



May 17, 2022

Via Email and Overnight Mail

Commissioner Ricardo Lara
Department of Insurance
State of California
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*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.*

Cal. Constitution, Art. 1, Sec. 3(b)(1)

Dear Commissioner Lara:

Your agency has engaged in a pattern and practice of obstructing access to public records. Standout in this recalcitrance at the Department of Insurance is that of your own office—the Office of the Commissioner.

Operating a government agency in the dark, let alone the nation's largest consumer department, is inconsistent with a healthy democracy, the California Constitution, and the requirements of the California Public Records Act. It is also at odds with your own repeated promises of [transparency](#).

Two recent examples raise serious questions about your agency's willingness to face public scrutiny on important matters of public policy.

As recently as last Friday, your agency once again failed to meet its own self-imposed deadline to produce records critical to the interests of consumers. This latest failure relates to records exchanged between the Department and the insurance industry regarding "telematics," a method of monitoring and/or controlling automobiles or other vehicles by using one or

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more technologies.¹ A [new report](#) by Consumer Watchdog details the privacy problems posed for consumers from connected cars and points to new rules to be developed in California as a potential model across the country, if the rules can withstand lobbying by the powerful auto and insurance industries.

As you know from the recent [video](#) released by Consumer Watchdog, insurance industry representatives claim you have committed to do what they want on the issue of telematics, but that you asked them to first provide you “political cover.” There can be little doubt that you, the Office of the Commissioner, and other high ranking staff have had numerous meetings and communications with the industry. Yet, in response to our records request, after three months your agency has released a paltry 16 records. Your agency has repeatedly granted itself revised deadlines for producing the records that cumulatively reflect an unreasonable delay.

The Department staff responsible for responding to public records requests told us on April 5th that your office—the Office of the Commissioner—among others, has yet to forward to them any records that are responsive to our records request. Further compounding the error, your staff informed us that it must first ask industry officials whether the documents should be released. This is wrong. Government Code section 6253.3 prohibits any agency from allowing “another party to control the disclosure of information that is otherwise subject to disclosure pursuant to this chapter.” Furthermore, there is absolutely no basis for the repeated delays under the mandatory production requirements for documents “provided to the Commissioner pursuant to” Proposition 103. (Ins. Code § 1861.07.)

The purpose of government transparency, which is enshrined in the California Constitution, is undermined when records concerning issues of significant contemporary interest to Californians are not produced in a timely manner.

¹ To the extent this request seeks records “provided to the Commissioner pursuant to” Proposition 103, the request is made under the authority of Insurance Code Section 1861.07. (See, e.g., *State Farm Mutual Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029.) However, because this request also seeks records that were not “provided to the Commissioner pursuant to” Proposition 103, such as agency meeting notes, calendars, internal non-privileged communications and documents, and communications from the Department of Insurance to recipients outside the agency, Consumer Watchdog seeks those records under the Public Records Act.

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The second recent public records fiasco relates to a prior policy of the Department to [delete agency email after 180 days](#). The email deletion program was initially proposed shortly after Consumer Watchdog sought records regarding a [government corruption scandal](#) and would have hamstrung Department enforcement efforts. As a [Los Angeles Times](#) editorial criticizing the deletion policy noted, “[a] fundamental principle of a free and open society is that citizens have a right to know what’s going on inside their government.”

The Department rightly [pulled back on the policy](#) after public outcry. Following that decision to reverse course, Consumer Watchdog sought records from your agency regarding the reasons the email deletion program was proposed, implemented, and ultimately terminated. Yet, your agency has been equally recalcitrant in producing those records.

Perhaps you were unaware of the latest two public records transgressions by the Department. With this letter you are on notice. Please comply with the letter and purposes of the law and instruct your executive staff and agency employees to produce all responsive documents by May 31, 2022.

Sincerely

A handwritten signature in black ink, appearing to read 'J. Flanagan', with a horizontal line drawn underneath it.

Jerry Flanagan
Litigation Director