



State of California
California Privacy Protection Agency

To: California Privacy Protection Agency Board
(Meeting of September 8, 2023)

From: Philip Laird
General Counsel
California Privacy Protection Agency

Date: August 28, 2023

Re: Board Handbook

This memorandum provides staff's recommendation to the Board to adopt a Board Handbook to serve as a ready reference to legal requirements, Board policies, practices, and agreements. Memorializing and collecting this information into a Board Handbook can help Board Members easily review relevant information, and more broadly, can help ensure an efficient, effective, and uniform approach to the Board's engagement with—and oversight of—the California Privacy Protection Agency (CPPA).

Background

Nearly all existing California boards and commissions have adopted some form of a Board Handbook to serve as a ready reference of important laws, regulations, board policies, and agreements by board members on how they will engage their work, the public, and each other. The goals of such a handbook include helping board members orient to and perform their roles, maximizing the state body's effectiveness and efficiency, and ensuring consistency through transitions in member appointments.

To date, the CPPA Board has operated without a comprehensive Board Handbook. At the Board's inaugural meeting on June 14, 2021, a draft Board Handbook was considered but ultimately deferred in order to further evaluate its contents and prioritize other Agency start-up functions. Since that meeting, the Board has steadily adopted subject-specific policies, procedures, and regulations that make for important components of a comprehensive handbook. These policies and procedures include:

- Per Diem Policy – adopted at the September 7, 2021 meeting
- Conflict of Interest Code – adopted at the October 18, 2021 meeting
- Board Incompatible Activities Statement – adopted at the May 26, 2022 meeting
- Budget Policy – adopted at the December 16, 2022 meeting
- Legislative Policy – adopted at the December 16, 2022 meeting
- Subcommittee Policy and Criteria – adopted at the March 3, 2023 meeting

The Board Handbook presented for consideration as part of this Agenda Item incorporates all of the above policies, procedures, and regulations, and further adds important legal obligations and commonly instituted standards for board operations and member conduct. In preparing the Board Handbook, staff drew from the existing governance frameworks and best

practices of other state bodies including, but not limited to, the Fair Political Practices Commission, CalPERS Board, California Public Utilities Commission, Cannabis Control Appeals Panel, the Medical Board of California, and the Department of Consumer Affairs Board Member Orientation Training.

Recommendation

Staff recommends that the Board adopt the Board Handbook included in these materials under Attachment A. Adoption of the Handbook will both express the Board's policies and procedures in one central location and also enhance clarity for Board Members in performing their roles and responsibilities.

ATTACHMENT A



CALIFORNIA PRIVACY PROTECTION AGENCY

BOARD MEMBER HANDBOOK

2101 Arena Blvd
Sacramento, CA 95834
www.cppa.ca.gov

PURPOSE

This Handbook serves as a guide for the California Privacy Protection Agency (CPPA or Agency) Board. It collects governing law and contains internal policies adopted by the Board. Several policies within this Handbook were previously adopted by the Board at prior meetings; the overall Handbook was adopted by the Board on [DATE]. The Handbook describes important duties, authority, and agreements of the Board, Chairperson, and Executive Director, and establishes standards of conduct for Board Members. If the Board adopts additional policies in the future, they will be added to this Handbook. Board Member questions regarding this Handbook should be directed to the General Counsel.

I. INTRODUCTION

Brief History

In November of 2020, voters approved Proposition 24, the California Privacy Rights Act of 2020 (CPRA). The CPRA amends and extends the California Consumer Privacy Act of 2018. It is intended to “protect consumers’ rights, including the constitutional right of privacy.” To this end, it gives consumers various rights to limit and control businesses’ collection and sharing of personal information and imposes on businesses various disclosure, security, and other responsibilities. The CPRA directs that the “rights of consumers and the responsibilities of businesses should be implemented with the goal of strengthening consumer privacy, while giving attention to the impact on business and innovation.” (CPRA, § 3(C)(1).)

To implement the law, the CPRA established the California Privacy Protection Agency (Agency), governed by a five-member board. The CPRA vests the Agency with the “full administrative power, authority and jurisdiction to implement and enforce” the law. (*Civil Code, § 1798.199.10(a)*.) The Agency’s responsibilities include (but are not limited to) engaging in rulemaking, investigating violations, assessing penalties, promoting public awareness, providing guidance to consumers and businesses, and cooperating with other jurisdictions. (*Civil Code, § 1798.199.40*.)

II. BOARD AUTHORITY AND MEMBERSHIP

Authority

(*Civil Code, § 1798.199.10(a)*.)

The California Privacy Protection Agency Board (Board) was established by California voters through the CPRA. The Agency is generally vested with full administrative power, authority, and jurisdiction to implement and enforce the California Consumer Privacy Act (CCPA), and the Board is expressly authorized to delegate authority to the Chair or the Executive Director to act in the name of the Agency between meetings of the Agency, except with respect to resolution of enforcement actions and rulemaking authority.

Board Appointment and Membership

(*Civil Code, §§ 1798.199.10(a) and 1798.199.35*.)

The Board consists of the following five members (Board Members):

- (A) The Chairperson of the Board (Chairperson), and one additional Member, appointed by the Governor;

- (B) one Board Member appointed by the by the Attorney General;
- (C) one Board Member appointed by the Senate Rules Committee; and
- (D) one Board Member appointed by the Speaker of the Assembly.

Board Member Qualifications, Responsibilities and Rights

(Civil Code, § 1798.199.15.)

The CPRA specifies certain Board Member qualifications, responsibilities, and rights. Board Members shall:

- (A) Have qualifications, experience, and skills, in particular in the areas of privacy and technology, required to perform the duties of the Agency and exercise its powers.
- (B) Maintain the confidentiality of information which has come to their knowledge in the course of the performance of their tasks or exercise of their powers, except to the extent that disclosure is required by the Public Records Act.
- (C) Remain free from external influence, whether direct or indirect, and shall neither seek nor take instructions from another.
- (D) Refrain from any action incompatible with their duties and engaging in any incompatible occupation, whether gainful or not, during their term.
- (E) Have the right of access to all information made available by the Agency to the Chairperson.
- (F) Be precluded, for a period of one year after leaving office, from accepting employment with a business that was subject to an enforcement action or civil action under this title during the Board Member's tenure or during the five-year period preceding the Board Member's appointment.
- (G) Be precluded for a period of two years after leaving office from acting, for compensation, as an agent or attorney for, or otherwise representing, any other person in a matter pending before the Agency if the purpose is to influence an action of the Agency.

Board Member Term

(Civil Code, § 1798.199.20.)

Each Board Member serves at the pleasure of their appointing authority but for no longer than eight consecutive years.

Board Member Resignation

(Government Code, § 1750(b).)

Written notification of resignation is required by state law. If it becomes necessary for a Board Member to resign, the Board Member shall send a letter to their appointing authority (Governor's Office, Office of the Attorney General, Senate Rules Committee, or the Speaker of the Assembly) with the effective date of the resignation. Copies of this letter shall also be sent to the Chairperson and the Executive Director.

III. BOARD ADMINISTRATION

On-boarding of Board Members

Board Members must submit the following no later than 30 days after their swearing-in:

1. A copy of their signed Oath of Office – submitted to the Executive Director
2. Form 700, Statement of Economic Interests – submitted electronically to the FPPC pursuant to 11 CCR § 7500 (see *Government Code § 87302(b)*.)
3. Employment Eligibility Verification (Form I-9) – submitted to the Deputy Director of Administration within three business days from the Board Member's date on their signed Oath, when possible.
4. Employee Action Request form – submitted to the Deputy Director of Administration. This form is required for all Board Members including those who decline to claim a per diem.

Required Trainings

State law and the State Administrative Manual (SAM) require officials, including Board Members, to undergo various trainings. In addition, Board Members are subject to requirements under the Bagley-Keene Open Meeting Act. Accordingly, Board Members must complete the required trainings within 6 months of their swearing-in:

- Bagley-Keene Open Meeting Act Training. Provided by the Board's General Counsel.

- Ethics Training. Board members are required to complete Ethics Training every two years of service (*Government Code § 11146, et seq.*).
- Sexual Harassment Prevention Training. Board Members are required to complete supervisory Sexual Harassment Prevention Training every two years of service (*Government Code § 12950.1.*).
- Information Security Training. Board Members are required to take information security training upon appointment, and annually thereafter. (*State Administrative Manual (SAM) Section 5320.1.*).
- Defensive Driver Training. Board Members are required to complete Defensive Driver Training every four years of service if they frequently drive on state business (*State Administrative Manual (SAM) Sections 0751 & 0752.*).

Compensation

(*Civil Code, § 1798.199.25.*)

Civil Code section 1798.199.25 of the CPRA provides for “per diem” compensation for Board Members. Specifically, section 1798.199.25 states: “For each day on which they engage in official duties, members of the Agency board shall be compensated at the rate of one hundred dollars (\$100), adjusted biennially to reflect changes in the cost of living, and shall be reimbursed for expenses incurred in performance of their official duties.”

At its regular meeting held on September 7, 2021, the Board voted to adopt the following Per Diem Policy:

Board Members shall be paid a per diem allowance of one hundred dollars (\$100), adjusted biennially to reflect changes in the cost of living, for every day on which a Board member is engaged in Official Duties. For guidance, engagement is generally at least an hour’s activity in a day.

“Official Duties” include: preparing for and attending Board meetings; preparing for and attending official Board committee, subcommittee, panel, or task force meetings; engaging in Board committee, subcommittee, or task force work; preparing for and attending Agency hearings or other Agency public forums; engaging in Agency enforcement-related work; and necessary official travel in connection with compensable official duties.

To claim the per diem allowance, Board Members are to complete one “Per Diem Form” per month, providing general information about their per diem (time worked). The Per Diem Form must be submitted by the 15th of each month following the month in which the work was conducted. If for any given month, there was no Board activity to report

and/or a Board Member elects not to claim a per diem for that month, the Board Member shall submit the Per Diem Form indicating they are not claiming any per diem.

Per Diem Forms are available from the Executive Director or Deputy Director of Administration on request. Completed Per Diem Forms should be submitted as directed on the Per Diem Form.

IV. AGENCY ADMINISTRATION

Executive Director

(Civil Code, § 1798.199.30.)

The Board shall appoint an Executive Director, who shall act in accordance with Agency policies and regulations and with applicable law. The Executive Director is responsible for the day-to-day operations and integrity of the Agency and is the official custodian of records. The Executive Director is an at-will employee, who serves at the pleasure of the Board, and may be terminated, with or without cause, in accordance with all applicable laws and certain provisions of the Bagley-Keene Open Meeting Act.

Executive Director Evaluations

On an annual basis, the Executive Director shall be evaluated by the Board during closed sessions. Board Members provide information to the Chairperson on the Executive Director's performance in advance of these meetings.

Agency Staff

(Civil Code, § 1798.199.30.)

Most employees of the Agency are civil service employees. Their employment, pay, benefits, discipline, termination, and conditions of employment are governed by a myriad of civil service laws and regulations and often by collective bargaining agreements. The Executive Director hired by the Board is an exempt position, and serves under different rules than a standard civil servant. Because of this complexity, the Board delegates authority and responsibility for management of the civil service staff to the Executive Director as an instrument of the Board.

Board Members may express any staff concerns to the Executive Director but shall refrain from involvement in any civil service matters. Board Members shall not become involved in the personnel issues of any state employee.

V. BOARD MEETING PROCEDURES

Board Meetings

(Government Code, § 11120 et seq.)

Being a member of the Board is a serious commitment to the people of the State of California. Board Members should strive to attend all scheduled Board meetings and review all materials provided by staff in advance of each meeting. If a Board Member is unable to attend a meeting, they should notify the Executive Director as soon as possible.

Meetings are subject to the Bagley-Keene Open Meeting Act (Act). The Act governs meetings of the state regulatory bodies and meetings of committees of those bodies where the committee consists of more than two members. The Act specifies requirements for providing notice of meetings and meeting agendas. It prohibits discussing or acting on matters not included on the meeting agenda.

Through training given to the Board, and on Board Members' own initiative, Board Members should become familiar with the general Bagley-Keene Act requirements. Board Members are required by law to receive a copy of the Act, which will be provided by the General Counsel upon a Board Member's appointment. If Board Members have questions about the law, they should contact the Agency's General Counsel for advice.

Annual Calendar

In order to maintain a predictable and regularized annual meeting schedule, the Board approved an annual calendar in its May 15, 2023 meeting. The current calendar is available on the Agency's Website under "Meetings & Events." The Board intends to hold regular meetings according to the annual calendar, although standing agenda items may be moved or cancelled as needed.

The annual calendar may be revised from time to time. Individual annual calendar meeting dates may change as needed, for example, to accommodate state holidays or ensure a quorum. In addition to the standing agenda items shown on the annual calendar, Board meetings will be supplemented with additional agenda items as needed. The Board also may hold additional meetings at any other time during the year as needed. The Board may cancel meetings at any time.

Meeting Agendas

Board Members may submit agenda items for a future Board meeting during the "Future Agenda Items" section of a Board meeting or at any time to the Executive Director. To the extent possible, the Chairperson will calendar each Board Member's request for a future Board meeting.

In the event of a conflict between potential agenda items, the Chairperson shall make the final decision. The Chairperson will work with the Executive Director to finalize the agenda.

If an agenda contains matters which are appropriate for closed session, the agenda must cite the statutory section and subdivision authorizing the closed session.

Notice of Meetings

(Government Code §11120 et seq.)

As required by the Bagley-Keene Open Meeting Act, meeting notices, including agendas, for Board meetings will be sent to persons on the Board's mailing list at least 10 calendar days in advance (with certain, limited exceptions for "special meetings" and "emergency meetings"). The notice shall include the name, work address, and work telephone number of a staff person who can provide further information prior to the meeting. Notices will also be posted online at <https://www.cppa.ca.gov>.

Record of Meetings

(Government Code § 11126.1.)

The business conducted in open session by the Board can be transcribed or audio recorded at the Board's discretion.

In the alternative, minutes or a summary of the open session can be taken. These shall be prepared by Board staff and submitted for review by Board Members. The Board minutes or summary will be considered and approved or disapproved at the next scheduled meeting of the Board. When approved, the minutes or summary shall serve as the official record of the meeting.

By law, minutes must also be taken of properly convened closed sessions of Board meetings, and confidentially maintained.

Subcommittees of the Board

(Government Code §11121.)

The Bagley-Keene Open Meeting Act (Act) permits subcommittees of no more than two Board Members, if acting in an advisory capacity only and within all other strictures imposed by the Act, to meet and develop advice outside of the noticed public meetings otherwise required by the Act.

The Board adopted the following policy for the use of subcommittees at its March 3, 2023, regular meeting:

In order to ensure the Board is able to exercise consistent and equitable oversight of the CPPA's functions, while maintaining compliance with Bagley-Keene and appropriately leveraging the support and availability of staff, it is the Board's policy to only utilize ad hoc, rulemaking, and subject-matter subcommittees 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.

VI. BOARD MEMBER RESPONSIBILITIES

General Responsibilities of Board Members

Board Members agree to act in accordance with their oath of office, and shall conduct themselves in a courteous, professional, and ethical manner at all times. The Board serves at the pleasure of its appointing authorities, and shall conduct its business in an open manner, so that the public shall be both informed and involved, consistent with the provisions of the Bagley-Keene Open Meeting Act and all other governmental and civil code provisions applicable to the Board. In addition to complying with all legal responsibilities, state boards generally function best when their members prioritize collegiality and agree to conduct themselves in a manner that puts their board's positions and agency's welfare above any personal interests. Therefore:

- Board Members shall comply with all provisions of the Bagley-Keene Open Meeting Act.
- Board Members agree not speak or act for the Board except in accordance with the provisions of this Handbook.
- Board Members shall not discuss personnel or Board business matters outside their official capacity or outside a properly noticed and agendized meeting or subcommittee meeting.
- Board Members shall never accept gifts from those having business before the Board or the CPPA while serving on the Board.
- Board Members shall maintain the confidentiality of non-public and otherwise confidential documents and information related to Board business.
- Board Members agree to comply with all applicable incompatible activities statements they serve under.

- Board Members agree to recognize the equal role and responsibilities of all Board Members.
- Board Members agree to act fairly, be nonpartisan, impartial, and unbiased in their roles.
- Board Members agree to treat all individuals in a fair, professional, courteous and impartial manner.
- Board Members shall not use their positions on the Board for personal, familial, or financial gain.

Responsibilities of the Chairperson

The responsibilities of the Chairperson additionally include, but are not limited to:

- Coordinating regularly with the Executive Director to be abreast of day-to-day operations of the Agency.
- Developing the agenda for Board meetings.
- Chairing and facilitating Board meetings.
- Representing the Board before external entities. This may include but is not limited to: attending legislative hearings and testifying on behalf of the Board, attending meetings with stakeholders and Legislators on behalf of Board, talking to the media on behalf of the Board, and signing letters on behalf of the Board. When necessary, the Chairperson may designate other Board Members or CPPA staff, as appropriate, to represent the Board. The Chairperson, or their designee, shall not represent any positions as Board positions unless duly adopted by the Board.
- Forming and dissolving subcommittees of the Board in accordance with the Subcommittee Policy in this Handbook, and assigning subcommittee members.
- Coordinating the development, update, and implementation of the Agency's Strategic Plan.
- Coordinating the annual review of the Executive Director.

Avoidance of Conflicts of Interest

(Government Code, § 87100; CPPA Conflict of Interest Code (11 CCR § 7500).)

Under the Government Code, conflicts of interest by Board Members and CPPA staff must be avoided. No Board Member may make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision—including in adjudicative proceedings—in which they know or have reason to know they have a financial interest. In addition, the Political Reform Act (Government Code §§ 81000, et seq.) requires state and local government agencies to adopt, and regularly update,

conflict of interest codes. Accordingly, the Board adopted a Conflict of Interest Code at its October 18, 2021 meeting, and will update the Code as necessary.

Any Board Member who has a financial interest shall disqualify himself or herself from making or attempting to use his or her official position to influence the decision.

Any Board Member who feels they are entering a situation where there is a potential for a conflict of interest should immediately consult the General Counsel.

Board Members shall abide by all other applicable provisions of the Political Reform Act, including timely filing of the Board Member's Statement of Economic Interests (Form 700) in accordance with the Agency's Conflict of Interest Code (11 CCR § 7500).

Please also see the specific instructions regarding refusing honoraria in Section VII below.

Avoidance of Incompatible Activities

(Civil Code, § 1798.199.15; Government Code, §19990; CPPA Board Member Incompatible Activities Statement)

Board Members must also avoid incompatible activities. The Board adopted the following incompatible activities statement at its May 26, 2022 regular meeting:

Board Members shall not engage in incompatible activities at any time, and shall sign the following incompatible activities statement upon their appointment:

The Members of Board of the California Privacy Protection Agency ("the Agency" herein have adopted this statement, as the Incompatible Activities Statement for the Members of the California Privacy Protection Agency Board.

No employment, activity, or enterprise shall be engaged in by a Member of the Board that might result in, or create the appearance of resulting in, any of the following.

1. Using the prestige or influence of the Agency for the Member's private gain or advantage, or the private gain or advantage of another.
2. Using Agency time, facilities, equipment, or supplies for the Member's private gain or advantage, or the private gain or advantage of another.
3. Using confidential information acquired by virtue of Agency involvement for the Member's private gain or advantage, or the private gain or advantage of another.
4. Receiving or accepting money or any other consideration from anyone other than as provided by Cal. Civ. Code §1798.199.25 for the performance of an act which the Member would be required or expected to render in the regular course of his or her duties.

5. Performance of an incompatible act in other than their capacity as a Board Member knowing that such an act may later be subject, directly or indirectly, to the control, inspection, review, audit, or enforcement by the Agency. This shall not be read so as to limit or preclude a Board Member from exercising their privacy rights pursuant to the California Consumer Privacy Act.

6. Receiving or accepting, directly or indirectly, any gifts, including money, any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value, from anyone who is doing or is seeking to do business of any kind with the Agency or whose activities are regulated or controlled in any way by the Agency, under circumstances from which it reasonably could be inferred that the gift was intended to influence the Member in their official duties or was intended as a reward for any official action on his or her part.

7. Not devoting their full time, attention, and efforts to the Agency during their required or regular hours of duty as a Board Member.

I have read and understand this Incompatible Activities Statement, and have received a copy. I agree to abide by the responsibilities and requirements of the Incompatible Activities Statement, and I understand that failure to comply with these requirements and responsibilities may result in disciplinary action up to and including dismissal, and/or civil or criminal prosecution in accordance with applicable laws.

In addition, Board Members may be required by their appointing authority to sign and comply with an additional incompatible activities statement.

Avoidance of Bias and Prejudice

(Government Code § 11425.40.).

The Board received training on avoiding bias and prejudice in its July 14, 2023 meeting. New Board Members should seek training on this topic from the General Counsel.

The term “bias” generally refers to a lack of impartiality towards a party in a case. Relatedly, the term “prejudice” generally refers to when a decisionmaker has prejudged the facts at issue in an adjudicative proceeding. Both due process and the Administrative Procedures Act prohibit the Board from bias and prejudice in an adjudicative proceeding. *(Government Code § 11425.40.).* Accordingly, Board Members are advised to:

1. Immediately disclose any personal or professional connection to a party in an adjudicative proceeding to the General Counsel;

2. Refrain from independently investigating violations alleged in an adjudicative proceeding or conduct research to find evidence that is not in the record; and
3. Avoid speculation about a specific person or entity's violations of the CCPA, whether or not such violations have been alleged by the Enforcement Division.

Please also see the provisions on *ex parte* communications in Section VII below.

Communications with Other Organizations, Individuals, and Media

The power of the Board is vested in the Board itself and not with any individual Board Member. Official positions of the Board and Agency are taken by the Board as a whole. It is important for the public to have clarity as to Board and Agency policies and positions. Board Members share responsibility for maintaining this clarity.

Accordingly, in all communications, Board Members are cautioned to never express their personal opinions as a Board policy or position or represent that the Board has taken a position on a particular issue when it has not. Guidance for common scenarios follows.

Communications on Behalf of the Board

Communications *on behalf of the Board or Agency* to any individual, organization, or a representative of the media shall be made only by the Chairperson, the Executive Director, or their designees, unless otherwise authorized by the Chairperson or by the Board in a properly noticed public meeting. Board Members representing the Board or Agency in meetings, conferences, or other similar events—as authorized by the Chairperson or Board—shall present within the scope of their authorization and in coordination with the Executive Director to ensure accuracy of current Agency activities and consistency with other Agency communications.

In the event that a Board Member is contacted for a statement or position of the Board, the member should promptly inform the Chairperson or the Executive Director of the contact and relay any information supplied by the requestor. If the contact is from a media representative seeking information or comment from the Board, the member should follow the guidance on media inquiries below. In both cases, the member shall not speak on behalf of the Board without prior authorization from the Chairperson, the Executive Director, or the Board as a whole.

Communications on Behalf of Individual Board Members

Board Members have been appointed because of their professional experience, expertise, or specialized knowledge in the subject matter of the Board. They will predictably be contacted by individuals, organizations, and media representatives about

areas within their expertise. Board members may speak about their own work and personal goals for the Board when not speaking as a representative of the Board or Agency.

In order to avoid confusion about the Board and Agency's positions, however, the Board agreed in its June 14, 2021 meeting that Board Members who speak as individuals will state clearly that they are speaking on their own behalf and not conveying a position of the Board or the Agency, unless they have been designated to speak for the Board by the Chairperson or the Board as a whole. Board members are requested and encouraged to inform the Executive Director any time they intend to speak publicly in their individual capacities about the Board's activities or matters within the Board's jurisdiction so that the Director may anticipate media outreach and coordinate Agency activity as necessary.

If Board Members prepare presentation slides, a paper, or other written materials on topics that could be perceived as relevant to Board or Agency business, they will include a written version of this statement in the materials. Board Members are encouraged to preview any such written materials with the Executive Director and other relevant CPPA staff if there are any questions.

In all instances, Board Members shall not privately or publicly lobby for, publicly endorse, or otherwise engage in any personal efforts that would tend to promote their own personal or political views or goals, when those are in direct opposition to an official position adopted by the Board.

Media Inquiries

Media inquiries to a Board Member about an issue related to the work of the Board or the Agency should be promptly referred to the Executive Director or the Deputy Director of Public & External Affairs. Expressing a personal opinion—even when clearly stating that the member is not representing a position of the Board—can be seen as a Board policy or position and may still be reported as the Board taking a position on a particular issue when it has not.

A Board Member who receives a call should politely thank the caller for the call, but state that it is the Board's policy to refer all inquiries. The Board Member should then send an email to the Executive Director, or their designee, indicating that they received a media inquiry and relaying any information supplied by the inquirer. The Executive Director, or their designee, will coordinate with the Board Member, the Chairperson, or other Agency staff, as appropriate, to respond to the inquiry.

Intergovernmental Communications

The CPPA has an interest in maintaining a consistent and coordinated approach to intra- and inter-governmental relations that promotes the positions of the Board and interests of the Agency, including when cooperating with other authorities pursuant to Civil Code § 1798.199.40(i).

Accordingly, Board Members should observe the same communication policies described above when communicating with local, state, federal, and international government officials (except for communications made with their appointing authorities). Additionally, inquiries and communications from government officials—including legislators—about an issue related to the work of the Board or the Agency, or about a subject falling within the Agency’s jurisdiction, should be promptly relayed to the Executive Director and the Deputy Director of Policy & Legislation. Any Board Member communicating with a government official on behalf of the Board or Agency—as authorized by the Chairperson or Board—shall coordinate with the Executive Director and the Deputy Director of Policy & Legislation on these communications.

Communications During Rulemaking

When considering whether to adopt, amend, or repeal a regulation, Board Members may consult with interested persons before the Board initiates regulatory action. (*Government Code, § 11346(b).*) However, once a notice of proposed rulemaking has been published in the Notice Register, Board Members should not discuss matters relating to the rulemaking with any interested third party, or an attorney or agent for any such party, prior to the Board’s decision, unless the discussion occurs during a public meeting of the Board. Board Members who are contacted by private parties wishing to discuss an active rulemaking should immediately notify the Executive Director and the General Counsel. Such communications may need to be summarized in the official rulemaking file.

Travel

(State Administrative Manual (SAM) Sections 0700, et seq.)

Travel is subject to multiple state requirements. Accordingly, all Board Member travel expenses and reimbursements shall be made in compliance with state travel requirements and the Agency’s Travel Guide. State travel rules can require substantial advance notice and approvals; Board Members are expected to adhere to these requirements and should inquire with the Executive Director well in advance of travel.

Board members shall be reimbursed for travel to Board meetings and any Bagley-Keene-compliant subcommittee meetings to which the Board Member is assigned.

It is also generally the CPPA's policy to reimburse travel when such travel is properly approved and necessary to serve the CPPA's business needs. Typically, CPPA full-time staff will be most knowledgeable of the Agency's current activities and developments between Board meetings and will be most suitable to represent the Agency at meetings, trainings, conferences, and other similar events arising in the regular course of business.

In some circumstances, however, Board Members may be designated by the Chairperson or full Board to represent the Board in accordance with the guidelines outlined in the section on "Communications with Other Organizations, Individuals, and Media" section above, and may also be reimbursed for travel on agency business in such circumstances.

Board Member travel, other than to Board and Subcommittee meetings, can only be reimbursed by the Agency if the Board Member is properly designated by the Chairperson or the Board as a whole to represent the Board or Agency in accordance with the guidelines outlined in the section on "Communications with Other Organizations, Individuals, and Media" section above.

NOTE: State guidelines generally prohibit reimbursement for hotel expenses if the meeting is less than 50 miles from an individual's home address, unless preapproval is secured. Board Members who wish to request an exemption to stay at a hotel less than 50 miles from their home must contact Agency staff to pursue this exemption at least two weeks before the meeting.

VII. GENERAL POLICIES & PROCEDURES

Budget Policy

This Board adopted the following policy regarding oversight of the CPPA's budget at its December 16, 2022, regular meeting:

The Board recognizes a need to: 1) stay informed about the Agency's budget expenditures and forecasts; 2) provide all Board members with an opportunity to have meaningful input into budget change proposals; and 3) allow staff to respond to fast-moving budget negotiations in a timely and effective manner.

Accordingly, it is the Board's policy to discuss the Agency's budget at two of its regular meetings each year. First, at its July meeting, staff presents a plan to the Board describing recommended fiscal priorities and budget change goals for the upcoming fiscal year at a regular open meeting. Board Members have the opportunity to ask questions about the

budget plan and provide direction on additional or alternative priorities for staff to pursue. Staff also reports on the Agency's expenditures to date and the performance of past and current budgets.

Then, at its January meeting, staff briefs the Board on the details of any approved Budget Change Proposal (BCP) appearing in the Governor's January 10th budget. Board members can ask questions about any approved BCP and provide additional direction, if necessary, on budget priorities during spring legislative engagements and the May Revise.

Legislation Policy

The Board adopted the following policy regarding Board consideration of legislation at its December 16, 2022, regular meeting:

Considering Introduced Legislation

The Board may want to take a position on state or federal bills that are relevant to the Agency. Legislative staff tracks bills relating to the Agency, and Board members and staff may individually flag bills to the Deputy Director of Policy and Legislation at any time. Board Members may also flag bills at public Board meetings. Staff develops brief bill analyses of introduced legislation that affects the Agency (for example, if it amends the CCPA, provides the Agency rulemaking or enforcement responsibility, or if it affects Agency operations), typically with a recommended position – support, support if amended, oppose unless amended, or oppose – and, if appropriate, a general description of substantive amendments that staff recommends. Bill analyses are distributed to the Board and posted publicly with the meeting agenda. The Deputy Director of Policy and Legislation presents the bill recommendations for consideration and possible action by the Board.

In light of the legislative calendar, the Board typically considers introduced legislation in early summer each year; however, the Board may consider pending legislation at any other meeting, including special meetings when the circumstances warrant urgent action.

CCPA Legislative Proposals

From time to time, the Board may choose to propose legislation to the California Legislature. Board Members and staff may individually suggest legislative ideas to the Deputy Director of Policy & Legislation at any time, and Board Members may also suggest legislative ideas at public meetings. Staff analyzes these proposals in the fall of each year, or as circumstances require. Brief memos analyzing relevant proposals are distributed to the Board and posted publicly with the meeting agenda. At a regularly scheduled meeting in the fall, the Board has the opportunity to discuss proposals and may choose to bring

them to a vote. Staff communicates Board-approved proposals to the California Legislature and other interested agencies, and provides updates to the Board on the status of the proposals.

Board Members are reminded that all legislation proposed or supported by the Agency should necessarily be consistent with and further the purposes and intent of the CCPA.

Intergovernmental Coordination Policy

Civil Code § 1798.199.40(i) directs the Agency to, “Cooperate with other agencies with Jurisdiction over privacy laws and with data processing authorities in California, other states, territories, and countries to ensure consistent application of privacy protections.” Such cooperation is primarily staff-led, since it typically requires regular, systematic, and sometimes time-sensitive contact between the Agency and its counterparts within other state, federal, and international governments. At the same time, it is important for the Board to stay informed about the Agency’s intergovernmental relations and to provide guidance on the preferred nature and priority of such engagements. Accordingly, the Deputy Director of Policy & Legislation will provide an annual update to the Board at a regular meeting on staff’s priorities and planned activities for intergovernmental engagement and invite input and feedback from the Board.

Enforcement Policy

While vigorous enforcement of the CCPA is one of the Agency’s core functions, the Board recognizes that its role as final adjudicator in administrative proceedings necessarily requires a degree of separation from the CPPA’s investigation and prosecutorial activities. Accordingly, the Board commits to only engage with the Enforcement Division to review past performance and complaint trends, as well as set general priorities. To facilitate this engagement, the Deputy Director of Enforcement will annually provide a general update to the Board at a regular meeting on the abovementioned subjects and invite input and feedback from the Board on general enforcement priorities.

In all instances, Board Members shall refrain from communications with Enforcement Division staff about specific investigations or pending cases if such communication would violate any provision of the Administrative Procedures Act (see below regarding *ex parte* communications).

Ex Parte Communications

(*Government Code, § 11430.10 et seq.*)

The Board received training on *ex parte* communications in its July 14, 2023 meeting. New Board Members should seek training on this topic from the General Counsel.

The Government Code contains provisions prohibiting *ex parte* communications. An “*ex parte*” communication is a communication to the decisionmaker made by one party to an enforcement action without participation by the other party. While there are specified exceptions to the general prohibition, the key provision is found in subdivision (a) of section 11430.10, which states:

“While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and an opportunity for all parties to participate in the communication.”

It is possible that the subject of an investigation or enforcement action will attempt to contact Board Members directly. If the communication is written, recipient Board Members should read only far enough to determine the nature of the communication. Once they realize it is from a person under investigation or against whom an action is pending, they should stop reading the written communication and send to the General Counsel.

If a Board Member receives a telephone call from the subject of an investigation or a person or entity against whom an enforcement action is pending, the Board Member should immediately tell the person they cannot speak to them about the matter and inform the General Counsel.

If the person insists on discussing the case, they should be told that the Board Member will be required to be recused from any participation in the matter. Therefore, continued discussion is of no benefit.

If a Board Member believes that they have received an unlawful *ex parte* communication, they should contact the Agency’s General Counsel immediately.

Service of Legal Documents

A Board Member may receive service of a lawsuit against themselves, the Board, or the Agency pertaining to a certain issue (e.g. a disciplinary matter, a complaint, a legislative matter, etc.). To prevent a confrontation, the Board Member should accept service, then immediately notify the Executive Director of the service and indicate the name of the matter that was served and any other pertinent information. The Board Member should then mail the entire package that was served to the Executive Director as soon as possible and await instructions from the Agency’s General Counsel.

Prohibition on Honoraria

(Government Code, § 89503 and FPPC Regulations, Title 2, Division 6.)

As a rule, Board Members should decline honoraria for speaking at, or otherwise participating in, professional association conferences and meetings. A member of a state board or commission is precluded from accepting an honorarium from any source, if the member would be required to report the receipt of income or gifts from that source on his or her statement of economic interest.

Board Members are required to report income from, among other entities, professional associations and continuing education providers. Therefore, a Board Member should decline all offers for honoraria for speaking or appearing before such entities.

There are limited exceptions to the honoraria prohibition. The acceptance of an honorarium is not prohibited under the following circumstances:

1. An honorarium is returned to the donor (unused) within 30 days;
2. an honorarium is delivered to the State Controller within 30 days for donation to the General Fund (for which a tax deduction is not claimed); or
3. an honorarium is not delivered to the Board Member, but is donated directly to a bona fide charitable, educational, civic, religious, or similar tax exempt, non-profit organization.

Considering this prohibition, Board Members should report all offers of honoraria to the Chairperson so that the Chairperson, in consultation with the Executive Director and General Counsel, may determine whether the potential for conflict of interest exists.

Public Records

The Board is a public body, the records of which are subject to the California Public Records Act (PRA). Under the PRA and other applicable statutes, a public record is broadly construed to include e-mail, data, paper records, computer hard drives, and audio and video recordings created, used, or retained by a government agency in the conduct of its official business. If a member uses their personal e-mail or computer to engage in Board activities, both may be subject to search for records responsive to a PRA request.

Generally, government records are disclosable to the public, though certain categories of records are exempt from public disclosure. The Agency's claim of an exemption in response to a request for records—as well as its decision to disclose responsive records—shall be made by the Executive Director or their designee, and with the advice of the General Counsel.

Through meetings with Agency staff and through their own initiative, Board Members should become familiar with the PRA. If Board Members have questions about the law, they should contact the General Counsel.

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