

Which Counties Impede Access to Parcel Data? June 2013

More Than Cost of Reproduction

- o **Orange** \$ **375,000** → free, on-line after lawsuit, July 2013
- o Santa Clara \$ ~~158,000~~ → \$3.14 after lawsuit, April 2009
- o Merced \$ ~~1,000~~ → Free! as of March 15, 2011
- o Sierra \$ 1,000
- o Alpine \$ 1,300
- o Monterey \$ 2,000

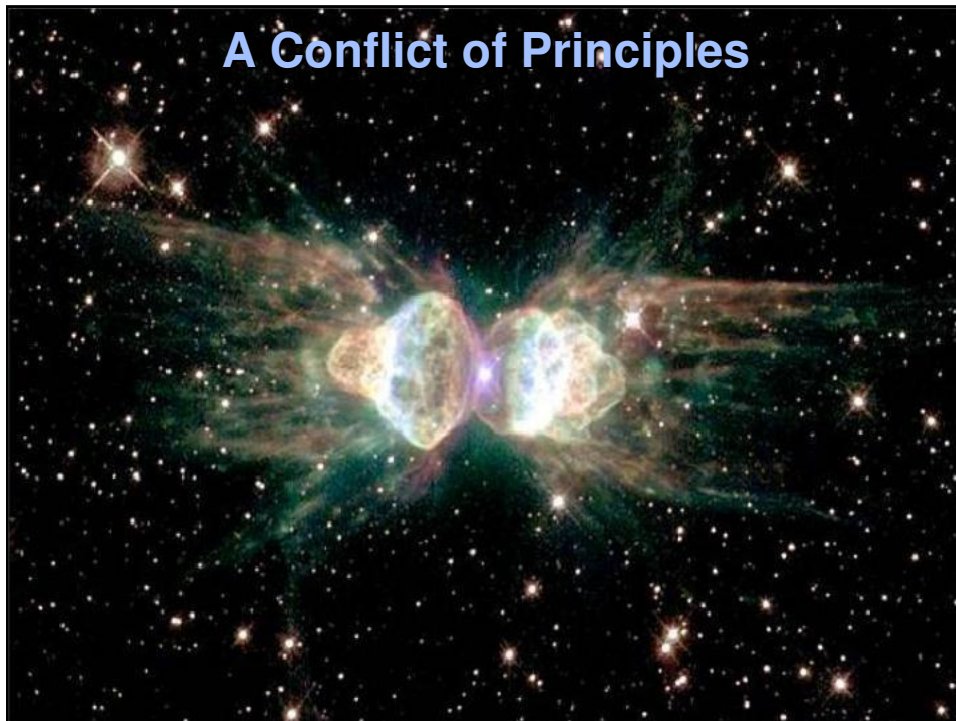
More Than Cost of Reproduction - Private

- o San Luis Obispo \$ 4,500
- o Madera \$ 2,500
- o Lassen \$ 1,200
- o Del Norte \$ 750
- o Colusa \$ 1,000

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A Conflict of Principles



Data Distribution Policy Governments' Accountability v. Cost

Public's Right to Public Data
access to public information
insures government accountability

" ... 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

Public Agency's Need to Fund Geodata Operations
Its ability to create, maintain, and disseminate data depends on funding through Taxes, Fees, Capture of Added Value, State Subsidy, or ~~Data Sale.~~

" ... Yipes! Our department budget was cut "

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Improving Access to Public Geodata: Strategies for Solution

- Enforcement of Public Records Law
- Use of Standard Data Distribution Policies & License Agreements to Harness the Private Sector for Distributing Data
- Capturing the Value of Using Geodata and Allocating a Portion to Geodata Maintenance
- Data Sharing for Emergency Response: Building Geodata Repositories
- State Government Incentive Payments



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CA Attorney General's Opinion

October 3, 2005

1. **Parcel boundary map data maintained by a county Assessor in an electronic format is subject to public inspection and copying under provisions of the California Public Record Act.**
2. **A copy of parcel boundary map data maintained in an electronic format by a county assessor must be furnished promptly upon request of a member of the public.**
3. **The fee that may be charged by a county for furnishing a copy of parcel boundary map data maintained in an electronic format by a county assessor is generally limited to the amount that covers the direct cost of producing the copy, but may include certain other costs depending upon the particular circumstances as specified in the California Public Records Act.**

20 Counties Have Changed Policy to Low or No Cost

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What about the 8 counties that are not in compliance with the California Public Records Act?

The A.G's opinion is not a legal interpretation of the law.

A judicial determination must be made in context of a lawsuit.

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Enforcement of Public Records Law

June 12, 2006

California First Amendment Coalition sent a Letter of Demand for Data under CPRA 6250 to Santa Clara County

- Most current version of the GIS parcel basemap closed polygons, each tagged with APN
- Each parcel to include these attributes:
APN, Situs Address, Air Parcel Status & Address, Adr. Annotation
- Metadata: projection, datum, date of data capture, accuracy
- Database Dictionary, description of contents
- In BOTH .shp and ESRI geodatabase (native) Format

June 26, 2006 Timely Response received: Request REFUSED

- AG Opinion does **not** apply to a "sophisticated GIS basemap"
- Basemap is **copyrighted**
- Records Exempted by State Law (unspecified)
- **Computer Mapping System is software (6254.9)**
claim that .shp files and geodatabase files are software

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Superior Court Decision: VICTORY !

May 18, 2007 (7 months after petition filed)

Superior Court directed Santa Clara County to:

1. Provide CFAC with an electronic copy of the GIS basemap, and
 2. Charge CFAC the direct cost for the copy provided.
- Citing the state constitution "*a statute shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access,*" the Court concluded that **the County failed to show a "clear overbalance" on the side of non-disclosure.**
If there's any doubt, data must be given to the requester

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Superior Court Decision Appealed VICTORY (?)

June 12, 2007

County Filed an Appeal:

- "County GIS Basemap is exempt from application of the CPRA because it has been Protected Critical Infrastructure Information (PCII) by the United States Department of Homeland Security"
 - "Release of this sensitive information into the public domain poses a threat to the public at large, ... potentially allowing terrorists to identify the precise location of the Hetch Hetchy water supply system and plan attacks that can disrupt the main water supply to millions of Bay Area residents
 - "The County's request to protect the GIS Basemap from disclosure is ... to protect sensitive infrastructure information not customarily in the public domain."

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Appeals Court Decision

February 5, 2009

- **Federal homeland security provisions do not apply.**
Both the Critical Infrastructure Information Act and the accompanying DHS regulations make a distinction between **submitters** of critical infrastructure information (to DHS) and **recipients** of PCII (from DHS). The federal prohibition on disclosure of PCII applies only to **recipients** of PCII from DHS.
- There is **no statutory basis** either for **copyrighting** the GIS basemap or for **conditioning its release on a licensing agreement**.
"End user restrictions are incompatible with the purposes and operation of the CPRA."
- **The public interest in disclosure outweighs the public interest in nondisclosure.**
- County "remanded" to Superior Court to determine the fee for duplication.

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Enforcing Orange County's Compliance with the Public Records Act

February 9, 2009

Sierra Club cites Santa Clara County decision requiring PRA compliance

March 5, 2009

County refuses again

March 30, 2009

Sierra Club requests again (MGE or Oracle Spatial format)

April 2, 2009

County refuses again

April 21, 2009

Sierra Club sues Orange County with "Petition for Writ of Mandate to Enforce Public Records Act"

- o Unless Sierra Club obtains the requested public records, the public will be denied information prepared at public expense pertaining to the conduct of the public's business essential to monitor its government

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What is the Software Exemption?

§6254.9 (a) **Computer software developed by a state or local agency is not itself a public record** under this chapter. The agency may sell, lease, or license the software for commercial or noncommercial use.

(b) As used in this section, "computer software" **includes** computer mapping systems, computer programs, and computer graphics systems.

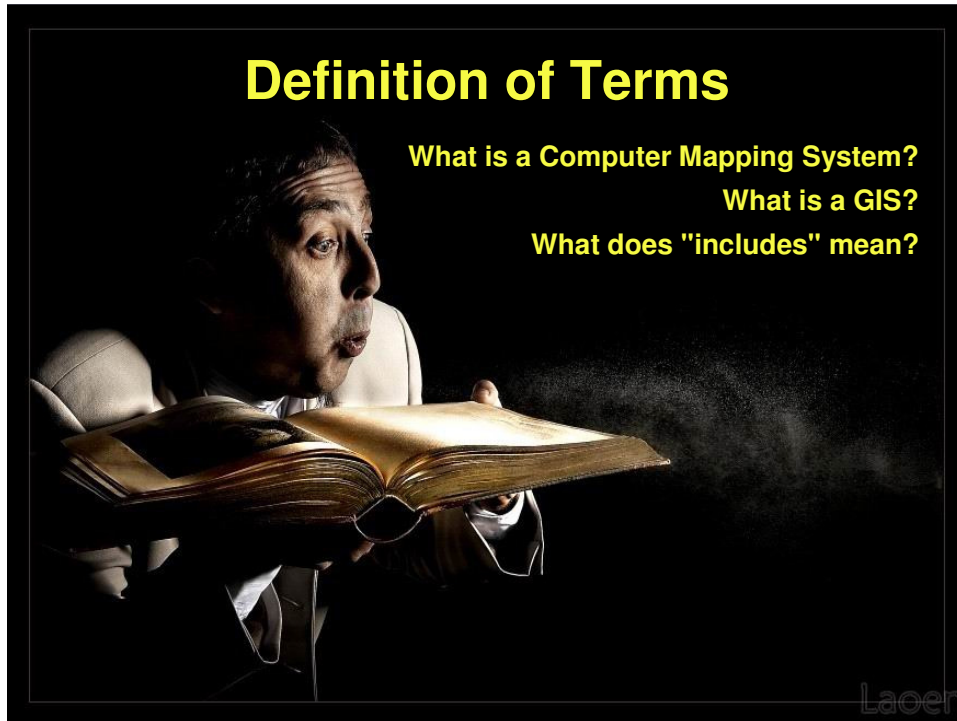
(c) This section shall not be construed to create an implied warranty on the part of the State of California or any local agency for errors, omissions, or other defects in any computer software as provided pursuant to this section.

(d) **Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer.** Public records stored in a computer shall be disclosed as required by this chapter.

(e) Nothing in this section is intended to limit any copyright protections.

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What is GIS?

- **County cites ESRI definition, and others:**
"An integrated collection of computer software and data used to view and manage information about geographic places, analyze spatial relationships, and model spatial processes.
A GIS provides a framework for gathering and organizing spatial data and related information so that it can be displayed and analyzed."
-- GIS From A to Z
- **County's Argument:**
 - GIS includes software and data
 - County's O.C. Landbase is a GIS
 - GIS is a type of CMS
 - CMS is excluded by §6254.9
 - Therefore, O.C.'s GIS Landbase data is excluded
- **ESRI definition should have said:**
"A collection of computer software used to integrate data to view ..."

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What is a Geographic Information System? What is "System"

"A GIS provides a framework for gathering and organizing spatial data and related information so that it can be displayed and analyzed."

- **Sierra Club's Argument**
 - GIS "System" refers to all the elements necessary to make use of GIS technology, including:
 - Hardware
 - Software
 - Data
 - Application Programming and Data Models
 - Staffing and Training
 - Administration / Management
 - Maintenance Procedures and Standards
 - Financing
 - CMS "system" refers to software modules; "CMS" does not mean "GIS"
 - A "framework for data" can not also be data; GIS (software) is distinct from GIS data
 - § 6254.9 (d) makes it clear:
Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer. Public records stored in a computer shall be disclosed as required by this chapter.
- **County says applies to "information" not the format of the information**

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What Does "Includes" Mean?

§6254.9 (b) As used in this section, "computer software" **includes** computer mapping systems, computer programs, and computer graphics systems.

Sierra Club says "computer mapping systems, computer programs, and computer graphics systems" are **examples** of software.

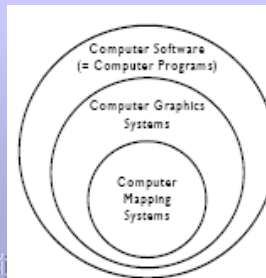
County says "computer mapping systems, computer programs, and computer graphics systems" is an **enlargement** of the definition of software.

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What Does "Includes" Mean?

- Sierra Club said:
 - The plain-meaning interpretation: "Computer software" has the same meaning when used in its common and its technical senses. **"Includes Clause" provides illustrative examples of types of computer software, but does not enlarge the definition.**
 - The County's **expanded-meaning interpretation**: Three enumerated items **"computer mapping systems, computer programs, and computer graphics systems"** would entail all computer-resident data.



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Judicial Decision: Landbase database is exempt under software exemption

- **May 21, 2010**
Court decided in favor of Orange County
 - "This Court credits the County's evidence ... that the OC Landbase in a GIS file format is part of a computer mapping system. To that end, the OC Landbase is not a public record."
 - "Section 6254.9 creates an exemption for GIS file formatted data, but it nevertheless guarantees the public access to non-GIS formatted records containing information stored in a GIS ..."

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The Fight Continues: Sierra Club Appeals the Decision

- August 27, 2010
Sierra Club files petition to the Court of Appeal
 - The OC Landbase contains data only. It does not contain software.
 - The trial court's interpretation **goes against Legislature's intent.**
 Upon introduction, the bill (AB3265) was immediately amended: "**proprietary information**" was replaced by "**computer software;**" and "**computer readable data bases**" was replaced by "**computer mapping systems.**"
 - The plain-meaning interpretation: "Computer software" has the same meaning when used in its common and its technical senses. "Includes Clause" provides illustrative examples of types of computer software, but does not enlarge the definition.
 - The County's **expanded-meaning interpretation:** Three enumerated items "**computer mapping systems, computer programs, and computer graphics systems**" would entail all computer-resident data.

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Legislative Editing as AB 3265 became §6254.9

AB 3265

Nothing in this chapter prohibits an agency from selling ~~proprietary information~~ or requiring a licensing agreement for payment of royalties to the agency ..."

"~~Proprietary information~~" includes ~~computer readable data-bases~~, computer programs, and computer graphics systems.

§6254.9

(a) **Computer software** developed by a state or local agency is not itself a public record under this chapter. The agency may sell, lease, or license the software for commercial or noncommercial use.

(b) As used in this section, "**computer software**" **includes computer mapping systems, computer programs, and computer graphics systems.**

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Orange County Wins Appeal

May 31, 2011 – Court of Appeal concludes: "§6254.9 excludes from the Act's disclosure requirements for a geographic information system database like the one at issue here."

- "Whether the increasing use of GIS data in our society requires reconsideration of section 6254.9's exclusion from disclosure is a matter of public policy for the Legislature to consider."

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Sierra Club Appeals to California Supreme Court

- July 11, 2011 – Sierra Club files CSC appeal.
- Sept 10, 2011 – GIS Amicus letter asking to hear the case
 - 11 GIS Organizations
 - 72 Individual GIS Professionals
- Sept 14, 2011 – CA Supreme Court agrees to hear the case
- Nov 14, 2011 – Sierra Club's brief filed
- Dec 15, 2011 – Orange County's answer brief filed
- Feb 6, 2012 – Sierra Club's rebuttal brief filed
- March 5, 2012 – 9 Amicus Briefs filed
 - 7 in support of Sierra Club, including GIS Community Brief:
 - 23 GIS Organizations
 - 212 Individual GIS Professionals
 - 2 in support of Orange County
- May 7, 2013 – Hearing before the CA Supreme Court

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GIS Community Amicus Brief

- A. **“Computer Mapping System” refers to software and only software**; it does not include data. GIS data should not be considered different from any other public record data that government agencies use in conducting the people's business.
- B. GIS-compatible **database structure is an intrinsic and necessary** part of Orange County's OC Landbase. **.PDF files do not substitute.**
- C. The consequences of removing GIS-readable parcel data from the public domain threatens citizens, **other counties and cities** in many ways.
- D. Removing GIS-readable parcel data from the public domain counters explicit **national and Federal data policies.**
- E. Some counties' policy of excluding GIS data from the public domain is currently causing **expensive, negative impacts on CA state government.**
- F. The 4th District Court, and Orange County, may have misunderstood the **concept of “system”** in the context of section 6254.9(b).
- G. **Excel analogy** to better understand the relationship between software and data.

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July 8, 2013

Supreme Court Decision: VICTORY!

- **Openness in government is essential to the functioning of a democracy.**
Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files.
- **We believe the public records exemption for “computer software,” a term that “includes computer mapping systems,” does not cover GIS-formatted databases like the OC Landbase at issue here.**
- **The County must produce the OC Landbase in response to Sierra Club's request “in any electronic format in which it holds the information” (§ 6253.9(a)(1)) “at a cost not to exceed the direct cost of duplication (§ 6253.9(a)(2).”**

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Supreme Court Decision: further discussion

- What the parties dispute is whether the OC Landbase *in a GIS file format* is a public record that must be disclosed in that format pursuant to the PRA.
- The analysis leads us to conclude that although the term “computer mapping systems” by itself is ambiguous, the ordinary meaning of “computer software” supports Sierra Club’s contention that **the public records exemption for computer mapping systems covers GIS mapping software but not GIS-formatted data.**
- Any remaining doubt about the proper interpretation of 6254.9 is dispelled by the interpretive rule in Article I, Section 3, Subdivision (b)(2), of the California Constitution: **“A statute, court rule, or other authority ... shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access.”**
- To the extent that the term “computer mapping system” is ambiguous, the constitutional canon requires us to interpret it in a way that **maximizes the public’s access to information, unless the Legislature has expressly provided to the contrary.**

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Legal Timeline Sierra Club vs Orange County

June 2007	- Sierra Club makes CPRA request for data
July 2007	- Orange County refuses
April 2008	- Sierra Club makes CPRA request for data
June 2008	- Orange County refuses
Feb 2009	- Sierra Club makes CPRA request for data
March 2009	- Orange County refuses
March 2009	- Sierra Club makes CPRA request for data
April 2009	- Orange County refuses
Months 0 April 2009	- Sierra Club files suit in Superior Court
7 Nov 2009	- Superior Court Tentative Ruling (in favor of Orange County)
12 April 2010	- Evidentiary Hearing
12 April 2010	- Trial Court ruled in favor of Orange County
16 Aug 2010	- Court issues final Statement of Decision
16 Aug 2010	- Sierra Club petition to Court of Appeal
17 Sept 2010	- Orange County responds (final response Nov 2010)
21 Jan 2011	- Amicus Briefs filed
23 March 2011	- Oral Arguments in Court of Appeal
26 June 2011	- Court of Appeal decides in favor of Orange County
27 July 2011	- Sierra Club appeals to California Supreme Court
29 Sept 2011	- CA Supreme Court agrees to hear the case
31 Nov 2011	- Sierra Club’s brief filed
32 Dec 2011	- OC’s brief filed
34 Feb 2012	- Sierra Club’s rebuttal brief
35 Mar 2012	- Amicus Briefs filed
49 May 2013	- Hearing before the CA Supreme Court
51 July 2013	- CA Supreme Court decides in favor of Sierra Club

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If Counties Understood the Value of their Geodata, they wouldn't have to sell data to support geodata maintenance

Geospatial Data Sharing Guidelines for Best Practices

Geospatial data refers to data that is geographically referenced. It is used to analyze and understand spatial patterns and relationships. The NSGIC report provides guidelines for best practices in geospatial data sharing.

Introduction

The National States Geographic Information Council (NSGIC) strongly believes that the sharing of geospatial data is the most important of all other geospatial data, and is the most important of all other geospatial data. The NSGIC report provides guidelines for best practices in geospatial data sharing.

The Value of Accessible Geospatial Data

Access to public geospatial data is an essential component of an agency's ability to track costs, added revenue, and allocate a portion of the ROI to GIS maintenance and operations.

National States Geographic Information Council
www.NSGIC.org
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<http://www.nsgic.org/publications-by-nsgic>

Understanding the Return on Investment of GIS & Geodata

- 1 – Geospatial data returns more value to the agency than its cost.
- 2 – The more users = the more value accrued.
- 3 – Counties with data sharing policies have more economic development than counties with data selling policies.
- 4 – To support its GIS operations, an agency needs to:
 - o Track the costs saved
 - o Track the added revenue
 - o Allocate a portion of the ROI to GIS maintenance and operations

Calculating Return On Investment of GIS & Geospatial Data

	Cost	2006	2007	2008	2009	2010
	Benefit	Cost	Cost	Cost	Cost	Cost
GIS Application Benefits	Benefit					
Number of new applications		2	1	1	1	1
Cumulative number of applications	Less: Lost	1	2	3	4	5
Estimated Benefit	Cost	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
Net Benefit	Cost	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
NET BENEFIT'S (Benefit) Cost		\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
Cumulative Benefit (Cost)		\$25,000	\$25,000	\$25,000	\$25,000	\$25,000

Vigilance = Participation + Teamwork

- **GIS Professionals must be aware of and involved with public policy issues that they can affect and that affect our society.**
 - o We have special knowledge that can assist public policy.
 - o Public Policy issues arise that affect our profession.
 - o **Our participation in the public forum is necessary!** Both for us, and for our national, state, and local communities.

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... but, Threats on the Horizon ...

HR 1604 – to establish a National Geospatial Technology Administration – "Map It Once, Use It Many Times act"

<http://www.govtrack.us/congress/bills/113/hr1604#>

Rep. Doug Lamborn [R-CO]

- **Section 103 (e) "Funding Strategy" -- (2) "the establishment of user fees for the National Geospatial Database"**
- In addition to the "fee for data" issue, there also is a good reason why different agencies order different mapping contracts for the same area: **differing requirements for accuracy, precision, imagery spectrum, LIDAR, SAR, and update timing**. How are all those to be reconciled with a "map once" requirement? Many apparent "duplications" are actually a response to different requirements.

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In California's 2013 Budget: a close call SB 71

Friday, June 14 – CA Legislature passes budget On Time (first time in over a decade).

- Also passed – several "trailer" bills with budgetary "adjustments" ... Including (buried within) ...
- Section 4 – would make CPRA **optional**. "Eliminates the requirement of existing law that agencies must make available 'electronic records' or 'information in any format in which the agency already holds them'."

Sunday, June 16 – First Amendment Coalition sends warning to its supporters

Monday, June 17 – GIS supporters of PRA receive call to action: email the Governor to VETO SB 71

Wednesday, June 19 – Governor refuses to veto, but at same time, newspapers all over California print VETO editorials and articles. Letters to Governor pouring in.

Thursday, June 20 – confusion – conflicting stories. Late in the day, Senate re-writes SB 71 without Section 4; Governor reverses policy and agrees to leave PRA legal requirements in tact.

**TAKE AWAY: Be Alert,
Stay Connected with reliable sources of information;
Act Quickly when the need arises**

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What Can You Do To Preserve Access To GIS Data?



**Defending Public Access to
our Governments' GeoData**

The Supreme Decision

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