

SUBJECT: Assembly Bill 1978

12 March 2008
The Honorable

Sir/Madam,

On behalf of the Central Coast Joint Data Committee, a consortium of over 50 public, non-profit, and private entities who create, use and distribute public data in Geographic Information Systems (GIS), I am respectfully requesting that you oppose AB 1978, which seeks to amend the California Public Records Act.

Our reasons for requesting that you oppose this legislation are the following;
(For a detailed explanation of each item please see Appendix A)

1. **It is factually in error and may cause unnecessary expenditure of public funds.** The legislation contends that “the assembled model data, metadata, and listing of metadata can not be separated from computer code (or GIS/LIS software) without rendering the computer mapping system inoperable”. This is patently untrue.
2. **It is misleading.** The legislation states that, “Unfortunately, there is no definition of what constitutes a ‘computer mapping system’, which is exempt from the PRA. On the contrary, the PRA makes it quite clear. Hardware and software, including programs that manipulate the software, constitute the mapping system. These are exempt from the PRA in its existing language; no change is required.
3. **It unnecessarily confuses the existing clear language of the PRA.** The proposed language seeks to cloud the issue by making data a part of the hardware and software.
4. **It would make implementation of the PRA very difficult.** By clouding the definition of data and by exempting metadata altogether, a public agency would find responding to public records request virtually impossible.
5. **It would void the intent of the Public Records Act –** to make government data open and available to the public.

Thank you for considering our concerns; we would be happy to answer any questions you may have. You may also find out more about the Central Coast Joint Data Committee (CCJDC) at www.ccjdc.org .

Sincerely,

Chair, Central Coast Joint Data Committee

Appendix A

Specifically, please consider the following explanations of our reasons for opposing this legislation:

1. **It is factually in error and may cause unnecessary expenditure of public funds.**

METADATA. The legislation contends that “the assembled model data, metadata, and listing of metadata can not be separated from computer code (or GIS/LIS software) without rendering the computer mapping system inoperable”. This is patently untrue and misleading.

- a. Metadata can be created internally, by pencil and paper, or directly on-line.
- b. Metadata merely describes the data and provides contact information, format, size, timeliness, suggested proper uses, and so on – sort of a medicine label listing of information for potential data users.

It is the card catalog of the computer world. Without a card catalog, a potential information user won’t even know what exists; further, the library won’t even know what its holdings are or where they are located.

- c. If metadata is not available, agencies risk expending substantial sums of public money to create or acquire data that may already exist – SIMPLY BECAUSE THERE IS NO METADATA CATALOG THAT LISTS IT.
 - i. In the early 1990’s, the GIS community, through the Governor’s Task Force on Geographic Information, identified metadata as one of the most serious needs facing the State of California. Since that time, agencies at every level have been working to create adequate descriptions of their data holdings.
 - ii. The USGS routinely sponsors grants to communities to develop and distribute metadata, and to train agencies in methods of metadata creation. Many California agencies have been the recipients of these grants.
 - iii. California has created a free, online metadata catalog available to everyone at <http://gis.ca.gov/catalog/>. It is free for agencies to use to catalog their holdings and it is open to researchers and potential data users. This is a major source for GIS users, and a very helpful tool for agencies to use in keeping track of their data holdings. Under the proposed legislation, *it would be illegal*. Data sharing agreements between agencies would likely be voided.

2. **It is misleading.** Rather than simplifying and clarifying existing language, the proposed legislation would obscure and confuse those attempting to follow the law. Its writers clearly do not understand the differences between hardware, software, data, and metadata. Professionals who routinely create and use GIS/mapping tools understand the following:

- a. Hardware is the computer and related physical equipment.
- b. Software is the program that runs the hardware.
- c. Data are the information put into the hardware through the software.
- d. Metadata merely describes the data and tells potential users what format the data are in, who can be contacted for it, when it was collected, when it will be collected again, how it should be used, how big the file is, and other pieces of information that merely tell a user about the data.

The following is an excerpt of existing PRA language, which we believe is quite clear and should not be modified by AB1978:

“6254.9. (a) Computer software developed by a state or local agency is not itself a public record under this chapter. The agency may sell, lease, or license the software for commercial or noncommercial use.

(b) As used in this section, "computer software" includes computer mapping systems, computer programs, and computer graphics systems.”

3. **It unnecessarily confuses the existing clear language of the PRA.** The existing PRA, in several locations, stresses that writing of any kind is considered public; it may be hand-written, kept digitally/electronically in a computer or other electronic device, and so on; anything developed in the course of carrying out an agency mission that is not specifically exempted for privacy or security concerns, is public.

This is the existing language: “6252. As used in this chapter:

(e) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency *regardless of physical form or characteristics*. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.” (italics added)

4. **It would make implementation of the PRA very difficult.** If the proposed legislation were enacted, a public agency could not describe its data holdings or provide that information to the public – presumably, it could not even inform the public that it holds particular datasets. It would make the differentiation between data used in modeling (which could be any dataset) and other data virtually impossible. We fear that to be safe, agencies would simply declare all of their data holdings to be exempt from the Public Records Act.
5. **It would void the intent of the Public Records Act.** This proposed “clarification” actually serves to create the exact opposite of the existing intent of the California Public Records Act – to make governmental information open and available to the public.

The decisions reached by legislators, regulators, agency staff and numerous other individuals are based upon the data used in mapping and other systems. If the public may no longer have access, they have been denied the right to see the basis upon which those decisions were made.