April 14, 2022

Via Email & Position Letter Portal

Chair Tom Daly and Members
Assembly Insurance Committee
Legislative Office Building
1020 N Street, Room 369
Sacramento, CA 95814

RE: AB 2323 (Levine) – SUPPORT

Dear Chair Daly,

California has established an unqualified commitment to making the inner workings of government as transparent as possible, starting with Article 1, Section 3, subd. (b) of the California Constitution, which states:

> (1) 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.

The passage of various "sunshine" legislation over the years, including the Bagley-Keene Open Meeting Act and the Brown Act, reflect the same determination to maintain open government. These laws work in tandem with the California Public Records Act ("CPRA") to define the state's commitment to transparency. As the California Supreme Court has opined, "[a]n informed and enlightened electorate is essential to a representative democracy." (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1328.)

The California Department of Insurance ("CDI") is the nation's largest state regulatory agency. As mandated by California voters, it is responsible for regulating the $310 billion insurance industry in California and keeping insurance available and affordable. The Department's decisions have daily impact on the finances of California consumers and business owners. Such power argues for the greatest sunshine into the Department's operations.

Instead, revelations over the past three years have revealed an unprecedented opacity of decision-making at CDI. CDI officials routinely meet with or engage in communications with insurance industry representatives or those with other business before the agency, with no public record of those activities, and then rule on the issues those representatives sought to influence. While the CPRA enables

citizens to submit requests for records that are required to be made public, that statute places the initial burden on the public. Such a burden requires the members of the public to know there is something to look for. In the case of the CDI's communications with industry and other contacts, procedures to enable more public scrutiny are warranted and must be enacted.

As one example, an investigation in 2019 uncovered $54,000 in campaign contributions to Insurance Commissioner Lara from individuals linked to two insurance companies with matters before the agency, one of which, Applied Underwriters, was being investigated for overcharging businesses; the Commissioner was ultimately responsible for deciding whether the company was liable. The Commissioner subsequently intervened in four proceedings involving Applied Underwriters, reversing Administrative Law Judge decisions that had found the insurance companies liable for excess workers compensation payments.

Commissioner Lara later admitted that he had met with the President of Applied Underwriters prior to intervening in the proceedings, and, critically, that intervention in the proceedings was discussed, as well as the status of a merger that the President sought to benefit from and which also required the Commissioner's approval.

Additionally, throughout the course of a Public Records Act request and ensuing lawsuit that followed the revelations, Consumer Watchdog discovered that other officials at the CDI had had additional undisclosed conversations with other insurance company representatives in close proximity to administrative proceedings taking place at the Department involving those companies.

No existing law or regulation requires Department officials to affirmatively disclose these types of communications. The public needs better real-time accounting from the Commissioner and his top deputies of communications with stakeholders that have issues before CDI.

AB 2323 would require the Commissioner, and a narrow group of top political appointees with decision-making powers, to disclose such "covered communications" within seven days. These reports will be publicly filed on the CDI website on a quarterly basis.

AB 2323 makes the CDI's operations more transparent. By requiring the highest-level CDI officials to record and report communications with insurance industry contacts and other "interested parties," the public has an additional tool in its arsenal to hold its officials accountable. This additional level of transparency is

necessary to restore the public's confidence in the operations of the Department of Insurance.

By limiting the requirement to only the Commissioner and top appointees, AB 2323 narrows the burden to only those whose decision-making authority warrants the highest level of scrutiny.

The need to record and report such communications is critical now more than ever, as the CDI takes tangible steps toward the regularly-planned destruction of public records. In January 2022, the Department quietly attempted to implement a new Email Deletion Policy that would automatically delete the emails of Department employees after merely 180 days, long before either employee or interested member of the public might be able to determine whether a record is worth preserving. While that specific plan was withdrawn, it illustrates the value of real-time reporting of top-level stakeholder communications.

The suggestion that existing "ex parte" rules fill this function is plainly wrong. "Ex parte" rules, covering the communications between decisionmakers and parties in CDI administrative proceedings, are designed primarily to ensure the fairness of those proceedings to all parties. Indeed, as long as all <u>parties</u> have an opportunity to participate in a communication with either the Commissioner or another CDI decisionmaker the public is afforded no opportunity to scrutinize such communications. Currently, such meetings and communications regularly occur in the dark, and the public is never informed.

Furthermore, the "ex parte" rules apply only to a narrow set of official proceedings at the CDI. AB 2323 requires the pro-active *public disclosure* of communications, regardless of their connection to ongoing, formal administrative proceedings. This is critical, as *these* are the types of communications that currently avoid public scrutiny.

AB 2323 is a productive step toward full transparency in California insurance regulation in particular and California policymaking in general. For these reasons, Consumer Watchdog urges passage of AB 2323.

Thank you for your consideration.

Sincerely,

Ben Powell
Consumer Watchdog

Carmen Balber
Consumer Watchdog