

AMENDMENT TO RESOLUTION 03-02-05

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Government Code section 6252 to read as follows:

- 1 § 6252
2 As used in this chapter:
3 (a) "Local agency" includes a county; city, whether general law or chartered; city and county;
4 school district; municipal corporation; district; political subdivision; or any board, commission or
5 agency thereof; other local public agency; or entities that are legislative bodies of a local agency
6 pursuant to subdivisions (c) and (d) of Section 54952.
7 (b) "Member of the public" means any person, except a member, agent, officer, or employee
8 of a federal, state, or local agency acting within the scope of his or her membership, agency, office,
9 or employment.
10 (c) "Person" includes any natural person, corporation, partnership, limited liability company,
11 firm, or association.
12 (d) "Public agency" means any state or local agency.
13 (e) "Public records" includes any writing containing information relating to the conduct of the
14 public's business prepared, owned, used, or retained by any state or local agency regardless of
15 physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's
16 office means any writing prepared on or after January 6, 1975.
17 (f) "State agency" means every state office, officer, department, division, bureau, board, and
18 commission or other state body or agency, except those agencies provided for in Article IV (except
19 Section 20 thereof) or Article VI of the California Constitution.
20 (g) "Writing" means handwriting, typewriting, printing, photostating, photographing,
21 photocopying, mechanical or electronic recording, transmitting by electronic mail or facsimile, and
22 every other means of recording ~~upon any tangible thing~~ and/or storing that is retrievable by any
23 means, communication or representation, including letters, words, pictures, sounds, or symbols, or
24 combinations thereof, and any record thereby created, regardless of the manner or location in which
25 the record has been stored." It is intended that the term "writing" be given the broadest possible
26 interpretation, consistent with that of the Attorney General as stated in 58 Ops. Cal. Atty. Gen. 629,
27 633-634.

(Proposed new language underlined; language to be deleted stricken.)

RESOLUTION 03-02-05

DIGEST

Public Records: "Writing" Defined

Amends Government Code section 6252 to broaden the term "writing" to clarify that it includes electronic media such as web pages.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

Similar to Resolution 11-01-05.

Reasons:

This resolution amends Government Code section 6252 to broaden the term "writing" to clarify that it includes electronic media such as web pages. This resolution should be disapproved because it is unnecessary.

Public agencies are required under the Public Records Act to make their records accessible to the public. The term "public record" has always been defined broadly. Thirty years ago, the Attorney General stated, "This definition is intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record-keeping instrument as it is developed." (58 Ops. Cal. Atty. Gen. 629, 633-634 (1975).) The proponent does not show that any form of record has been excluded under this broad interpretation.

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- 22 every other means of recording ~~upon any tangible thing~~ and/or storing that is retrievable by any

23 means, communication or representation, including letters, words, pictures, sounds, or symbols, or
24 combinations thereof, and any record thereby created, regardless of the manner or location in which
25 the record has been stored.”

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Beverly Hills Bar Association

STATEMENT OF REASONS:

Existing Law: Requires that a writing be recorded upon a tangible thing in order to fall within the statutory definition of “writing.”

This Resolution: The proposed amendment deletes the requirement that a writing be recorded upon a “tangible thing” and adds that “writing” includes anything that can be stored and retrievable, irrespective of whether the location in which it is stored is, or is not, tangible.

The Problem: The California Public Records Act, which requires each state and local agency to make its records open to public inspection at all times during office hours, with specified exemptions, defines public records as including “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”.

The section was amended by Stats 2002 ch. 945 , § 1, which at the same time amended the identical language in Evidence Code section 250. The amendment added the words “transmitting by electronic mail or facsimile,” implying the section might not have been interpreted to include “transmitting by electronic mail or facsimile” as a recording upon a “tangible thing.”

The statute as it presently exists is not clear as to the meaning of recording upon “any tangible thing.” If electronic mail and facsimiles might not have come within the definition of “writings” as formerly defined by the section, as not being a recording upon a tangible thing, then all web pages, contents of computer dominions, content contained in intranets and portals, might not be perceived as recorded upon a “tangible thing.” Accordingly “mechanical or electronic recording” should be included in the definition of a “writing” as set forth in the section.

This amendment would also be consistent with Federal Rules of Evidence, Rule 1001, which defines writings as: “(1) Writings and recordings. - “Writings” and “recordings” consist of letters, words, or numbers, or their equivalent set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation. (2) Photographs. - “Photographs” include still photographs, Xray films, video tapes, and motion pictures.”

IMPACT STATEMENT

This resolution does not affect any other laws.

AUTHOR AND/OR PERMANENT CONTACT: Elizabeth Franco Bradley, Law Offices of Elizabeth Franco Bradley, 415 N. Camden Drive, Beverly Hills, CA 90212, (310) 385-9246, attorneyefb@yahoo.com.

RESPONSIBLE FLOOR DELEGATE: Elizabeth Franco Bradley