November 19, 2007

TO COUNTY ASSESSORS AND INTERESTED PARTIES:

GUIDELINES ON THE PROPER HANDLING OF CONFIDENTIAL INFORMATION

Board staff has initiated a project to develop Guidelines on the Proper Handling of Confidential Information. These guidelines will primarily address documents and procedures in county assessors' offices.

Enclosed is a draft of the proposed guidelines. Interested parties may provide suggested revisions to the guidelines in the form of alternative text. Proposed revisions should be sent by January 25, 2008 to Mr. Michael McDade at michael.mcdade@boe.ca.gov or mailed to the above address.

After reviewing comments received, staff will meet with interested parties to discuss any outstanding issues. It is anticipated that the guidelines will be presented to the Board's Property Tax Committee for discussion in summer 2008.

All documents for this project will be posted to the Board's website at www.boe.ca.gov/proptaxes/otherprojects07.htm. If you have questions regarding this project, you may contact Mr. McDade at 916-445-3150 or Ms. Sherrie Kinkle at 916-322-2921.

Sincerely,

/s/Mickie Stuckey

Mickie Stuckey
Acting Deputy Director
Property and Special Taxes Department

MS: mpm
Enclosure
GUIDELINES ON THE PROPER HANDLING
OF CONFIDENTIAL INFORMATION

The purpose of this document is to provide guidance to county assessors for the proper handling
of confidential information by presenting a comprehensive summary of the statutory provisions,
explaining their application in commonly encountered situations, and resolving some of the
apparent conflicts in those provisions.

GENERAL DISCLOSURE PROVISIONS

The right to privacy is a personal and fundamental right protected by section 1 of article 1 of the
California Constitution and by the United States Constitution. All individuals have a right of
privacy in information pertaining to them. In order to protect that privacy, the dissemination and
maintenance of personal information must be subject to strict limits.1

The California Public Records Act (Act), codified by Government Code section 6250 et seq., is
the general provision governing the public disclosure of information by all state and local
agencies in California. The Act implements the Legislature's finding and declaration that
"mindful of the right of individuals to privacy…access to information concerning the conduct of
the people's business is a fundamental and necessary right of every person in this state."2 In
enacting those provisions, the Legislature also took measures to protect the confidentiality of
individual members of the public by prohibiting the disclosure of specified types and forms of
information such as property statements, change in ownership statements, and homeowners'
exemption claim forms.

COUNTY ASSESSORS' INQUIRY RIGHTS

Pursuant to the California Constitution, article XIII section 1, and Revenue and Taxation Code
sections 110, 110.1 and 401,3 county assessors are required to value and enroll all locally
assessable property at its fair market value. To allow a county assessor to perform this task,
every person owning, claiming, possessing, controlling, or managing property shall furnish any
required information or records to a county assessor for examination at any time.4 Property
owners with business-related personal property having a value in excess of $100,000 are
obligated to file annual property statements describing the cost of all taxable property acquired or
disposed of during the preceding assessment year.5 County assessors may also pose specific
property valuation questions and request specific property-related documents.6

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1 Civil Code section 1798.1.
2 Government Code section 6250.
3 All statutory references are to the Revenue and Taxation Code unless otherwise designated.
4 Section 442.
5 Section 441, subdivision (a).
6 Sections 441, 454, and 470.
A county assessor's ability to request property information is only limited by the requirements that the inquiry is within the authority of the agency, the demand is not too indefinite, and the information sought is reasonably relevant to the discovery and valuation of taxable property. In accordance with section 19551, for example, a county assessor may request and receive assesseetax return information from the Franchise Tax Board.

**PROPERTY OWNERS' INQUIRY RIGHTS**

A property owner is entitled to require a county assessor to disclose the basis and methodology used for the assessment of the owner's property. The property owner may inspect the county assessor's records concerning the particular appraisal of his or her property and review publicly available market data used as basis for the appraisal. In certain instances, the property owner may secure a court order to force disclosure of confidential business information of others which the county assessor may have used to value the property.

**INFORMATION PROVIDED TO THE PUBLIC**

The types of information held by county assessors fall into two general categories:

1. Public information filed by taxpayers that a county assessor is statutorily required to maintain. These include the assessment roll, assessment maps, list of all property transferred in the last two years, welfare exemption claims and supporting documents, market data, and information maintained on property characteristics.

2. Other information not required by the statute to be kept but that is used for purposes of conducting appraisals. These include change in ownership statements, personal property statements, and other appraisal information obtained by a county assessor.

Government Code section 6253, subdivision (a), provides in relevant part that:

Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

Public records that are generally subject to inspection and copying as defined under the Act include "any writing containing information relating to the conduct of the public's business

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10 For ease of reference in this document, we may refer to subdivisions as, for example, section 6253(a).
prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”

A public agency must justify withholding any record by demonstrating that the record in question is statutorily exempt from public inspection or that the public interest served by not disclosing it clearly outweighs the public interest served by disclosure of the record.

The disclosure provisions governing information collected and maintained by county assessors are set forth in section 408, which provide that information and records in a county assessor's office that are not required by law to be kept or prepared by a county assessor are not public documents and are not open to public inspection.

Government Code section 25303 sets forth the authority of the board of supervisors to supervise the official conduct of all county officers and to investigate the conduct of a county assessor's office. It provides in part:

The board of supervisors shall supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county, and particularly insofar as the functions and duties of such county officers and officers of all districts and subdivisions of the county relate to the assessing, collecting, safekeeping, management, or disbursement of public funds....

Section 408(b) incorporated the above Government Code section into the Revenue and Taxation Code in order to confirm the authority and jurisdiction of the board of supervisors and to ensure that the board of supervisors has access to all documents in a county assessor's possession.

Section 408(b) provides an exception to the general rule of confidentiality for certain governmental agencies or representatives. It requires that a county assessor disclose information or permit access to all records sought by a county assessor of any other county and the following:

- Law enforcement agencies
- County grand jury
- Boards of supervisors or their duly authorized agents employees or representatives when conducting an investigation of a county assessor's office pursuant to section 25303 of the Government Code
- State Controller and employees of the State Controller for property tax postponement purposes
- Probate referees
- Employees of the Franchise Tax Board for tax administration purposes only

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11 Government Code section 6252(e).
12 Government Code section 6255(a).
Staff appraisers of the Department of Financial Institutions

State Department of Transportation

State Department of General Services

State Board of Equalization

State Lands Commission

State Department of Social Services

State Department of Child Support Services

State Department of Water Resources

Other duly authorized legislative or administrative bodies of the state pursuant to their authorization to examine records

ASSESSMENT ROLL

Section 601 instructs a county assessor to prepare an assessment roll showing all assessable property within the county. The assessment roll must contain the following information:\(^\text{14}\)

- The name and address, if known, of the assesse. (A county assessor is not required to maintain electronic mail addresses.)
- Land, by legal description.
- A description of possessory interests sufficient to identify them.
- Personal property. (A failure to enumerate personal property in detail does not invalidate the assessment.)
- The assessed value of real estate, except improvements.
- The assessed value of improvements on the real estate.
- The assessed value of improvements assessed to any person other than the owner of the land.
- The assessed value of possessory interests.
- The assessed value of personal property, other than intangibles.
- The revenue district in which each piece of property assessed is situated.
- The total taxable value of all property assessed, exclusive of intangibles.

\(^{14}\) Section 602.
Section 1602 provides that the information contained on the roll is public and must be made available for inspection during regular office hours.

**ORGANIZATIONAL EXEMPTIONS**

Organizational exemption claims and related documents are available for public inspection pursuant to the Act and section 408.2. All documents filed with an organizational exemption claim may be inspected, including supplemental affidavits, financial statements, organizational documents, and federal or state tax exempt letters.

These exemptions include cemetery, college, church, religious, welfare, and lessor.

**PROPERTY CHARACTERISTICS**

Property characteristics information maintained by a county assessor is a public record and must be open to public inspection. Property characteristics include, but are not limited to, the following:

- The year of construction of improvements to a property
- The square footage
- The number of bedrooms and bathrooms of all dwellings
- The property's acreage
- Other attributes of or amenities to a property, such as swimming pools, views, zoning classifications or restrictions, use code designations, and the number of dwelling units of multiple-family properties

**COUNTY ASSESSOR’S MAPS**

Section 327 provides that where any county or county officer possesses a complete, accurate map of any land in the county, the map or a copy of it must be displayed publicly at all times in the office of the county assessor.

Parcel boundary map data maintained by a county assessor in an electronic format is also subject to public inspection and copying under provisions of the Act. When requested by a member of the public, a copy of parcel boundary map data must be furnished upon request.

**LIST OF TRANSFERS**

Section 408.1 provides in part that a county assessor must maintain a list of property transfers within the county that have occurred within the preceding two-year period. The list must be open for public inspection and must contain the following information:

- Transferor and transferee, if available

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15 Section 408.3(a).
16 Section 408.3(b).
• Assessor's parcel number
• Address of the sales property
• Date of transfer
• Date of recording and recording reference number
• Consideration paid for such property (if known)

A county assessor is prohibited from including information on the list which relates to:

• The business or business affairs of the owner of the property or the income or income stream generated by the property\(^{18}\)
• Information from the Preliminary Change of Ownership Report (PCOR) or Change of Ownership Statement (COS) which is not otherwise public information\(^{19}\)

**MARKET DATA**

If a county assessor bases the assessment of property on comparable sales, then upon the assessee's request, the following information must be provided:

• The names of the seller and buyer of each property on which the comparison is based
• The location of each property
• The date of each sale
• The consideration paid for each property (if known)

Section 408(d) defines *market data* as any information in a county assessor's possession, whether or not required by law to be prepared or kept by a county assessor, relating to the sale of any property comparable to the property of the assessee.

**COST OF PROVIDING DATA**

Section 409(a) provides that if a county assessor, pursuant to the request of any party, provides information or records that a county assessor is not required by law to prepare or keep, the county may require that a fee reasonably related to the actual cost of developing and providing that information be paid by the party receiving the information.

The actual cost of providing the information is not limited to duplication or reproduction costs, but may include recovery of developmental and indirect costs, such as overhead, personnel, supply, material, office, storage, and computer costs.\(^{20}\) The county may impose this fee for information and records maintained for county use, as well as for information and records not maintained for county use.

\(^{18}\) Section 408.1(b)(7).
\(^{19}\) Section 481.
\(^{20}\) Section 408.3(c).
INFORMATION PROVIDED TO OR OBTAINED FROM OTHER AGENCIES

Section 408(b) provides that a county assessor is required to disclose information, or permit access to all records in a county assessor's office, to:

- Law enforcement agencies
- The county grand jury
- The board of supervisors or their duly authorized agents, employees or representatives when conducting an investigation of a county assessor's office pursuant to section 25303 of the Government Code
- The State Controller
- Probate referees
- Employees of the Franchise Tax Board for tax administration purposes only
- The State Board of Equalization
- Other duly authorized legislative or administrative bodies of the state pursuant to their authorization to examine the records

Examples of other duly authorized legislative or administrative bodies include agencies or committees authorized to investigate matters to which access to county assessors' records is necessary and proper such as legislative committees, the State Auditor, and any other agency having specific statutory authority.

INFORMATION PROVIDED TO OTHER DEPARTMENTS

There is a general prohibition of disclosure contained in section 408. Only specific agencies listed in the statutes are allowed access to confidential taxpayer information gathered for tax collection and assessment purposes. There is a public purpose to promoting full disclosure from taxpayers. Since taxpayers are required by the law to provide the information for the particular purpose of taxation, public policy is against revealing that information. Inspection is permitted only if it is necessary in the administration of tax law.21

County Planning Commission

County planning commissions are agencies created by the Legislature pursuant to Government Code section 65101, and are authorized by section 65106 to request information from all public officials as may be required for their work. Such a commission qualifies as a legislative or administrative body authorized under section 408 to examine the records of a county assessor.

21 Franchise Tax Board v. Superior Court (1950) 36 Cal.2d 538.
County and Local Planning Departments

Although county and local planning departments are responsible for enforcing county and local ordinances with respect to the regulation of construction of buildings, they are not law enforcement agencies pursuant to section 408(b). Law enforcement agencies are those local, state, or federal, agencies such as the police, sheriff, or the Federal Bureau of Investigation that enforce the penal statutes. Many state and local administrative agencies enforce one or more statutes, and in the course of such enforcement conduct investigations. Those agencies are not allowed the same access to confidential information as other law enforcement agencies.

District Attorneys

The district attorneys, and their deputies and employees, in the 58 California counties are "law enforcement agencies" within the meaning of section 408(b). Accordingly, county assessors are required to disclose information, furnish abstracts, or permit access to all records in their offices to the district attorney or their authorized deputies, agents, and employees.

County Tax Collector

Section 408(c) provides that upon the request of the tax collector, a county assessor is required to disclose and provide to the tax collector information used in the preparation of that portion of the unsecured roll for which the taxes are delinquent. The tax collector is to certify to the county assessor that the information requested is needed for the enforcement of the tax lien in collecting those delinquent taxes. Information requested by the tax collector may include social security numbers. A county assessor is authorized to recover from the tax collector reasonable costs for providing the information.

INFORMATION FROM THE STATE BOARD OF EQUALIZATION

Section 833(c) states that except as provided in section 38706, the State Board of Equalization (Board) may provide any assessment data in its possession to an assessor of any county. When requested by resolution of the board of supervisors of any county, or the city council of any city that prepares its own local roll, the Board shall permit the auditor or the assessor of the county or city, or any duly authorized deputy or employee of that officer, to examine any and all records of the Board.

Documents that are confidential and privileged, such as the property statements of state assessees, remain so as long as the privilege is not waived and they do not become public information. If both the Board and a county assessor receive confidential data under section 833, then they both are bound by its restrictions and limitations. Further, a county assessor does not have the authority to share the information received from the Board with either a city council or board of supervisors.

INFORMATION SHARING AMONG COUNTY ASSESSORS

Section 408 allows one county assessor to share relevant confidential information concerning property owners with other county assessors. Section 408(b) provides in part:

The assessor may provide any appraisal data in his or her possession to the assessor of any county.

This provision allows county assessors to determine the fair market value of certain types of properties that share common market characteristics such as oil, gas, gravel, geothermal, regional shopping centers, central wholesale distribution centers, and amusement parks.

CALIFORNIA COUNTIES COOPERATIVE AUDIT SERVICE EXCHANGE

Many counties conduct audits through the inter-county cooperative audit program. This program is called the California Counties Cooperative Audit Services Exchange (CCCASE). It can be an efficient and effective means of audit for both the county assessor and the assessee. Using this program, a county assessor's staff in the county where the assessee is headquartered gathers information for the audit for all participating counties. A similar arrangement is used for assessees headquartered outside of California. One auditor may go to a particular state or city and gather information for all counties who have audit accounts at that location.

Each participating county's board of supervisors establishes a Joint Powers Agreement with the other counties. The agreement specifically references the confidentiality provisions of sections 408 and 451.23

AIRCRAFT ADVISORY SUBCOMMITTEE OF THE CALIFORNIA ASSESSORS' ASSOCIATION

Section 1153.5 provides for the establishment of a lead county assessor's office for each commercial air carrier operating certificated aircraft. The lead county office receives the property statements from the carrier, calculates the unallocated value of the aircraft, electronically transmits the calculated values to the county in which the aircraft has situs, and leads the audit team when an audit of the designated carrier is conducted.

In this capacity, the lead county assessor is subject to the provisions of Property Tax Rule 32224 and sections 408, 451, and 1606 to the same extent as the local assessor.25

FEDERAL SUMMONS

A county assessor is required, pursuant to an administrative summons issued by the Internal Revenue Service,26 to produce information contained in property tax records made confidential under sections 408, 451, or 481 of the Revenue and Taxation Code, where the federal interest in disclosure outweigh the state interest in confidentiality. Conversely, a county assessor is

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24 All references to Rules are Property Tax Rules from Title 18, Public Revenues, California Code of Regulations.
25 Section 1153.5(c)(2). Section 1153.5 is in effect until December 31, 2010.
26 Article 26, United States Code, section 7602.
prohibited from producing such information where the state interests in confidentiality outweigh
the federal interests in disclosure.27

Title 26, United States Code, section 7602(a), provides:

For the purpose of ascertaining the correctness of any return, making a return
where none has been made, determining the liability of any person for any
internal revenue tax or the liability at law or in equity of any transferee or
fiduciary of any person in respect of any internal revenue tax, or collecting any
such liability, the Secretary is authorized—

(1) To examine any books, papers, records, or other data relevant or material to
such inquiry.

(2) To summon the person liable for tax or required to perform the act, or any
officer or employee of such person, or any person having possession, custody, or
care of books of account containing entries relating to the business of the person
liable for tax or required to perform the act, or any other person the Secretary may
decide proper, to appear before the Secretary at a time and place named in the
summons and to produce such books, papers, records, or other data, and to give
such testimony, under oath, as may be relevant or material to such inquiry.

(3) To take such testimony of the person concerned, under oath, as may be
relevant or material to such inquiry.

Example

The Internal Revenue Service requests an examination of the homeowners'
exemption claims to determine the accuracy of the federal tax returns filed by
certain individuals.

Opinion 84-1104 of the California Attorney General considered the issue of releasing
confidential records in a county assessor's possession in response to a summons issued under
Title 26, section 7602. The Attorney General set factors which would weigh in favor of
disclosure, and others that would weigh in favor of nondisclosure.

Considerations that weigh in favor of disclosure include, but are not limited to:

1. The importance of the federal proceedings;
2. The information would directly affect the resolution of a primary issue;
3. Under similar circumstances, disclosure by the federal government of federal tax
information would be permitted;

4. Under similar circumstances, disclosure by the state to another state taxing agency would be permitted;

5. The taxpayer whose records are to be disclosed is a party or is directly interested in the investigative proceeding.

However, a county assessor is prohibited from producing such information where the state interest in confidentiality outweighs the federal interest in disclosure. Considerations which would weigh in favor of nondisclosure would include:

1. The information sought may be readily acquired from another source;

2. The information sought would be cumulative of other competent evidence acquired or available;

3. The disclosure of information not otherwise a matter of public record or knowledge would constitute a substantial invasion of privacy or impairment of competitive advantage;

4. Disclosure of information would have a substantial adverse effect upon voluntary compliance with revenue requirements;

5. Disclosure of information would identify a confidential informant or impair a state investigation in progress.

CONFIDENTIAL INFORMATION

Certain documents filed by taxpayers contain personal information, and are statutorily required to be kept confidential. These include property statements, Preliminary Change of Ownership Report (PCOR), \(^{28}\) Change of Ownership Statement (COS), \(^{29}\) and the Claim for Homeowners' Property Tax Exemption. \(^{30}\)

PROPERTY STATEMENTS

Each person owning taxable personal property, other than a manufactured home, having an aggregate cost of $100,000 or more for any assessment year must file a signed property statement with the assessor of the county where the property is located. Every person owning personal property that does not require the filing of a property statement, upon request of a county assessor, must file a signed property statement. \(^{31}\)

\(^{28}\) Form BOE-502-A.
\(^{29}\) Form BOE-502-AH.
\(^{30}\) Form BOE-266.
\(^{31}\) Section 441(a).
A county assessor is authorized to examine information or records related to the assessee's property or any other personal property located on the assessee's premises that is considered essential to the proper discharge of an assessor's duties. This information may include:

- Details of property acquisition transactions such as price paid, delivery and installation cost
- Construction and development costs
- Rental income
- Other data relevant to the determination of an estimate of value

All information requested by a county assessor or furnished in the property statement will be held secret by the county assessor. The statement is not a public document and is not open to inspection, except as provided in section 408.33

Property statements include:

- Mutual or Private Water Company Property Statement (BOE-540-S)
- Oil, Gas and Geothermal Personal Property Statement (BOE-566-J)
- Agricultural Property Statement (BOE-571-A and BOE-571-F)
- Power Plant Property Statement (BOE-571-C)
- Horse Property Statement (BOE-571-K)
- Business Property Statement (BOE-571-L)
- Miscellaneous Property Statement (BOE-571-M)
- Pipeline Property Statement (BOE-571-P)
- Apartment House Property Statement (BOE-571-R)
- Right-of-Way Property Statement (BOE-571-RW)
- Insurance Company Separate Account Property Statement (BOE-572)
- Vessel Property Statement (BOE-576-D)

**Business Property Statement Electronic Filing**

Section 441(k) authorizes electronic filing (e-filing) and authentication of business property statements. Some county assessors are participating in a program whereby business property statements may be filed electronically via the Internet. In the California Assessor Standard Data Guidelines on Proper Handling of Confidential Information--DRAFT

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32 Section 441(d)(1).
33 Section 451.
Record (SDR) Network Group, the confidentiality of data is addressed in the Conditions of Use Policy.\footnote{http://www.sdrtest.org, Section D: Public Disclosure.}

Other county assessors are currently working with their property tax software providers to permit online filing.

In using either the SDR filings or online filing, the Internet transactions must use secure websites to prevent unauthorized exposure of the data.

County assessors are also prohibited from releasing information related to the property or business affairs of other taxpayers.

Civil Code section 1798.3 provides the following definition of \textit{personal information}:

\begin{quote}
Any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual.
\end{quote}

\textbf{HOMEOWNERS' EXEMPTION}

Section 408(a) provides that property receiving the homeowners' exemption must be clearly identified on the assessment roll. A county assessor must maintain records that are open to public inspection to identify those claimants who have been granted the homeowners' exemption.

Certain documents, however, are not open to public inspection. The Claim for Homeowners' Property Tax Exemption contains confidential information, such as social security numbers. Therefore, the \textbf{claims} may not be disclosed.\footnote{Property Tax Rule 135, subsection (e)(4).}

\textbf{VETERANS' EXEMPTIONS}

The Claim for Disabled Veterans' Property Tax Exemption\footnote{Form BOE-261-G.} is confidential because it contains the applicant's social security number.

However, the Claim for Veterans' Exemption\footnote{Form BOE-261.} is not considered confidential because it does not contain the applicant's social security number.

\textbf{CHANGE IN OWNERSHIP STATEMENTS}

Anytime there is any change in ownership of real property or of a manufactured home that is subject to local property taxation, the transferee is required to file a signed change in ownership statement in the county where the property is located. The type of information provided on the statement includes:
A description of the property
Identification of the parties to the transaction
The date of acquisition
The amount paid for the property measured in money or otherwise
The terms of the transaction

All information furnished in the change in ownership statement must 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 408.38

SUMMARY OF CONFIDENTIAL CLAIMS AND FORMS
The following claims and forms contain confidential information and are not subject to public inspection:

CONFIDENTIAL—SOCIAL SECURITY NUMBERS

<table>
<thead>
<tr>
<th>Form</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>BOE-58-AH</td>
<td>Claim for Reassessment Exclusion for Transfer Between Parent and Child</td>
</tr>
<tr>
<td>BOE-58-G</td>
<td>Claim for Reassessment Exclusion for Transfer from Grandparent to Grandchild</td>
</tr>
<tr>
<td>BOE-60-AH</td>
<td>Claim of Person(s) at Least 55 Years of Age for Transfer of Base Year Value to Replacement Dwelling</td>
</tr>
<tr>
<td>BOE-60-NR</td>
<td>Notice of Rescission of Claim to Transfer Base Year Value to Replacement Dwelling</td>
</tr>
<tr>
<td>BOE-62</td>
<td>Disabled Persons Claim for Transfer of Base Year Value to Replacement Dwelling</td>
</tr>
<tr>
<td>BOE-261-G</td>
<td>Claim for Disabled Veterans' Property Tax Exemption</td>
</tr>
<tr>
<td>BOE-266</td>
<td>Claim for Homeowners' Property Tax Exemption</td>
</tr>
</tbody>
</table>

CONFIDENTIAL—BUSINESS AFFAIRS OF OTHERS

<table>
<thead>
<tr>
<th>Form</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>BOE-502-A</td>
<td>Preliminary Change of Ownership Report</td>
</tr>
<tr>
<td>BOE-502-AH</td>
<td>Change of Ownership Statement</td>
</tr>
<tr>
<td>BOE-502-G</td>
<td>Change of Ownership Statement, Oil and Gas Property</td>
</tr>
<tr>
<td>BOE-502-P</td>
<td>Possessory Interests Annual Usage Report</td>
</tr>
<tr>
<td>BOE-540-S</td>
<td>Mutual or Private Water Company Property Statement</td>
</tr>
<tr>
<td>BOE-560-A</td>
<td>Aggregate Production Report</td>
</tr>
<tr>
<td>BOE-560-B</td>
<td>Mining Production Report</td>
</tr>
<tr>
<td>BOE-560-C</td>
<td>Mining Claim Production Report</td>
</tr>
</tbody>
</table>

38 Section 481.
The following claims do not contain confidential information and therefore are subject to public inspection:

<table>
<thead>
<tr>
<th>Form</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>BOE-63</td>
<td>Disabled Persons Claim for Exclusion of New Construction</td>
</tr>
<tr>
<td>BOE-64</td>
<td>Claim for Seismic Safety Construction Exclusion from Assessment</td>
</tr>
<tr>
<td>BOE-65-CP</td>
<td>Claim for Transfer of Base Year Value from Qualified Contaminated Property to Replacement Property</td>
</tr>
<tr>
<td>BOE-65-PT</td>
<td>Claim for Intercounty Transfer of Base Year Value from Principal Residence Damaged or Destroyed in a Governor-Declared Disaster to Replacement Property</td>
</tr>
<tr>
<td>BOE-261</td>
<td>Claim for Veteran's Exemption</td>
</tr>
</tbody>
</table>

**RECONCILIATION OF SECTIONS 408.1 AND 481**

Section 481 requires a county assessor to hold secret all information furnished on either the PCOR or COS. Section 408.1 requires a county assessor to maintain a list of transfers of property that have occurred within the preceding two years and hold that list open for public inspection. In most instances, the source of information for that list is obtained from the PCOR or COS.

39 These are not Board-prescribed forms. County assessors may be using different forms or the records may exist in a computer file. In any case, the information contained therein is confidential except for property characteristics in accordance with section 408.3.
The specific information required to be placed on the transfer list under section 408.1 constitutes an exception to the *hold secret* requirement in section 481. However, subdivision (f) of section 408.1 mandates that a county assessor include on the transfer list only information from the PCOR or COS that is otherwise public information.

In this context, *public information* means any information concerning real property transfers that is available from documents accessible by the public. For example, the name of the transferor and transferee, the assessor's parcel number, the property address, date of transfer, and date of recording is information that is typically available to the public from the recorder's office. The consideration paid for the property can usually be calculated from the amount of documentary transfer tax shown on the recorded deed. In some cases, real estate publications and Realtors' Multiple Listing Service databases disclose information to the public concerning the sales price or liabilities assumed.

**INFORMATION RELATED TO BUSINESS AFFAIRS OF OTHERS**

A county assessor is prohibited from disclosing to one taxpayer information and records that relate to the property or business affairs of another taxpayer. An exception occurs when the disclosure is ordered by a competent court in a proceeding initiated by a taxpayer seeking to challenge the validity of the assessment of his or her property.\(^{40}\)

Government Code section 6254(i) describes records that may not be disclosed by a county assessor:

> Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

Section 408 states that a county assessor shall permit the assessee or representative to inspect or copy all information, documents, and records, including auditors' narrations and workpapers, whether or not required to be kept or prepared by a county assessor, relating to the appraisal and the assessment of the assessee's property.

Subsequent to a change in ownership, a prior owner is not permitted to have the same access to those confidential records because he or she is no longer the assessee.

**CONTRACTORS Hired BY COUNTY ASSESSORS**

Section 674(e) defines a *contractor* as any person who is not an employee of the state, any county, or any city who performs appraisal work pursuant to a contract with a county assessor.

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\(^{40}\) Section 408(e)(3).
County assessors contract with non-employee appraisers (contractors) to perform appraisal work, typically for specialized properties such as petroleum and mining properties. Section 674 requires specific standards of confidentiality to be included in all contracts executed between county assessors and contractors. Some of the provisions include:

- Any request for information and records from an assessee must be made by a county assessor. A county assessor may authorize a contractor to request additional information or records, if needed. However, a contractor is not allowed to request information or records without the written authorization of the county assessor.\textsuperscript{41}

- A contractor shall not provide appraisal data in his or her possession to the county assessor or a contractor of another county who is not a party to the contract. A county assessor may provide that data to the assessor of another county as provided in section 408(b).\textsuperscript{42}

- A contractor may not retain information contained in, or derived from, an assessee's confidential information and records after the conclusion, termination, or nonrenewal of the contract. Within 90 days of the conclusion, termination, or nonrenewal of the contract, the contractor must do the following:\textsuperscript{43}
  - Purge and return to the county assessor any assessee records, whether originals, copies, or electronically stored, provided by the county assessor or otherwise obtained from the assessee.
  - Provide a written declaration to the county assessor that the contractor has complied with this subdivision.

**INTERNET PUBLICATION RESTRICTIONS**

Government Code section 6254.21(a) prohibits the publication on the Internet of home addresses or telephone numbers of any state or local agency official, whether elected or appointed, without first obtaining the written permission of that individual.

Government Code section 6254.21(f) defines *elected or appointed official* to include, but not be limited to, all of the following:

1. State constitutional officers
2. Members of the Legislature
3. Judges and court commissioners
4. District attorneys

\textsuperscript{41} Section 674(b)(1).
\textsuperscript{42} Section 674(b)(2).
\textsuperscript{43} Section 674(c).
5. Public defenders
6. Members of a city council
7. Members of a board of supervisors
8. Appointees of the Governor
9. Appointees of the Legislature
10. Mayors
11. City attorneys
12. Police chiefs and sheriffs
13. A public safety official as defined in Government Code section 6254.24
14. State administrative law judges
15. Federal judges and federal defenders
16. Members of the United States Congress and appointees of the President

E-MAIL CONFIDENTIALITY

The most widely used Internet e-mail protocol, Simple Mail Transfer Protocol (SMTP), is inherently not secure. Messages sent in this fashion are easily readable by others. A general recommendation is that confidential information should not be exchanged via e-mail.

ASSESSMENT APPEALS

Section 1605.4 and Rule 313 require that appeals board hearings must be open, accessible, and audible to the public. When a portion of a hearing involves evidence regarding trade secrets for which the county assessor or applicant wishes to maintain confidentiality, that portion of the hearing may be closed to the public. If the appeals board grants the request of the county assessor or applicant to close a portion of the hearing, only evidence relating to the confidential information may be presented during the time the hearing is closed to the public.

A trade secret: \(^44\)

…means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

1. Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and

\(^44\) Civil Code section 3426.1(d).
(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

When the county assessor presents detailed information on the methodology employed to arrive at a value during an appeals hearing, such information may have been derived from confidential data submitted by the assessee. If the information is included as an exhibit, or if the minutes of the hearing delineate the information, confidentiality would not be maintained. Therefore, the confidential information must be redacted/deleted from the published minutes.

**Example**

In the minutes of a gas well appeal, the county assessor's exhibits include appraisal calculations that contain the taxpayer's name, current and prior years' production, and estimated reserves.

The Oil, Gas and Geothermal Personal Property Statement (form BOE-566-J) contains the statement "The information contained herein will be held secret by the Assessor (Code section 451)...." Therefore, prior to inclusion in the minutes, all confidential information should be redacted.

**Example**

The minutes of a cable television appeal contain specific references, by the county assessor and assessee, to growth rate, market rent, discount rate, expense ratios, contract terms, and competitive issues.

This portion of the hearing could have been closed, at either party's request, if confidentiality had been a concern.

Local county rules of notice and procedure should include procedures for maintaining the confidentiality of transcripts and exhibits presented during closed portions of appeals hearings.

**OBTAINING INFORMATION FOR THE HEARING**

For an appeals hearing to be most effective, taxpayers and county assessors should provide the board members with comprehensive information regarding the subject property and the taxpayer's and the county assessor's opinions of value for the subject property. There are various means for both the taxpayer and a county assessor to obtain pertinent information for the hearing.

**INSPECTION OF COUNTY ASSessor’S RECORDS**

Section 408 allows an assessee, or a representative of the assessee, to inspect records at a county assessor's office regarding the assessment of his or her property, as well as market information regarding any comparable properties that the county assessor used in the valuation of the assessee's property. The assessee or representative may inspect or copy all information, documents, and records, including auditors' narrations and workpapers, whether or not required.

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46. Article XIII, section 16 of the California Constitution.
to be kept or prepared by a county assessor, relating to the appraisal and the assessment of the
assessee's property, and any applicable penalties and interest. A county assessor is prohibited by
law from disclosing market information that relates to the business affairs of another taxpayer
unless the county assessor is provided with a written waiver from that taxpayer allowing the
county assessor to disclose the information.

Information obtainable under section 408 is relevant to a determination of value and may be
introduced at an appeals hearing. County assessors are expected to comply with an assessee's
reasonable request pursuant to that provision.47 A taxpayer has a right to inspect records under
section 408 whether or not an appeal has been formally filed.

**INFORMATION FROM TAXPAYER'S RECORDS**

Section 441(d) requires a taxpayer to make available to a county assessor, for assessment
purposes, information or records regarding the taxpayer's property or any other personal property
located on premises the taxpayer owns or controls. A county assessor may obtain details of
property acquisition transactions, construction and development costs, rental income, and other
data relevant to the determination of an estimate of value, and this information may be
introduced at an appeals board hearing.

Taxpayers are expected to comply with a county assessor's reasonable requests pursuant to the
provisions of section 441(d).

**INFORMATION FROM THIRD PARTY RECORDS**

Section 441 permits a county assessor to gather information from as many sources as necessary
to arrive at an opinion of value. Information from other taxpayer records may be used as
reference data as long as confidentiality is maintained.

**Example**

In a multi-unit apartment appeal, data supporting the county assessor's use of the income
approach was obtained from several recent sales of comparable apartment buildings. To
maintain confidentiality, the comparable properties are identified in the assessor's exhibits as
A, B, C, and D, with no references to owner's name, APN, street address, or other similar
items.

**SUBPOENAS**

Rule 322 allows an applicant or a county assessor to request that the appeals board issue a
subpoena for attendance of witnesses at a hearing, or to produce books, records, maps, and
documents relevant to the issues contemplated in the application. Additionally, the appeals board
may issue a subpoena on its own motion. Subpoenas will be restricted to compelling the
appearance of a person or the production of things at the hearing and will not be used for
purposes of prehearing discovery.

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When subpoenaed to appear before an assessment appeals board, a county assessor remains subject to the confidentiality requirements of sections 408, 451 and 481. If a county assessor is requested by the subpoena to disclose confidential documents and records concerning the property owner which constitute trade secrets, the county assessor may present such evidence but should request that the evidence should only be examined in closed session.

If an applicant has subpoenaed confidential information in a county assessor's possession concerning the business affairs of third parties, the county assessor must invoke the confidentiality provisions of sections 408, 451, and 481 and refuse to offer evidence on that matter unless the applicant has first sought and obtained a judicial order for disclosure. In order to obtain such a disclosure, the applicant must successfully convince a court that the applicant's due process need for access to all of the information on which the county assessor relies for the valuation of the applicant's property outweighs the third party taxpayer's confidentiality rights. The applicant must also prove that adequate protections are in place to prevent the misuse of the third party confidential information.

Evidence Code section 1040(a) defines official information as information acquired in confidence by a public employee in the course of his or her duty that is not open, or officially disclosed, to the public prior to the time the claim of privilege is made. A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing official information, if the following conditions are met:

- The privilege is claimed by a person authorized by the public entity to do so.
- Disclosure is forbidden by an act of the Congress of the United States or a statute of this state.
- Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice.

County assessors cannot claim the privilege of refusing to release confidential information if the person to whom the information relates authorizes the release and consents that the information be disclosed in the proceeding. In determining whether disclosure of the information is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered.

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48 Section 1609.6.
49 Section 408(e)(3).
50 Evidence Code section 1040(b).