

## New Brown Act Requirement—

### “Confidential Information Discussed In Closed Sessions Should Remain Confidential”

By Lance Shoemaker and Patrick Miyaki

California’s Brown Act (California Government Code § 54950 *et. seq.*) requires that all local public agencies conduct meetings of their legislative bodies openly and publicly. However, the Brown Act authorizes legislative bodies of local agencies to meet in closed session for specific statutory purposes, including for personnel matters, pending litigation, real property negotiations, labor negotiations, matters posing a threat to public security and certain types of license applications.

The legislature recently added a new section to the Brown Act to address the disclosure of information obtained in a closed session. This new section, codified as California Government Code § 54963, prohibits a person from disclosing confidential information that has been acquired by being present in a closed session, unless the legislative body has authorized the disclosure of that confidential information.

Violations of this section may be addressed by use of remedies that are currently available by law, including:

“(1) Injunctive relief to prevent the disclosure of any confidential information prohibited by this section; (2) Disciplinary action against an *employee* who has willfully disclosed confidential information in violation of this section; and (3) Referral of a *member of a legislative body* who has willfully disclosed confidential information in violation of this section to a grand jury.” (Emphasis added.)

However, subsection 54963(d) provides that an employee may not be disciplined for willfully disclosing confidential information unless that employee has received training about or has been given notice of the requirements of this new law.

The new law also recognizes the following circumstances when the disclosure of confidential information obtained in a closed session will not be deemed a violation:

- 1) making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law that is necessary to establish the illegality of an action taken by a legislative body in a closed session or the potential illegality of an action that has been the subject of deliberation in a closed session;
- 2) expressing an opinion about the propriety or legality of actions taken by a legislative body in closed session; and
- 3) disclosing information acquired by being present in a closed session that is not confidential information. The term “confidential information” is defined in § 54963(b) as communication made in a closed session that is “specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session.”

Moreover, the new law does not prohibit disclosures under the “whistleblower” statutes contained in section 1102.5 of the Labor Code or Article 4.5 (commencing with § 53296) of the Government Code.

This new law became effective January 1, 2003. If you have any questions about the subject of this newsletter or other public agency matters, please contact Patrick Miyaki (415) 995-5048 or Lance Shoemaker (415) 995-5817, or any of the other attorneys in Hanson Bridgett’s Public Agency Section.

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