

CALIFORNIA PRIVACY PROTECTION AGENCY

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**M e m o r a n d u m**

Date: February 22, 2023

To: California Privacy Protection Agency Board
(Meeting of March 3, 2023)

From: Philip Laird, General Counsel

Subject: Board and Agency Policies and Practices: Subcommittees

Description: At the request of the Chairperson, this memo reviews the existing subcommittees of the California Privacy Protection Agency Board (“Board”) and sets forth various options for the role, structure, and cadence of the Board’s subcommittees going forward. The formats described below are based on approaches common to other state boards, while keeping in mind the unique needs and functions of the California Privacy Protection Agency (“CPPA”). This memo is intended to facilitate discussion and possible action by the Board to adopt a regularized approach and policy for the creation, maintenance, and disbandment of the Board’s subcommittees.

Background

State Board Subcommittees: The Bagley-Keene Open Meeting Act (“Bagley-Keene” or “the Act”) establishes the transparency and meeting requirements for every “state body”¹ created by California law. A subcomponent of the Act is the contemplation of, and framework for, a state body’s potential use of subcommittees to carry out certain functions. Subcommittees can take a variety of forms but are most commonly composed of a minority of members of a given state body.

The Act explains that two types of subcommittees may exist under a state body—those that are purely advisory in nature, and those that are delegated authority to act on behalf of the body.² A subcommittee with delegated authority must comply with all of the same Bagley-Keene open meeting requirements as a state body, no matter the size of their membership. An advisory subcommittee, however, must only comply with Bagley Keene if it consists of three or more members.³

CPPA Subcommittee History: Upon its initial creation, the CPPA was without any permanent staff beyond its five appointed Board Members. To contend with its various and immediate responsibilities as a new state agency, the Board at that time chose to create a variety of two-member advisory subcommittees to divide and focus their workstreams: the Regulations Subcommittee, the Start-Up and Administration Subcommittee, and the Public Awareness and Guidance Subcommittee.

¹ See Government Code § 11121.

² See Government Code § 11121(b)-(c).

³ *Id.* Note that in the case of the CPPA Board, a three-member subcommittee meeting would also be a regular meeting of the Board, since three members constitute a majority of the full Board.

At its September 2021 meeting, the Board dissolved the Regulations Subcommittee, and instead commence three new subcommittees: the Rules Update Subcommittee—tasked with updating existing regulations to include CPRA requirements; the New Rules Subcommittee—tasked with drafting new rules on items not addressed in existing CCPA regulations; and the Rulemaking Process Subcommittee—tasked with defining and carrying out the rulemaking process.

Since the creation of these subcommittees, two Board Members have stepped down from the CPPA Board, creating vacancies on every subcommittee except for the New Rules Subcommittee.

Subcommittee Formats

While there is no legal requirement that the Board establish or utilize subcommittees to conduct any of its business, the following lays out the subcommittee formats most common to those state bodies that utilize such structures. Note that the following subcommittees would all be advisory for the purposes of the CPPA.

1. Ad Hoc Subcommittees

An “Ad Hoc Subcommittee” is a subcommittee that is temporary in nature and formed for the purpose of overseeing a specific issue or project task. Once the task is completed, the subcommittee disbands. Such subcommittees are often utilized when a state body has a unique or high-priority function to perform—such as to conduct a one-time study—and can be used to leverage the expertise of particular board members for special projects. The final product of such a subcommittee is often either an informational report to, or a recommendation for specific action by, the state body.

2. Rulemaking Subcommittees

Similar to an ad hoc subcommittee, a “Rulemaking Subcommittee” is one that is tasked exclusively with proposing a specific regulatory amendment, addition, or repeal to the broader state body for consideration. Typically, such subcommittees are given a specific, one-time rulemaking assignment (e.g. propose changes to implement a recent law change, update an existing regulation, etc.), and conclude their work when draft regulations are approved by the state body to be published for public comment. Like with an ad hoc subcommittee, a rulemaking subcommittee may be used to leverage the expertise of certain members in a given field.

3. Subject-Matter Subcommittees

Unlike the other two types of subcommittees, “Subject-Matter Subcommittees”—which focus on general functions of a state body, such as Law and Policy or Education and Outreach—are typically ongoing in nature and are tasked with making regular updates and recommendations to the state body at key junctures within their subject-area. Such subcommittees can sometimes be formed to leverage the expertise of certain members, but are more commonly used to divide the work of larger state bodies and/or streamline the discussion and activities of state bodies that meet infrequently as a whole.

Key considerations for determining the appropriate number and type of subcommittees for a given board include but are not limited to:

- The size of the board;
- The level of interest in a given subject area by board members;
- The size and expertise of staff to conduct work to support the board and/or its subcommittees;
- The unique expertise of board members; and
- The likelihood of subject-matter or activity overlap between subcommittees.

For instance, a large board that meets infrequently, conducts little public education, and has limited staff to assist its work may choose to establish an ongoing Public Education Subcommittee to create and update educational materials and make recommendations on when and how such materials should be published. Alternatively, a smaller board with dedicated public education staff, a regular meeting cadence, and uniform interest in their agency's public education efforts may choose to rely on their staff to prepare materials, make recommendations, and carry out the full board's direction throughout the year.

Recommendation

To maximize the impact and efficiency of the Board's subcommittees going forward, staff recommends that the Board adopt a practice of utilizing subcommittees in any of the abovementioned formats when:

1. The subject-matter and tasks assigned to the subcommittee can be appropriately bounded so as not to overlap with any other existing subcommittee work;
2. The subcommittee can be given specific, deliverable-based assignments with clear timelines for completion; and
3. The Agency can benefit from the heightened engagement, advice, and guidance by a minority of board members on a particular subject.

Such a framework will ensure the Board is able to exercise consistent and equitable oversight of the Agency's functions, while maintaining compliance with Bagley-Keene and appropriately leveraging the support and availability of staff.