



Californians Aware

THE CENTER FOR PUBLIC FORUM RIGHTS

September 11, 2014

Governor Edmund G. Brown, Jr.
State Capitol
Sacramento, CA 95814

RE: VETO REQUEST – AB 1300

Dear Governor Brown,

Californians Aware, a non-partisan nonprofit alliance of journalists, public officials and employees and civic-minded citizens working to keep government as transparent as possible to the public, urges your veto of AB 1300.

The bill would needlessly create bad law in two ways.

First, it would force anyone making a request to the Division of Occupational Safety and Health for records concerning oil refineries' periodic "turnaround" shutdown of operations for maintenance purposes to risk involvement in a lawsuit brought by the refinery owners to block access to that information. Such pre-emptive litigation, when brought by public agencies to thwart access to information under the California Public Records Act, was ruled invalid by the California Supreme Court in *Filarsky v. Superior Court*, 121 Cal.Rptr.2d 844, 849 (2002) for the following reasons:

(P)ermitting a public agency to file a preemptive declaratory relief action to determine its obligation to disclose records to a member of the public would eliminate important incentives and protections for individuals requesting public records. Members of the public could be discouraged from requesting records, because a simple request for disclosure and a denial by the public agency could require the individual to defend a civil action in which he or she would be liable for costs if the agency prevailed, and in which the individual would not recoup attorney fees if he or she succeeded. The initiation of an ordinary declaratory relief action also could delay disclosure of the documents for a lengthy period, because the court would be under no statutory obligation to schedule briefing and hearings to expedite a decision, as would a court in a proceeding pursuant to the Act. Moreover, in a declaratory relief action pursuant to Code of Civil Procedure section 1060, a public agency could appeal from a judgment in favor of the individual or entity seeking disclosure, thus further delaying a determination whether the records must be disclosed and thwarting the clear intent of the Legislature that the matter be resolved expeditiously.

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The same considerations would apply to the litigation by refinery owners under this bill to block public access—circumventing the enforcement scheme provided for in the California Public Records Act and thereby stripping members of the public of the options and protections they enjoy under that statute.

The second element of bad law proposed by AB 1300 is the grafting of an industry-and-process-specific addition to the Evidence Code definition of information eligible for the trade secrets privilege, to be enforced on a case by case basis at the initiative of the information's proprietor. By contrast, the nearly universal approach to the protection of competitively sensitive industrial, trade or commercial information is *simply to exempt it from disclosure*, either in the California Public Records Act or, more commonly, in the same statute that requires its reporting to a government agency.

Among the scores of such restrictions—none of them expanding the trade secrets privilege or dragging records requesters into lawsuits they never contemplated—perhaps the most relevant examples are the following, which are treated as exemptions from disclosure under the California Public Records Act (via Government Code §6254 (k)):

- Oil and gas, confidentiality of proposals for the drilling of a well, [Public Resources Code §3724.4](#).
- Oil and gas, disclosure of onshore and offshore exploratory well records, [Public Resources Code §3234](#).
- Oil and gas, disclosure of well records, [Public Resources Code §3752](#).
- Oil and gas leases, surveys for permits, confidentiality of information, [Public Resources Code §6826](#).
- Petroleum supply and pricing, confidential information, [Public Resources Code §§25364, 25366](#).
- Proprietary information, availability only to the director and other persons authorized by the operator and the owner, [Public Resources Code §2778](#).
- State Energy Resources Conservation and Development Commission, confidentiality of proprietary information submitted to, [Public Resources Code §25223](#).

If ensuring occupational health and safety for refinery workers is better served by the extended monitoring provisions of AB 1300, no one can quarrel with that. But the bill's needless departure from the laws providing for government transparency while securing proprietary data is not the answer.

Accordingly, Californians Aware urges you to veto AB 1300.

Sincerely,

Terry Francke
General Counsel