

Lawrence Edelman
130 San Aleso Avenue
San Francisco, California 94127
April 15, 2005

By email and US Mail

Daniel G. Stone
Deputy Attorney General
Post Office Box 944255
Sacramento CA 94244-2500
Dan.Stone@joj.ca.gov

Cc: Rodney.Lilyquist@doj.ca.gov

Re: Opinion No. 04-1105
Additional Comments of Boundary Solutions

Dear Mr. Stone,

Please accept these additional comments in rebuttal to arguments of others earlier submitted.

It has been claimed that Section 409 of the Revenue and Taxation code gives Assessors the right to charge for the costs of developing the electronic database from which the requested data is extracted because the information allegedly is not required to be kept by law.

It has also been claimed that parcel boundary map data comprises “computer software” under section CPRA § 62454.9 (b), and thus is not itself a public record.

Additionally Government Code section 54985 has been cited to justify charging for costs above and beyond those required to produce a copy of the requested information.

Finally, some suggest it is contrary to sound public policy to allow the distribution of public record data to private enterprises for private, profit-making usage.

This letter offers response to these arguments.

I. Reliance on R&T section 409 in the context of the to-be-issued opinion is misplaced.

In evaluating the applicability of section 409, it is instructive to consider it in the context of those sections immediately preceding. Specifically, section 408(a) is directed to records not required to be kept by an assessor, and declares such records are not public records. Section 408.2 declares that records in an assessor's office which are required by law to be kept or prepared by the assessor (other than homeowners' exemption claims) are public records which shall be open to

public inspection. And, section 408.3¹ provides that property characteristics information maintained by the assessor is a public record and shall be open to public inspection. In the case of these property characteristics as defined by the section, the assessor is allowed to charge for more than the costs of reproduction, in that “the assessor may require that a fee reasonably related to the actual cost of developing and providing the information be paid by the party receiving the information.”

In the Public Notice re Opinion No. 04-1105, Question 1 limits the inquiry to “parcel boundary map data maintained in electronic format”. Underlying Question 1 is the assumption that a requestor simply seeks parcel boundary information, i.e. the legal description of the property in digital format, which includes the parcel identification number, and the situs address, and may also include other, related assessment information as described in R&T sections 601 and 602.² The legal description is the meets and bounds of the parcel, which in digitized form is a computer-stored polygon. This limited data set does not fall within the definition of “property characteristics information”(section 408.3), and therefore, the requested data is a public record required to be kept by law, and subject to the limitations regarding costs of copying.³

It is important to note that the assessors' roll records, though not mandated to be kept in digitized form, once encoded and relied upon by a county in the conduct of its daily business, do become public records covered by section 6252 of the Government Code, and must be provided in electronic format pursuant to section 6253.9 of the Government Code. In addition to the direct cost of producing the record in electronic format, as noted in subsection (b) of 6253.9, the costs may include the cost of programming and computer services necessary to produce a copy of the record where the request requires data extraction or programming. These types of additional costs are permitted, but no more.

II. The requested data is not a computer mapping system exempt under 6254.9.

The geographic data (digital parcels and other mapped features) are stored in a database. The database is manipulated by Data Base Management System software (DBMS). DBMS software works cooperatively with, or is embedded in GIS (or computer mapping) software. The GIS or DBMS software requires, and enables, the data to be structured into a usable format.

¹ Section 408.3 (b) states: “For purposes of this section, ‘property characteristics,’ includes, but is not limited to, the year of construction of improvements to the property, their square footage, the number of bedrooms and bathrooms of all dwellings, the property's acreage, and other attributes of or amenities to the property, such as swimming pools, views, zoning classifications or restrictions, use code designations, and the number of dwelling units of multiple family properties”.

² Of note, section 601 of the Revenue and Taxation Code, directs local assessors to prepare the assessment rolls. Section 602 of the Revenue and Taxation Code states that the local roll shall show among other things, (a) the name and address of the assessee, (b) the land, by legal description, (c) the assessed value of the real estate, except improvements, (d) the assessed value of the improvements, etc.

³ Further, sections 1254 and 1255 explicitly direct the assessor to maintain maps. Assessors' maps are clearly required by law and therefore not exempt from the CPRA.

The database structure usually includes tables for each type of mapped feature. Each table is comprised of feature ID numbers and descriptive attributes (e.g., characteristics of the individual features). Typically, the data describing each type of mapped feature is stored in a separate table, configured appropriately to log that type of feature's attributes. DBMS structure also establishes the relationship between data tables. Nearly every agency's implementation of GIS-oriented DBMS has uniquely configured its tables, attributes, and relationships.

This database configuration, which is called a "schema" or "database dictionary", is not software; it is the necessary metadata required for a GIS-DBMS to retrieve and display the stored data. The data stored in the GIS database, along with the metadata schema, are the public records; they are not computer mapping software.

III. Reliance upon the provisions of Government Code 54985 is misplaced.

As noted in our initial submission (a corrected copy attached hereto), the California Office of the Attorney General interpreted this section in Opinion 01-605, dated November 1, 2002. That decision limited what a county could charge under the section by holding that the "fee set by the county could not exceed the amount reasonably necessary to recover the cost to the county of providing the copy". This issue has already been decided in favor of open records, and there is no reason to depart from that precedent here.

IV. The argument that a public agency must sell its geographic data in order to afford to maintain the data is not well taken.

This is a spurious position. The creating and maintaining of such data in the first place, has already been determined by the public agency to be necessary for its mandated functions. Public agencies decide to digitize and maintain their data in GIS because it is more efficient than using paper maps and because it enables more effective decision making due to the analytical and display capabilities of GIS. Therefore, once such data have been converted to digital format, the electronic records are as much a part of the public record as their paper counterparts.

The CPRA does not address either the affordability of an agency to maintain its data, or the value of the data as a marketable commodity. Nor does it place any restrictions on its use. The CPRA was enacted to promote free public access to the public's data which have been created, maintained, and held by government agencies at taxpayers' expense. The California Public Records Act articulates this principle eloquently stating, "... 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..." [CPRA §6250]. To charge a fee greater than duplication costs allows some with ample resources to be informed while others are not. If counties wish to predicate their fee for providing data on their particular budgetary needs, a legislative remedy should be sought, not the extrajudicial remedy they have now adopted, ad hoc.

The prospect of selling public record data has arisen because geodata is a valuable commodity. However, it is different than all other commodities or products produced in a given jurisdiction. Any other product may be consumed elsewhere, but a local jurisdiction's geodata is specific to the one locality. When tourists plan a trip using a map, someplace on that map will receive their vacation dollars. When a developer selects a specific map location, that is where the investment will be made. The more that agencies, public and private, distribute a locality's geodata, the more likely it is that benefits will accrue to that location. The real value of geodata is created by its usage, not by the sale of the data records. It benefits a jurisdiction far more to distribute its geodata freely, to both public and private citizens, than it does to sell data at a price that restricts access.

Finally, some complain that it is inherently unfair to allow a private citizen to make money reselling public data obtained through the CPRA. This private use of public information is similar to private use of public roadways. Clearly it is in the public's interest to support economic activity with public infrastructure (both roads and data). The use of digital geodata by any number of private or public agents does not in any way take away from nor diminish the public agency's data. In fact, some public agencies have improved the quality of their data by receiving notification from various data users of errors which were thereafter corrected. In order for private enterprises to make money selling public data, they must offer an added value at an affordable price. Otherwise, their customers would acquire the public agency's data directly from the public agency. This added value enables the public agency to have its data distributed more effectively through the auspices of private entrepreneurs than it can do on its own, because these "value added services" exceed the agency's mandated function. Private redistribution of public data is desirable because the more the data are distributed and used, the more value accrues the providing jurisdiction.

Thank you for your consideration of these additional comments.

Respectfully submitted,

Lawrence Edelman
For: Boundary Solutions