POSSESSORY INTERESTS ANNUAL USAGE REPORT
(FORM BOE-502-P)

Proposal to remove confidentiality language from the form

COMMENTS FROM INTERESTED PARTIES

ITEM	SOURCE	COMMENT
1	Ron Thompson, President California Assessors' Association	The CAA's position, taken at its August 11 meeting, is that the language of confidentiality should remain.
2	Jeffrey Sinsheimer, Time Warner Cable	See Attachment A
3	Russ Hall, Alameda County Assessor's Office	The confidentiality statement on BOE-502-P is reassuring to agencies supplying the assessor with indispensible data and should be retained.
4	Leslie Davis, Acting Calaveras County Assessor	I understand that the information provided on the form contains information that is already public. However, I cannot guarantee that the information is accurate and I do not want my staff time taken up to respond to a Public Records Request. I do not want the liability for inaccurate information. And, I certainly don't have the time to answer questions that may arise from data that is reported.
5	Sheryl Thur, Glenn County Assessor	The only issue that I have is that this is not my information to release. I would direct them to the agency that has provided the information to our office and let them disclose the information.
6	Chuck Brough, Madera County Assessor's Office	The confidentiality statement should remain on the form.
7	Brent L. Joseph, Mariposa County Assessor's Office	Mariposa has always held information received on Possessory Interest Usage Reports confidential.

ITEM	SOURCE	COMMENT
8	John Tuteur, Napa County Assessor	There are two issues I see in the interested parties process: 1. Can the public agency which grants the possessory interest keep the terms of the arrangements confidential? If the answer to that question is no, then there is no reason that the Report of Annual Usage should be kept confidential. If the answer to the first question is yes or maybe, then the second issue becomes important. 2. If public agencies are able to keep the terms of possessory interest leases confidential, then the assessor should be able to keep that same data confidential.
9	James Lambeth, Placer County Assessor's Office	We hold the information confidential to the reporting agency and the individual possessory interest holder.
10	Elsie Thomas, Sacramento County Assessor's Office	Some agencies have been reluctant to provide information regarding their tenants. The confidentiality clause has been beneficial in graining their cooperation.
11	Diana Lackey, San Diego County Assessor's Office	We don't disclose any of this information. The lease terms should remain confidential.
12	Walter De Lorrell, San Diego County Counsel's Office	While the "real property usage report" is not the "property statement" referenced in section 451, the exemption from disclosure in section 481 should apply. It appears from the legislative history that the failure to make specific reference to the form in section 481 is an oversight. The original language of section 480.6 (SB 657 – 1995) required the public entity to file a PCOR or COS for a renewal of a possessory interest. It was amended the following year (SB 713 – 1996) to allow an annual filing in lieu of filing a separate PCOR or COS for each PI at the opinion of the public entity. It would be incongruent to hold the information if provided separately for each PI in a PCOR or COS as confidential, but the same information provided in the form of a comprehensive annual usage report is not confidential.
13	Eileen Lin, Santa Clara County Assessor's Office	We do occasionally have taxpayers asking lease information regarding the other possessors. It is nice to have the confidentiality clause on the form to show the inquirers.
14	Eric Fitz, Shasta County Assessor's Office	We have not had confidentiality come up as an issue in our County.
15	L. Foster, Siskiyou County Assessor's Office	Being it is the use of publicly-owned property, I would think who uses it and how should not be confidential information.

ITEM	SOURCE	COMMENT
16	Frank Newell, Ventura County Assessor's Office	It is difficult to provide comments without knowing what the "issue" is and in what context and under what circumstances it has been raised (i.e., appeals, litigation, subpoenas, public information request from media, tenant inquiries, etc.). Ventura County has had no experience with a confidentiality issue and this information.
17	Joel Butler, Yolo County Assessor	I think it should remain confidential as there may be information relating to business affairs of the various taxpayers being reported. The Assessor should not have to review and confirm with other agencies whether any information contained on the form is confidential. The person requesting the information can request it from the originating source. Besides agencies can feel free to share information with the Assessor; they may not if it is not held confidential.

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October 22, 2010

VIA EMAIL: sherrie.kinkle@boe.ca.gov

Ms. Sherrie Kinkle
State Board of Equalization
Property and Special Taxes Department
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Re: Comments of Time Warner Cable in Interested Parties Process Supporting the Conclusion that Any Data Provided to County Assessors by State and Local Governmental Entities in Compliance with Section 480.6 are Public Documents that Must be Disclosed by Assessors Subject to the Public Records Act

Dear Ms. Kinkle:

On behalf of Time Warner Cable, we provide these comments to include in the matrix you are preparing in the Interested Parties Process initiated by the State Board of Equalization's ("SBOE" or "Board") action at its September 15, 2010 hearing about the public nature of reports that state and local agencies prepare in compliance with Revenue and Taxation Code Section 480.6[1] and triggered by the Letter to Assessors from Mr. David Gau dated September 29, 2010 ("LTA").[2]

EXECUTIVE SUMMARY

The writings in question in this Interested Parties Process are the most obvious public records relevant to the people's business as articulated by the California Constitution and Public Records Act ("PRA") – data transmitted from one public agency to another public agency about leases of public property. These public records are exempt from a county assessor's secrecy obligation.

Section 480.6 requires that state and local governmental entities report information about possessory interests to county assessors so that the possessory interests can be appraised and taxed throughout their term. The Board issued Form BOE-502-P ("Annual Usage Report") to assist assessors to obtain this possessory interest information from

[1] All "Section" references are to the California Revenue and Taxation Code, unless otherwise indicated.

[2] David Gau, Deputy Director of the Property and Special Taxes Department of the State Board of Equalization, letter to County Assessors, County Counsels and Interested Parties entitled "Possessory Interests Annual Usage Report" (No. 2010/049), September 29, 2010.

governmental entities. With respect to an assessor's secrecy obligation, the Annual Usage Report's Official Explanation ("Official Explanation") reads:

> This is a written request made pursuant to Sec. 480.6 of the Revenue and Taxation Code . . . . This report is not a public document. The information contained herein will be held secret by the Assessor (Sec. 451, Rev. & Tax. Code); it can only be disclosed to the district attorney, grand jury, and other agencies specified in Sec. 408 of the Rev. & Tax. Code.

In order to comply with the reporting requirements under Section 480.6, there are other means by which state and local agencies can transmit possessory interest data to county assessors. For example, in its 2002 Handbook pertaining to Assessment of Taxable Possessory Interests ("Handbook"), the Board suggested a three-step alternative approach by which county assessors could collect possessory interest data from state and local agencies so that it could be used to appraise possessory interests and kept throughout the term of the possessory interest.[3] Moreover, eight years ago in the Handbook, the Board acknowledged that some assessors and state and local agencies in their counties engaged in electronic exchange of information to track possessory interests.[4] The exchange of information in pubic records about leases of public property between and among public agencies has probably evolved since 2002.

As set forth below, any possessory interest information prepared by state and local governmental entities and sent to county assessors in the Board's Annual Usage Report or by any other means (such as those described in the Handbook) are public records that county assessors may not hold secret. The California Constitution requires a narrow reading of the secrecy obligations and a broad reading of any exception that "furthers the people's right of access." The cases demonstrate that an assessor's secrecy provision is not absolute. The secrecy provisions cannot apply to documents that are otherwise "public records". As a matter of law, a county assessor must make possessory interest documents provided by a state or local governmental entity in compliance with its obligation under Section 480.6 available in response to a request under the PRA.

Therefore, Time Warner Cable believes that the Board should delete the Official Explanation from the Annual Usage Report. Time Warner Cable also believes that the SBOE should advise county assessors that:

1. All written and electronic documents prepared by state and local governmental entities in satisfaction of their obligation under Section 480.6 or otherwise transmitted to county assessors detailing information about possessory interests are "public records";
2. The records kept by county assessors from state and local governmental entities are not covered by any secrecy obligation; and,

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[3] California State Board of Equalization, Assessors' Handbook Section 510, Assessment of Taxable Possessory Interests (December 2002), pp. 63-64. See footnotes 11, 13, 14, and 38, infra.

[4] *Id.*

3. An assessor must disclose all other documents generated in compliance with its obligation under Section 480.6 and kept by the accessor when presented with a PRA request.

DISCUSSION

1. The information state and local governmental entities generate in compliance with their obligation under Section 480.6 and transmit to the assessors are "public records" subject to disclosure under the PRA.

The PRA grants public access to governmental information. Its purpose is to maintain governmental accountability and to prevent secrecy in government.[5] The PRA states that "[p]ublic records are open to inspection . . . and every person has a right to inspect any record."[6] The PRA mandates disclosure from every "local agency," which includes county assessors.[7]

"Public records" include any writing that contains information relating to the public's business that is prepared, owned, used, or retained by any state or local agency, regardless of physical form or characteristics.[8] One California appellate court has broadly defined a "public record" as:

> [A]ny writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state . . . agency. . . . This definition is intended to cover every conceivable kind of record that is involved in the governmental process . . . . Only purely personal information unrelated to the conduct of the public's business could be considered exempt from this definition, i.e., the shopping list phoned from home, the letter to a public officer from a friend which is totally void of reference to governmental activities.[9]

When faced with the reach of the PRA to require disclosure by a public agency, the courts have held that the precise documents all state and local governmental entities must transmit to county assessors – leases and licenses of public lands that create possessory interests – are public records that must be disclosed.[10]

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[5] *Los Angeles Police Dept. v. Superior Court* (1977) 65 Cal.App.3d 661 (purpose of PRA).

[6] Gov. Code, § 6253(a).

[7] Gov. Code, § 6252(a).

[8] Gov. Code, § 6252.

[9] *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 774 (citations).

[10] *Cal. State Univ. v. Superior Court* (2001) 90 Cal.App.4th 810. In *California State University*, a state university leased luxury boxes in a new arena to anonymous donors; the university argued that disclosure of the leases and the identities of the donors would harm the public interest because the university would lose donors. The trial court, affirmed by the Court of Appeal, held that the information was public record, in part because the leases created "a significant and valuable benefit from the *possessory interests* . . . in the luxury suites . . ." (*Id.* at 821 (emphasis added).) In addition, the licenses were disclosable because they "relate[d] to the conduct of the public's business," and the arena was "a public facility on land owned (footnote continued)

In enacting Section 480.6, the Legislature intended to shift reporting responsibilities for public records relating to possessory interests from individual taxpayers to state and local governmental entities to preserve the property tax base. In the Handbook, the Board calls Section 480.6 the most "notable and comprehensive" statutory provision to discover the existence of possessory interests.[11] Section 480.6 requires that state and local governmental entities report possessory interest information to assessors so that the assessor can appraise the value of public land occupied by a private taxpayer throughout its term. State and local governmental entities must comply with this obligation. The Legislature has the power to determine how best to preserve the property tax base by ensuring that state and local governmental entities report possessory interest data in a timely basis to county assessors so that those possessory interests can be appraised and property taxes can be levied throughout their term consistent with the California Constitution.[12] Specifically, Section 480.6 provides:

> [E]very state or local governmental entity that is the fee owner of real property in which one or more taxable possessory interests have been created shall either file any preliminary change in ownership report or change in ownership statement otherwise required to be filed with respect to any renewal of a possessory interest, or annually file with the county assessor, no later than the 15th day of the first month following the month in which the lien date occurs, a real property usage report. The report shall include all of the following information:
>
> (1) The name and address of the fee owner of the real property.
>
> (2) The name and address of each holder of a possessory interest in the real property.
>
> (3) The types of transactions in which the holders of the possessory interests acquired those interests, whether creations, renewals, subleases, or assignments
>
> (4) The description of the subject real property.
>
> (5) The date of each transaction in which a holder of a possessory interest in the real property acquired that interest.
>
> (6) The terms of each transaction described in paragraph (5), including all the following:
>
> (A) The consideration given for the possessory interest, whether paid in money or otherwise.
>
> (B) The terms of the possessory interest, including any renewal or extension option.
>
> (C) For any subleases, the original term and remaining term of the sublease, and the consideration paid for the master lease.

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by a public university." (*Id.* at 824. *See also San Gabriel Tribune, supra*, 143 Cal.App.3d 762 (financial data supplied by private company to agency, where agency and company had a contract, was "public record," even though company had been assured of the records' confidentiality).

[11] Handbook, *supra*, at p. 63.

[12] *See Mendoza v. State of California* (2007) 149 Cal.App.4th 1034, 1050-1051; *In re Sanitary Board of East Fruitvale Sanitary District* (1910) 158 Cal. 433, 457; Cal. Const., art. III § 3.5; Cal. Const., art. IV § 1; Cal. Const., art XI, § 2.

(D) For any assignments, the original term and remaining term of the assignment, and the consideration paid for the underlying lease.

The Board has worked with county assessors to help the governmental entities meet the legislative mandate and the Legislature's intent. The Board propounded the Annual Usage Report to obtain this information from state and local governmental entities for county assessors to encourage uniformity and efficiency. In the Handbook the Board suggests a three-step "approach" for county assessors to collect the same information that is required by Section 480.6 from federal, state and local agencies so that the county assessor can appraise the possessory interest and be kept to ensure that the interest is taxed throughout its term.[13] The Handbook section concludes by stating: "Some assessors have implemented this or a similar approach through the electronic exchange of information with public agencies."[14]

The Board has a duty to assessors and to the process to be accurate about the law as it relates to the public nature of the data that is transmitted by state and local governmental entities to county assessors no matter in what form the date is provided. One big risk in this Interested Parties Process is that the Board simply corrects the Annual Usage Report by striking the Official Explanation. This could inadvertently leave county assessors to conclude that alternative means that they have worked out with state and local governmental entities to the Annual Usage Reports do not make those disclosures by the state and local governmental entities public records.

The Legislature's requirement in Section 480.6 specifies which details must be transmitted by state or local governmental entities regularly to county assessors. It is silent as to the form. The Annual Usage Report and the alternatives in the Handbook are among a variety of means for a state or local governmental entity to achieve compliance. Thus, given that the underlying documents or details in the leases creating the possessory interests are "public records" and California courts have held that public records creating possessory interests are subject to disclosure under the PRA,[15] any information a state or local governmental entity prepares and provides about a possessory interest consistent with their obligation under Section 480.6 – whether written or electronic – is a public record.

Moreover, forcing the county assessors to keep those documents secret would lead to the bizarre result that public writings creating possessory interests would become secret when a state or local governmental entity – a public agency – reports their contents to an assessor – another public agency. The law does not provide that a public agency may shield a record from public disclosure simply by relocating it and labeling it "secret".[16] Given

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[13] Handbook, *supra*, at p. 64.

[14] *Id.*

[15] *California State University* makes clear that information about encumbrances on public lands, creating possessory interests, is public information when the request is directed to the agency which granted the possessory interest. (*Cal. State Univ.*, *supra*, 90 Cal.App.4th 810.)

[16] See *Commission on Peace Officer Standards and Training v. Superior Court* (2007) 42 Cal. 4th 278, 291, 293 (unlikely Legislature intended to render documents confidential based on their location, rather than their content; to extend protection of statute exempting peace officer personnel records from disclosure to "information not included within any of the enumerated [statutory] categories merely (footnote continued)

that the courts must attempt to avoid absurd results,[17] the SBOE should also not permit public records to become secret simply by their transmittal in a deconstructed form to the county assessors.

The Board should make it clear that all documents, regardless of the form in which they are transmitted to or kept by county assessors, generated by state and local governmental entities in compliance with Section 480.6 are public records that must be disclosed under the PRA.

2. The Constitution requires a narrow reading of the secrecy requirements in Sections 451 and 481, and, given the broad interpretation that must be given to the exception in Section 408, there is no statutory justification for keeping secret the public records that state and local governmental entities created in compliance with Section 480.6.

The broad right of the people to have access to public records in the PRA is founded in the California Constitution:

> The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.[18]

Time Warner Cable agrees with the statutory interpretation standard set forth in the LTA – statutes must be interpreted to further the people's right of access:

> [W]hen section 451 is narrowly construed as required by Proposition 59, it appears that its express provisions do not apply to the possessory interest usage report since section 451 specifically states that only information furnished on a property statement is to be held secret by the assessor, and the possessory interest usage report is not a property statement.[19]

This interpretation comports with the Constitutional Amendment adopted in Proposition 59 providing that statutes, court rules, or other authority in effect at the time of the amendment

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because that information is contained in a file that also includes the type of confidential information specified in the statute would serve no legitimate purpose and would lead to arbitrary results").

[17] In considering a statute, the court may consider the consequences that would flow from interpretation. (*People v. Sinohui* (2002) 28 Cal.4th 205.) After considering the consequences, the court should avoid any "[i]nterpretations that lead to absurd results." (*Woods v. Young* (1991) 53 Cal.3d 315, 323.) Indeed, the prohibition against absurd results is so strong that unambiguous statutes may be judicially interpreted contrary to their express language where effectuating the language of the statute would lead to an absurd result. (*Upland Police Officers Assn. v. City of Upland* (2003) 111 Cal.App.4th 1294.)

[18] Cal. Const., art. I, § 3, subd. (b), par. (1).

[19] LTA, *supra*, at pp. 1-2.

"shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access."[20]

The LTA requests that:

> [t]he interested parties process . . . discuss whether the express terms and legislative history of section 451, or other provisions of the Revenue and Taxation Code, specifically sections 481 and 408, as well as judicial decisions, including *Gallagher v. Boller* (1964) 231 Cal.App.2d 482, apply to information provided on the possessory interest usage report.

There is no specific indication that the Legislature intended to keep possessory interest information provided to an assessor by a state or local governmental entity pursuant to Section 480.6 secret. Under any circumstances, however, the California Constitution requires that, in interpreting the Legislature's intent, the Board must narrowly construe Sections 451 and 481 to the extent that they limit the right of access. Moreover, Section 408 – which is the exception to the secrecy provisions in Sections 451 and 481 and has been upheld by a California appellate court to ensure that public records should be disclosed by an assessor for public inspection[21] – must be "broadly construed" in the Board's analysis.

Section 451, the provision cited as authority for the assessor's keeping public records secret in the Official Explanation, provides:

> All information requested by the assessor or furnished in the property statement shall be held secret by the assessor. The statement is not a public document and is not open to inspection, except as provided in Section 408.

Section 408(a), the listed exception to the secrecy provision of Sections 451 and 481, provides:

> Except as otherwise provided in subdivisions (b), (c), (d), and (e), any information and records in the assessor's office that are not required by law to be kept or prepared by the assessor, disabled veterans' exemption claims, and homeowners' exemption claims, are not public documents and shall not be open to public inspection. Property receiving the homeowners' exemption shall be clearly identified on the assessment roll. The assessor shall maintain records which shall be open to public inspection to identify those claimants who have been granted the homeowners' exemption.

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[20] Cal. Const., art. I, § 3, subd. (b), par. (2). As detailed in Section 3, the Court of Appeal decided that an assessor's secrecy obligation did not extend to public records 40 years before the passage of Proposition 59. See, *Gallagher v. Boller* (1964) 231 Cal.App.2d 482 which is cited in the LTA.

[21] *Id.*

With respect to Sections 451 and 481, Section 408 is intended to make documents open to public inspection as an exception to an assessor's secrecy obligation. So Section 408 must be interpreted broadly.[22] The critical sentence reads:

> [A]ny information and records in the Assessor's Office that are not required by law to be kept or prepared by the assessor . . . are not public documents and shall not be open to public inspection.

Therefore, logically, records that are required by law to be kept by the assessor are public documents and must be disclosed subject to a PRA request.[23] In the case of what is being considered in this Interested Parties Process, statutory construction of Section 408 consistent with the Constitution requires that assessors keep documents produced by state and local governmental entities, and, therefore, the written or electronic reports shared with the assessors are public documents open to public inspection.

Notwithstanding the Official Explanation's reference to Section 451, one could argue that Section 481 — not Section 451 — requires an assessor to limit access to information provided under Section 480.6. Sections 480.6 and 481 appear in the Article concerning "Change in Ownership Reporting." Section 481 provides:

> All information requested by the assessor or the board pursuant to this article or furnished in the change in ownership statement shall be held secret by the assessor and the board. All information furnished in either the preliminary change in ownership statement or the change in ownership statement shall be held secret by those authorized by law to receive or have access to this information. These statements are not public documents and are not open to inspection, except as provided in Section 408.

One might argue that there appears to be no authority that Section 451 rather than Section 481 applies to Section 480.6. Section 481, which refers specifically to preliminary change in ownership statements and change in ownership statements, and appears in the same article as Section 480.6, may more appropriately apply. Section 451 appears in an Article concerning "Information from Taxpayers"; applies to "property statements", which Section 480.6 does not refer to; and is contained in a different article than Sections 480.6 and 481.

However, the statutory analysis under the Constitution does not change the outcome: as suggested by in the LTA, regardless of whether Section 451 or 481 applies, the California Constitution requires that both must be narrowly construed because they limit the right of access. And, because both Section 451 and 481 are subject to the exception under Section 408, which must be broadly construed to ensure that public records are open to public inspection, neither statute can prevent disclosure of the Possessory Interest Usage Reports by a county assessor or any other data on possessory interests provided by state or local governmental entities in either written or electronic form to the public.

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[22] See *Id.*

[23] *Gallagher* supports this interpretation of 408 – that any records required by law to be prepared or kept by the Assessor's Office, like the possessory interest statements and reports, are open to public disclosure.

The possessory interest reports and statements mandated by Section 480.6 are "public records" and, absent an exception, the public records that state and local governmental entities created and then transmitted to the county assessors should be accessible to the public as "writings of public officials and agencies" under Article I, Section 3 of the California Constitution. The secrecy provisions of Sections 451 and 481 are designed to keep information from taxpayers confidential. But there is no indication that the Legislature intended to keep public records — in this case possessory interest reports under Section 480.6 — secret. Such an interpretation simply would make no sense. Finally, Section 408 demonstrates that an assessor not hold public records kept by an assessor secret.

3. ***Gallagher*, which predates Proposition 59, supports the conclusion that statutes requiring assessor secrecy are not absolute and do not apply to "public records" generated by state and local governmental entities.**

Although there are no cases that have interpreted the legislative purpose of Section 481, California courts have described the underlying policy for the similar secrecy requirement in Section 451. *Gallagher* has been interpreted for the proposition that Section 451 applies to individual taxpayers and is intended to encourage full disclosure by the taxpayer – as distinguished from a public agency – who must supply information pursuant to other sections of the code. This policy applies equally to Section 481, a similar provision. It simply makes no sense to treat public information secret just because it is given to the assessor. Moreover, as demonstrated in *Gallagher*, the focus of the courts is not on who provides the data, but on whether the data is a public record. If it is a public record, an assessor is required to make the data available in response to a request under the PRA.

In *Gallagher*, an attorney who represented a commercial laundry competing against a church-owned laundry wanted to inspect the affidavit the church provided to the assessor in support of the church's claim for a welfare exemption from property taxation, and the assessor's ruling on this claim for exemption. The assessor refused to disclose the documents. The court held that the assessor was keeping the records of application for tax-exempt status because of a statute requiring the church to file its application for tax exemption with the assessor.[24] Thus, the record was open to public inspection under Section 408.

From the standpoint of the Interested Parties Process, it is compelling that the document treated as "public" in *Gallagher* was provided by a taxpayer. Section 480.6 states that governmental entities "shall . . . file" with the assessor the possessory interest records. Under the plain language of Section 480.6, assessors are required by law to "keep" the possessory interest records. Thus, Section 408's exception to Section 481 applies, and the requested possessory interest records should be open to public inspection.

Finally, *Gallagher* was decided 40 years before Proposition 59's passage and applied existing law as it pertained to Section 451's secrecy requirement. This fact is relevant because Proposition 59 was not intended to repeal or nullify any statutory exemption to the

[24] *Gallagher, supra*, 231 Cal.App.2d at 491.

right of access to public records.[25] *Gallagher* shows that the public records exception to the secrecy requirement predates Proposition 59. Such an interpretation by the Board would affirm, rather than change or nullify, existing law.[26]

Thus, Section 408 requires an assessor to disclose public records filed in compliance with Section 480.6 by state and local governmental entities. Such a result is consistent with *Gallagher*, which, before Proposition 59 was passed, held that an assessor must disclose public records.

4. County assessors may not rely on California Government Code Section 6255 to justify withholding documents pursuant to Section 480.6 because the disclosures to the assessors by state and local governmental entities are already public records undermining any public interest in nondisclosure.

The LTA also requests that interested parties "discuss the public interest in disclosure of information provided on the report and the public interest in nondisclosure of such information as required by Government Code Section 6255." Government Code Section 6255 is the broad "catch all" exemption in the PRA for non-disclosure of public records under a policy balancing test:

> (a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.
> (b) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.

It is difficult to argue that an assessor can justify withholding Section 480.6 under the PRA's "catch all" exemption. Here there is no public interest in secrecy because the information contained in documents filed under Section 480.6 is already contained in public records – the writings that created the possessory interests. Those public records must be disclosed by the state and local governmental entities supplying the data to an assessor under a PRA request.

Arguably, but not absolutely, when information is provided by private taxpayers, Section 481 is intended to keep that information secret to encourage private taxpayers to disclose information relevant to appraisal and assessment.[27] This limited exception is consistent

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[25] See, Cal. Const. art. 1, § (3), subd. (b), par. (5) and *Sutter's Place Inc. v. Superior Court* (2008) 161 Cal.App.4th 1370, 1382.

[26] See *Sutter's Place Inc.*, *supra*, 161 Cal.App.4th at 1382. *See In re Marriage of Burkle* (2006) 135 Cal.App.4th 1045 (although the right of privacy extends to one's confidential financial affairs, this does not mean parties who come to court are entitled to privacy in court records that are presumptively public records).

[27] See, change in ownership report requirements imposed on taxpayers such as Section 480 (change in ownership of real property or of a manufactured home), Section 480.1 (change in ownership caused by change in control of any corporation, partnership, limited liability company, or other legal entity), and (footnote continued)

with the PRA and cases in this area. In recognition that important public interests would be compromised by full disclosure of certain records, the PRA contains a number of exemptions which allow agencies to keep certain records confidential.[28] The PRA sets forth a number of express exceptions from disclosure, such as private medical and law enforcement records.[29] The PRA expressly exempts from disclosure "records, the disclosure of which is exempted or prohibited pursuant to federal or state law."[30] Under the California Constitution, these statutory exemptions must be construed narrowly.[31]

Thus, to keep secret any record, the public agency has the burden under Government Code Section 6255 to justify secrecy of a public record by providing that there is a public interest in confidentiality that "clearly outweighs" the public right to governmental information.[32] It is difficult if not impossible to believe that an assessor can justify nondisclosure of public records which would otherwise be subject to disclosure. In this instance, the opposite of Government Code Section 6255 is true: the public right to the records "clearly outweighs" the public interest in confidentiality because the records are already public and would otherwise have to be disclosed pursuant to a PRA request.

5. **The PRA requires that county assessors comply with PRA requests for documents filed in compliance with Section 480.6 and ensures that assessors will be able to recover duplication costs associated with producing public records.**

While an assessor must make filings of state and local governmental entities in compliance with Section 480.6 available to the public, members of the public must comply with the process under the PRA to obtain these records from an assessor.[33] However, Time Warner Cable is confused by the implied suggestion of the Assessor of Los Angeles County that removal of the Official Explanation would impede the collection of possessory interest information or increase costs for PRA compliance.

In a letter to the Board dated September 9, 2010, an Assistant Assessor for Los Angeles County stated:

Section 480.2 (change in ownership caused by change in ownership of any corporation, partnership, limited liability company, or other legal entity).

[28] Cal. art. I, § I (recognizing citizens' right to privacy); Gov. Code, §§ 6254 *et seq.* (exceptions to public inspection of governmental records).

[29] Gov. Code, § 6254.

[30] Gov. Code, § 6254(k).

[31] Cal. Const., Art. I, § 3, subd. (b), par. (1) (any rules with regard to access to public records "shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access".)

[32] *Citizens for a Better Environment v. Dept. of Food & Agriculture* (1985) 171 Cal.App.3d 704. If an agency refuses to disclose records, the burden of justifying secrecy falls upon the agency. (*Vallejos v. Cal. Highway Patrol* (1979) 89 Cal.App.3d 781, 787.)

[33] Gov. Code, §§6250, et seq.

> We do not support the removal of this language. The confidentiality clause contained in this section allows us to obtain needed information that my [sic] otherwise be difficult to secure. The removal of this language will likely result in additional cost and escape assessments.[34]

It is troubling that Los Angeles County claims that the assessors' secrecy requirement is necessary to induce state and local governmental entities to comply with a legislative mandate. By passing Section 480.6, the Legislature placed an explicit reporting obligation on state and local governmental entities with which they are obligated to comply.[35] And, although the Handbook discusses several reasons why possessory interests are difficult to discover, the Board has praised Section 480.6 as a means to preserve the property tax base.[36] The county assessors' secrecy obligation is not mentioned in the Handbook.

Notwithstanding these concerns, Time Warner Cable trusts that Los Angeles County understands that, as a matter of law, all agencies, including county assessors, already have to comply with the PRA and the process it outlines with respect to requests for disclosure of public records.[37] No provision allows an agency to ignore a PRA request. In fact, exactly the opposite is true: the agency such as an assessor is only allotted 10 days to respond, even if the response is only preliminary, and moreover, any denial of a request for disclosure must be in writing.[38]

After a request is submitted to a local agency, an assessor has ten days to determine whether the request "seeks copies of disclosable public records in the possession of the agency."[39] In "unusual circumstances," an assessor may respond within 10 days that it needs an additional 14 days to determine whether the request will be granted or denied.[40] If the request is granted, costs incurred by furnishing public records created by state and local governmental entities in compliance with Section 480.6, the California Government Code provides that an assessor may recover "the direct costs of duplication."[41] If the request is denied, a county assessor bears the burden of justifying the secrecy of the documents.[42] As the analysis above demonstrates, an assessor cannot meet this burden because there is

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[34] See George Renkei, Assistant Assessor for Los Angeles County, letter to Diane Olson, Chief Board Proceedings, State Board of Equalization, September 9, 2010. Note, the possibility that striking the Official Explanation from the Usage Report may cause escape assessments is not relevant to the analysis of the public nature of the documents supplied by the state and local agencies under Section 480.6.

[35] See Footnote 12, supra.

[36] Handbook, *supra*, at p. 63. The extent to which possessory interests are not recorded and the difficulty for appraisers in identifying public lands are mentioned as key challenges.

[37] See *Gallagher* and Footnote 24, supra.

[38] Gov. Code, § 6255(b).

[39] Gov. Code, § 6253(c).

[40] Gov. Code, § 6253(c).

[41] Gov. Code, § 6253(b).

[42] See Section 4.

no legal or policy justification for keeping possessory interest information provided by state and local governmental entities to a county assessor secret.

CONCLUSION

The California Constitution and the PRA guarantee the right of the people to writings of public agencies. The courts have upheld the right of the people to access – and the obligation of an agency to disclose – leases and other records that either create or are relevant to possessory interests. The Section 408 exception to an assessor's secrecy obligation must be broadly construed to give the people ability to have access to the change in ownership reports or statements or any other writing provided by state and local governmental agencies in compliance with Section 480.6 and kept by county assessors. The secrecy provisions in Sections 451 and 481 must be narrowly construed to exclude from secrecy data provided by state and local governmental agencies to assessors so that assessors can use and keep those documents to appraise the possessory interest throughout the term. Assessors are required to follow the PRA. These is no public interest supporting nondisclosure by an assessor of records kept in any form that are transmitted by state and local governmental entities pursuant to their obligation under Section 480.6.

The Board should advise assessors that no secrecy obligation applies to public records provided by state and local governmental agencies as required by Section 480.6. The assessors must make those public records available in response to a request under the PRA.

Respectfully submitted,

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