

To: Rodney O. Lilyquist
Senior Assistant Attorney General
Chief, Opinion Unit
c/o Dan.Stone@doj.ca.gov

Date: February 4, 2005

RE: Request for views for AG Opinion No. 04-1105

Dear Mr. Lilyquist,

As a GIS consultant to local governments for 28 years, I have helped many agencies to define and develop their data distribution policies. In recent years, I have worked collaboratively with people from both public and private sectors to formulate consensus-based recommendations for a data distribution policy standard that resolves many of the highly contentious arguments in the ongoing debate of whether a public agency can or should sell its data. I invite you to review this work at www.OpenDataConsortium.org.

Herein, I offer you my opinion to the questions you circulated in your letter of November 30, 2004. I hope this helps. You are welcome to call me if you'd like to discuss these ideas further.

Sincerely,
Bruce Joffe
Principal, GIS Consultants
Organizer, Open Data Consortium project

Response to Questions:

1. Does parcel boundary map data maintained in an electronic format by a city or county constitute a public record subject to disclosure under the Public Records Act (Gov. Code, 6253.9)?

YES. If the parcel map is used by a public agency in the conduct of its official business, then that data constitutes a public record.

2. If so, in what period of time must a city or county make the information available to the public in the electronic format in which it holds the information?

The data should be made available to the requester within a "reasonable" time. Typically, it takes between 1 to 3 hours for a copy to be made of the data in it's "native" electronic format. The copy process would be the same, or very similar, to a standard backup procedure normally conducted by the public agency.

The most significant time constraint on fulfilling a public record request is often the

prioritization of limited personnel resources. Unfortunately, however, in some agencies there are also political considerations regarding who the requester is that determine the urgency of the fulfillment.

3. What costs are to be included in calculating the fee for making the information available to the public in the electronic format in which the city or county holds the information?

The cost should be limited to the direct staff time and materials used to fulfill the request.

4. In what period of time must the city or county make the information available to the public if the requested format is one that has been used by the city or county to create copies for its own use or for provision to other agencies?

As with making copies of the data in its native electronic format, the making of copies in a standard, export format typically takes 1 to 3 hours. In both cases, standardized commands would have been executed from a "macro program" that require the operator to do little more than initiate the process.

5. What costs are to be included in calculating the fee for making the information available if the requested format is one that has been used by the city or county to create copies for its own use or for provision to other agencies?

As with making copies of the data in its native electronic format, the making of copies in a standard, export format, the cost should be limited to the direct staff time and materials used to fulfill the request. Often, a public agency will make several copies of the data in export format in a single procedure, thereby reducing the incremental cost of a single copy to a near-trivial amount.

6. Where the request for a copy of an electronic record requires more than mere reproduction, what costs are to be included as direct costs to be charged for producing the record?

Additional services beyond mere reproduction or duplication are optional, and not subject to the Public Records Act. An agency could include any surcharge they think is marketable. However, their pricing scheme must be consistently and fairly applied to any and all of their customers.

7. May a city or county recover previously incurred costs (or some portion thereof) in connection with the initial collection of the data and its conversion into an electronic format as part of the costs of reproduction to be charged for the copy of the record?

NO. If the data that have been collected or are being maintained as part of the public agency's mandated responsibilities, whether in paper format or electronic format, they are public records. If any part of that data are used in making or implementing

public policy, then the entire database is public record. The public can not be charged more for public records than the direct costs of reproduction.

Several counties, including Santa Clara, San Diego, Orange, Riverside, and Los Angeles, have gotten specific laws passed exempting them from the cost provisions of the CPRA. These exemptions are not filed under 6250 et.seq. These special exemptions allow a county to claim that their data are owned by a private entity. Some county's exemptions, like Santa Clara's, are now obsolete, because Santa Clara County cancelled its contract with Barclay Mapworks. Whether such claims are current or obsolete, I believe they must be subordinated to the CPRA because the source of the data, as well as the ongoing maintenance of the data, derive from the county's mandated operations, i.e., the public's business. Private enterprises that perform a conversion of this data into digital format can not legitimately claim to "own" the data, nor can they own copyrights over public information.

Some Additional Comments:

A "record" is traditionally considered to be a set of facts associated with a specified item, for instance, the situs address, owner's name, and owner's address associated with an Assessor Parcel Number (APN). In a GIS, this information is stored in a database.

There are two reasons why the entire database must be considered as a public record, with the equivalent public accessibility obligations as a single "record."

1 - Most decisions that use information contained in GIS, require analysis and manipulation of the entire database. For instance, the public's right to scrutinize a specific property's assessment would require reviewing the assessments of similar properties throughout the jurisdiction, with consideration for each property's unique locational characteristics (e.g., proximity to school, view, proximity to public transportation, etc.). This kind of analysis requires the entire GIS database.

2 - Modern databases do not store all the information related to a specific property in a single computer record. The information is scattered throughout the database in a set of related data tables. This is the essence of a database. Therefore the entire database must be made available to a requester of public record information. (Excluding, of course, the specific data items that are explicitly excluded by the CPRA.)

Database management system software is NOT considered part of the database. It is the requester's own responsibility to obtain the software needed to read the database tables. The CPRA does require, however, that the database be given to the requester in the same format which the public agency uses for their official actions. The cost of reproduction of the public agency's database, in the native format which it is used, may only be the direct staff time and materials for making the copy.

The structure of the constituent database tables, and the relationship between tables

that has been structured into the database, IS a necessary part of the public record. These facts are communicated in a "database dictionary" and "schema diagram"; they are the metadata necessary to enable the database management software (and the human operator) to access and retrieve data. Metadata must be included in fulfillment of a public records request so that the requester knows how to read the data.

Most public agencies are willing to extract data associated with the property parcel maps and APNs from the database tables into a set of standardized export records . If the public agency provides its data to requesters in a standard export format, they should only charge direct staff time and materials. If they produce a specialized, or unique data format for a requester, they may charge whatever price they want, so long as their pricing policy is consistent to all customers.

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