
Access To Barred Records By Auditor

California Codes Government Code

8545.1 Disclosure of confidential records; offense

It is a misdemeanor for the State Auditor or any employee or former employee of the bureau to divulge or make known in any manner not expressly permitted by law to any person not employed by the bureau any particulars of any record, document, or information the disclosure of which is restricted by law from release to the public. This prohibition is also applicable to any person or business entity that is contracting with or has contracted with the State Auditor and to the employees and former employees of that person or business entity or the employees of any state agency or public entity that has assisted the State Auditor in the course of any audit or investigative audit or that has been furnished a draft copy of any report for comment or review.

8545.2 Access to barred records by auditor or authorized representative; offense

- a) Notwithstanding any other provision of law, the State Auditor during regular business hours shall have access to and authority to examine and reproduce, any and all books, accounts, reports, vouchers, correspondence files, and other records, bank accounts, and money or other property, of any agency of the state, whether created by the California Constitution or otherwise, and any public entity, including any city, county, and school or special district for any audit or investigative audit. Any officer or employee of any agency or entity having these records or property in his or her possession or under his or her control shall permit access to, and examination and reproduction thereof, upon the request of the State Auditor or his or her authorized representative.
- b) For the purposes of access to and examination and reproduction of the records and property described in subdivision (a), an authorized representative of the State Auditor is an employee or officer of the agency or public entity involved and is subject to any limitations on release of the information as may apply to an employee or officer of the agency or public entity. For the purpose of conducting any audit or investigation, the State Auditor or his or her authorized representative shall have access to the records and property of any public or private entity or person subject to review or regulation by the public agency or public entity being audited or investigated to the same extent that employees or officers of that agency or public entity have access. No provision of law providing for the confidentiality of any records or property shall prevent disclosure pursuant to subdivision (a), unless the provision specifically refers to and precludes access and examination and reproduction pursuant to subdivision (a). This subdivision does not apply to records compiled pursuant to Part 1 (commencing with Section 8900) or Part 2 (commencing with Section 10200) of Division 2.
- c) Any officer or person who fails or refuses to permit access and examination and reproduction, as required by this section, is guilty of a misdemeanor.

8545.3 Release of records prohibited from disclosure; offense

It is a misdemeanor for the State Auditor or any employee of the State Auditor to release any information received pursuant to Section 10850 of the Welfare and Institutions Code or that is otherwise prohibited by law to be disclosed.

8545.4 Audits or investigative audits; powers of auditor or designee

- a) In connection with any audit or investigative audit conducted by the State Auditor, the State Auditor or his or her designee, may do any of the following:
 1. Administer oaths.
 2. Certify to all official acts.
 3. Issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, or documents, or for the making of oral or written sworn statements, in any investigative interview conducted as part of an audit or investigative audit.
- b) Any subpoena issued under this section extends as process to all parts of the state and may be served by any person authorized to serve process of courts of record or by any person designated for that purpose by the State Auditor or his or her designee. The person serving this process may receive compensation as allowed by the State Auditor or his or her designee, not to exceed the fees prescribed by law for similar service.
- c) Notwithstanding Section 7470, 7474, or 7491, subpoenas issued under this section for financial records of financial institutions concerning customers of financial institutions or for information contained in those records shall not be subject to the requirement or conditions of Section 7474.

8547.5 Investigative Audits

Upon receiving specific information that any employee or state agency has engaged in an improper governmental activity, the State Auditor may conduct an investigative audit of the matter. The identity of the person providing the information that initiated the investigative audit shall not be disclosed without the written permission of the person providing the information unless the disclosure is to a law enforcement agency that is conducting a criminal investigation.

8547.6 Assistance in conduct of investigative audits.

The State Auditor may request the assistance of any state department, agency, or employee in conducting any investigative audit required by this article. If an investigative audit conducted by the State Auditor involves access to confidential academic peer review records of University of California academic personnel, these records shall be provided in a form consistent with university policy effective on August 1, 1992. No information obtained from the State Auditor by any department, agency, or employee as a result of the State Auditor's request for assistance, nor any information obtained thereafter as a result of further investigation, shall be divulged or made known to any person without the prior approval of the State Auditor.

8547.7 Report of improper governmental activities; enforcement authority

- a) If the State Auditor determines that there is reasonable cause to believe that an employee or state agency has engaged in any improper governmental activity, he or she shall report the nature and details of the activity to the head of the employing agency, or the appropriate appointing authority. If appropriate, the State Auditor shall report this information to the Attorney General, the policy committees of the Senate and Assembly having jurisdiction over the subject involved, and to any other authority that the State Auditor determines appropriate.
- b) The State Auditor shall not have any enforcement power. In any case in which the State Auditor submits a report of alleged improper activity to the head of the employing agency or appropriate appointing authority, that individual shall report to the State Auditor with respect to any action taken by the individual regarding the activity, the first report being transmitted no later than 30 days after the date of the State Auditor's report and monthly thereafter until final action has been taken.
- c) Every investigative audit shall be kept confidential, except that the State Auditor may issue any report of an investigation that has been substantiated, keeping confidential the identity of the individual or individuals involved, or release any findings resulting from an investigation conducted pursuant to this article that is deemed necessary to serve the interests of the state.
- d) This section shall not limit any authority conferred upon the Attorney General or any other department or agency of government to investigate any matter.

8547.8 Reprisals or other improper acts for disclosure of improper governmental activities; complaints; limitation of actions; civil and criminal penalties

- a) A state employee or applicant for state employment who files a written complaint with his or her supervisor, manager, or the appointing power alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 8547.3, may also file a copy of the written complaint with the State Personnel Board, together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the

board, shall be filed within 12 months of the most recent act of reprisal complained about.

- b) Any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a state employee or applicant for state employment for having disclosed improper governmental activities, is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for up to a period of one year. Any state civil service employee who intentionally engages in that conduct shall be disciplined by adverse action as provided by Section 19572. If no adverse action is instituted by the appointing power, the State Personnel Board shall invoke adverse action as provided in Section 19583.5.
- c) In addition to all other penalties provided by law, any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a state employee or applicant for state employment for having disclosed improper governmental activities shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, any action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the State Personnel Board pursuant to subdivision (a) of this section, and the board has failed to reach a decision regarding any hearing conducted pursuant to Section 19683.
- d) This section is not intended to prevent an appointing power, manager, or supervisor from taking, directing others to take, recommending, or approving any personnel action or from taking or failing to take a personnel action with respect to any state employee or applicant for state employment if the appointing power, manager, or supervisor reasonably believes any action or inaction is justified on the basis of evidence separate and apart from the fact that the person has disclosed improper governmental activities as defined in subdivision (b) of Section 8547.2.