account of the officer or employee in the original creation or transmission of the record; or

(2) forwards a complete copy of the record to an official electronic messaging account of the officer or employee not later than 20 days after the original creation or transmission of the record.

Sources:

[Colorado Freedom of Information Coalition](#)

["Colorado lawmakers commit to stop auto-deleting instant messages with other lawmakers"](#)

<https://coloradofoic.org/wp-content/uploads/2023/10/ConsentDecree.pdf>

The following government entities have been reported to have experienced incidents of personal devices and/or ephemeral messaging preventing the preservation of public records:

Title	Description	Result
Trump administration in SignalGate	Senior national security officials coordinated airstrikes on Signal and accidentally added The Atlantic's editor to the chat.	American Oversight sued ; Judge Boasberg issued a temporary restraining order to preserve messages (most already auto-deleted); Pentagon issued a memo barring Signal for non-public unclassified info.
Department of Government Efficiency (DOGE)	Department of Government Efficiency members used Signal for agency matters, allegedly to evade FOIA.	A 2025 memo was issued, asking DOGE employees to preserve Signal messages and disable auto-delete.

San Francisco Board of Supervisors	Supervisors and aides used Telegram (including Secret Chats with self-destruct timers, on purpose) for city business.	Supervisor decided not to use Telegram for public business until resolved by City Attorney.
San Jose Mayor	Mayor directed a constituent to contact him on a personal email account to skirt public records laws. "I'm going to delete this email from my government account..."	Judge ruled in August 2023 that they violated state transparency law; this directly prompted SB 908 (2024).
San Diego Councilmembers Offices	Official asked colleagues to use Signal for work purposes. When asked for records via CPRA, records were gone.	Found no action in response.
Missouri Governor	"nearly every member of the former governor's taxpayer-funded staff had a Confide [self-destructive texting app] account and that the app was being used to communicate both within the governor's office and with outside allies and lobbyists."	AG found no legal violation, but Governor's office banned self-destructive texting apps for public business.
Police in Portland, Maine	Police use Signal for sensitive communications, sometimes with self-deleting chat feature.	Found no action in response.
Oklahoma Treasurer's Office	Signal chats used to coordinate policy with outside lobbyists. Official disabled ephemeral messages, but lobbyist may have enabled it, and thus some records auto-deleted.	AG "strongly discourages public officials from using third-party messaging applications when communicating about public business."
Maryland Governor	Governor and senior advisors used Wickr chat rooms with 24-hour auto-delete for state business.	"Transparency in Public Records Act of 2022 (SB 307)" introduced to prevent this. Bill failed.
Michigan State Police	Top police officials used Signal. One quote lightly suggested that some Signal chat were missing.	Passed House Bill 4778 "all state departments and all state agencies must not use any app, software, or other technology that prevents it

		from maintaining or preserving a public record..."
Seattle Mayor	"Former Mayor Jenny Durkan's phone was changed to "delete messages after 30 days" for roughly three weeks, which effectively destroyed past texts. Former Chief Carmen Best deleted her text messages, saying she thought the city backed them up, as they do with email. Fire Chief Harold Scoggins conducted a hard reset on his phone, destroying his text messages, because he couldn't remember the passcode on his phone."	"King County Prosecutor declined criminal charges, citing inability to prove intent."
New York Governor	"In 2012, New York Gov. Andrew Cuomo grabbed headlines by refusing to use email, requiring anyone contacting him to use BlackBerry's PIN-to-PIN function, which establishes a direct connection between phones and, just as with ephemeral messaging apps, does not leave a record that the public can later request. Whether the governor was being prudent, making a point about privacy or the rights of the government, or hiding something he didn't want the public to know about was never proven."	N/A
Florida Governor	Public business seems to have been conducted on personal devices; some records production refused.	"Appeals court overturned a ruling that governor's administration took too long in providing public records about a controversial 2022 decision to fly migrants from Texas to Massachusetts."

Appendix

California Code, Government Code - GOV § 7920.500

Current as of January 01, 2025 | Updated by [Findlaw Staff](#)

For purposes of Article 3 (commencing with [Section 7928.200](#)) of Chapter 14 of Part 5, “elected or appointed official” includes, but is not limited to, all of the following:

- (a) A state constitutional officer.
- (b) A Member of the Legislature.
- (c) A judge or court commissioner.
- (d) A district attorney.
- (e) A public defender.
- (f) A member of a city council.
- (g) A member of a board of supervisors.
- (h) An appointee of the Governor.
- (i) An appointee of the Legislature.
- (j) A mayor.
- (k) A city attorney.
- (l) A police chief or sheriff.
- (m) A public safety official.

(n) A state administrative law judge.

(o) A federal judge or federal defender.

(p) A member of the United States Congress or appointee of the President of the United States.

(q) A judge of a federally recognized Indian tribe.

California Code, Government Code - GOV § 7920.530

Current as of January 01, 2025 | Updated by [Findlaw Staff](#)

(a) As used in this division, “public records” includes 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.

California Code, Government Code - GOV § 7920.545

Current as of January 01, 2025 | Updated by [Findlaw Staff](#)

As used in this division, “writing” means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

California Code, Government Code - GOV § 7921.000

Current as of January 01, 2025 | Updated by [Findlaw Staff](#)

In enacting this division, the Legislature, mindful of the right of individuals to privacy, finds and 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.