

# When You Need to Know: Getting Information by Informal and Formal Means

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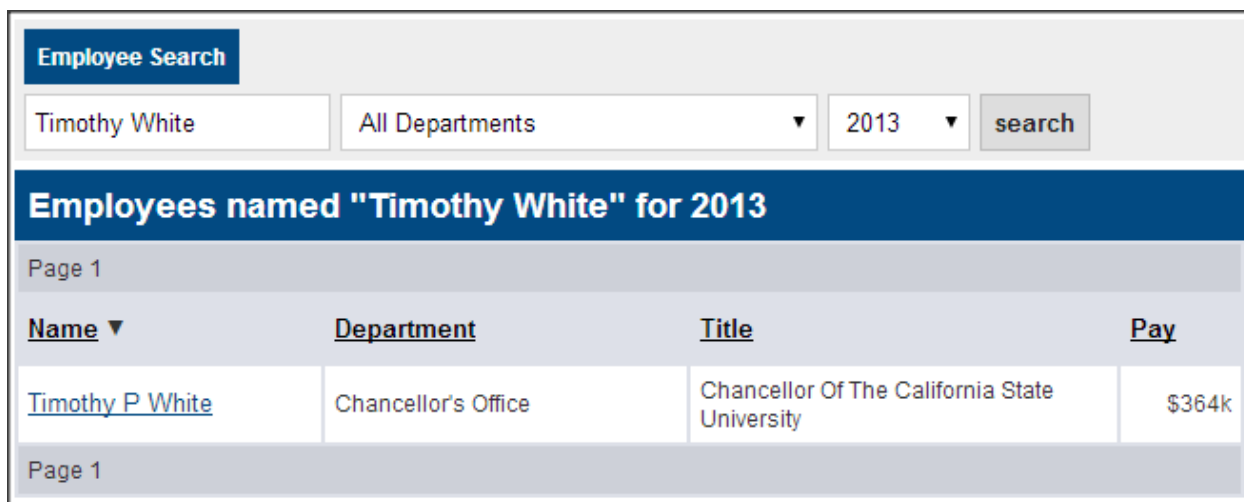
## I. Employ Informal Means Before You Make a Formal Information Request.

A. Ask Somebody You Know for the Information.

B. Look for the Information on the Internet. A Few Examples:<sup>1</sup>

### 1. State Employee Salaries (Including CSU Employees)

<http://www.sacbee.com/statepay/#req=employee%2Ftop%2Fyear%3D2013>



The screenshot shows an "Employee Search" interface. At the top, there is a search bar with the text "Timothy White", a dropdown menu for "All Departments", another dropdown for "2013", and a "search" button. Below the search bar, a blue header reads "Employees named 'Timothy White' for 2013". Underneath, it says "Page 1". A table with four columns is displayed: "Name", "Department", "Title", and "Pay". The table contains one row with the following data: "Timothy P White" (Name), "Chancellor's Office" (Department), "Chancellor Of The California State University" (Title), and "\$364k" (Pay). Below the table, it says "Page 1".

Name ▼	Department	Title	Pay
<a href="#">Timothy P White</a>	Chancellor's Office	Chancellor Of The California State University	\$364k

### 2. Current and Previous Collective Bargaining Agreements

[http://www.calstate.edu/LaborRel/Contracts\\_HTML/current\\_cba.shtml](http://www.calstate.edu/LaborRel/Contracts_HTML/current_cba.shtml)

[http://www.calstate.edu/LaborRel/Contracts\\_HTML/previous\\_cba.shtml](http://www.calstate.edu/LaborRel/Contracts_HTML/previous_cba.shtml)

### 3. CSU Salary Schedule

<http://www.calstate.edu/HRAAdm/SalarySchedule/Salary.aspx>

<sup>1</sup> Links to additional internet sources can be found in Section IV below.

**Basic Search of Salary Schedule Records for Word(s) or Class Code(s):**

3082  Most Recent Effective Dates  [Search Help](#)

[Advanced Search of Salary Schedule Records](#)

Class	Range	Effective Date	Class Title	Min Salary	Max Salary	CBID	Status
3082	1	2013-07-01	STUDENT SERVICES PROFESSIONAL II	\$3,566.00	\$5,069.00	R04	Active
3082	6	2013-07-01	STUDENT SERVICES PROFESSIONAL II	\$3,269.00	\$4,647.00	R04	Active

**II. Know APC’s/Your Right to Information under the CBA, the HEERA, and the PRA.**

**A. Collective Bargaining Agreement**

**1. Union Rights**

“The campus Human Resources Office shall provide to the APC *upon request*, a monthly list of all employees new to the bargaining unit, employees reclassified, and those who have terminated their employment. Such lists shall contain names and work locations and shall be provided *at no cost to the APC.*” Article 8.8 (emphasis supplied)

“*Upon request* of the APC, employee lists and public information shall be provided to the APC. An employee's home address shall be released to the APC unless the employee has officially informed the CSU that he/she wishes the home address withheld. *The cost of such employee lists and public information shall be borne by the APC.*” Article 8.13 (emphasis supplied)

**2. Grievances**

“In cases where it is necessary for the grievant or his/her representative to have access to information for the purpose of investigating a grievance, the grievant or his/her representative *shall make a written request* for such information to the appropriate administrator. The grievant or his/her representative shall have access to all information which would assist in pursuing the grievance exclusive of information defined as "confidential" or "personal" pursuant to the Information Practices Act of 1977 or the HEERA.” Article 10.13 (emphasis supplied)

**3. Disciplinary Action**

“The employee *shall be provided* a notice of the disciplinary action proposed to be taken; a copy of the charges and materials upon which the disciplinary action is based, and notice of the right to respond, either orally or in writing.” Article 12.15 (emphasis supplied)<sup>2</sup>

<sup>2</sup> See also *Skelly v. State Personnel Board* 15 Cal.3d 194 (1975).

#### 4. Case Law

##### a. *CSU Hayward (APC) (Collins, July 8, 2002) [arbitration award]*

- i. No APC right to inspect personnel file of Unit 4 employee without consent of employee.
- ii. APC right to receive of copies of documents from personnel file of Unit 4 employee without consent of employee if copies can be redacted to remove confidential and personal information if documents are “relevant and material” to APC’s role as exclusive representative of Unit 4.

##### b. *Humboldt State University (APC) (Collins, January 10, 2002) [letter decision]*

- i. “[T]he University not obligated to gather or create new data upon request of an employee organization.”
- ii. But see *Oakland Unified School District (1985) PERB Dec. No. 540* (extracting information about unit employees from data available on all employees may not be unduly burdensome).

##### c. *San Jose State University (APC) (Collins, February 2, 2003) [letter decision]*

- i. CSU bears burden of supporting its cost estimate “by something more than a guess.”
- ii. CSU did not carry that burden when it based “roughshod estimate” that it would take 40 hours to comply with information request on “unsupported assertion that an unidentified previous search required 80 hours and that the current would require half that time to complete.”<sup>3</sup>

### B. Higher Education Employer-Employee Relations Act

#### 1. Nature of the Right

“In general, the exclusive representative is entitled to all information that is necessary and relevant to discharging its duty to represent unit employees. . . . An employer’s refusal to provide such information evidences bad faith bargaining unless the employer can supply adequate reasons why it cannot supply the information. . . . [I]nformation pertaining immediately to *mandatory* subjects of bargaining is so intrinsic to the core of the employer-employee relationship that it is considered presumptively relevant and must be disclosed unless

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<sup>3</sup> See also *CSU (APC) (Collins, February 1, 2003) [letter decision]* (holding that “[w]hile [under Article 8.13] APC is clearly liable for the cost of providing the requested documents, the Agreement does not permit the University to refuse to comply with an information request until it actually has received payment from APC” and that “[o]nce APC agrees to pay, CSU is contractually obligated to provide the documents”).

the employer can establish that the information is plainly irrelevant or can provide adequate reasons why it cannot furnish the information.”

*Stockton Unified Scholl District* (1980) PERB Dec. No. 143 [emphasis in original]

## **2. Limitations on the Right**

- a. Union right to information must be balanced against employee right to privacy.
  - i. Employer does not have to provide social security numbers of non-unit employees.
  - ii. Employees can “opt out” (in writing) and thereby prevent the release of home addresses.
- b. Undue burden on employer may excuse non-production of information.
  - i. *Union bears cost of production.*
  - ii. Employer must bargain in good faith over cost of production.
- c. Information that unavailable to the employer or equally available to the union does not have to be produced.

## **3. *County of Los Angeles v. Los Angeles County Employee Relations Committee*, 56 Cal. 4th 905 (2013)**

### a. Facts

“During negotiations in 2006, SEIU proposed amending the MOU as follows: “To facilitate the carrying out of this responsibility [to provide *Hudson* notices], each year the County shall furnish the Union with the names and home addresses of employees in [the] bargaining units covered by agency shop provisions.” SEIU also sought contact information for other reasons. As the exclusive bargaining representative, SEIU wanted to communicate with all County employees, members or otherwise, about union activities and events. It also wanted the information for recruitment and investigation of grievances.”

“The County rejected the amendment, contending contact information was not relevant to any collective bargaining issue and disclosure would violate nonmembers' privacy rights.”

### b. Discussion

“SEIU's interest in obtaining residential contact information for all employees it represents is both legitimate and important. . . . [A] union elected as an exclusive bargaining agent owes a duty of fair representation to *all* employees in the bargaining unit it represents, including employees who are not union members.”

“A union breaches the duty of representation if it fails to inform employees about the status of negotiations . . . or changes in the contractual terms of their employment . . . . Because the union's duty extends to all employees in the bargaining unit, regardless of union membership, the union must have the means of communicating with all employees on these important topics. In addition, a union must give nonmembers an opportunity to express their views on bargaining matters, even if these employees do not have a vote. . . . Direct communication between unions and all bargaining unit employees is essential to ensure that nonmembers' opinions are heard. Finally . . . , every year the union must send *Hudson* notices to all employees explaining how their dues are used. . . . The obligation to send *Hudson* notices falls on the union, not the employer, and a union commits an unfair business practice if it collects an agency fee without providing a proper notice.”

“[A]lternative means for unions to communicate with nonmembers are often inadequate. Bulletin board postings may not meaningfully convey lengthy or complex information, and employers often monitor the materials posted. . . . A posting provides only one-way communication and is not an avenue for unions to receive employees' views. . . . Other alternatives, such as union meetings and worksite visits by union representatives, are inefficient and ineffective means of communicating with large and dispersed groups of employees.”

“In contrast, the privacy intrusion occasioned by disclosure of contact information to the union is reduced. . . . County employees' expectation of privacy is undermined by the common practice of disclosure in other settings. For decades, the [National Labor Relations Board] has required private employers to furnish unions with employees' home contact information . . . and [the California Public Employment Relations Board] has required most California public employers to make the same disclosure . . . . The invasion of nonmember employees' privacy . . . is also comparatively mild. Nonmember employees may experience increased contact with the union by mail or other means . . . , but there is no evidence SEIU has ever engaged in any harassment of a nonmember. If harassment is a concern, employers may bargain for, or [the Employee Relations Committee] may adopt, procedures that allow nonmembers to opt out and prevent disclosure of their contact information. . . . Although we have concluded that a balancing of interests generally favors disclosure, this balance might, in some cases, tip in favor of privacy when an individual employee objects and demands that home contact information be withheld.”

“On balance, we conclude SEIU's interest in communicating with all County employees significantly outweighs nonmembers' interest in preserving the privacy of their contact information.”

## **C. California Public Records Act**

### **1. Government Code § 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. . . .

(g) "Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored."

## **2. Government Code § 6253**

“(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication,<sup>[4]</sup> or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. . . .”

## **3. Government Code 6253.9**

“(a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format. . . .”

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<sup>4</sup> “Direct costs of duplication” exclude the costs for searching for, reviewing, or deleting parts of (*i.e.* redacting) the public record. *See North County Parents v. Dept. of Educ.*, 23 Cal. App. 4th 144 (1994)].

### CSU Office of General Counsel “Records Access Manual”

“CSU’s direct cost of duplication has been established at \$0.20 per page (per side), for records up to 8½ x 14 in size, irrespective of whether they are produced in hard or electronic format. . . . In addition to CSU’s \$0.20 per page charge, the requester must bear any added cost of producing electronic records if (1) the request calls for production out of sequence with otherwise regularly scheduled intervals; or (2) the request requires data compilation, extraction, or programming. These additional costs cover the ‘cost to construct a record,’ and the “cost of programming and computer services necessary to produce a copy of the record.””

#### 4. Government Code § 6254

“Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure.

. . . .  
(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy. . . .”

### Family Educational Rights and Privacy Act (“FERPA”)

- FERPA prohibits the disclosure of “education records,” *i.e.*, “those records, files, documents, and other materials that (1) contain information directly related to a student and (2) are maintained by an educational agency or institution or by a person acting for such agency or institution.” 20 U.S.C. § 1232g(a)(4)(A).
- However, FERPA allows the disclosure of “directory information,” *i.e.*, “information contained in an education record that would generally not be considered harmful or an invasion of privacy if disclosed, and may include, the student’s name, address, telephone listing, e-mail address, photograph, date and place of birth, major field of study, dates of attendance, grade level, enrollment status (e.g., undergraduate or graduate; full-time or part-time), participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received, and the most recent educational agency or institution attended. 20 U.S.C. § 1232g(a)(5)(A); 34 C.F.R. § 99.3.
- CSU must give students notice and an opportunity to opt out of having any or all of those types of information disclosed as “directory information.” 34 C.F.R. 99.37.

#### 5. Government Code § 6255

“(a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular

case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

(b) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.”

**D. Comparison of the Right to Information under the CBA, HEERA, and PRA**

	CBA			HEERA	PRA
	Article 8	Article 10	Article 12		
<b>Who Can Make the Request?</b>	“APC”	“the grievant or his/her representative”	“the employee”	APC	“any person”
<b>What Does the CSU Have to Disclose?</b>	“employee lists” & “public information”	“information”	“a copy of the charges and materials upon which the disciplinary action is based”	“all information that is necessary and relevant to discharging its duty to represent unit employees”	“public records”
<b>What Are the Limitations on Disclosure?</b>	<ul style="list-style-type: none"> <li>• privacy</li> <li>• confidentiality</li> <li>• FERPA etc.</li> </ul>	<ul style="list-style-type: none"> <li>• privacy</li> <li>• confidentiality</li> <li>• FERPA etc.</li> </ul>	none	<ul style="list-style-type: none"> <li>• privacy</li> <li>• confidentiality</li> <li>• FERPA etc.</li> </ul>	<ul style="list-style-type: none"> <li>• “preliminary drafts” etc.</li> <li>• “personnel, medical, or similar files”</li> <li>• “public interest served by not disclosing the record clearly outweighs the public interest served by disclosure”</li> <li>• FERPA etc.</li> </ul>
<b>What Will Disclosure Cost?</b>	negotiable	negotiable	negotiable	negotiable	\$0.20/page (“direct cost of duplication”)
<b>When Will I Get the Stuff?</b>	reasonable time after agreement to pay	reasonable time after agreement to pay	reasonable time after agreement to pay	reasonable time	“promptly . . . upon payment” (initial response within ten days)
<b>Can I Get Attorneys’ Fees if I Have to Sue to Get the Stuff?</b>	no	no	no	no	yes



### **III. Make an Information Request.**

#### **A. Who Are You?**

1. If you are making the request as a private person on your own behalf, you must use CBA Article 10, if applicable, or the PRA. You cannot use CBA Article 8 or the HEERA. (You must be a grievant for CBA Article 10 to be applicable.)
2. If you are making the request as an APC officer or employee on behalf of APC, you can use CBA Article 8 or 10, if applicable, the HEERA, or the PRA. (You must be a grievant's representative for CBA Article 10 to be applicable.)

#### **B. What Are You Looking for?**

1. If you are looking for information that is not contained in already existing documentary records and that also cannot be compiled or extracted from already existing electronic records, you must use CBA Article 8 or 10, if applicable, or the HEERA. You cannot use the PRA.
2. If you are looking for information that is contained in already existing documentary records or that can be compiled or extracted from already existing electronic records, you can use CBA Article 8 or 10, if applicable, the HEERA, or the PRA.

#### **C. How Are You Going to Ask for It?**

1. Consider asking for the information, if it contains private or confidential information, in redacted form to avoid objections.
2. Consider asking for the information in electronic format to reduce cost.

#### **Sample Information Request**

Pursuant to the CBA, the HEERA, and the PRA, where applicable, I hereby request the following information and documents on behalf of APC:

- For each MPP merit bonus awarded in fiscal year 2012-13, name and campus of MPP employee to whom bonus was awarded, amount of bonus, and date on which it was awarded.

If any documents that are otherwise responsive to this information request contain non-disclosable private or confidential information, I am willing to accept them in redacted form.

If any of the requested information exists in electronic format, please provide it in such format.

Pursuant to Government Code 6253(b), I expect you to determine, within 10 days from receipt of the request, whether the request, in whole or in part, seeks copies of disclosable public records in the possession of CSU and promptly to notify me of the determination and the reasons therefore.

#### **IV. Explore the Following Links**

**A. APC Homepage:**

<http://www.apc1002.org/>

**B. APC Labor Relations Page:**

<http://lrc.apc1002.net/index.php>

**C. A Pocket Guide to the California Public Records Act (First Amendment Project)**

<http://www.thefirstamendment.org/publicrecordsact.pdf>

**E. Summary of the California Public Records Act 2004 (CA Attorney General Office)**

[http://www.ag.ca.gov/publications/summary\\_public\\_records\\_act.pdf](http://www.ag.ca.gov/publications/summary_public_records_act.pdf)

**F. Records Access Manual (CSU Office of General Counsel)**

<http://www.calstate.edu/gc/documents/RecordsAccessManual.pdf>

**G. Systemwide CSU Employee Policies and Programs**

<http://www.calstate.edu/HRAdm/policies.shtml>